PROFESSIONAL LICENSING:
LEARNING FROM THE PAST, LOOKING TO THE FUTURE

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ABSTRACT

Professional and occupational regulation can be seen as both a benefit and a burden. Some industries monitor and impose high standards of quality, ethics, and/or practice through self-regulation. Other times it may be found that some level of government regulation is necessary to ensure minimum competency of those practicing in a given industry in order to protect the health, safety, and welfare of the public. In the last few years, the regulation of onsite sewage system professionals in Virginia has evolved from minimal regulation to full licensure. Through this evolution, there have been many things learned along the way, and many things on the horizon that continue to evolve professional licensing of onsite sewage system professionals in Virginia.

INTRODUCTION

The history of professional licensing in Virginia includes a tale of two agencies: the Virginia Department of Health (VDH) and the Virginia Department of Professional and Occupational Regulation (DPOR). VDH protects and promotes the health of Virginians through a network of 35 health districts in 119 counties. Various areas under VDH’s purview include emergency preparedness, drinking water regulation, diseases and conditions, vital records, nutrition, injury and violence prevention, and environmental health, among many others. DPOR consists of 18 policy boards that are made up of practitioners and citizens appointed by the Governor who are responsible for regulating certain professions and occupations, as determined by the Virginia General Assembly. DPOR issues professional credentials—licenses, certificates or registrations—in the least intrusive, least burdensome and most efficient way. The goal is to ensure the minimum competency necessary to practice without harming the public.

CHAPTER 1: ONSITE SEWAGE SYSTEM REGULATION, THE EARLY YEARS

At one time, VDH handled all aspects of septic system design and installation, from site evaluation to operation permit issuance. Before 1999, there was primarily a single service provider option for designing a septic system and there was essentially one option of design: septic tank effluent and gravity flow (sometimes with a simple pump). When the growth of the housing market in Virginia accelerated, VDH and customers experienced significant backlogs.

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With delays in construction equaling lost dollars, the state legislature decided to address complaints about backlogs in 1999 by passing a law that required VDH to accept private sector evaluations. VDH had 15 days to process an application or else the application was “deemed approved.”

The next few years saw VDH regulating private soil evaluators and designers of sewage systems. In 2000, the first “emergency” regulations became effective and VDH issued certifications to authorized onsite soil evaluators (AOSEs). At the time, an AOSE was defined as “a person currently listed by the board as possessing the qualifications to evaluate soils and soil properties in relationship to the effects of these properties on the use and management of these soils as the locations for traditional onsite sewage disposal systems.” In 2001, the emergency regulations were replaced with the standard regulations. The regulation provided the qualifications for certification, the authority of the Commissioner of Health to discipline AOSEs, and the processes and practices used to obtain a sewage disposal system construction permit.

With the expansion of soil evaluation and design in the private sector, one might think there was peace throughout the lands. Alas, that was not quite the case. As with many of the best-laid plans, there were some unintended consequences. In addition to changes in the review process for VDH staff – one process for VDH soil evaluations and another for private sector soil evaluations – there was greater pressure to review the work given the shortened timeframe and concerns about the efficacy of private sector work. In addition, as the demand for private sector work increased, many VDH staff pursued private sector opportunities since the pay was better and private sector providers could turn down work that they did not wish to perform. The increase in staff turnover meant VDH spent more dollars to train new employees, as well as a loss of knowledge and experience from the departed employees and an overall decrease in morale.

CHAPTER 2: PROFESSIONAL LICENSING BEGINS

The next chapter of this story begins in 2007 when the Virginia General Assembly passed a law that moved the regulation of onsite soil evaluators to DPOR. In addition, the new law established license programs for onsite sewage system installers and onsite sewage system operators.

When a new licensing program is established, the program is often placed into an existing regulatory board to take advantage of existing economies of scale. It is more expensive to create a new board with potentially new staff, office equipment, etc. Thus, the new licensing programs were added to the existing Board for Waterworks and Wastewater Works Operators through the addition of Onsite Sewage System Professionals. The Board was expanded to include representatives of alternative onsite soil evaluators, alternative onsite sewage system installers, and alternative onsite sewage system operators, as well as a citizen member.

