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

ANTHONY R. HATTON  
COMMISSIONER

300 SOWER BOULEVARD  
FRANKFORT, KENTUCKY 40601

August 14, 2019

Dear Concerned Citizen,

On May 13, 2019, the Kentucky Division of Water and Division of Compliance Assistance ("the Divisions") filed proposed amendments to administrative regulations 401 KAR 5:010, 8:030, 8:050, and Chapter 11. The Divisions held a public hearing on June 27, 2019, and received written comments regarding the proposed amendments before the public comment period closed on June 30, 2019.

On August 14, 2019, the Divisions filed a Statement of Consideration to address the comments it received, and filed further proposed amendments to seven (7) of the administrative regulations (401 KAR 8:030, 8:050, 11:001, 11:030, 11:040, 11:050, and 11:060) which will be available on the Division of Water website at <https://eec.ky.gov/Environmental-Protection/Water/Regs/Pages/default.aspx> and at the Legislative Research Commission website at <https://apps.legislature.ky.gov/law/kar/TITLE401.HTM>. The Statement of Consideration is attached for your convenience pursuant to KRS Chapter 13A. We anticipate that the proposed regulations will be considered by the legislative Administrative Regulation Review Subcommittee at its September 2019 meeting, and by the legislative Natural Resources and Energy Committee at its October 2019 meeting.

The Divisions appreciate and recognize the importance of public participation in the regulatory process and the role it plays in meeting and protecting the interests of Kentucky citizens, stakeholders, and state resources.

Sincerely,

Peter T. Goodmann, Director  
Division of Water

Amanda W. LeFevre, Director  
Division of Compliance Assistance

PTG – AWL/cjc

FILED WITH LRC TIME: <u>10 am</u>
AUG 14 2019
<i>Emily B Caudill</i> REGULATIONS COMPILER

**STATEMENT OF CONSIDERATION  
RELATING TO:**

401 KAR 5:010 (Not Amended After Comments)  
 401 KAR 8:030 (Amended After Comments)  
 401 KAR 8:050 (Amended After Comments)  
 401 KAR 11:001 (Amended After Comments)  
 401 KAR 11:030 (Amended After Comments)  
 401 KAR 11:040 (Amended After Comments)  
 401 KAR 11:050 (Amended After Comments)  
 401 KAR 11:060 (Amended After Comments)

Energy and Environment Cabinet  
 Department for Environmental Protection  
 Division of Water

I. The public hearing for proposed amendments to 401 KAR Chapter 5:010, 8:030, 8:050, 11:001, 11:030, 11:040, 11:050, and 11:060 was held on June 27, 2019 at 6:00 p.m. at 300 Soewer Boulevard, Training Room B, Frankfort, Kentucky. The Division of Water also received written comments regarding the proposed changes to these administrative regulations.

II. The following people submitted comments:

Name and title	Agency/Organization/Entity/Other	Comments
Joe Burns	On behalf of Kentucky Rural Water Association Board of Directors; Water and Wastewater Utilities, member (KRWA)	Verbal
Donald R. Compton	Chair, KY Water & Wastewater Operators Association (KWWOA)	Written and verbal
Lloyd Cress Jr.	Dinsmore & Shohl LLP on behalf of Kentucky League of Cities (KLC)	Written
Mike Gardner	Water/Sewer Systems Manager, Bowling Green Municipal Utilities (BGMU)	Written
Greg Heitzman, P.E.	Chair, American Water Works Association Kentucky/Tennessee Section (AWWA)	Written

Amy Kramer, P.E.	Chair, Kentucky Water Utility Council American Water Works Association, Kentucky/Tennessee Section (AWWA)	Written
Ruth Lancaster	Certified Operator	Written
Gary Larimore	Executive Director, Kentucky Rural Water Association (KRWA)	Written
Matthew Lipps	Certified Operator	Written
Dustin Miller	Government Strategies LLC on behalf of East Kentucky Power Corporation (EKPC)	Written
Kay Sanborn, P.E.	Executive Director, American Water Works Association, Kentucky/Tennessee Section (AWWA)	Written
Christopher Spriggs	Superintendent/Water Treatment Operator City of Madisonville	Written
Robin Strader	Certified Operator	Written and Verbal
Jeremy Woosley	KY Water and Wastewater Operators Association (KWWOA)	Verbal

III. The following people from the promulgating administrative body responded to the comments:

Peter T. Goodman, Director, Division of Water  
Amanda Lefevre, Director, Division of Compliance Assistance  
Jessica Wilhoite, Branch Manager, Certification & Licensing, Division of Compliance Assistance  
Carole Catalfo, Agency Representative

IV. Summary of Comments and Responses for 401 KAR 5:010, 8:030, 8:050, 11:001, 11:030, 11:040, 11:050, and 11:060. Comments and responses are grouped by general comments, followed by comments regarding specific administrative regulations listed in numerical order.

(1) Subject Matter: General comment regarding regulatory effectiveness. (401 KAR Chapter 11)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: The commenter does not believe that the regulations will make true improvements to the program, increase the number of certified operators, and will have a negative impact on public health and the operator profession.

(b) Response: The cabinet acknowledges the comment. KRS 224.10-100(4) requires the cabinet to "develop and conduct a comprehensive program for the management of water, land, and air resources to assure their protection and balance utilization consistent with the environmental policy of the Commonwealth." The proposed amendments to the administrative regulations assure protection of water resources.

(2) Subject Matter: General comment regarding regulations. (401 KAR Chapter 11)

(a) Commenter: Gary Larimore (KRW)

Comment: The commenter commends the Division of Water and Division of Compliance Assistance in proposing needed amendments. The proposed regulations recognize that the availability of qualified operators is one of the biggest industry concerns and this approach, combined with developing targeted educational programs, seems to be the best way to address staffing issues while maintaining high standards for certified operators.

