

December 14, 2011

Wednesday, December 14, 2011

3:00 p.m. to 5:00 p.m.

Legislative Rule-Making
Review Committee
(Code §29A-3-10)

Earl Ray Tomblin
ex officio nonvoting member

Richard Thompson
ex officio nonvoting member

Senate

House

Minard, Chair
Snyder, Vice Chair
Laird, IV
Unger
Boley
Facemyer

Absent

Absent

Brown, Chair
Poling, Vice Chair
Fleischauer
Talbot
Overington
Sobonya

Absent

The meeting was called to order by Delegate Brown, Chair.

Delegate Brown moved that the minutes of the November 14 & 16, 2011, meeting be approved. The motion was adopted.

Charles Roskovensky, Associate Counsel, explained his abstract on the rule proposed by the **Athletic Commission, Mixed Martial Arts, 177CSR2**, stated that the Commission has agreed to technical modifications and responded to questions from the Committee.

Butch Hiles, local gym owner, addressed the Committee and responded to questions.

Delegate Sobonya moved to amend §177-2-41.

Steve Allred, Commissioner, responded to questions from the Committee.

Sam Minardi, representing LOFA, LLC, responded to questions from the Committee.

Senator Snyder moved that the rule be placed at the foot of the agenda. The motion was adopted.

Mr. Roskovensky reviewed his abstract on the rule proposed by the **Racing Commission, Simulcast Pari-Mutuel Wagering at Authorized Gaming Facility in Historic Resort Hotel, 178CSR7**, and responded to questions from the Committee.

Jon Amores, Director of the Commission, responded to questions from the Committee.

Senator Minard moved that the proposed rule be approved. The motion was adopted.

Mr. Roskovensky explained his abstract on the rule proposed by the **WV State Police**, West Virginia State Police Career Progression System, **81CSR3**, and stated that the Agency has agreed to technical modifications.

Senator Minard moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Roskovensky reviewed his abstract on the rule proposed by the **WV State Police**, **West Virginia State Police Modified Vehicle Inspection Manual**, **81CSR4**, and stated that the Agency has agreed to technical modifications.

Senator Minard moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Roskovensky reviewed his abstract on the rule proposed by the **WV Development Office**, Brownfield Economic Development Districts, **145CSR11**, and stated that the Agency has agreed to technical modifications.

Senator Minard moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Roskovensky explained his abstract on the rule proposed by the **WV Development Office**, Use of Coalbed Methane Severance Tax Proceeds, **145CSR13**, and stated that the Agency has agreed to technical modifications.

Senator Minard moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Roskovensky reviewed his abstract on the rule proposed by the **WV Board of Pharmacy**, Rules Regarding Immunization Administered by Pharmacists, **15CSR12**.

Senator Minard moved that the proposed rule be approved. The motion was adopted.

Miss Graham explained her abstract on the rule proposed by the **Department of Health and Human Resources**, **Public Water Systems Operator Regulations**, **64CSR4**, stated that the Department has agreed to technical modifications and responded to questions from the Committee.

Lisa Dooley with the Municipal League responded to questions from the Committee.

Mutual agreement to add the term "grossly" to the proposed rule and also 64CSR5.

Senator Minard moved that the proposed rule be approved as modified. The motion was adopted.

Miss Graham explained her abstract on the rule proposed by the **Department of Health and Human Resources, Wastewater Systems and Operators, 64CSR5**, stated that the Department has agreed to technical modifications and responded to questions from the Committee.

Walter Ivey, with Environmental & Public Health, responded to questions from the Committee.

Senator Minard moved that the proposed rule be approved as modified. The motion was adopted.

Jay Lazell, Associate Counsel, explained his abstract on the rule proposed by the **Department of Health and Human Resources, Public Water Systems Design Standards, 64CSR77**, and responded to questions from the Committee.

Mr. Ivey responded to questions from the Committee.

Senator Minard moved that the proposed rule be approved. The motion was adopted.

Miss Graham reviewed her abstract on the rule proposed by the **Governor's Committee on Crime, Delinquency and Correction, Law Enforcement Training Standards, 149CSR2**, and stated that the Commission has agreed to technical modifications.

Senator Minard moved that the proposed rule be approved as modified. The motion was adopted.

Miss Graham explained her abstract on the rule proposed by the **Governor's Committee on Crime, Delinquency and Correction, Motor Vehicle Search Standards, 149CSR6**, stated that the Agency has agreed to technical modifications and responded to questions from the Committee.

Chuck Sadler with the Governor's Committee responded to questions from the Committee.

Senator Minard moved that the proposed rule be approved as modified. The motion was adopted.

Miss Graham reviewed her abstract on the rule proposed by the **Secretary of State, Vote-by-Mail Pilot Project Phase 2: Voting by Mail, 153CSR39**, stated that the Agency has agreed to technical modifications and responded to questions from the Committee.

Senator Minard moved that the proposed rule be approved as modified. The motion was adopted.

Miss Graham reviewed her abstract on the rule proposed by the **Secretary of State, Rules for General Management and Preservation of State Records, 153CSR42**.

Senator Minard moved that the proposed rule be laid over. The motion was adopted.

Mr. Roskovensky stated that an agreement had been made on the **Athletic Commission, Mixed Martial Arts, 177CSR2** and explained. This agreement will be made through technical modifications.

Senator Minard moved that the proposed rule be approved as modified. The motion was adopted.

Miss Graham addressed the Committee.

Senator Minard moved to adjourn the meeting. The motion was adopted.

DECEMBER INTERIM ATTENDANCE
Legislative Interim Meetings
December 12, 13 and 14, 2011

Wednesday 14
~~Monday~~, December 12, 2011
3:00 5:00
~~10:00 am - 12:00 pm~~

Legislative Rule-Making Review Committee

Jeffrey V. Kessler, ex
officio nonvoting member

Thompson, ex
officio nonvoting member

Senate

Minard, Chair
Snyder, Vice Chair
Laird
Unger
Boley
Facemyer

✓

✓

✓

✓

House

Brown, Chair
Poling, D., Vice Chair
Fleischauer
Talbot
Overington
Sobonya

✓

✓

✓

✓

✓

✓

I certify that the attendance as noted
above is correct.



Staff Person

Debra Graham

Please return to Brenda in Room 132-E or Fax to 347-4819 ASAP, due to payroll deadline.

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Wednesday, December 14, 2011
3:00 p.m. to 5:00 p.m.
Senate Judiciary Committee Room

1. **Approval of Minutes** - Meetings of November 14 & 16, 2011
2. **Review of Legislative Rules:**
 - a. **Athletic Commission**
Mixed Martial Arts
177CSR2
 - Approve as Modified
 - b. **Racing Commission, WV**
Simulcast Pari-Mutuel Wagering at Authorized Gaming Facility in Historic Resort Hotel
178CSR7
 - Approve
 - c. **State Police, WV**
West Virginia State Police Career Progression System
81CSR3
 - Approve as Modified
 - d. **State Police, WV**
West Virginia State Police Modified Vehicle Inspection Manual
81CSR4
 - Approve as Modified
 - e. **Development Office, WV**
Brownfield Economic Development Districts
145CSR11
 - Approve as Modified
 - f. **Development Office, WV**
Use of Coalbed Methane Severance Tax Proceeds
145CSR13
 - Approve as Modified
 - g. **Health and Human Resources, Department of**
Public Water Systems Operator Regulations
64CSR4
 - Approve as Modified

