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**ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION**

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MAY 20 2019

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SECRETARY

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COMMISSIONER

May 13, 2019

Dear Concerned Citizen:

Pursuant to public notification requirements established in KRS Chapter 13A, the Kentucky Division of Water (DOW) and Kentucky Division of Compliance Assistance (DCA) submit for your information proposed amendments to the following administrative regulations:

- 401 KAR 11:001 - Definitions for 401 KAR Chapter 11
- 401 KAR 11:030 – Wastewater treatment and collection system operators; classification and qualification
- 401 KAR 11:040 – Water treatment and distribution system operators; classification and qualifications
- 401 KAR 11:050 – Operator certification
- 401 KAR 11:060 – Certification fees

Related regulations:

- 401 KAR 8:030 - Water treatment plant and water distribution system classification and staffing
- 401 KAR 8:050 - Drinking water program fees
- 401 KAR 5:010 - Operation of wastewater systems by certified operators

The DOW and DCA have joint responsibility for regulations contained in 401 KAR Chapter 11 – Certified Operators. These regulations establish education, experience, and training requirements for certified drinking water and wastewater operators. Due to reduced availability of certified operators and persons eligible for certification, regulatory amendments to expand the base of eligible persons and increase clarity and efficiency, while maintaining high standards for certified operators, are both timely and necessary. The majority of the regulations have not been amended since 2010.

The Divisions filed the proposed amended regulations with the Legislative Research Commission on May 13, 2019 and anticipate that the proposed amended regulations will be published in the Kentucky Administrative Register on June 1, 2019. Once published, the proposed administrative regulations will be available on the LRC website at <https://apps.legislature.ky.gov/law/kar/TITLE401.HTM> and on the Division of Water website at <https://eec.ky.gov/Environmental-Protection/Water/Regs/Pages/default.aspx>. Both websites can be accessed through public libraries or any device with Internet access.

401 KAR 11:001 establishes definitions for terms used in Chapter 11. DOW and DCA propose:

- Adding a definition for “Certified training provider” to align with the new certified training provider program in 401 KAR 11:050
- Adding definitions for “Active certificate” and “Inactive certificate”

401 KAR 11:030 establishes classifications and qualifications for wastewater treatment and collection operator certifications. DOW and DCA propose:

- Clarifying statutory authority and modifying language for clarity and to comply with KRS Chapter 13A
- Clarifying “limited certification” to conform with the KRS 224.73-110(5) (home unit operators) and that experience obtained during limited certification cannot be applied to any other level of certification
- Clarifying Operator In Training (OIT) responsibility (an OIT cannot be primarily responsible for a system for which the OIT does not hold required certification except for alternate staffing in 5:010), adding a reference to staffing established in 401 KAR 5:010 and clarifying requirements for OIT Classes II through IV
- Expanding acceptable education for Class IV treatment and collection certifications, and reducing the number of years of experience required for certification
- Expanding acceptable education for experience substitutions, and expanding acceptable experience for education substitutions
- Making distribution and collection experience equivalent for substitution purposes
- Recognizing state-approved apprenticeship programs as an avenue towards certification
- Expanding the option for equivalent certification for operators who hold out-of-state wastewater operator certification. Rather than considering only what the original out-of-state certification required, allowing consideration of the operator’s experience while certified
- Granting the cabinet authority to enter reciprocal certification agreements with other states

401 KAR 11:040 establishes classification and qualifications for water treatment and distribution operators. DOW and DCA propose:

- Clarifying statutory authority and modifying language for clarity and to comply with KRS Chapter 13A
- Clarifying “limited certification” to conform with KRS 223.160
- Clarifying OIT responsibility (an OIT cannot be primarily responsible for a system for which the OIT does not hold required certification except for alternate staffing in 8:030), and clarifying requirements for OIT Classes II through IV
- Expanding acceptable education for experience substitutions, and expanding acceptable experience for education substitutions
- Recognizing state-approved apprenticeship programs as an avenue towards certification
- Expanding the option for equivalent certification for operators who hold out-of-state water operator certification. Rather than considering only what the out-of-state certification required, allowing consideration of the operator’s experience while certified
- Granting the cabinet authority to enter reciprocal certification agreements with other states