(b) Response: The cabinet acknowledges the comment.

(3) Subject Matter: General comment regarding regulations. (401 KAR Chapter 11)

(a) Commenter: Lloyd Cress Jr. (KLC)

Comment: Clean drinking water and properly treated wastewater are obviously critical components for the health and safety of our citizens. It is essential that appropriately trained and certified employees be available to perform operator functions. Many systems have seen a steady decline in the availability of qualified operators. KLC understands that employment market conditions contribute to this phenomenon, but the KLC also believes that unnecessary burdens in seeking or upgrading certification play a significant role. KLC appreciates the Department of Environmental Protection's diligent and methodical approach in addressing those burdens in this regulatory action, and supports the proposed regulatory imposition of realistic experience requirements, enhanced education equivalency, and inclusion of apprenticeship experience for credit. These provisions will likely assist in stemming the trend of a lack of certified operators.

(b) Response: The cabinet acknowledges the comment.

(4) Subject Matter: General comment regarding operator qualifications. (401 KAR Chapter 11)

(a) Commenter: Matthew Lipps (Certified Operator)

Comment: The commenter is concerned that time and money invested by operators and utilities in obtaining operator certification, as well as experience, will be devalued. The commenter, who has a Bachelor's degree, waited one year before taking the Class IV Operator test because the experience was so important. The commenter is concerned that a company could hire an Operator In Training (OIT) to which they will not have to pay a fair wage, and will be able to oversee a water treatment plant on their own. This sends the message that anyone can do this job, public safety is of no concern, and candidates will be driven away due to devalued education and lack of fair wages. The only reasons for these changes is to save money and make it easier to fill vacancies.

(b) Response: The cabinet does not concur. The cabinet finds the proposed amendments reflect the value of formal education. The proposed amendments allow credit not only for college degrees in science-related areas, but also (though to a lesser extent) for college degrees in unrelated areas. A Class IV Operator candidate still requires substantial experience prior to being eligible for testing. An OIT cannot operate a water treatment plant of a classification for which the operator does not hold certification without being under the direct supervision of a duly-



certified operator.

**(5) Subject Matter: General comment regarding Boards of Certification involvement. (401 KAR Chapter 11)**

**(a) Commenter: Donald R. Compton (KWWOA), Jeremy Woosley (KWWOA)**

**Comment:** The KWWOA generally opposes the proposed regulations. The Division of Water (DOW) and Division of Compliance Assistance (DCA) did not share draft regulations before filing them with the Legislative Research Commission. KWWOA suggests that the cabinet withdraw the regulations, return to the Certification Boards to solicit their input on every proposed regulatory change, and make changes the Boards recommend for the program. Neither DOW nor DCA followed the intent of KRS 223.170 nor 224.73-110 regarding certification board involvement, and that initial discussions with the Water and Wastewater Advisory Boards occurred 18 months prior to the proposed regulations being discussed with the Certification Boards.

**(b) Response:** The cabinet acknowledges the comment. It is important to note that the comment was not submitted by the certification boards, nor any of the individual board members. In fact, the only comment submitted by a board member related to a form incorporated by reference into 401 KAR 11:050. KRS 223.170 requires the cabinet to consider the recommendations of the Board of Certification. KRS 224.73-110 states that "the cabinet, with the advice of the board of certification, may classify..."

For the record, proposed changes to the regulations were discussed in varying detail with the Drinking Water and Wastewater Operator Boards in 2018 on August 28, and December 18, and in 2019 on February 19, March 19, and May 21. The cabinet emailed Board members copies of proposed regulations on December 12, 2018 and requested feedback by December 20, and again on January 4, 2019, and May 21, 2019. Additionally, the cabinet addressed the Drinking Water and Wastewater Advisory Councils regarding the proposed amendments on December 11, 2018, and March 12 and June 11, 2019. While the statutes require that the cabinet consider the recommendations and advice of the boards, the statutes do not require that the cabinet adopt all advice or recommendations of the boards. The cabinet appreciates the work and recommendations that the boards contributed during the development of the proposed amendments to the regulations.

**(6) Subject Matter: General comment regarding the Regulatory Impact Analyses and Fiscal Notes. (401 KAR Chapter 11)**

**(a) Commenter: Donald R. Compton (KWWOA), Jeremy Woosley (KWWOA)**

**Comment:** The Regulatory Impact Analysis and Fiscal Notes for the proposed regulations lack data to support an operator shortage as justification for reducing the operator qualifications for testing and broader authority for Operators in Training (OIT) because the databases are not currently linked.

**(b) Response:** The cabinet does not concur. The cabinet is able to record the number of licenses issued, the number of operator-trainees, as well as Alternative Staffing Plans. The cabinet finds the proposed regulations recognize the value of education and experience, and do not broaden the authority of OITs.

**(7) Subject Matter: General comment regarding operator qualifications. (401 KAR Chapter 11)**

**(a) Commenter: Donald R. Compton (KWWOA), Matthew Lipps (Certified Operator),**

**Jeremy Woosley (KWWOA)**

**Comment:** The commenters suggest that if staffing requirements had always been enforced, systems would have been more proactive about hiring and training staff, but are concerned that systems want a break in qualifications because they failed to be proactive in staff development. This is of special concern due to the Flint, MI crisis. The commenters are concerned that underqualified operators would be allowed to operate a system, or that fast tracking existing operators could be dangerous.

**(b) Response:** The cabinet finds the proposed regulations recognize the value of education and experience and do not reduce the qualifications required to train and become certified for these important jobs.