- h. **Health and Human Resources, Department of**
Wastewater Systems and Operators
64CSR5
 - Approve as Modified
- i. **Health and Human Resources, Department of**
Public Water Systems Design Standards
64CSR77
 - Approve
- j. **Governor's Committee on Crime, Delinquency and Correction**
Law Enforcement Training Standards
149CSR2
 - Approve as Modified
- k. **Governor's Committee on Crime, Delinquency and Correction**
Motor Vehicle Search Standards
149CSR6
 - Approve as Modified
- l. **Secretary of State**
Vote-by-Mail Pilot Project Phase 2: Voting by Mail
153CSR39
 - Approve as Modified
- m. **Secretary of State**
Rules for General Management and Preservation of State
Records
153CSR42
 - Approve as Modified

3. Other Business

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Wednesday, December 14, 2011
3:00 p.m. to 5:00 p.m.
Senate Judiciary Committee Room

1. **Approval of Minutes** - Meetings of November 14 & 16, 2011
2. **Review of Legislative Rules:**
 - a. **Athletic Commission**
Mixed Martial Arts
177CSR2
 - b. **Racing Commission, WV**
*Simulcast Pari-Mutuel Wagering at Authorized Gaming Facility
in Historic Resort Hotel*
178CSR7
 - c. **State Police, WV**
West Virginia State Police Career Progression System
81CSR3
 - d. **State Police, WV**
West Virginia State Police Modified Vehicle Inspection Manual
81CSR4
 - e. **Development Office, WV**
Brownfield Economic Development Districts
145CSR11
 - f. **Development Office, WV**
Use of Coalbed Methane Severance Tax Proceeds
145CSR13
 - g. **Health and Human Resources, Department of**
Public Water Systems Operator Regulations
64CSR4
 - h. **Health and Human Resources, Department of**
Wastewater Systems and Operators
64CSR5
 - i. **Health and Human Resources, Department of**
Public Water Systems Design Standards
64CSR77
 - j. **Governor's Committee on Crime, Delinquency and Correction**
Law Enforcement Training Standards
149CSR2

k. **Governor's Committee on Crime, Delinquency and Correction**
Motor Vehicle Search Standards
149CSR6

l. **Secretary of State**
Vote-by-Mail Pilot Project Phase 2: Voting by Mail
153CSR39

m. **Secretary of State**
Rules for General Management and Preservation of State
Records
153CSR42

3. **Other Business**

DECEMBER INTERIM ATTENDANCE

Legislative Interim Meetings

December 12, 13 & 14, 2011

Wednesday, December 14, 2011

3:00 p.m. - 5:00 p.m.

Legislative Rule-Making Review Committee

Earl Ray Tomblin, ex
officio nonvoting member

Richard Thompson, ex
officio nonvoting member

Senate

House

Minard, Chair

✓

Snyder, Vice Chair

✓

Laird IV

✓

Unger

Boley

✓

Facemyer

Brown, Chair

✓

Poling, Vice Chair

✓

Fleischauer

✓

Talbott

Overington

✓

Sobonya

✓

Bwd Disk 2
Disk
1-7

- Brown called meeting to order

- Minard moved minutes - Approved

- Athletic 177CSR2

Charlie explained & responded to ?'s

Butch Hiles, ^{local} gym owner, addressed the Committee
and responded to ?'s

Delegate Sobonya moved to amend 177-2-41

Steve Allred, Commissioner, responded to ?'s

Steve Minard, representing Lofk LLC, responded to ?'s

Snyder moved to move rule to foot - Approved

- Racing 178CSR7

Charlie explained & responded to ?

Jon Amores, Director of Commissioner, responded to ?

Minard moved rule

Approved

- State Police 81CSR3

Charlie explained

Minard moved as modified

Approved

- State Police 81CSR4

Charlie explained

Minard moved as modified

Approved

- Development 145CSR11

Charlie explained

Minard moved as modified

Approved

- Development 145CSR13

Charlie explained

Minard moved as modified

Approved

*Debra
Bill

- Pharmacy 15CSR12

Charlie explained

Minard moved rule

Approved

- Health 64CSR4

Debra explained & responded to ?'s

Risa Pooley, w/ Municipal League, responded to ?'s

* Agreement to add "grossly" to this § 64CSR5

Minard moved as modified

Approved

- Health 64CSR5

Debra explained & responded to ?'s

Walter Ivey, Environmental & Public Health, responded to ?'s

Minard moved rule as modified

- Health 64CSR77

Jay explained & responded to ?'s

Walter Ivey, responded to ?'s

Minard moved rule

Approved

- Governor's 149CSR2

Debra explained

Minnard moved rule as modified

Approved

- Governor's 149CSR6

Debra explained & responded to?

↙ Minnard moved as modified

↙ Chuck Sailer, w/Committee, responded to?

Approved

- SOS 153CSR39

Debra explained & responded to?

Minnard moved as modified

Approved

- SOS 153CSR42

Minnard moved to lay over

Approved

- Athletic

Charlie - stated agreement made & explained
also ~~stated~~ that they would be modified

Minnard moved as modified

Approved

- Debra addressed the Committee

- Minnard moved to adjourn

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Wednesday, December 14, 2011
3:00 p.m. to 5:00 p.m.
Senate Judiciary Committee Room

1. **Approval of Minutes - Meetings of November 14 & 16, 2011**

2. **Review of Legislative Rules:**

Foot a. **Athletic Commission**
Mixed Martial Arts
177CSR2

- Approve as Modified

b. **Racing Commission, WV**
Simulcast Pari-Mutuel Wagering at Authorized Gaming Facility in Historic Resort Hotel
178CSR7

- Approve

c. **State Police, WV**
West Virginia State Police Career Progression System
81CSR3

- Approve as Modified

d. **State Police, WV**
West Virginia State Police Modified Vehicle Inspection Manual
81CSR4

- Approve as Modified

e. **Development Office, WV**
Brownfield Economic Development Districts
145CSR11

- Approve as Modified

f. **Development Office, WV**
Use of Coalbed Methane Severance Tax Proceeds
145CSR13

g. **Pharmacy**
15CSR12
Approve

- Approve as Modified

h. **Health and Human Resources, Department of**
Public Water Systems Operator Regulations
64CSR4

- Approve as Modified

h.

**Health and Human Resources, Department of
Wastewater Systems and Operators
64CSR5**

- Approve as Modified

i.

**Health and Human Resources, Department of
Public Water Systems Design Standards
64CSR77**

- Approve

j.

**Governor's Committee on Crime, Delinquency and Correction
Law Enforcement Training Standards
149CSR2**

- Approve as Modified

k.

**Governor's Committee on Crime, Delinquency and Correction
Motor Vehicle Search Standards
149CSR6**

- Approve as Modified

l.

**Secretary of State
Vote-by-Mail Pilot Project Phase 2: Voting by Mail
153CSR39**

- Approve as Modified

Laid Over

m.

**Secretary of State
Rules for General Management and Preservation of State
Records
153CSR42**

- Approve as Modified

3. Other Business

✓ • 177-2-41

- ✓ 41.1 MOVE TO AMEND AS FOLLOWS WITH THE UNDERLINED LANGUAGE: All MMA contests will take place in either a cage or ring that has been approved by the Commission. The cage or ring will meet the requirements set forth by the Athletic Commission and also be subject to inspection prior to each event by a Commission representative such as a referee.
- Reason: Most MMA shows occur in 5-roped boxing rings. The cages are expensive and this limitation is an attempt to shut down smaller promotions.

• 177-2-33

Strike

- 33.2 STRIKE IN ITS ENTIRETY: Again, under no circumstances should a Commission official be permitted to serve as a judge. Never!

