

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Water

4 (Amendment)

5 401 KAR 11:060. Operator and training provider certification fees.

6 RELATES TO: KRS 223.160 through 223.220, 224.10-110, 224.73-110

7 STATUTORY AUTHORITY: KRS 224.10-100, 224.10-110, 224.73-110

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 223.160 through 223.220

9 authorizes the cabinet to promulgate administrative regulations and establish fees for the
10 certification of water operators. KRS 224.73-110[224.10-110] authorizes the cabinet to
11 promulgate administrative regulations and establish fees for[concerning] the certification of
12 wastewater operators. This administrative regulation establishes a fee schedule for water and
13 wastewater operator certification and for training of[wastewater] operators that is provided or
14 approved by the cabinet.

15 Section 1. Operator Certification Fees. (1) Fees for certification of water and wastewater
16 operators shall be as established in this subsection.[:]

17 (a) Certification application fee: \$250[\$100].

18 (b) Renewal application fee: \$200

19 [1. Fifty (50) dollars if renewed through the cabinet Web site.

20 2. \$100 if not renewed through the cabinet Web site].

(c) Renewal late fee: \$250.

(d) Reciprocity and equivalency fee: \$500.

4. Is this per renewal period or for eternity. If not for each renewal period, how are you going to know if operators move, die, etc?

(e) Inactive fee: \$100.

(2) Initial, renewal, equivalency, inactive, and reciprocal certification application fees that are not submitted through the cabinet's website shall incur a surcharge of fifty (50) dollars in addition to the fees established in Subsection 1 of this section.

(3) Fees established in this section are nonrefundable.

Section 2. Training Fees. (1)[(2)] Each year the cabinet, in consultation with the board, shall set fees for operator training conducted by the cabinet.

~~[(3)(a) The fees in subsection (1) of this section of this administrative regulation are nonrefundable.]~~

(2) If an operator cancels registration at least two (2) business days prior to the beginning of a training event, the operator shall:

1. Have one (1) calendar year to reschedule attendance at another training event without being required to submit an additional fee; and

2. Not receive a fee refund for canceled registration.

(3) The fees established in this section shall be fully refunded only if the training event is canceled by the cabinet.

~~[(b) Fifty (50) percent of the fees in subsection (2) of this section are refundable if registration is canceled at least two (2) business days prior to the beginning of the training event.~~

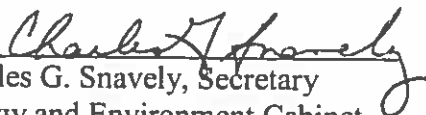
~~(e) The fees in subsection (2) of this section shall be fully refunded if the training event is canceled by the cabinet.]~~

Section 3. Training Provider and Continuing Education Approval Fees.

- 1 (1) Certified training provider annual fee: \$2000.
- 2 (2) Cabinet approval of individual continuing education credit hours for non-certified
- 3 training providers:
- 4 (a) Fifty (50) dollars for the first six (6) continuing education credit hours; and
- 5 (b) Twenty-five (25) dollars for each additional six (6) continuing education credit hours.
- 6 (3) Continuing Education Activity Report entry fee: Fifty (50) dollars.
- 7 (4) Extension Request for Approved Continuing Education: Fifteen (15) dollars.
- 8 (5) Continuing education and training provider fees that are not submitted through the
- 9 cabinet's website shall incur a surcharge of fifty (50) dollars in addition to the fees established in
- 10 this section.

5. This section says that all training providers will pay \$50 for the entry of training hours earned by operators at their training events. The continuing education activity reports can already be enter via the DEP portal. This includes the course name, number, operator name agency interest no., certificate and number of hours earned. Once approved, DCA approves the information for it to appear on the operators account. Given this entry by the training provider, what is this \$50 fee based upon? If these are not entered electronically, a training provider will have to pay a total of \$100 for submitting a paper form. DCA may want to make sure this fee accurately reflects the time to enter most continuing education activity reports because when entering hours for 250-300 operators, that \$100 fee may we be worth having all the operators sign the form and then we only have to enter the hours.

401 KAR 11:060 Operator and training provider certification fees is approved for filing.


Charles G. Snavely, Secretary
Energy and Environment Cabinet

5/9/2019
Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 27, 2019 at 6:00 p.m. Eastern Time at 300 Sower Boulevard, 1st Floor Training Room B, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through June 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

401 KAR 11:060

Contact Person:

Carole J. Catalfo

Phone: (502) 782-6914

Email: water@ky.gov (Subject Line: Chapter 11 regulations)

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes fees for operator and training provider certification.