**(8) Subject Matter: General comment regarding staffing requirements and alternative staffing plans. (401 KAR Chapter 11, 5:010, and 8:030)**

**(a) Commenter: Donald R. Compton (KWWOA), Jeremy Woosley (KWWOA)**

**Comment:** The commenters are concerned that instead of using the current mechanism to approve Alternate Staffing Plans and hold systems accountable, the cabinet is advocating reducing the standards. The proposed wastewater qualification changes have no basis other than to match the requirements of the same level in the drinking water regulation. The Certification Boards told the Division of Water and Division of Compliance Assistance in a joint meeting that qualifications for wastewater operators are more extensive because wastewater plants are more difficult to operate. A workgroup in May 2018 reached consensus on the information to be requested for Alternate Staffing Plans, and that they should be incorporated into an agreed order if out of compliance. To date, the group has not heard from the DOW on how the process has changed, and the language in 401 KAR 8:030 has not been changed, but is the same problematic language in 401 KAR 5:010.

**(b) Response:** The cabinet finds the proposed regulations recognize the value of education and experience and do not reduce the qualifications required to train and become certified for these important jobs. The purpose of the alternate staffing workgroup was to provide feedback regarding non-regulatory internal processes and considerations in reviewing alternate staffing plans, not for the purpose of regulatory changes.

**(9) Subject Matter: General comment regarding staffing requirements. (401 KAR Chapter 11, 5:010, 8:030)**

**(a) Commenter: Donald R. Compton (KWWOA), Jeremy Woosley (KWWOA)**

**Comment:** The different staffing requirements for water and wastewater facilities would impact a system's ability to use an Operator In Training (OIT) because of the number of required operators. An operator could be forced by a system to take on and be personally liable for multiple trainees. Mentors need some protection since the system should bear the responsibility of operating with OITs. The regulations have redundancy in treatment processes and there should be redundancy in staffing.

**(b) Response:** The cabinet finds that staffing requirements must be flexible to accommodate the differences in location, size, and type of systems across the Commonwealth while protecting human health and the environment. The Division of Water reviews all Alternate Staffing Plans and will not approve a plan that could compromise operator safety, human health, or the environment.

(10) Subject Matter: General comment regarding staffing requirements. (401 KAR Chapter 11, 5:010, 8:030)

(a) Commenter: Robin Strader (Certified Operator)

Comment: Improve questions on drinking and wastewater plant inspection forms to help regional inspectors identify operator shortages and insufficient staffing. Clarify "system related duties" for regional inspectors as well.

(b) Response: To clarify, plant inspection forms are not within the subject matter of 401 KAR Chapter 11. This issue may be evaluated when the cabinet proposes changes to regulations that govern inspections.

(11) Subject Matter: General comment regarding alternative staffing. (401 KAR Chapter 11, 5:010, 8:030)

(a) Commenter: Robin Strader (Certified Operator)

Comment: Alternate staffing subcommittee conclusions should be incorporated into the proposed regulations. Some suggestions were not clearly stated and some suggestions were left out of the regulations.

(b) Response: The cabinet does not concur. The purpose of the alternate staffing workgroup was to provide feedback regarding non-regulatory internal processes and considerations in reviewing alternate staffing plans, not for the purpose of regulatory changes.

(12) Subject Matter: General comment regarding operator base experience and qualifications. (401 KAR Chapter 11)

(a) Commenter: Donald R. Compton (KWWOA), Jeremy Woosley (KWWOA)

Comment: The requirement for a base year of experience after all substitutions should be reinstituted. All of the substitutions for education and experience creates a maze that will add work to Division of Compliance Assistance (DCA) staff and make consistency difficult for DCA trainers.

(b) Response: To clarify, the proposed amendments already limit substitutions. Education in a related scientific field cannot substitute for more than 50% of the required experience, and education in unrelated fields cannot substitute for more than 25% of the required experience. The cabinet is confident that DCA trainers and staff will properly address and handle the limits on education and experience substitutions.

(13) Subject Matter: General comment regarding operator education and experience substitutions. (401 KAR Chapter 11)

(a) Commenter: Robin Strader (Certified Operator)

Comment: Clarify substitutions to have uniform application reviews.

(b) Response: Education and experience substitutions have been clarified within the drafting requirements of KRS Chapter 13A.

(14) Subject Matter: General comment regarding operator experience. (401 KAR Chapter 11)

(a) Commenter: Robin Strader (Certified Operator)

Comment: Require six (6) months experience for Class I, and one (1) year experience for Class II-IV, which may not be substituted out with education or "other" experience.

(b) Response: The proposed amendments already limit substitutions. Education in a related scientific field cannot substitute for more than 50% of the required experience, and

education in unrelated fields cannot substitute for more than 25% of the required experience.

(15) Subject Matter: General comment regarding Operator In Training (OIT) language. (401 KAR Chapter 11)

(a) Commenter: Robin Strader (Certified Operator)

Comment: OIT language has not evolved into a "useable tool".

(b) Response: The cabinet does not concur. The cabinet finds the proposed language clarifies the qualifications and responsibilities of an OIT within the drafting requirements of KRS Chapter 13A.

(16) Subject Matter: General comment regarding certification fees and training. (401 KAR Chapter 11)

(a) Commenter: Greg Heitzman (AWWA), Amy Kramer (AWWA), Kay Sanborn (AWWA)

Comment: The proposed regulatory changes include certification application and renewal fee increases, and new fees for certified and non-certified training providers, plus penalties for non-electronic submittal. These changes may be a detriment both to individuals considering water operations as a career and to utilities attempting to hire. There is an absence or ambiguity regarding online training and utility in-house training.

(b) Response: The cabinet does not concur. The training class review and approval fee for non-certified training providers is \$50 per class for 2-year approval, or only \$25 per class per year. The cabinet finds utilities realize cost savings with the ability to provide training in-house, rather than having to expend the costs of sending operators to outside locations for training.