• 177-2-10 (b)

Strike

- MOVE TO STRIKE BEGINNING WITH "PROVIDED" AS DETAILED BELOW: The deputy in charge of a show and any additional deputies or inspectors may not act as a referee or judge in any event sanctioned by the commission: Provided, that Deputies or inspectors may act as a referee or judge on an emergency basis due to the failure of the scheduled referee or judge to appear or the inability of the scheduled referee or judge to perform the designated duties at the event.
- Reason: this is a direct conflict of interest and should never, under any circumstances, be permitted to occur. The Commission and its representatives are not permitted to serve such a capacity anywhere else in the country, to my knowledge.

✓ • 177-2-5

- ✓ MOVE TO STRIKE 5.6 "VENUES" IN ITS ENTIRETY:
- Reason: This is the only requirement for seating capacity anywhere in the world. It is overly broad and unnecessary. Safely regulated events can occur in venue of any size provided there are licensed and properly supervised participants, officials and doctors present.

✓ • 177-2-22

- X MOVE TO STRIKE "FOR MALE FIGHTERS" in the first sentence, and STRIKE THE SECOND SENTENCE IN ITS ENTIRETY:
- Reason: Why set different time limits for female athletes? Nowhere else in the world is such a limitation in place. All MMA rounds should be 5 minutes in duration regardless of the sex of fighter.

✓ • 41.3 MOVE TO AMEND AS FOLLOWS WITH THE UNDERLINED LANGUAGE:

X

- 41.3 The Athletic Commission shall determine all seating arrangements at cage or ring side necessary to effectuate their supervision of the match.
- Reason: These seats are the most expensive and there is no reason the Commission should determine all seating for an event.

REGISTRATION OF PUBLIC
AT COMMITTEE MEETINGS

WEST VIRGINIA LEGISLATURE

Committee: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Date: Dec. 14, 2011

Please print or write plainly.

NAME	ADDRESS	REPRESENTING	RULE NUMBER	Please mark with an (X) if you desire to make a statement.
BUTCH HILES	309 Redwood Dr Charleston, WV 25302	Kanawha County Gym owner	177CSR22	X
Chuck Sadler	Gov's Committee on Crime Delinquency + Correction 1204 Kan Bldg E. Charleston WV 25301	GCCDC	149-246	
LISA DOOLEY	WV Municipal League			

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
Wednesday, December 14, 2011
3:00 p.m. to 5:00 p.m.
Senate Judiciary Committee Room

Minard approved. Approval of Minutes - Meetings of November 14 & 16, 2011

2. Review of Legislative Rules:

Minard foot of agenda ✓ **Athletic Commission** *Charlie explained*
Mixed Martial Arts *Butch Hiles - owns gym spoke to*
177CSR2 *the proposed amendments; responded*
• Approve as Modified *to questions; Charlie explained amendments.*

Minard Approved ✓ **Racing Commission, WV** *Charlie explained & responded to question*
Simulcast Pari-Mutuel Wagering at Authorized Gaming Facility *John Amores addressed the C&E responded*
in Historic Resort Hotel *to questions*
178CSR7

• Approve

Minard Approved as modified ✓ **State Police, WV** *Charlie explained*
West Virginia State Police Career Progression System
81CSR3

• Approve as Modified

Minard Approved as modified ✓ **State Police, WV** *Charlie explained*
West Virginia State Police Modified Vehicle Inspection Manual
81CSR4

• Approve as Modified

Minard Approved as modified ✓ **Development Office, WV**
Brownfield Economic Development Districts
145CSR11

• Approve as Modified

Minard Approved as Pharmacy mod. ✓ **Development Office, WV** *Charlie explained*
Use of Coalbed Methane Severance Tax Proceeds
145CSR13

• Approve as Modified

Minard Approve as mod ✓ **Health and Human Resources, Department of** *I explained last month*
Public Water Systems Operator Regulations *Lisa Dadey responded to*
64CSR4 *questions*

• Approve as Modified

Charlie explained
Need bill

Minard Approved

Minard
Approved
as mod.

Health and Human Resources, Department of
Wastewater Systems and Operators
64CSR5

- Approve as Modified

I explained ~~last month~~
Lisa Dooley responded
to questions (WV Mun. League
— responded to questions

Minard
Approve

Health and Human Resources, Department of
Public Water Systems Design Standards
64CSR77

- Approve

Jay explained
— responded to questions

Minard
Approved
as modified

Governor's Committee on Crime, Delinquency and Correction
Law Enforcement Training Standards
149CSR2

- Approve as Modified

Governor's Committee on Crime, Delinquency and Correction
Motor Vehicle Search Standards
149CSR6

- Approve as Modified

1. Secretary of State
Vote-by-Mail Pilot Project Phase 2: Voting by Mail
153CSR39

- Approve as Modified

m. Secretary of State
Rules for General Management and Preservation of State
Records
153CSR42

- Approve as Modified

3. Other Business



Municipal Water Quality Association

Explanation of Changes Sought to Water/Wastewater Operator Regulations

Below is a summary of changes which the MWQA seeks to have the LRRC adopt to the Water/Sewer Operator Licensing Regulations.

We propose three identical changes to both sets of regulations (Water and Sewer). We identify and explain each change below, first for the Wastewater regulation and then the identical changes to the Water Regulation.

We also attach four pages from each rule showing these changes marked up as we believe the rules should read.

Thank you for considering our requested changes. These are necessary in our view so that the rules will be fair to environmental operators.

Wastewater Systems and Operators

Proposed Change:

Revise Tables 64-5B and 54-5C to remove the requirement that an operator work 2000 hours to qualify for one year of experience.

Municipal Water Quality Association Objection:

The rules specify that to have a year of experience toward operator licensing, the operator must work "2000" hours. We believe the requirement should be a narrative "one" year rather than 2000 hours. Yearly experience requirements for the different classes of operators should not be specific hourly requirements (the rule imposes a 2000 hour requirement for each year of experience). It should be enough to specify one-year of full time employment and not impose the unnecessary (and unfair) burden of making operators and employers track 2000 hours.

Proposed Change:

Delete Section 64-5-8, Section 8.4

~~“Experience obtained exclusively in distribution, maintenance, and other non-operational/treatment duties shall not count more than six hundred (600) hours of the total experience required for Class I through IV certification.”~~

Municipal Water Quality Association Objection:

This arbitrary requirement is an unnecessary tracking burden and substantive limitation. The agency has no demonstrated basis for limiting Class I operators to 600 hours of such experience. Such operators will still have to (1) pass muster with the utility in question and (2) pass the agency’s test for operator proficiency.

Moreover, the requirement is irrational because 600 hours for a Class I operator is 600/2000 or 30 percent of their experience whereas for a Class IV operator it is 600/10,000 or just 6 percent. That makes no sense. A class IV operator has five years experience and has passed the Class IV test. That should be enough. It makes no sense whatsoever to specify that more than 6 percent of his or her time can’t be spent on particular tasks.

Proposed Change:

Delete Section 64-5-8, Section 8.5

~~“Experience obtained exclusively in laboratory duties shall not count more than one thousand (1000) hours of the total experience required for Class I through IV certification.”~~

Municipal Water Quality Association Objection:

Same as above. This is an arbitrary burden and tracking requirement and makes no sense to apply the same 1000 hour threshold to operators with wildly varying experience (one to five years). For example, why is it okay for half of a Class I operator’s experience to be in the lab but only 1/10 of a Class IV operator’s experience to be in the lab? That makes no sense. This unnecessary provision should be deleted.