The newly-created licensure of onsite sewage system professionals (OSSP) required the development of regulations for six new license types since each type of license (installer, operator, onsite soil evaluator) included categories for conventional and alternative licenses. Conventional licensees could work on septic tanks with gravity, pumped, or siphoned
conveyance to a subsurface drainfield. Alternative licensees, on the other hand, could work on conventional systems as well as alternative systems that typically consist of pre-engineered, packaged equipment and do not have a point-source discharge.

As a result of the time it took to develop the new regulations, the issuance of licenses by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals (WWWOOSSP Board) to onsite sewage system professionals began July 1, 2009. The first licenses issued were “interim licenses.” These licenses permitted individuals to continue working legally with proof of experience and other qualifications, but no examination. However, interim licenses were only effective for four years, and at the end of four years, the interim license could not be renewed. Thus, all individuals granted interim licenses were required to take the mandatory exam by the end of the four-year interim license period to legally continue working in the profession. In addition, interim licenses were only issued for the first year of the program. After that time, any new applicants had to apply via the standard route – which included an exam requirement. This resulted in several legislative proposals seeking to address complaints from those who had been working in the industry for many years, some for decades, and were now going to have to take an exam to continue doing what they had been doing for years.

In 2012, the General Assembly passed a law to allow installers with a certain amount of experience to obtain a license without having to pass the conventional onsite sewage system installer exam. Next, 2013 resulted in the passage of a bill to allow wastewater works operators to take the conventional onsite sewage system operator examination without meeting the experience and training requirements. Finally, 2014 included the introduction of two bills that sought different methods to create exam exemptions. At this point, most of the interim licenses had expired. Many individuals who had been in the industry for years went to their legislative representatives to find a way to legally continue working, and to not have to shut the doors on their businesses. Concerns that were voiced on behalf of this constituency included illiteracy, the applicability of exam content areas, difficulty with passing an examination after so many years, etc. After much discussion and compromise, the result was a six-month extension of the interim license for alternative onsite sewage system operators. But the message had been heard – the WWWOOSSP Board needed to explore additional options for licensure that met statutory mandates and that fit with the realities of the industry.

CHAPTER 3: LEARNING FROM THE PAST, LOOKING TO THE FUTURE

The WWWOOSSP Board initiated a complete review of its licensing regulations in 2014 and adopted proposed regulations in 2015, which are currently undergoing executive branch review. After, there will be a 60-day public comment period. In all, it will be at least another year or so before the new regulations are in effect, but many preparations are being made to ensure adequate outreach and education is done to let professionals know what to expect, and to revise processes and procedures to accommodate any new requirements.

This extensive review resulted in the separation of the licensing regulations for waterworks and wastewater works operators and onsite sewage system professionals to allow for greater
specificity and clarity. In addition, the OSSP regulations have been amended to include “journeyman” and “master” classifications for each license. This has been, and will continue to be, an area of great discussion and debate. When the WWO OSSP Board was conducting a general review of its regulations, it carefully considered the current license requirements along with its statutory responsibility to protect the public.

One alternative the Board considered was to require all individuals performing the duties identified in the statute as requiring a license to meet the current license requirements for the applicable classification and category of license. However, this option would require an examination for all license types and result in an increased cost to all individuals through application fees, examination fees, and, for some, the cost of study classes and/or materials. Alternatively, the Board decided to utilize a license model currently in place for other, similar programs. This would allow those who are performing hands-on work that requires a license--but who are not in a supervisory or responsible charge capacity--to continue performing such work after having demonstrated minimum competency to the Board for a license. This also allows the Board to take disciplinary action, if necessary, against the licensee actually performing the regulated activity, addressing a current deficiency that prevents the Board from sanctioning someone who is performing the work but is not a licensee.

While this was a major change to the licensing regulations, there were many other changes based on lessons learned since the initial establishment of the program. Standards of practice and conduct were refined, continuing education areas were revised, and more alternatives for education, experience, and training to qualify for licensure were developed.

**CONCLUSION**

The effectiveness and acceptance of these changes remain to be seen; however, there is one thing that can be said with certainty: as the onsite industry grows and evolves, as technology changes, and as processes develop, professional licensing will continue to need updates, adjustments, and reviews. After all, the regulatory programs have to adjust and adapt to the realities of the professions in order to do what professional licensing is intended: protect the health, safety, and welfare of the public.