



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

| | |
|----------------------------|---|
| Agency Name: | 160 |
| VAC Chapter Number: | 20 |
| Regulation Title: | Virginia Waterworks and Wastewater Works Operators Regulation |
| Action Title: | Proposed |
| Date: | May 23, 2000 |

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The Board was created to regulate through testing and evaluation, those individuals who operate waterworks or wastewater works facilities. A waterworks is defined as a system that serves piped water for drinking or domestic use to (i) the public, (ii) at least 15 connections, or (iii) an average of 25 individuals for at least 60 days out of the year. The term waterworks shall include all structures, equipment, appurtenances used in the storage, collection, purification, treatment and distribution of pure water except the piping and fixtures inside the building where such water is delivered. A wastewater works is defined as a system of (i) sewerage systems or sewage treatment works serving more than 400 persons, as set forth in Section 62.1-44.18 of the Code of Virginia; (ii) sewerage treatment works serving fewer than 400 persons, as

set forth in Section 62.1-44.18 of the Code of Virginia, if so certified by the State Water Control Board; and (iii) facilities for discharge into state waters of industrial wastes or other wastes, if certified by the State Water Control Board.

The Board's current regulations became effective on August 27, 1992. The proposed regulations are necessary to implement the "Environment Protection Agency Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems; Notice" (1999). The new EPA guidelines established a new class for restricted waterworks license and requires continuing professional education (CPE) for waterworks licenses.

The web site address for locating the text of the EPA Guidelines is:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=1999_register&docid=99-2692-filed.pdf.

It is necessary to amend the existing regulations to implement the new EPA guidelines to ensure that the state does not lose federal funding.

The proposed regulations establish a new Class VI restricted waterworks license as mandated by the new EPA guidelines and includes waterworks continuing professional education (CPE) requirements.

In addition, the text of the regulations has been substantially reorganized and revised for clarity and ease of use. The Office of the Attorney General suggested many of the amendments.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

The Board's authority to promulgate the proposed regulations is contained in Section 54.1-201 and Section 54.1-2301 of the Code of Virginia.

The imperative form of the verb "shall" is used in the statute making the rulemaking provisions mandatory rather than discretionary.

Subsection B of 54.1-2301 states "The Board shall examine operators and issue licenses. The licenses may be issued in specific operator classifications to attest to the competency of an operator to supervise and operate waterworks and wastewater works while protecting the public health, welfare and property and conserving and protecting the water resources of the Commonwealth."

The web site address for locating the text of the cited authority is <http://leg1.state.va.us/000/cod/code9115.htm#156944>.

By memorandum dated April 28, 2000, the Office of the Attorney General stated that the agency has the authority to promulgate the proposed regulations under the authority granted the Board under Section 54.1-201(5) of the Code of Virginia.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The Board's proposed regulations are necessary to implement the mandates of the "Environment Protection Agency: Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems; Notice" for small water systems which the Board must implement on or before February 5, 2001. The new EPA guidelines are requiring all waterworks operators fulfill continuing profession education (CPE) requirements. Revisions to the regulations have been made in accordance with the changes brought forward by the Office of the Attorney General. If the EPA guidelines are not implemented by February 5, 2001, the Commonwealth will lose substantial federal funding.

The public health objectives of the guidelines and proposed regulations are to ensure that: Customers of any public water system be provided with an adequate supply of safe, potable drinking water; consumers are confident that their water is safe to drink; public water system operators are trained and certified and that they have knowledge and understanding of the public health reasons for drinking water standards.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The following is a summary of the revisions to the Board's August 27, 1992 regulations that are being proposed to implement changes to the regulations and to implement "Environmental Protection Agency Final Guidelines for the Certification and Recertification of Community and Nontransient Noncommunity Public Water Systems; Notice" (1999).

Under Section 18 VAC 160-20-10 of the proposed regulations, certain definitions have been added, modified or deleted to comply with the Office of Attorney General comments and the Board's decisions.

Sections 18 VAC 160-20-20, 18 VAC 160-20-30, 18 VAC 160-20-40, 18 VAC 160-20-50, 18 VAC 160-20-60, 18 VAC 160-20-70, and 18 VAC 160-20-100 are proposed for repeal in their entirety.

The substance of Sections 18 VAC 160-20-20 and 18 VAC 160-20-70 has been moved to Section 18 VAC 160-20-74. The language now found in Section 18 VAC 160-20-74 continues to require an operator to apply for and hold a valid license in the class and category of the facility operated. Language has been added to void a lower classification of license when a higher classification authorizes practice in all lower classifications. The new language simplifies the regulatory program for licensees and for DPOR.

The substance of Section 18 VAC 160-20-30 has been moved to Section 18 VAC 160-20-106. The language now found in Section 18 VAC 160-20-106 continues to specify the license renewal procedure and adds the requirement for licensed waterworks operators to comply with the CPE requirement. The language in the current subsection E, concerning licenses issued under the Board's August 27, 1992 regulations has been deleted.

The substance of Section 18 VAC 160-20-40 has been moved to Section 18 VAC 160-20-102. In Section 18 VAC 160-20-102, the fee structure remains the same. Language has been added to clarify that the date a fee is received by the Board is the date that will determine whether the fee is received timely. In addition, language is added to make clear that an additional fee of \$25 will be charged to anyone who submits a check that is dishonored by the institution on which it is drawn.