Proposed Change:

Modify 14.1.c and Delete 14.1.e

14.1. The Commissioner may suspend or revoke the certification of an operator if the individual:

14.1.a. Used fraud or deceit in obtaining certification;

14.1.b. Failed to comply with this rule;

14.1.c. Performed the duties of a wastewater operator in agrossly negligent or incompetent manner;

14.1.d. Knowingly or negligently submitted misleading, inaccurate, or false reports to the Commissioner; or

~~14.1.e. Violated or caused to be violated, any portion of DEP's legislative rule, NPDES Program, 47 CSR 10, or the U.S. Clean Water Act.~~

Municipal Water Quality Association Objection:

Operators should not face license revocation for simple errors – those should be left to the utility to address. Accordingly, in Section 14.1.c we propose that license revocation can only be for “grossly” negligent or incompetent operation.

We also propose to delete Section 14.1.e as this is unnecessary and overly broad. Again, an operator should not have a license revoked for a minor violation of the rule, permit, or statute. Sections 14.1.a through d are more than adequate to cover appropriate causes for operator license revocation.

Public Water Systems Operators Regulation

Proposed Change:

Delete Section 64-4-8, Section 8.4

~~“Experience obtained exclusively in distribution, maintenance, and other non-operational/treatment duties shall not count more than six hundred (600) hours of the total experience required for Class I through IV certification.”~~

Municipal Water Quality Association Objection:

This arbitrary requirement is an unnecessary tracking burden and substantive limitation. The agency has no demonstrated basis for limiting Class I operators to 600 hours of such experience. Such operators will still have to (1) pass muster with the utility in question and (2) pass the agency's test for operator proficiency.

Moreover, the requirement is irrational because 600 hours for a Class I operator is 600/2000 or 30 percent of their experience whereas for a Class IV operator it is 600/10,000 or just 6 percent. That makes no sense. A class IV operator has five years experience and has passed the Class IV test. That should be enough. It makes no sense whatsoever to specify that more than 6 percent of his or her time can't be spent on particular tasks.

Proposed Change:

Modify Section 64-4-8, Section 8.5 as follows:

8.5 Class II applicants at Class I systems may obtain ~~two thousand (2,000) hours~~ one year's experience at a Class I PWS and successful completion of a Commissioner approved course instead of obtaining ~~two thousand (2,000) hours~~ one year's experience at a Class II or higher PWS.

Municipal Water Quality Association Objection:

One year of experience should not be defined by 2000 hours. That is too many and an unnecessary tracking and certification burden. Utility owners should simply have to certify that an employee has been employed on a full-time basis for a year, not track and report 2000 hours each year.

Proposed Change:

Modify 64-4-14.1.c and Delete 14.1.e

14.1. The Commissioner may suspend or revoke the certification of an operator if the individual:

14.1.a. Used fraud or deceit in obtaining certification;

14.1.b. Failed to comply with this rule;

14.1.c. Performed the duties of a wastewater operator in agrossly negligent or incompetent manner;

14.1.d. Knowingly or negligently submitted misleading, inaccurate, or false reports to the Commissioner; or

~~**14.1.e. Violated or caused to be violated, any portion of Public Water Systems (64 CSR3) or Cross Connection Control and Backflow Prevention (64CSR15).**~~

Municipal Water Quality Association Objection:

Operators should not face license revocation for simple errors – those should be left to the utility to address. Accordingly, in Section 14.1.c we propose that license revocation can only be for “grossly” negligent or incompetent operation.

We also propose to delete Section 14.1.e as this is unnecessary and overly broad. Again, an operator should not have a license revoked for a minor violation of the rule, permit, or statute. Sections 14.1.a through d are more than adequate to cover appropriate causes for operator license revocation.

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

JUL 29 PM 4: 01

WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: DHHR - Bureau for Public Health TITLE NUMBER: 64

CITE AUTHORITY: WV Code §16-1-4(c)

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: WASTEWATER SYSTEMS
AND OPERATORS

IF NO, SERIES NUMBER OF RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

§ FIVE

Michael J. Lewis ssp
Authorized Signature

Legislative Rule-Making

JUL 29 2011

Review Committee

p. 9 < 64-5-8.4 eliminate 600 lbs
64-5-8.5 eliminate 1000 lbs
revert to old rule or eliminate rule
p. 15 ~~Table~~ Table 64-5B replace
daily reqs
with years
p. 12 64-5-14.1.c add "grossly"

Subject: FW: RMR
From: "Lisa Dooley" <wvml@wvml.org>
Date: 12/14/2011 8:31 AM
To: <felishas@mail.wvnet.edu>
CC: "'Jason Wazelle'" <jwazelle@wvml.org>

Felisha,

I really thought we might have time to go over this, but I hear Rule Making is meeting today at three.

Do you have a copy of these amendments the Municipal Water Quality guys want? John Law is aware I am going to amend or ask to lie over, but I wanted to talk to you and Debra as well and see what her preference is.

I hate it when they wait to last minute to let me know...but.
Can you give me a call at my cell 304-546-3685. When you get a chance.

Lisa Dooley

From: Law, John D [mailto:John.D.Law@wv.gov]
Sent: Tuesday, December 13, 2011 2:47 PM
To: Lisa Dooley
Subject: RE: RMR

12/13/2011 2:44 PM

Lisa,

These have already been laid over once, so I don't think we can do it again. I'm okay with it if you can get them put on January's agenda, but I'm not going to make the overture. Also, I've talked with our folks, and they're pretty insistent they're on the money with these. Also, and I know it's your clients pushing you, but these rules have been out there for 13 months. It's a little late to be negotiating.

From: Lisa Dooley [mailto:wvml@wvml.org]
Sent: Tuesday, December 13, 2011 2:03 PM
To: Law, John D
Subject: RMR

John,

I am so anal sometimes. Attached are the responses we received from DHHR and some items have been changed. I received these and did not pull them up in time to review changes and what is still being requested as far as changes.

The municipals still have concerns and would like to have an opportunity to sit down with you all during this next few weeks to work on them before next interims.

Can we agree to have them pulled from the RMR agenda on Wednesday and give the two a few weeks to try to reach compromise?

Thanks,
Lisa



Disclaimer: The content of this reply is provided as a general informational service to you as participating member of the West Virginia Municipal League. The information contained herein does not constitute legal advice and does not create an attorney-client relationship between you and WVML Programs or the WV Municipal League. You should not act or refrain from acting based upon this information without first consulting your city attorney or other legal counsel. This reply is a confidential communication and shall be treated as an internal memoranda or letter received by a public body exempt from disclosure. This communication and any files transmitted with it are intended solely for the use of the individual(s) to whom it is addressed. Please notify the sender immediately if you have received this communication by mistake. If you are not the intended recipient you are hereby notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

— Attachments: —

Municipal Water Quality Association Changes to Water-Sewer Operator Regs.doc	31.0 KB
MWQA Markup of Water Operator Regulations.pdf	254 KB
MWQA Markup of Wastewater Operator Regs.pdf	233 KB

Municipal Water Quality Association

Explanation of Changes Sought to Water/Wastewater Operator Regulations

Below is a summary of changes which the MWQA seeks to have the LRRC adopt to the Water/Sewer Operator Licensing Regulations.

We propose three identical changes to both sets of regulations (Water and Sewer). We identify and explain each change below, first for the Wastewater regulation and then the identical changes to the Water Regulation.

We also attach four pages from each rule showing these changes marked up as we believe the rules should read.

Thank you for considering our requested changes. These are necessary in our view so that the rules will be fair to environmental operators.