(b) The necessity of this administrative regulation: This regulation is necessary to establish fees for operator and training provider certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 223.160 through 223.220 authorizes the cabinet to promulgate administrative regulations and establish fees for the certification of water operators. KRS 224.73-110 authorizes the cabinet to promulgate administrative regulations and establish fees for the certification of wastewater operators. This administrative regulation establishes a fee schedule for water and wastewater operator certification and for training of operators that is provided or approved by the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The amendment will assist in making the program more self-funded and draw less on general funds. In order to be effective, the operator certification program must be administered in a manner that meets the objectives of the federal Clean Water Act and Safe Drinking Water Act and is acceptable to the EPA.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The amendments clarify statutory authority, consolidate water and wastewater operator certification fees into one regulation, increases certification and renewal fees by \$150 (\$75 per year), adds a fee for equivalent certification, inactive certification, training provider certification, continuing education units offered by non-certified providers, and for continuing education activity report and Extension Request forms, and clarifies that fees incur a \$50 surcharge if not paid online and are nonrefundable, and clarifies that operators who cancel registration at cabinet training may reschedule attendance within a year and that fees are nonrefundable unless the cabinet cancels training.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to streamline regulatory operator and training provider fees, and allow the cabinet to recover some of the actual costs of the operator certification

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1. It has been stated that the Ky DCA is drafting language to potentially contract out the training of operators to a third party. Are fees being raised to facilitate this?

program. The FY20 projected cost of the program, including salaries, benefits, travel, and administrative costs is \$847,700. Over the past five (5) years, the program generated an annual average of \$295,234 from licensing and exam fees, or about 34% of the cost of the program. Funding towards the remaining costs (approximately \$407,900) is provided by the Division of Water State Revolving Funds (DSRFs), as well as carry over from vacant positions, which still leaves a projected deficit of \$144,566. Fee increases for renewal, exams, and third party training providers could potentially generate an additional \$424,600 - \$461,850 and would lessen dependency on DSRFs which can be used for other vital programs and functions.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 223.160 through 223.220 authorizes the cabinet to promulgate administrative regulations and establish fees for the certification of water operators. KRS 224.73-110 authorizes the cabinet to promulgate administrative regulations and establish fees for the certification of wastewater operators. This administrative regulation establishes a fee schedule for water and wastewater operator and training provider certification, and for operator training offered by non-certified providers.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will allow the cabinet to recover more of the actual costs of the operator certification program and reduce dependence on state revolving funds that it currently requires. The training and testing of water and wastewater operators helps ensure high quality drinking water, protects public health, and may help extend the life of a water system through proper operation and maintenance.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified water and wastewater operators, operator-candidates, training providers, and state and local governments that operate drinking water or wastewater facilities if they pay employee certification fees, will be affected by the amendment to this administrative regulation. There are approximately 4,234 operators currently certified by the program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Certified water and wastewater operators, operator-candidates, and training providers will refer to this amended administrative regulation to determine the necessary fees for obtaining and maintaining certification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Initial and renewal water and wastewater operator certification will increase by \$150 (\$75 per year). Operators seeking initial equivalent certification will pay \$500 which is the current fee for reciprocal certification. Training providers

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2. This section states that renewal fees will increase by \$150. Many utilities do not pay this fee for operators and a 300 percent increase seems unreasonable especially if they have multiple licenses to renew. Hopefully the increase will compensate for the number of licenses that will no longer be renewed. At the present time, DCA's database already records the continuing education hours earned by operators and the renewal application is online as well. Given this automation, how much time does it take DCA to process a license renewal? In other words, what is the basis for this increase?

Also explain the reason for adding the \$50 for entry of training hours when the trainer will be entering all the data per the DEP portal.

seeking certification will pay \$2000 annually. Non-certified training providers will pay fees for course approval based on the number of credit hours offered. All training providers will pay \$50 for CEU Activity Report entry and \$15 for Extension Requests.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Public water systems must be operated by certified operators, and this administrative regulation assists the cabinet in providing certification and training services. Certified training providers will no longer need individual course approval from the cabinet. Additionally, these changes will partially relieve dependence on state revolving funds which can be directed towards other vital programs and functions.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The state currently collects operator certification fees, offers training, offers exams, approves CEUs, and issues licenses. However, the current fees cover only 34% of the cost of implementing the current program. There is no additional cost to the state to implement this amendment, however, the FY20 projected cost of the program, including salaries, benefits, travel, and administrative costs is \$847,700. Over the past five (5) years, the program generated an annual average of \$295,234 from licensing and exam fees, or about 34% of the cost of the program. Funding towards the remaining costs (approximately \$407,900) is provided by the Division of Water State Revolving Funds (DSRFs), as well as carry over from vacant positions, which still leaves a projected deficit of \$144,566. Fee increases for renewal, exams, and third party training providers could potentially generate an additional \$424,600 - \$461,850 and would lessen dependency on DSRFs which can be used for other vital programs and functions.