401 KAR 11:050 establishes application and examination procedures; provisions relating to certificate issuance, renewal, and termination, reciprocity; training; and disciplinary actions for wastewater operators. DOW and DCA propose:

- Clarifying statutory authority and that the regulation applies to both water and wastewater operators, and modifying language for clarity and to comply with KRS Chapter 13A
- Clarifying that an OIT may renew the designation when all certification requirements have been completed
- Removing language that limits operator mentorship to only one OIT
- Clarifying that only Class IV operators require Board review
- Clarifying that after receiving application materials, the cabinet will determine whether requirements for examination have been met
- Establishing a program for cabinet certification of training providers and CEU approval, and renaming the regulation accordingly
- Clarifying materials needed for certification renewal
- Updating Materials Incorporated By Reference

401 KAR 11:060 establishes fees for operator certification. DOW and DCA propose:

- Removing water operator fees from 401 KAR 8:050 and consolidating language into 11:060
- Raising operator certification and renewal fees so that the program is more closely self-funded and less reliant on subsidization with State Revolving Funds
- Adding an equivalency fee with the addition of equivalency certification in 11:030 and 11:040
- Clarifying that a \$50 surcharge applies to all fees that are not submitted online
- Clarifying that an attendee who cancels registration for cabinet training is entitled to reschedule training within one year, but that cabinet training fees are nonrefundable
- Adding fees for certified training providers and individual continuing education with the addition of training provider certification and CEU approval in 11:050

Related Regulations

401 KAR 8:030 establishes standards for staffing and classification of drinking water treatment plants and water distribution systems. DOW and DCA propose:

- Amending language to comply with KRS 13A requirements
- Clarifying that a Class I OIT shall not be in direct responsible charge of any drinking water system
- Establishing staffing requirements when Operators In Training are working in those systems to accommodate alternate staffing.

401 KAR 8:050 establishes Drinking Water program fees, including water operator certification and drinking water laboratory certification fees. DOW and DCA propose:

- Removing drinking water operator fees (to be consolidated into 11:060)
- Clarifying statutory authority and amending language to comply with KRS Chapter 13A
- Requiring payment for lab certification fees by December 31 of the year preceding certification
 - Eliminates a 6-week period (Jan 1 - March 15 of the certification year) during

- which labs receive "free" certification
- o Eliminates any confusion regarding the certification of a laboratory and the validity of lab results which are required in January

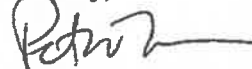
401 KAR 5:010 establishes standards for the staffing and classification of wastewater treatment plants and collection systems that accept domestic sewage. DOW and DCA propose:

- Clarifying that a Class I OIT shall not be in direct responsible charge of any wastewater system
- Establishing staffing requirements when Operators In Training are working in those systems to accommodate alternate staffing.


Adding alternate staffing language that mirrors 401 KAR 8:030

A public hearing to receive comments regarding the proposed amended regulations is scheduled for Thursday, June 27, 2019 at 6 p.m. at the Department of Environmental Protection, Training Room B, 300 Sower Blvd, Frankfort, KY 40601. The Division requests that attendees submit a written copy of their comments made at the public hearing. Written comments will be accepted through June 30, 2019, and will receive the same consideration as those made verbally at the public hearing. Send written comments to: Carole Catalfo, Internal Policy Analyst, Division of Water, 3 NW WK 36, 300 Sower Blvd, Frankfort, KY 40601 or email to water@ky.gov with the subject line "Chapter 11 regulations".

Sincerely,



Peter T. Goodmann, Director
Division of Water



Amanda W. LeFevre, Director
Division of Compliance Assistance

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