Wastewater Systems and Operators

Proposed Change:

Revise Tables 64-5B and 54-5C to remove the requirement that an operator work 2000 hours to qualify for one year of experience.

Municipal Water Quality Association Objection:

The rules specify that to have a year of experience toward operator licensing, the operator must work "2000" hours. We believe the requirement should be a narrative "one" year rather than 2000 hours. Yearly experience requirements for the different classes of operators should not be specific hourly requirements (the rule imposes a 2000 hour requirement for each year of experience). It should be enough to specify one-year of full time employment and not impose the unnecessary (and unfair) burden of making operators and employers track 2000 hours.

Proposed Change:

Delete Section 64-5-8, Section 8.4

~~“Experience obtained exclusively in distribution, maintenance, and other non-operational/treatment duties shall not count more than six hundred (600) hours of the total experience required for Class I through IV certification.”~~

Municipal Water Quality Association Objection:

This arbitrary requirement is an unnecessary tracking burden and substantive limitation. The agency has no demonstrated basis for limiting Class I operators to 600 hours of such experience. Such operators will still have to (1) pass muster with the utility in question and (2) pass the agency’s test for operator proficiency.

Moreover, the requirement is irrational because 600 hours for a Class I operator is 600/2000 or 30 percent of their experience whereas for a Class IV operator it is 600/10,000 or just 6 percent. That makes no sense. A class IV operator has five years experience and has passed the Class IV test. That should be enough. It makes no sense whatsoever to specify that more than 6 percent of his or her time can’t be spent on particular tasks.

Proposed Change:

Delete Section 64-5-8, Section 8.5

~~“Experience obtained exclusively in laboratory duties shall not count more than one thousand (1000) hours of the total experience required for Class I through IV certification.”~~

Municipal Water Quality Association Objection:

Same as above. This is an arbitrary burden and tracking requirement and makes no sense to apply the same 1000 hour threshold to operators with wildly varying experience (one to five years). For example, why is it okay for half of a Class I operator’s experience to be in the lab but only 1/10 of a Class IV operator’s experience to be in the lab? That makes no sense. This unnecessary provision should be deleted.

Proposed Change:

Modify 14.1.c and Delete 14.1.e

14.1. The Commissioner may suspend or revoke the certification of an operator if the individual:

- 14.1.a. Used fraud or deceit in obtaining certification;
- 14.1.b. Failed to comply with this rule;
- 14.1.c. Performed the duties of a wastewater operator in agrossly negligent or incompetent manner;
- 14.1.d. Knowingly or negligently submitted misleading, inaccurate, or false reports to the Commissioner; or

~~14.1.e. Violated or caused to be violated, any portion of DEP's legislative rule, NPDES Program, 47 CSR 10, or the U.S. Clean Water Act.~~

Municipal Water Quality Association Objection:

Operators should not face license revocation for simple errors – those should be left to the utility to address. Accordingly, in Section 14.1.c we propose that license revocation can only be for “grossly” negligent or incompetent operation.

We also propose to delete Section 14.1.e as this is unnecessary and overly broad. Again, an operator should not have a license revoked for a minor violation of the rule, permit, or statute. Sections 14.1.a through d are more than adequate to cover appropriate causes for operator license revocation.

Public Water Systems Operators Regulation

Proposed Change:

Delete Section 64-4-8, Section 8.4

~~“Experience obtained exclusively in distribution, maintenance, and other non operational/treatment duties shall not count more than six hundred (600) hours of the total experience required for Class I through IV certification.”~~

Municipal Water Quality Association Objection:

This arbitrary requirement is an unnecessary tracking burden and substantive limitation. The agency has no demonstrated basis for limiting Class I operators to 600 hours of such experience. Such operators will still have to (1) pass muster with the utility in question and (2) pass the agency's test for operator proficiency.

Moreover, the requirement is irrational because 600 hours for a Class I operator is 600/2000 or 30 percent of their experience whereas for a Class IV operator it is 600/10,000 or just 6 percent. That makes no sense. A class IV operator has five years experience and has passed the Class IV test. That should be enough. It makes no sense whatsoever to specify that more than 6 percent of his or her time can't be spent on particular tasks.

Proposed Change:

Modify Section 64-4-8, Section 8.5 as follows:

8.5 Class II applicants at Class I systems may obtain ~~two thousand (2,000) hours~~ one year's experience at a Class I PWS and successful completion of a Commissioner approved course instead of obtaining ~~two thousand (2,000) hours~~ one year's experience at a Class II or higher PWS.

Municipal Water Quality Association Objection:

One year of experience should not be defined by 2000 hours. That is too many and an unnecessary tracking and certification burden. Utility owners should simply have to certify that an employee has been employed on a full-time basis for a year, not track and report 2000 hours each year.

Proposed Change:

Modify 64-4-14.1.c and Delete 14.1.e

14.1. The Commissioner may suspend or revoke the certification of an operator if the individual:

14.1.a. Used fraud or deceit in obtaining certification;

14.1.b. Failed to comply with this rule;

14.1.c. Performed the duties of a wastewater operator in agrossly negligent or incompetent manner;

14.1.d. Knowingly or negligently submitted misleading, inaccurate, or false reports to the Commissioner; ~~or~~

~~14.1.e. Violated or caused to be violated, any portion of Public Water Systems (64 CSR3) or Cross-Connection Control and Backflow Prevention (64 CSR15).~~

Municipal Water Quality Association Objection:

Operators should not face license revocation for simple errors – those should be left to the utility to address. Accordingly, in Section 14.1.c we propose that license revocation can only be for “grossly” negligent or incompetent operation.

We also propose to delete Section 14.1.e as this is unnecessary and overly broad. Again, an operator should not have a license revoked for a minor violation of the rule, permit, or statute. Sections 14.1.a through d are more than adequate to cover appropriate causes for operator license revocation.

Municipal Water Quality Association

Explanation of Changes Sought to Water/Wastewater Operator Regulations

Below is a summary of changes which the MWQA seeks to have the LRRC adopt to the Water/Sewer Operator Licensing Regulations.

We propose three identical changes to both sets of regulations (Water and Sewer). We identify and explain each change below, first for the Wastewater regulation and then the identical changes to the Water Regulation.

We also attach four pages from each rule showing these changes marked up as we believe the rules should read.

Thank you for considering our requested changes. These are necessary in our view so that the rules will be fair to environmental operators.

Wastewater Systems and Operators

Proposed Change:

Revise Tables 64-5B and 54-5C to remove the requirement that an operator work 2000 hours to qualify for one year of experience.

Municipal Water Quality Association Objection:

The rules specify that to have a year of experience toward operator licensing, the operator must work “2000” hours. We believe the requirement should be a narrative “one” year rather than 2000 hours. Yearly experience requirements for the different classes of operators should not be specific hourly requirements (the rule imposes a 2000 hour requirement for each year of experience). It should be enough to specify one-year of full time employment and not impose the unnecessary (and unfair) burden of making operators and employers track 2000 hours.

Proposed Change:

Delete Section 64-5-8, Section 8.4

~~“Experience obtained exclusively in distribution, maintenance, and other non-operational/treatment duties shall not count more than six hundred (600) hours of the total experience required for Class I through IV certification.”~~

Municipal Water Quality Association Objection:

This arbitrary requirement is an unnecessary tracking burden and substantive limitation. The agency has no demonstrated basis for limiting Class I operators to 600 hours of such experience. Such operators will still have to (1) pass muster with the utility in question and (2) pass the agency’s test for operator proficiency.

