

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Water

4 (Amendment)

5 401 KAR 5:010. Operation of wastewater systems by certified operators.

6 RELATES TO: KRS 224.10-100, 224.10-110, 224.70-100, 224.70-110

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

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Cabinet  
9 to develop and conduct a comprehensive program for the management of water resources and to  
10 provide for the prevention, abatement, and control of water pollution. KRS 224.73-110 requires that  
11 a person shall not have primary responsibility for the operation of a sewage system or a portion of a  
12 system, whether publicly or privately owned, unless the operator has passed an examination pre-  
13 scribed by the cabinet. This administrative regulation establishes standards for the staffing and  
14 classification of~~[requires]~~ wastewater treatment plants and collection systems that accept domestic  
15 sewage~~[to be under the primary responsibility of an appropriately certified operator]~~.

16 Section 1. Certified Operators for Wastewater Treatment Plants. A wastewater treatment  
17 plant that accepts wastewater containing domestic sewage shall be under the primary  
18 responsibility of a certified operator as established in this section.~~[follows:]~~

19 (1) A treatment plant with a design capacity of less than or equal to 50,000 gallons per day  
20 shall be under the primary responsibility of a certified operator holding an active Class I, II, III,

1 or IV treatment certificate.[:]

2 (2) A treatment plant with a design capacity of more than 50,000 gallons per day, but less  
3 than or equal to two (2) million gallons per day shall be under the primary responsibility of a  
4 certified operator holding an active Class II, III, or IV treatment certificate.[:]

5 (3) A treatment plant with a design capacity of more than two (2) million gallons per day,  
6 but less than or equal to seven and one-half (7 1/2) million gallons per day shall be under the  
7 primary responsibility of a certified operator holding an active Class III or IV treatment  
8 certificate.[:]

9 (4) A treatment plant with a design capacity in excess of seven and one-half (7 1/2) million  
10 gallons per day shall be under the primary responsibility of a certified operator holding an active  
11 Class IV treatment certificate.[:~~or~~]

12 (5) A wastewater treatment plant at a school shall be under the primary responsibility of a  
13 certified operator holding an active limited certificate or a Class I, II, III, or IV treatment certificate.

14 Section 2. Certified Operators for Collection Systems.~~[Effective January 1, 2010,]~~ Each  
15 collection system transporting wastewater containing domestic sewage shall be under the  
16 primary responsibility of a certified operator as established in this section.~~[follows:]~~

17 (1) Collection systems with greater than 5,000 linear feet of sewer line that transport  
18 wastewater to a treatment plant with a design capacity of less than or equal to 50,000 gallons per  
19 day shall be under the primary responsibility of a certified operator holding an active Class I, II,  
20 III, or IV collection certificate.[:]

21 (2) Collection systems that transport wastewater to a treatment plant with a design  
22 capacity of more than 50,000 gallons per day, but less than or equal to two (2) million gallons  
23 per day shall be under the primary responsibility of a certified operator holding an active Class

1 II, III, or IV collection certificate.[;]

2 (3) Collection systems that transport wastewater to a treatment plant with a design  
3 capacity of more than two (2) million gallons per day, but less than or equal to seven and one-  
4 half (7 1/2) million gallons per day shall be under the primary responsibility of a certified  
5 operator holding an active Class III or IV collection certificate.[;]

6 (4) Collection systems that transport wastewater to a treatment plant with a design  
7 capacity in excess of seven and one-half (7 1/2) million gallons per day shall be under the primary  
8 responsibility of a certified operator holding an active IV collection certificate.[;]

9 (5) A wastewater collection system at a school shall be under the primary responsibility of  
10 an operator holding an active:

11 (a) Class I, II, III, or IV collection certificate;

12 (b) Class I, II, III, or IV treatment certificate; or

13 (c) Limited certificate.[;]

14 (6) Collection systems with not more than 5,000 linear feet of sewer line that transport  
15 wastewater to a treatment plant with a design capacity of less than or equal to 50,000 gallons per  
16 day, shall be operated under the primary responsibility of a certified operator with an active:

17 (a) Class I, II, III, or IV collection certificate; or

18 (b) Class I, II, III, or IV treatment certificate.[;or]

19 (7) Collection systems that transport wastewater containing domestic sewage to a  
20 treatment plant owned by another person shall use population-served for determination of the  
21 appropriate collection system certificate.