(17) Subject Matter: Electric generating unit exemption. (401 KAR 5:010 Operation of wastewater systems by certified operators)

(a) Commenter: Dustin Miller (EKPC)

Comment: The commenter requests that electric generating units be exempt from the definition of domestic sewer and wastewater treatment programs in 401 KAR 5:010.

(b) Response: The cabinet does not concur. The controlling statutes do not distinguish between discharges, nor is the cabinet aware of any provision in statute or regulation for the requested exemption.

(18) Subject Matter: Staffing requirements. (401 KAR 5:010 Operation of wastewater systems by certified operators)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: Wastewater facilities require only one certified operator. There are numerous Class I systems that this designation would not help because a Class I Operator In Training (OIT) could not have primary responsibility.

(b) Response: The cabinet finds certification requirements are appropriate. While a Class I OIT cannot have primary responsibility over any system, the regulations create avenues by which the Class I OIT can receive the education and experience required to advance in operator certification.

(19) Subject Matter: Alternative staffing. (401 KAR 5:010 Operation of wastewater systems by certified operators)



(a) Commenter: Donald R. Compton (KWWOA), Jeremy Woosley (KWWOA)

Comment: A workgroup convened in May 2018 reached consensus on the information to be requested for Alternative Staffing Plans and that they should be incorporated into an agreed order if out of compliance. However, the same problematic language contained in 401 KAR 8:030 is duplicated verbatim in 401 KAR 5:010.

(b) Response: The cabinet does not concur. The purpose of the alternate staffing workgroup was to provide feedback regarding non-regulatory internal processes and considerations in reviewing alternate staffing plans, not for the purpose of regulatory changes.

(20) Subject Matter: Level of Operator In Training (OIT) required to be in direct responsible charge of a wastewater system. (401 KAR 5:010 Operation of wastewater systems by certified operators)

(a) Commenter: Ruth Lancaster (Certified operator)

Comment: The regulation appears to require that an OIT must have an existing license at a Level I, II, or III before becoming an OIT, but that an OIT cannot be in direct responsible charge of a plant at the level of the OIT license.

(b) Response: To clarify, a duly certified operator must be in direct responsible charge of a wastewater collection system or treatment plant in accordance with KRS 224.73-110 and 401 KAR 11:030. An OIT at any level cannot be in direct responsible charge of a plant for which the OIT does not hold certification.

(21) Subject Matter: Regulatory Impact Analysis regarding individuals affected and fees. (401 KAR 5:010 Operation of wastewater systems by certified operators)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: The Regulatory Impact Analysis (RIA) does not contain the type and number of individuals affected by this regulation, and it is misleading to say that this regulation, which deals with staffing and qualifications, will not result in additional costs to wastewater systems. The information in the Regulatory Impact Analysis for 401 KAR 11:060 should be repeated here.

(b) Response: As noted in the comment, the RIA and Fiscal Note for 401 KAR 11:060 specifically address fees that are included in the regulation. 401 KAR 5:010 does not address fees and therefore the RIA does not include that information.

(22) Subject Matter: Classification of wastewater collection systems. (401 KAR 8:030 Water treatment plant and water distribution system classification and staffing)

(a) Commenter: Joe Burns (KRWA), Gary Larimore (KRWA)

Comment: The requirement that a wastewater collection system operator obtain the same class license as that of the wastewater plant treating the wastewater places an unnecessary and undue burden on smaller communities being served by a larger utility. The KRWA supports the cabinet in balancing the drinking water and wastewater operator certification programs, and recommends that the same criteria for drinking water distribution system population criteria be adopted for wastewater collection systems.

Charts and graphics provided by the commenter purport to show: public water systems (PWS) have decreased from 2,188 in 1974 to fewer than 400 today. Kentucky leads the nation in serving the largest population with the east number of water systems (data from US Census Bureau, 2011). Ninety-three percent (93%) of Kentucky's water treatment plants require the

highest two levels of licensing. As consolidation continues, Class I-A and II-A facilities will further be reduced. By applying wastewater design capacity criteria to drinking water plants, a more even distribution should result. KRWA recommends that Class I plants have a design capacity of 75,000 gallons per day (GPD), Class II of 75,000 but less than 750,000 GPD, Class III of 750,000 to less than 7.5 million GPD, and Class IV of 7.5 million or more GPD.

(b) Response: The cabinet acknowledges the comment and may further evaluate this proposal and determine potential impacts related to the recommendation.

(23) Subject Matter: Level of Operator In Training (OIT) required to be in direct responsible charge of a water system. (401 KAR 8:030 Water treatment plant and water distribution system classification and staffing)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: OIT designation is proposed to be allowed in direct responsible charge if he/she has an active, appropriate size classification. If the operator is properly certified there is no need for OIT designation. Additionally, this would have operators paying two renewals: one for certification and one for OIT designation.

(b) Response: The cabinet acknowledges the comment. To clarify, a certified operator may hold an OIT designation for a higher level of certification until the operator achieves all requirements necessary to hold the higher level certification.

(24) Subject Matter: Operator In Training (OIT). (401 KAR 8:030 Water treatment plant and water distribution system classification and staffing)

(a) Commenter: Mike Gardner (BGMU)

Comment: BGMU recommends eliminating OIT and Certified OIT and replace them with Provisional Operator.

(b) Response: The cabinet does not concur. The OIT designation provides a mechanism by which an operator's progression of testing and experience can be tracked. Changing the title to "Provisional Operator" would not change restrictions on OIT responsibilities, nor would it change the testing, education, or experience requirements to become a certified operator.