Moreover, the requirement is irrational because 600 hours for a Class I operator is 600/2000 or 30 percent of their experience whereas for a Class IV operator it is 600/10,000 or just 6 percent. That makes no sense. A class IV operator has five years experience and has passed the Class IV test. That should be enough. It makes no sense whatsoever to specify that more than 6 percent of his or her time can’t be spent on particular tasks.

Proposed Change:

Delete Section 64-5-8, Section 8.5

~~“Experience obtained exclusively in laboratory duties shall not count more than one thousand (1000) hours of the total experience required for Class I through IV certification.”~~

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Same as above. This is an arbitrary burden and tracking requirement and makes no sense to apply the same 1000 hour threshold to operators with wildly varying experience (one to five years). For example, why is it okay for half of a Class I operator’s experience to be in the lab but only 1/10 of a Class IV operator’s experience to be in the lab? That makes no sense. This unnecessary provision should be deleted.

Proposed Change:

Modify 14.1.c and Delete 14.1.e

14.1. The Commissioner may suspend or revoke the certification of an operator if the individual:

14.1.a. Used fraud or deceit in obtaining certification;

14.1.b. Failed to comply with this rule;

14.1.c. Performed the duties of a wastewater operator in agrossly negligent or incompetent manner;

14.1.d. Knowingly or negligently submitted misleading, inaccurate, or false reports to the Commissioner;~~or~~

~~14.1.e. Violated or caused to be violated, any portion of DEP's legislative rule, NPDES Program, 47 CSR 10, or the U.S. Clean Water Act.~~

Municipal Water Quality Association Objection:

Operators should not face license revocation for simple errors – those should be left to the utility to address. Accordingly, in Section 14.1.c we propose that license revocation can only be for “grossly” negligent or incompetent operation.

We also propose to delete Section 14.1.e as this is unnecessary and overly broad. Again, an operator should not have a license revoked for a minor violation of the rule, permit, or statute. Sections 14.1.a through d are more than adequate to cover appropriate causes for operator license revocation.

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Proposed Change:

Modify Section 64-4-8, Section 8.5 as follows:

8.5 Class II applicants at Class I systems may obtain ~~two thousand (2,000) hours~~ one year's experience at a Class I PWS and successful completion of a Commissioner approved course instead of obtaining ~~two thousand (2,000) hours~~ one year's experience at a Class II or higher PWS.

Municipal Water Quality Association Objection:

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Proposed Change:

Modify 64-4-14.1.c and Delete 14.1.e

14.1. The Commissioner may suspend or revoke the certification of an operator if the individual:

14.1.a. Used fraud or deceit in obtaining certification;

14.1.b. Failed to comply with this rule;

14.1.c. Performed the duties of a wastewater operator in agrossly negligent or incompetent manner;

14.1.d. Knowingly or negligently submitted misleading, inaccurate, or false reports to the Commissioner; or

~~14.1.e. Violated or caused to be violated, any portion of Public Water Systems (64 CSR3) or Cross-Connection Control and Backflow Prevention (64 CSR15).~~

Municipal Water Quality Association Objection:

Operators should not face license revocation for simple errors – those should be left to the utility to address. Accordingly, in Section 14.1.c we propose that license revocation can only be for “grossly” negligent or incompetent operation.

We also propose to delete Section 14.1.e as this is unnecessary and overly broad. Again, an operator should not have a license revoked for a minor violation of the rule, permit, or statute. Sections 14.1.a through d are more than adequate to cover appropriate causes for operator license revocation.

----- Original Message -----

Subject:Manufactured home community rule amendment, 60CSR40

Date:Wed, 7 Dec 2011 12:28:41 -0500

From:Herb Snyder <sensorsnyder@comcast.net>

To:Leslie Smith <Leslie.Smith@wvsenate.gov>

Leslie,

Below is the section of rule 60CSR40 that was amended in the Rule Making Committee during the November meeting.. The definition of Manufactured home community is to begin by saying "Any individual site, area, tract or parcel of land upon which four or more manufactured homes used or occupied for dwelling purposes are parked" The words "site, area, tract or" are to be removed per the amendment from the Rule Making Committee.

3.6. Mobile home park. Manufactured home community -- Any individual site, area, tract or parcel of land upon which ~~two~~ four or more mobile manufactured homes used or occupied for dwelling purposes are parked either free of charge or for monetary consideration and shall include any roadway, building, structure, installation, enclosure, or vehicle used or intended for use as a part of the facilities of said mobile home park the manufactured home community. All existing mobile home parks which meet this definition shall be renamed as "manufactured home communities" by this rule. The Bureau for Public Health legislative rule, Fees for Permits, 64CSR30, establishes a permit fee for mobile home parks. The established fee applies to all manufactured home communities regulated by this rule.

Please forward this email to Debra Gram with the Rule Making Committee.

Thank you,

Herb Snyder

sensorsnyder@comcast.net

cell 304-582



FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Felisha Sutherland	Paul Calamita
COMPANY:	DATE:
	12/12/11
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
304-347-4901	11
PHONE NUMBER:	
RE:	

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

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JUL 29 11 47 02

WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: DHHR - Bureau for Public Health TITLE NUMBER: 64

CITE AUTHORITY: WV Code §§16-1-4 and 16-1-9.

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4

TITLE OF RULE BEING AMENDED: PUBLIC WATER SYSTEMS
OPERATORS REGULATIONS

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Michael J. Lewis *sup*
Authorized Signature

64CSR4

attending school and maintaining a 2.0 average on a 4.0 scale towards graduation requirements. Failure to meet the above requirements will be grounds for revocation of the certificate.

7.3. Education requirements can be waived by the Commissioner, in writing, to actively working towards a GED. Minimum requirements are verification each semester the student is currently enrolled in an adult education program and completing graduation requirements. Failure to meet the above requirements will be grounds for revocation of the certificate.

7.4. The Commissioner-approved Class R certification course and passing the Class R exam education requirement can be substituted with a Commissioner-approved manufacturer certification if requested in writing and adequate information is provided.

7.5. The number of CEUs credited for courses and operating experience, are in Table 64-4B.

7.6. All education courses for CEUs will be evaluated by the Commissioner. One hundred percent (100%) credit will be awarded for those deemed to be directly related to water treatment and distribution (examples are mathematics, science, and business courses). If the Commissioner deems the course not directly related, fifty percent (50%) credit will be awarded.

7.7. Class III and IV applicants may substitute up to half of the required CEU education as specified in Tables 64-4A and B of this rule with additional experience upon written request to the Commissioner.

7.7.a. An applicant cannot use experience used as a substitute for the educational requirement to also satisfy the experience requirement.

7.7.b. An applicant may use the Class R, ID, WD, Class I, and Class II certification courses towards the educational requirements for a Class III or higher class level certificate.

§64-4-8. Experience Requirements.

8.1. The experience requirements for each classification are listed in Table 64-4A of this rule.

8.2. Only experience obtained as a valid certified water operator shall count towards experience required for the purposes of this rule.

8.3. Experience as an operator should be predominantly "hands-on" or necessary skills, knowledge, ability, and judgment acquired from daily operating experience rather than from text book study or supervisory observation. It means the individual has actually operated a water treatment plant or worked in the distribution system and has performed tasks including, but not limited to, routine tests, sample collection, completion of operational reports, and calculations of chemical dosages and subsequent adjustment of chemical feeders or backwashed filters.

8.4. ~~Experience obtained exclusively in distribution, maintenance, and other non-operational/treatment duties shall not count more than six hundred (600) hours of the total experience required for Class I through IV certification.~~



8.5. Class II applicants at Class I systems may obtain ^{one year} two thousand (2,000) hours experience at a Class I PWS and successful completion of a Commissioner approved course instead of obtaining two thousand (2,000) hours at a Class II or higher PWS.
year's experience



8.6. An applicant may substitute the experience requirements with education and training as specified below:

64CSR4

§64-4-14. Suspension and Revocation.