22 (a) Collection systems with greater than 5,000 linear feet of sewer line and with a  
23 population served of 1,500 individuals or less shall be operated by a certified operator holding an

1 active Class I, II, III, or IV collection certificate.

2 (b) Collection systems with a population served of 1,501 to 15,000 individuals shall be  
3 operated by a certified operator holding an active Class II, III, or IV collection certificate.

4 (c) Collection systems with a population served of 15,001 to 50,000 individuals shall be  
5 operated by a certified operator holding an active Class III or IV collection certificate.

6 (d) Collection systems with a population served of 50,001 individuals or greater shall be  
7 operated by a certified operator holding an active Class IV collection certificate.

8 (e) Collection systems with not more than 5,000 linear feet of sewer line that serve a  
9 population of not more than 1,500, shall be operated under the primary responsibility of a  
10 certified operator with an active:

11 1. Class I, II, III, or IV collection certificate; or

12 2. Class I, II, III, or IV treatment certificate.

13 Section 3. Certified Operator Availability. (1) The facility shall ensure that a certified  
14 operator with primary responsibility shall be able to be contacted by phone within thirty (30)  
15 minutes.

16 (2) The facility shall ensure that a certified operator with primary responsibility shall be  
17 capable of being onsite:

18 (a) Within two (2) hours if the certified operator with primary responsibility is required to  
19 have a Class I or Limited certificate; or

20 (b) Within one (1) hour if the certified operator with primary responsibility is required to  
21 have a Class II, III, or IV certificate.

22 Section 4. Operators In Training. (1) A Class I Operator In Training shall not have primary  
23 responsibility of a wastewater treatment plant or wastewater collection system. 3. Wastewater

treatment plants and collection systems are only required to have one operator. As a result, it would appear that if  
they needed an OIT there is not going to be another operator on staff to supervise the OIT as required.

1           (2) A certified operator with an Operator In Training designation shall work under the direct  
2 supervision of a certified operator who:

3           (a) Works at the same facility; and

4           (b) Holds an active certification level that is equal to or greater than the certification level  
5 required to serve in primary responsibility of the facility.

6           (3) An Operator In Training may have primary responsibility for a wastewater collection  
7 system or wastewater treatment plant for which the operator holds an active Class II through  
8 Class IV certification as established in 401 KAR 11:030.

9           Section 5. A wastewater collection system or treatment plant may propose an alternate  
10 staffing plan to the staffing requirement established in this section.

11           (1) The proposal shall be submitted to the cabinet and shall thoroughly explain the  
12 alternate proposal.

13           (2) The proposal shall demonstrate:

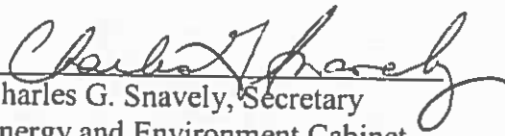
14           (a) A necessity for the wastewater collection system or treatment plant to vary from the  
15 requirements in this paragraph; and

16           (b) An equal level of protection of human health and the environment.

17           (2) The cabinet shall not approve an alternate proposal that does not propose that a duly  
18 certified operator in direct responsible charge operate a wastewater collection system  
19 or treatment plant. in accordance with KRS 224.73-110. 4. Is this language duplicated in KAR 401 8:030?

20           Section 6. Certificate Display. If a system office is available at the wastewater  
21 treatment plant or within the sewer service area, the operator's certificate shall be prominently  
22 displayed on the wall.

401 KAR 5:010 Operation of wastewater systems by certified operators is approved for filing.

  
Charles G. Snively, 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 the Department for Environmental Protection, Training Room B, 300 Sower Boulevard, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 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.