(25) Subject Matter: Operator in direct responsible charge. (401 KAR 8:030 Water treatment plant and water distribution system classification and staffing)

(a) Commenter: Joe Burns (KRWA), Mike Gardner (BGMU), Gary Larimore (KRWA)

Comment: The cabinet should recognize modern communication capabilities that enable the operator in direct responsible charge to be contacted for consultation and advice at any time and in any location, and is responsible whether onsite or not. BGMU and KRWA recommend allowing greater flexibility with staffing by recognizing the responsibility placed on the operator in direct responsible charge by changing the language to read "Certified operators licensed at one class below the classification of any water treatment plant may work any shift at the discretion of the operator in direct responsible charge of the water treatment plant provided that the operator in direct responsible charge shall be able to respond within thirty (30) minutes by any means necessary."

(b) Response: The cabinet acknowledges the comment. The cabinet will further evaluate this proposal and determine potential impacts related to the recommendation.

(26) Subject Matter: Operator in direct responsible charge. (401 KAR 8:030 Water treatment

plant and water distribution system classification and staffing)

(a) Commenter: Ruth Lancaster (Certified operator)

Comment: The regulation does not address how close the supervisory or location relationship must be for a supervising operator to be in direct responsible charge.

(b) Response: The cabinet acknowledges the comment. The cabinet will further evaluate this proposal and determine potential impacts related to the recommendation.

(27) Subject Matter: Regulatory Impact Analysis regarding level of Operator In Training (OIT) required to be in direct responsible charge of a water system (401 KAR 8:030 Water treatment plant and water distribution system classification and staff)

(a) Commenter: Donald R. Compton (KWWOA), Jeremy Woosley (KWWOA)

Comment: The RIA states that the proposed regulatory changes clarify the role and responsibilities of an OIT, however, the language here as well as in all the regulations is still very confusing. The RIA states the changes were necessary to accommodate alternate staffing but the only correction was a spelling error. The Division of Water was struggling to review and approve Alternate Staffing Plans, but input from the May 2018 workgroup was not included in the changes.

(b) Response: The cabinet does not concur. The regulatory language was drafted within the requirements of KRS Chapter 13A. The purpose of the alternate staffing workgroup was to provide feedback regarding non-regulatory internal processes and considerations in reviewing alternate staffing plans, not for the purpose of regulatory changes.

(28) Subject Matter: Regulatory Impact Analysis regarding staffing requirements. (401 KAR 8:030 Water treatment plant and water distribution system classification and staff)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: The section asks for the type and number of individuals affected by this regulation but no numbers were provided.

(b) Response: The cabinet does not concur. The cabinet provided appropriate answers in the Regulatory Impact Analysis and Fiscal Notes.

(29) Subject Matter: Regulatory Impact Analysis regarding impact to each entity. (401 KAR 8:030 Water treatment plant and water distribution system classification and staff)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: The section requests the number and cost to each entity impacted by this regulation. While it will be easier for systems to meet staffing requirements, the Division of Water should have to identify how many systems are currently out of compliance and in need of additional shift operators while the system is treating drinking water.

(b) Response: The cabinet does not concur. The identification of systems out of compliance or in need of additional operators while the system is treating drinking water would not be responsive to this section of the Regulatory Impact Analysis.

(30) Subject Matter: Drinking water fee due dates. (401 KAR 8:050 Drinking water program fees)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: The commenter suggests changing the due date on water lab certification fees for consistency with wastewater lab certification fees and making the dates postmarked by using

traceable delivery rather than received by.

(b) Response: The cabinet does not concur. Due to federal requirements, the due date for drinking water laboratory certification fees was changed to coincide with reports that can be issued only by a certified drinking water laboratory. A laboratory may use traceable delivery for its own records if it chooses to do so.

(31) Subject Matter: Drinking water fee description. (401 KAR 8:050 Drinking water program fees)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: The commenter suggests adopting the full fee description from 401 KAR 5:320, Section 8.

(b) Response: The cabinet does not concur. 401 KAR 5:320, Section 8, concerns audits. The cabinet assumes the commenter is referring to Section 6, however, the description of fees for wastewater does not apply to drinking water.

(32) Subject Matter: Agency responsible for regulations. (401 KAR 11:001 Definitions for 401 KAR Chapter 11)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: Page 1, Line 3 should read "DCA" (Division of Compliance Assistance) and not "DOW" (Division of Water) because the DCA implements and enforces 401 KAR Chapter 11.

(b) Response: The cabinet does not concur. Division of Water is responsible for the regulations located in 401 KAR Chapters 5, 8, and 11 which apply to drinking water, wastewater, and drinking water and wastewater operators.

(33) Subject Matter: Definition of "Certified Training Provider" (401 KAR 11:001 Definitions for 401 KAR Chapter 11)

(a) Commenter: Ruth Lancaster (Certified operator)

Comment: The regulation does not use the previously defined term "core content" and instead uses new language to define acceptable content of continuing education.

(b) Response: The cabinet acknowledges the comment. The definition of "core content" has not been changed from its previous version. The cabinet finds that the language preserves flexibility for the cabinet, in consultation with the board, when reviewing coursework for core content.

(34) Subject Matter: Definition of "Direct responsible charge". (401 KAR 11:001 Definitions for 401 KAR Chapter 11)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: The definition of "direct responsible charge" should encompass "primary responsibility", and "primary responsibility" should be deleted. Kentucky belongs to the Association of Boards of Certification, and the standard language used for both water and wastewater is "direct responsible charge". Primary responsibility should be replaced with "direct responsible charge" for water and wastewater.

(b) Response: The cabinet does not concur. "Responsible charge" is used in KRS Chapter 223 which governs water plant operators, and "direct responsible charge" is therefore used in the regulations contained in 401 KAR Chapter 8 regarding drinking water facilities. "Primary

responsibility" is used in KRS Chapter 224, Subchapter 73, which governs sewage treatment, and therefore is also used in the regulations in 401 KAR Chapter 5 regarding wastewater facilities.