14.1. The Commissioner may suspend or revoke the certification of an operator if the individual:

14.1.a. Used fraud or deceit in obtaining certification;

14.1.b. Failed to comply with this rule. Failure to notify the Commissioner of voluntary termination of employment in accordance with Subsection 5.2.d. of this rule, even though the failure shall not subject the certified operator to the penalties of Section 16 of this rule.

→ 14.1.c. Performed the duties of a water operator in a ^{grossly} negligent or incompetent manner;

14.1.d. Knowingly or negligently submitted misleading, inaccurate, or false reports to the Commissioner; or,

→ 14.1.e. ~~Violated, or caused to be violated, any portion of Public Water Systems (64CSR3) or Cross-Connection Control and Backflow Prevention (64CSR15).~~

14.2. The Commissioner shall notify the certified operator and the employer via certified mail of a proposed suspension or revocation. The notification shall set forth the action proposed, the effective date, the reason, and the length of time of the proposed action.

14.3. The suspension of an operator's certification is effective for an initial period of not more than one (1) year, during which time the certification is not valid and the individual cannot operate a PWS. The individual shall obtain the CEHs required for that certification level, as if the revocation had not occurred.

14.4. The revocation of an operator's certification is for a period of not less than one (1) year during which time the certification is not valid and the individual cannot operate a PWS. After the period of ineligibility (caused by the revocation) has expired, the formerly certified operator shall pass the examination at the certification level previously held at a minimum to regain certification.

§64-4-15. Penalties.

15.1. A person subject to the provisions of this rule shall comply fully with them and shall not direct or assist another person to violate this rule.

15.2. A person who violates any provision of this rule or any rules or orders of the Bureau for Public Health is guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not more than five hundred dollars (\$500), as provided under WV Code §16-1-18. Each day there is a failure to comply with a provision of this rule may be a separate offense.

§64-4-16. Administrative Due Process.

16.1. Those persons adversely affected by the enforcement of this rule may request a contested case hearing in accordance with procedural rule, Rules of Procedures for Contested Case Hearings and Declaratory Rulings, 64CSR1.

64CSR4

Table 64-4A
OPERATOR EDUCATION AND EXPERIENCE REQUIREMENTS FOR CERTIFICATION

CLASS	EDUCATION REQUIRED	EXPERIENCE REQUIRED
Class R	HS diploma or GED, Commissioner-approved Class R certification course & passing the Class R exam.*	No experience required.
1D	Commissioner-approved 1D certification course & passing the 1D exam.	No experience required.
OIT	HS diploma or GED.*	No experience required.
WD	HS diploma or GED, Commissioner-approved WD certification course & passing the WD exam.	One thousand (1,000) hours (6 months full-time) at a WD or higher PWS.
Class I	HS diploma or GED, Commissioner-approved Class I certification course & passing the Class I exam.	Two thousand (2,000) hours (1 year full-time) at a PWS.**
Class II	HS diploma or GED, Commissioner-approved Class II certification course & passing the Class II exam.	Four thousand (4,000) hours (2 years full-time) at a PWS with at least two thousand (2,000) ^{one year} of those hours at a Class II or higher PWS.**
Class III	HS diploma or GED and successfully completing ninety (90) CEUs** and passing the examination in accordance with Subsection 6.4.	Eight thousand (8,000) hours (4 years full-time) at a Class I or higher PWS with at least two thousand (2,000) ^{one year} of those hours at a Class II or higher PWS.**
Class IV	HS diploma or GED and successfully completing one hundred eighty (180) CEUs** and passing the examination in accordance with subsection 6.4.	Ten thousand (10,000) hours (5 years full-time) at a Class I or higher PWS with at least two thousand (2,000) ^{one year} of those hours at a Class III or higher PWS.**

* and ** Refer to Sections 7 and 8.

64CSR4

**Table 64-4B
CEUs FOR COURSES AND OPERATING EXPERIENCE**

Ten (10) CEHs	1 CEU
One (1) College Semester Credit Hour	1.5 CEU
One (1) College Quarter Credit Hour	1 CEU
<i>One Year</i> Five thousand (2,000) hours of experience	45 CEU

Note Section 7.6.

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

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2011 JUL 29 PM 4:00

WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: DHHR - Bureau for Public Health TITLE NUMBER: 64

CITE AUTHORITY: WV Code §16-1-4(e)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 5

TITLE OF RULE BEING AMENDED: WASTEWATER SYSTEMS
AND OPERATORS

IF NO, SERIES NUMBER OF RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.

Michael J. Lewis ssp
Authorized Signature

64CSR5

certificate.

§64-5-8. Experience Requirements.

8.1. The experience requirements for each classification are listed in Table 64-5B of this rule.

8.2 Only experience obtained as a valid certified wastewater operator shall count towards experience required for the purposes of this rule.

8.3. Experience as an operator should be predominantly "hands-on" or necessary skills, knowledge, ability, and judgment acquired from daily operating experience rather than from text book study or supervisory observation. It means the individual has actually operated a wastewater treatment plant or worked in the collection system and has performed tasks including, but not limited to, routine tests, sample collection, completion of operational reports, calculations of chemical dosages and subsequent adjustment of chemical feeders or backwashed filters.

~~8.4. Experience obtained exclusively in collection, maintenance, and other non operational/treatment duties shall not count more than six hundred (600) hours of the total experience required for Class I through IV certification.~~

~~8.5. Experience obtained exclusively in laboratory duties shall not count more than one thousand (1,000) hours of the total experience required for Class I through IV certification.~~

8.6. An applicant may substitute the experience requirements with education and training as specified below:

8.6.a. Class II, III and IV applicants may substitute up to half of the required experience with additional education upon written request to the Commissioner.

8.6.b. An applicant cannot use education used as a substitute for experience requirements to satisfy education requirements.

§64-5-9. Examination Requirements.

9.1. Examination requirements for each certification are listed in Table 64-5B.

9.2. Examinations shall not be administered until the Commissioner-approved certification course requirements are first met, unless the Commissioner grants a written exception based on a written request.

9.3. An applicant for operator certification shall submit an application for examination in a form and manner approved by the Commissioner with proof of education and, if required, separate proof of work experience.

9.4. The Commissioner shall schedule examinations for wastewater operator certification

64CSR5

advanced course and pass the exam within three (3) years of the effective date of this rule to be grandfathered as an advanced certified operator.

12.1.i. Approved CEH courses taken by individuals within one (1) year prior to the effective date of this rule shall be applied to the first renewal period under the effective date of this rule.

§64-5-13. Certification from Another Jurisdiction.

13.1. The Commissioner shall grant certification to a wastewater operator certified by another jurisdiction, if the applicant:

13.1.a. Is actively seeking, has been offered or has accepted employment in West Virginia which requires a certified operator;

13.1.b. Submits a completed application in a manner and form approved by the Commissioner;

13.1.c. Meets the educational and work experience requirements of this rule; and,

13.1.d. Passes the West Virginia certification examination equivalent to the certification level of the other jurisdiction, as determined by the Commissioner.

§64-5-14. Suspension and Revocation.