Contact person: Carole J. Catalfo  
Internal Policy Analyst, RPPS,  
Division of Water, 3<sup>rd</sup> Floor  
300 Sower Boulevard  
Frankfort, Kentucky 40601  
Phone (502) 564-3410  
Fax (502) 564-9003  
Email: water @ky.gov (Subject line: "Chapter 11 regulations")

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

401 KAR 5:010

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 standards for the staffing and classification of wastewater treatment plants and collection systems that accept domestic sewage.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to ensure that wastewater treatment plants and collection systems are staffed by operators who have passed a certification examination by the cabinet and have obtained the appropriate level of certification for the type of plant or system being operated.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of water pollution. KRS 224.73-110 requires that a person shall not have primary responsibility for the operation of a sewage system or a portion of a system, whether publicly or privately owned, unless the operator has passed an examination prescribed by the cabinet.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation informs wastewater treatment and collection systems of the staffing requirements for each class of system or plant.

(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 amendment corrects regulatory language to meet KRS 13A requirements, clarifies that Class I Operators In Training shall not have primary responsibility for wastewater treatment plants or collections systems, establishes staffing requirements when Operators In Training are working in those systems to accommodate alternate staffing, and establishes alternate staffing requirements.

(b) The necessity of the amendment to this administrative regulation: The amendment to this administrative regulation is necessary to clarify the role and responsibilities of Operators In Training and to accommodate alternate staffing.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 224.10-100 requires the Cabinet to develop and conduct a comprehensive program for the management of water resources and to provide for the prevention, abatement, and control of



water pollution. KRS 224.73-110 requires that a person shall not have primary responsibility for the operation of a sewage system or a portion of a system, whether publicly or privately owned, unless the operator has passed an examination prescribed by the cabinet.

(d) How the amendment will assist in the effective administration of the statutes: The amendment to this administrative regulation will assist to inform wastewater treatment and collection systems of the staffing requirements for each class of system or plant when Operators In Training are working.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Certified wastewater operators, Operators In Training, and state or local governments that operate wastewater treatment or collection systems are affected by this administrative regulation. 1. No type or number listed.

(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: The regulated entities will not need to take additional actions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment to this administrative regulation will not result in additional costs. 2. This statement is misleading as fees for certification, renewal, etc. are being raised in 401 KAR 11:060 and this reg requires certified Operators.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The regulated entities will benefit from the clarification the amendment provides regarding staffing requirements when Operators In Training are working at the facility and for alternate staffing.

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

(a) Initially: The amendment to this administrative regulation will not result in additional costs.

(b) On a continuing basis: The amendment to this administrative regulation will not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: KPDES permit fees, state general funds, and federal EPA 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: No increase or changes in funding will be necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees directly or indirectly.

(9) TIERING: Is tiering applied? (Explain why or why not) Yes, tiering is applied dependent upon the type, size, and classification of wastewater system being operated.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

401 KAR 5:010

Contact Person:

Carole J. Catalfo

Phone: (502) 782-6914

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

(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 administrative regulation affects any units of state or local government that employ certified wastewater treatment plant or collection system operators

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 224.10-100 and KRS 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.

(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? This administrative regulation will not generate revenue.

(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? This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year? This administrative regulation will not increase costs.

(d) How much will it cost to administer this program for subsequent years? This administrative regulation will not increase costs. This statement is misleading as fees for certification, renewal, etc. are being raised in 401 KAR 11:060 and this reg requires certified operators.

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

Revenues (+/-): NA

Expenditures (+/-): NA

Other Explanation: The amendment to this administrative regulation will not generate revenue or increase costs.

## FEDERAL MANDATE ANALYSIS COMPARISON

401 KAR 5:010

Contact Person:

Carole J. Catalfo

Phone: (502) 782-6914

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

1. Federal statute or regulation constituting the federal mandate. There is no federal mandate for the certification of wastewater operators.
2. State compliance standards. KRS 224.10-100, 224.10-110, and 224.73-110.
3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate for the certification of wastewater operators.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate? There is no federal mandate for the certification of wastewater operators.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There is no federal mandate for the certification of wastewater operators.