(b) On a continuing basis: The state currently collects operator certification fees, offers training, offers exams, approves CEUs, and issues licenses.. There is no additional cost to the state to implement this amendment. However, the current fees cover only 34% of the cost of implementing the current program. 3. Creating these new forms and processes will have to add more cost to the cabinet. What is the cost of this work estimated at?

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Certification, training provider, and exam fees and Division of Water State Revolving Funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amended administrative regulation establishes the fees for water and wastewater operator and training provider certification, and cabinet approval of continuing education units. The increased fees are necessary to effectively implement the programs and continue to provide existing services with less reliance on state revolving funds.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment establishes fees for water and wastewater operator

and training provider certification, and for approval of continuing education courses offered by non-certified training providers.

(9) TIERING: Is tiering applied? (Explain why or why not) Yes, tiering is applied. Fees are dependent on the type of operator certification requested. Fees for cabinet approval of continuing education units offered by non-certified training providers fees are tiered based on the number of hours submitted for approval.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

401 KAR 11:060

Contact Person:

Carole J. Catalfo

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Email: water@ky.gov (Subject Line: Chapter 11 regulation)

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This regulation will impact the Division of Water and Division of Compliance Assistance, both within the cabinet's Department of Environmental Protection, and state or local governments that operate drinking water or wastewater facilities.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 223.160 through 223.220, and 224.73-110.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

This never mentions the impact on local governments who will be paying, in some cases 300% fee increase.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The FY20 projected cost of the program, including salaries, benefits, travel, and administrative costs is \$847,700. Over the past five (5) years, the program generated an annual average of \$295,234 from licensing and exam fees, or about 34% of the cost of the program. Funding towards the remaining costs (approximately \$407,900) is provided by the Division of Water State Revolving Funds (DSRFs), as well as carry over from vacant positions, which still leaves a projected deficit of \$144,566. Fee increases for renewal, exams, and third party training providers could potentially generate an additional \$424,600 - \$461,850 and would lessen dependency on DSRFs which can be used for other vital programs and functions.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The FY20 projected cost of the program, including salaries, benefits, travel, and administrative costs is \$847,700. Over the past five (5) years, the program generated an annual average of \$295,234 from licensing and exam fees, or about 34% of the cost of the program. Funding towards the remaining costs (approximately \$407,900) is provided by the Division of Water State Revolving Funds (DSRFs), as well as carry over from vacant positions, which still leaves a projected deficit of \$144,566. Fee increases for renewal, exams, and third party training providers could potentially generate an additional \$424,600 - \$461,850 and would lessen dependency on DSRFs which can be used for other vital programs and functions.

(c) How much will it cost to administer this program for the first year? The cost of administering the program is approximately \$847,700 annually.

(d) How much will it cost to administer this program for subsequent years? The cost of administering the program is approximately \$847,700 annually.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: The FY20 projected cost of the program, including salaries, benefits, travel, and administrative costs is \$847,700. Over the past five (5) years, the program generated an annual average of \$295,234 from licensing and exam fees, or about 34% of the cost of the program. Funding towards the remaining costs (approximately \$407,900) is provided by the Division of Water State Revolving Funds (DSRFs), as well as carry over from vacant positions, which still leaves a projected deficit of \$144,566. Fee increases for renewal, exams, and third party training providers could potentially generate an additional \$424,600 - \$461,850 and would lessen dependency on DSRFs which can be used for other vital programs and functions.

FEDERAL MANDATE ANALYSIS COMPARISON

401 KAR 11:060

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1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for operator certification fees, although 40 C.F.R. 142 requires these activities to occur as a condition of primacy to implement the federal Safe Drinking Water Act.

2. State compliance standards. KRS 223.160 through 223.220, and 224.73-110.

3. Minimum or uniform standards contained in the federal mandate. 40 C.F.R. Part 141 and 142.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. KRS 223.160 through 223, and 224.73-110. The cabinet uses the fees to partially recover the cost of providing operator certification programs.