(35) Subject Matter: Definition of "Direct responsible charge". (401 KAR 11:001 Definitions for 401 KAR Chapter 11)

(a) Commenter: Mike Gardner (BGMU), Gary Larimore (KRWA)

Comment: "Direct responsible charge" and "Primary responsibility" are very similar. The commenter suggests that one term be used for both water and wastewater.

(b) Response: The cabinet does not concur. "Responsible charge" is used in KRS Chapter 223 which governs water plant operators, and "direct responsible charge" is therefore used in the regulations contained in 401 KAR Chapter 8 regarding drinking water facilities. "Primary responsibility" is used in KRS Chapter 224, Subchapter 73, which governs sewage treatment, and therefore is also used in the regulations in 401 KAR Chapter 5 regarding wastewater facilities.

(36) Subject Matter: Definition of "Inactive certificate". (401 KAR 11:001 Definitions for 401 KAR Chapter 11)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: The definition of "inactive certificate" should include how an inactive certificate can be returned to "active".

(b) Response: The cabinet does not concur. Pursuant to KRS 13A.222 which governs administrative drafting rules, definitions shall not establish requirements or standards. Information regarding how to return an inactive certificate to active status is properly contained in 401 KAR 11:050.

(37) Subject Matter: Definition of "Inactive certificate". (401 KAR 11:001 Definitions for 401 KAR Chapter 11)

(a) Commenter: Gary Larimore (KRWA)

Comment: The commenter suggests that the definition of "inactive certificate" should read "means the certified operator's renewal fee has been paid but continuing education has not been met. No authority to operate until returned to active."

(b) Response: The cabinet acknowledges the comment but finds the suggested definition does not include other circumstances that could make a certificate inactive. The cabinet finds the information regarding how to return an inactive certificate to active status is properly contained in 401 KAR 11:050.

(38) Subject Matter: Definition of "Operator In Training". (401 KAR 11:001 Definitions for 401 KAR Chapter 11)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: A definition for "Operator In Training (OIT)" should be included.

(b) Response: The cabinet does not concur. Due to the range of classes and types of OITs, the cabinet finds that the information is properly contained in 401 KAR 11:030 and 11:040.

(39) Subject Matter: Agency responsible for regulations. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)

**(a) Commenter: Donald R. Compton (KWWOA)**

**Comment: Page 1, Line 3 should read "DCA" (Division of Compliance Assistance) and not "DOW" (Division of Water) because the DCA implements and enforces 401 KAR Chapter 11.**

**(b) Response: The cabinet does not concur. The Division of Water is responsible for the regulations located in 401 KAR Chapters 5, 8, and 11 which apply to drinking water, wastewater, and drinking water and wastewater operators.**

**(40) Subject Matter: Typographical error. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)**

**(a) Commenter: Gary Larimore (KRWA)**

**Comment: Page 1, Line 10, change "possesses" to "possess".**

**(b) Response: The cabinet concurs and has made the suggested change.**

**(41) Subject Matter: Typographical error. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)**

**(a) Commenter: Gary Larimore (KRWA)**

**Comment: Section 2 does not contain a subsection (5).**

**(b) Response: The cabinet concurs and has corrected the error at Page 12, Line 5, and has renumbered the remainder of the Section.**

**(42) Subject Matter: Duration of Operator In Training (OIT) designation. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)**

**(a) Commenter: Donald R. Compton (KWWOA)**

**Comment: The OIT language needs to include a maximum duration of an OIT designation.**

**(b) Response: The cabinet does not concur. As the regulatory language reflects, an OIT designation terminates if the operator does not actively pursue the certification, or if the operator completes all requirements for certification.**

**(43) Subject Matter: Operator In Training (OIT) designation. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)**

**(a) Commenter: Mike Gardner (BGMU), Gary Larimore (KRWA)**

**Comment: The commenters recommend that the OIT provision be eliminated because in its present form it does not expedite the certification process for an individual to become licensed, nor does the OIT designation provide any benefit to utilities.**

**(b) Response: The cabinet does not concur. The cabinet finds the OIT designation is useful and necessary to identify operators who are not fully certified at a particular level.**

**(44) Subject Matter: Cabinet approval prior to testing. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)**

**(a) Commenter: Mike Gardner (BGMU), Gary Larimore (KRWA)**

**Comment: Page 5, Lines 9 and 10, remove "prior to the cabinet approving the individual to", and replace with "and".**

**(b) Response: The cabinet acknowledges the comment, but will retain the authority to approve an individual prior to testing to prevent unnecessary loss of time and investment for both**



the candidate and the cabinet.

(45) Subject Matter: Conversion for college credit. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)

(a) Commenter: Mike Gardner (BGMU)

Comment: The commenter recommends leaving the .033 provision on Page 9, Line 23.

(b) Response: The cabinet does not concur. The cabinet finds this conversion appropriate when giving credit for any subject earned during studies that did not result in a science or technology-related degree.

(46) Subject Matter: Limited certification. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: Limited certification should require a high school diploma or GED as a minimum education requirement.

(b) Response: The cabinet does not concur. The controlling statute, KRS 223.73-110(5), requires that a person with a limited certification only demonstrate the knowledge and experience required for operation of the system for which the person is responsible.

(47) Subject Matter: Substitutions. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: Substitutions in this regulation have been broadened to include all degree fields. If this language is required then a comprehensive chart should be included for clarification.

(b) Response: The cabinet does not concur. Education appropriate for substitution is dependent upon the level and subject matter. The cabinet does not find it necessary to incorporate a chart into the regulation.

(48) Subject Matter: Substitutions. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: Partial education substitutions based on other experience should be capped at some point as with other substitutions, and the burden should be on the applicant, not the cabinet, to prove applicable skills gained in other fields.