14.1. The Commissioner may suspend or revoke the certification of an operator if the individual:

14.1.a. Used fraud or deceit in obtaining certification;

14.1.b. Failed to comply with this rule;

14.1.c. Performed the duties of a wastewater operator in a negligent or incompetent manner;

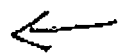
14.1.d. Knowingly or negligently submitted misleading, inaccurate, or false reports to the Commissioner; or

~~14.1.e. Violated or caused to be violated, any portion of DEP's legislative rule, NPDES Program, 47CSR10, or the U.S. Clean Water Act.~~

14.2. The Commissioner shall notify the certified operator and the employer via certified mail of a proposed suspension or revocation. The notification shall set forth the action proposed, the effective date, the reason, and the length of time of the proposed action.

14.3. The suspension of an operator's certification is effective for an initial period of not more than one (1) year, during which time the certification is not valid and the individual cannot

grossly



64CSR5

**Table 64-5B
OPERATOR EDUCATION AND EXPERIENCE REQUIREMENTS**

Class	Education	Experience
Class H	HS diploma or GED*, Commissioner-approved certification course & passing the Class H exam.	None
Class S	HS diploma or GED, Commissioner-approved certification course & passing the Class S exam.	None
Class C	HS diploma or GED, Commissioner-approved certification course & passing the Class C exam.	None
OIT	HS diploma or GED.*	None
Class I	HS diploma or GED, Commissioner-approved certification course & passing the Class I exam.	Two thousand (2,000) hours (1 year full-time) wastewater system experience as an OIT.**
Class II	HS diploma or GED, Commissioner-approved certification course & passing the Class II exam.	Four thousand (4,000) hours (2 years full- time) wastewater system experience at a Class I or higher class level wastewater system as a Class I operator.**
Class III	HS diploma or GED, ninety (90) CEUs* & passing the Class III exam.	Eight thousand (8,000) hours (4 years full- time) wastewater system experience, ^{one year} 2,000 of which shall be at a Class II or higher class level wastewater system as a Class II operator.**
Class IV	HS diploma or GED, one hundred eighty (180) CEUs* & passing the Class IV exam.	Ten thousand (10,000) hours (5 years full- time) wastewater system experience, at least ^{two years} 4,000 of which shall be at a Class III or higher class level wastewater system as a Class III operator.**
Advanced	Commissioner-approved training course & passing the Advanced exam.	None

* and ** Refer to Sections 7, 8, and 9.

64CSR5

Table 64-5C
CEUs FOR COURSES AND OPERATING EXPERIENCE

Ten (10) CEHs	1 CEU
One (1) College Semester Credit Hour	1.5 CEUs
One (1) College Quarter Credit Hour	1 CEU
Two thousand (2,000) hours of experience <i>One year</i>	45 CEUs

Note Section 7.6.



FACSIMILE TRANSMITTAL SHEET

TO: Felisha Sutherland	FROM: Michelle Ashworth, Paralegal
COMPANY: WV Legislative Rulemaking Review Committee	DATE: 11/8/2011
FAX NUMBER: 304-347-4901	TOTAL NO. PAGES INCL COVER: 3
PHONE NUMBER: 304-347-4841	

RE: WV MUNICIPAL WATER QUALITY ASSOCIATION COMMENTS ON ENVIRONMENTAL OPERATOR LICENSING REGULATIONS

URGENT
 FOR REVIEW
 PLEASE COMMENT
 PLEASE REPLY
 PLEASE RECYCLE

Attached is a letter from the WV Municipal Water Quality Association which summarizes two concerns that we have with environmental operator regulations that will be considered by the Committee on November 16. We will greatly appreciate your sharing this letter with the Committee members.

Please let me know if you need anything else from me.

We expect to have someone attend the meeting and speak to these two issues.

Should you have any questions, please contact me at 804-716-9021, ext. 222 or mashworth@aqualaw.com.

Thank you very much for your assistance.



WEST VIRGINIA MUNICIPAL WATER QUALITY ASSOCIATION

515 W. Main St.
P.O. Box 1310
Bridgeport, West Virginia 26330
304-842-8231

November 1, 2011

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Paul Calamita, AQUALAW

West Virginia Legislative Rule-Making Review Committee
State Capitol Building, Room MB 49
Charleston, West Virginia 25305

Re: Proposed Amendments to Water and Wastewater Operator Regulations

Dear Honorable Members of the Legislative Rule-Making Review Committee:

We are writing to share the concerns of the West Virginia Municipal Water Quality Association (the "MWQA") with respect to the amendments proposed by the Department of Health and Human Resources Bureau for Public Health (collectively, the "Department") to the above-referenced regulations.

The MWQA is a statewide association of thirty-three (33) owners and operators of publicly owned treatment works (POTWs), many of whom also operate public water systems. The MWQA's primary purpose is to ensure that West Virginia's water quality programs are based on sound science and regulatory policy so that its members can protect public health and the environment in the most cost-effective manner possible. The MWQA submitted written comments to the Department during the rulemaking process.

The MWQA requests that the Committee address two specific areas of concern in the proposed amendments. These issues involve fundamental fairness to water and sewer system operators.

First, we object to the provision in the rules that assigns a specific hourly threshold (2000 hours) to each "year" of experience. We believe that 2000 hours is too high a threshold as operators away from work for more than two weeks (due to vacation, illness, etc) will not qualify as having met the "year" educational requirement. Moreover, we see no reason to require utility owners to track time worked to the arbitrary 2000 hours.

The 2000 hour/year work requirement appears in §64-4-8.4 and Table 64-4A of the Water Operator Regulation and §§64-5-8.4, 64-5.8.5 and Table 64-5B of the Wastewater Operator Regulation. We believe that the experience requirement is best stated in terms of "years" of full-time experience (*i.e.*, a narrative standard).

West Virginia Legislative Rule-Making Review Committee

November 7, 2011

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Accordingly, we ask the committee to strike the specific hourly requirements in the Tables referenced above while leaving the narrative "year" experience requirements. We are not aware of any other State which imposes such hourly thresholds and tracking requirements on environmental operators.

Our second concern relates to the proposal in the rules to specify the maximum number of hours specific tasks can comprise toward the one year hourly requirement. For example, the rule proposes that only 1000 out of 2000 required hours can be in the area of utility maintenance rather than treatment. Same for laboratory work – it can comprise only 600 hours of the yearly hourly requirement. This limitation is arbitrary in that it fails to consider the education and testing required by the Department. Thus, experience notwithstanding, for an operator to be licensed he or she has to pass a test which covers all areas of their responsibility for the license sought. If the operator can pass that test, why should the Department care if their experience is more in system maintenance or laboratory functions than in operation? Either the test is a valid gatekeeper for competence or it is not. In the latter case, we should get rid of it. In the end the utility hiring each operator has the ultimate responsibility (and liability) for ensuring the operator is competent to perform his or her duties.

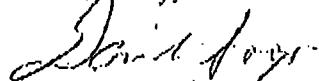
Accordingly, we ask the Committee to strike the specific numerical hourly requirements and leave in place the narrative "year" experience requirements.

Second, we object to a provision in the proposed rules which would allow the Department to revoke operator licenses for simple negligence. Everyone makes mistakes. Our utilities are subject to strict liability so they have every incentive to comply to the best of their ability. Minor errors by our operators should be handled internally. As proposed, these provisions could render an operator strictly liable for anything that may go wrong at a water or wastewater plant. Only gross negligence should rise to the level of license action by the Department.

Accordingly, we ask that the Committee ensure the addition of the word "grossly" in front of "negligent" in both §64-4-14.1.c of the Water Operator Regulation and §64-5-14.1.c. f the Wastewater Operator Regulation.

Thank you for considering these two important changes to the operator licensing rules.

Sincerely,



David C. Sago
President