(b) Response: To clarify, education substitutions are restricted in the proposed regulations. Science-related education cannot substitute for more than fifty percent (50%) of the experience requirement, and education unrelated to science and technology cannot substitute for more than twenty-five percent (25%) of the experience requirement. The burden of providing verification of education and experience remains with applicant.

(49) Subject Matter: Education requirements. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)

(a) Commenter: Mike Gardner (BGMU), Gary Larimore (KRWA)

Comment: The commenters state that more credit should be given to degrees from accredited colleges or universities, and recommend that post-secondary degrees be treated

equally. Using any associate or baccalaureate degree as a substitute for experience would be more efficient and eliminate confusion and subjectivity.

(b) Response: The cabinet acknowledges the comment. The cabinet has amended the proposed regulations to recognize degrees only from regionally-accredited colleges and universities. While the cabinet recognizes the value of all college degrees in the proposed regulation, the cabinet finds that science and technology-related education is more closely related to the knowledge required to safely operate water and wastewater facilities to protect public health and the environment.

(50) Subject Matter: Education requirements for wastewater operators. (401 KAR 11:030 Wastewater treatment and collection operators – classification and qualification)

(a) Commenter: Ruth Lancaster (Certified operator)

Comment: Some degrees which have applicability to wastewater operations have been omitted, such as health, medical, and math degrees.

(b) Response: To clarify, the regulation includes “biological science” which encompasses health and medical degrees. Engineering “or equivalent” can encompass degrees in mathematics.

(51) Subject Matter: Education requirements for wastewater operators. (401 KAR 11:030 Wastewater treatment and collection operators – classification and qualification)

(a) Commenter: Ruth Lancaster (Certified operator)

Comment: The changes made to the regulation accomplish the goal of making the path to operator certification more streamlined except for the reduction of education/experience substitution from 50% to 25%.

(b) Response: The cabinet acknowledges the comment. The regulation allows a 50% substitution for degrees in engineering, science, or the equivalent which facilitate the protection of public health. Courses and degrees unrelated to engineering, science or the equivalent should still receive credit towards the education requirement, but the candidate will require additional coursework in the sciences to facilitate the protection of public health.

(52) Subject Matter: Education requirements for wastewater operators. (401 KAR 11:030 Wastewater treatment and collection operators – classification and qualification)

(a) Commenter: Ruth Lancaster (Certified operator)

Comment: The cabinet’s investment of time and thoughtful consideration in defining the credit to be earned through ancillary activities such as laboratory or construction trades work will be of great benefit to the operator community and is appreciated.

(b) Response: The cabinet acknowledges the comment.

(53) Subject Matter: Education requirements for wastewater operators. (401 KAR 11:030 Wastewater treatment and collection operators – classification and qualification and 11:040 Water treatment and distribution system operators; classification and qualifications)

(a) Commenter: Ruth Lancaster (Certified operator)

Comment: The commenter states that much of the language from 401 KAR 11:040 and 11:030 are copied from other proposed regulations in 401 KAR Chapter 8. The commenter states that this will require opening two regulatory chapters for future revisions and that combining the language by reference in one chapter may be more efficient.

(b) Response: The cabinet has followed the administrative regulation drafting rules as

established in KRS Chapter 13A. Additionally, the respective KAR chapters govern different subject matter and therefore must remain in separate chapters.

(54) Subject Matter: Experience substitutions. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: Experience gained in outside fields seems too generous and lacks a basis for the substitution values. The maximum experience substituted should be no more than 25% since there is no technical basis for the amount of credit given for unrelated fields.

(b) Response: The cabinet finds that valuable experience can be gained in many fields, such as the construction trades and military training, and wants to maintain flexibility in giving operator candidates credit for experience the cabinet determines is relevant.

(55) Subject Matter: Apprenticeships. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: Apprenticeships should refer to approval by the Kentucky Department of Labor. Any apprenticeship should work under existing regulations so it is redundant to have a specific section. The RIA states that the regulations establish a route for accepting apprenticeships approved by the Kentucky Labor Cabinet, but the regulation only refers to "state-approved apprenticeship program".

(b) Response: The cabinet acknowledges the comment. There are several state agencies that may have the authority to approve apprenticeship programs, though the names of those agencies, cabinets, and departments may change in the future. To avoid having to reopen the regulation due to consolidation or reorganization, the cabinet finds "state-approved" is an appropriate term.

(56) Subject Matter: Apprenticeships. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)

(a) Commenter: Joe Burns, (KRWA), Gary Larimore (KRWA)

Comment: The commenters state that successful completion of a certified drinking water apprenticeship program should qualify an apprentice to test for Class III certification for treatment and/or distribution with the equivalent of four (4) years of experience.

(b) Response: The cabinet does not concur. While the cabinet recognizes the value of targeted apprenticeship programs, the cabinet finds that sufficient experience is required to be protective of human health and the environment.

(57) Subject Matter: Equivalent certification. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: Equivalency language should be removed. The proposed regulation would grant certification from an out-of-state individual who worked long enough to upgrade their certification but has not done so. The Association of Boards of Certification standard for equivalency is to compare state regulatory requirements and create a crosswalk for equivalent certification. Reciprocity is given to equivalent certification when requested and paid for, and this proposed language could impact our reciprocity with other states.

(b) Response: Reciprocity refers to a formal agreement with another state or territory to give comparable certification to any operator from that state or territory. Equivalent certification refers to granting certification to an operator when there is no reciprocal agreement with the state or territory from which the operator is transferring. The current regulations do not allow the cabinet to consider the years of experience an out-of-state operator has achieved when it grants Kentucky certification. Equivalency gives the cabinet discretion to consider the level of testing that an applicant has achieved, as well as the years of experience the applicant has already completed, when granting an equivalent certification.

(58) Subject Matter: Regulatory Impact Analysis regarding reciprocal certification. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: The RIA states that the regulations allow the cabinet to enter reciprocal certification agreements with other states which has been occurring for at least thirty (30) years. The proposal is to lessen certification requirements via the "equivalency" language to go beyond allowing certificate exchanges, but to recognize additional experience gained for a higher certification. This is not "reciprocity" according to the Associations for the Boards of Certification.

(b) Response: Reciprocity refers to a formal agreement with another state or territory to give comparable certification to any operator from that state or territory. Equivalent certification refers to granting certification to an operator when there is no reciprocal agreement with the state or territory from which the operator is transferring. The cabinet finds that experience as a certified operator is extremely valuable and, along with testing, should be considered in granting appropriate Kentucky certification.

(59) Subject Matter: Regulatory Impact Analysis regarding experience requirements. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: The commenter is concerned that reducing the experience requirements for Class III and IV operators and allowing for substitutions is not protective of public health or waters of the Commonwealth and that the proposed changes reduce qualifications rather than clarify qualifications. Contact hours and post-secondary education in any subject can be substituted for up to 50% of the required experience.

(b) Response: The cabinet finds the proposed regulatory language strikes a balance between the value of education and protection of public health and the environment. Contact hours and education in subject matter unrelated to science or technology cannot substitute for more than twenty-five percent (25%) of the required experience. Education related to science and technology cannot substitute for more than fifty percent (50%) of the required experience.

(60) Subject Matter: Regulatory Impact Analysis regarding operator shortages. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: The RIA does not contain data to support the statement that there is an operator shortage because their databases are not integrated to allow for data comparison. Citing facilities for lack of operators has not been a priority unless other violations exist. Wastewater systems need only one operator of record and do not have to staff certain shifts. The cabinet is

simply taking the word of drinking water systems without knowing the true need.

(b) Response: The cabinet does not concur. The cabinet is able to record the number of licenses issued, the number of operator-trainees, as well as Alternate Staffing Plans.

(61) Subject Matter: Regulatory Impact Analysis regarding costs. (401 KAR 11:030 Wastewater treatment and collection system operators; classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: The regulation will not result in additional cost unless operators with less experience send improperly treated water out of the plant or fail to properly disinfect lines.

(b) Response: The cabinet finds that the proposed regulations strike an appropriate balance between the need to provide better opportunities for operator candidates, while providing substantial measures to protect human health and the environment.

(62) Subject Matter: Agency responsible for regulations. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: Page 1, Line 3 should read “DCA” (Division of Compliance Assistance) and not “DOW” (Division of Water) because the DCA implements and enforces 401 KAR Chapter 11.

(b) Response: The cabinet does not concur. The Division of Water is responsible for the regulations located in 401 KAR Chapters 5, 8, and 11 which apply to drinking water, wastewater, and drinking water and wastewater operators.

(63) Subject Matter: Operator In Training (OIT) classification. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: Page 5, Line 5 should read OIT “designation” and not “classification.”

(b) Response: The cabinet concurs and has made the change.

(64) Subject Matter: Operator In Training (OIT) classification. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: The OIT language should include the maximum duration of an OIT designation.

(b) Response: The cabinet does not concur. As the regulatory language reflects, an OIT designation terminates if the operator does not actively pursue the certification, or if the operator completes all requirements for certification.

(65) Subject Matter: Operator In Training (OIT) classification. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)

(a) Commenter: Mike Gardner (BGMU), Gary Larimore (KRWA)

Comment: The Operator In Training designation should be eliminated because it does not expedite the certification process for an individual to become licensed, nor does the OIT designation provide any benefit to utilities. BGMU recommends including a “Provisional Operator” certification to replace the OIT designation, and that a Provisional Operator would be a person who works for a public or private utility, who has successfully passed a certification

examination administered by the Division of Water, but who has not yet achieved the required experience to become a certified operator.

(b) Response: The cabinet does not concur. The OIT designation provides a mechanism by which an operator's progression of testing and experience can be tracked. Changing the title to "Provisional Operator" would not change restrictions on OIT responsibilities, nor would it change the testing, education, or experience requirements to become a certified operator.

(66) Subject Matter: Cabinet approval prior to testing. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)

(a) Commenter: Mike Gardner (BGMU), Gary Larimore (KRWA)

Comment: Page 6, Lines 3 and 4, remove "prior to the cabinet approving the individual to", and replace with "and".

(b) Response: The cabinet acknowledges the comment, but will retain the authority to approve an individual prior to testing to prevent unnecessary loss of time and investment for both the candidate and the cabinet.

(67) Subject Matter: Limited certification. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: Limited certification should require a high school diploma or GED as a minimum education requirement.

(b) Response: The cabinet does not concur. The controlling statute, KRS 223.160, requires that a person responsible for a school or semipublic water treatment system only demonstrate the knowledge and ability to operate the treatment system for which the person is responsible.

(68) Subject Matter: Education substitutions. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: Substitutions have been broadened to include all degree fields. If this language is required, then a comprehensive chart should be included for clarification.

(b) Response: The cabinet does not concur. Education appropriate for substitution is dependent upon the level and subject matter. The cabinet does not find it necessary to incorporate a chart into the regulation.

(69) Subject Matter: Partial education substitutions. (401 KAR 11:040 Water treatment and distribution system operators – classification and qualifications)

(a) Commenter: Donald R. Compton (KWWOA)

Comment: Partial education substitutions based on other experience should be capped at some point as with other substitutions, and the burden should be on the applicant, not the cabinet, to prove applicable skills gained in other fields.

(b) Response: The cabinet acknowledges the comment. Education substitutions are restricted in the proposed regulations. Science-related education cannot substitute for more than fifty percent (50%) of the experience requirement, and education unrelated to science and technology cannot substitute for more than twenty-five percent (25%) of the experience requirement. The burden has always been on the applicant to provide verification of education