The substance of Section 18 VAC 160-20-50 has been moved to Section 18 VAC 160-20-120. In Section 18 VAC 160-20-120, a new Class VI facility has been added in order to implement the EPA Guidelines. The descriptions of the other facilities have been modified to reflect current operation practice. The new language makes clear that a licensee may lawfully operate a facility of a lower classification than the classification on his license.

The substance of Section 18 VAC 160-20-60 has been moved to Section 18 VAC 160-20-130. In Section 18 VAC 160-20-130, the descriptions have been modified to reflect current operation practice. The new language makes clear that a licensee may lawfully operate a facility of a lower classification than the classification which appears on his license.

Section 18 VAC 160-20-74 is a new section that continues the substance of repealed Sections 18 VAC 160-20-20 and 18 VAC 160-20-70 requiring an individual to hold a license pertinent to the facility to be operated and prohibits the possession of more than one classification of license in the same category by a single individual.

Section 18 VAC 160-20-76 is a new section that continues the substance of repealed Section 18 VAC 160-20-100, except for the language describing practices that do not comply with the Virginia Administrative Process Act (APA). Language is added that more accurately describes the application procedure, establishes the age of majority as an entry standard and requires disclosure of conviction and disciplinary actions. The language also requires the applicant to disclose his physical address and makes clear that receipt of an application and deposit of fees in no way indicates application approval.

Section 18 VAC 160-20-80 has been amended to simplify the language. In substance, any individual licensed in another jurisdiction that can document that he meets the experience and education requirements of the Board may take the Virginia license examination.

Section 18 VAC 160-20-85 is a new section that implements a provision of the EPA Guidelines recommending the grandparenting of operators of small water systems described as Class VI in the proposed regulations. The EPA is concerned that there are currently many competent operators who should be allowed to continue to function as operators until they can meet the new entry requirements, in order to allow a transition period.

Section 18 VAC 160-20-90 has been amended to clarify language, to reflect the suggestions of the Office of the Attorney General, by deleting "Table 1," which caused confusion, and by adding the entry requirements for the new restricted Class VI waterworks license.

Section 18 VAC 160-20-100 has been proposed for repeal as addressed above under the comments for Section 18 VAC 160-20-76.

Section 18 VAC 160-20-102 has been added and contains the substance of Section 18 VAC 160-20-40, which has been proposed for repeal, as addressed above under comments for Section 18 VAC 160-20-40. In addition, language has been added to make clear that an additional fee of \$25 will be charged to anyone who submits a check that is dishonored by the institution on which it is drawn.

Section 18 VAC 160-20-104 has been added and contains a requirement for regulants to notify the board in writing of any change in name and address, and mandates that regulants practice under the name in which their license is issued.

Section 18 VAC 160-20-106 has been added and contains the substance of deleted Section 18 VAC 160-20-30. The language continues to specify the license renewal procedure and adds the requirement for licensed waterworks operators to comply with the CPE requirement. The language in the current Section 18 VAC 160-20-30 E, concerning licenses issued under the Board's August 27, 1992 regulations, has been deleted because it is obsolete.

Section 18 VAC 160-20-109 has been added to articulate the new CPE requirement mandated by the new EPA Guidelines. The number of contact hours of CPE required varies depending on the class of license held. More hours are required for higher classes because of the more complicated nature of the higher-class facility operation. CPE is not required for license renewal for less than two years from the date of expiration, because the Board feels the effort to qualify for the examination meets the CPE requirement for the first renewal cycle. CPE subject

matter is limited to those areas covered on the Board's current examination. Copies of the examination content are available from DPOR free of charge and will be posted to the DPOR web site. Courses approved by the Board to substitute for training credits or formal education are acceptable as CPE.

Section 18 VAC 160-20-110 has been repealed and its substance moved to new Section 18 VAC 160-20-140. The new language contains the provisions of the repealed section, one of which has been revised for clarity. A provision concerning criminal convictions has been added to make clear that individuals convicted of felonies and certain misdemeanors are subject to license denial, suspension or revocation. Licensees are required to notify the Board of convictions of certain felonies. Gross negligence or a continued pattern of incompetence has been added as grounds for disciplinary action.

Section 18 VAC 160-20-160 is the former "Appendix A," that contained the standards for approval of specialized training courses. The appendix has been restyled as Section 18 VAC 160-20-160 and contains the language found in the appendix with some clarifying amendments. The language specifies how the training can be substituted for the experience required for licensure and the standards the training courses must meet to be approved. The information to be submitted by those seeking training course approval is specified. Additional provisions are included for recurring training programs, which will save some cost and effort for both providers of the training and the Board.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary advantage to the public of implementing the new regulatory provisions is the added protection to the public resulting from the additional oversight of the waterworks and wastewater works professions. Implementation of CPE provides for more competent operators, which assures the public of a potable water supply. The primary advantage to the Board and to the Commonwealth is to prevent the loss of funding provided by the EPA. The disadvantages to the public would be the added cost to license small water system operators (Class VI) and the CPE costs for all waterworks operators, which will put some upward pressure on water bills.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's

best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

The Board for Waterworks and Wastewater Works Operators was established by the Virginia General Assembly in 1971 to regulate individuals who operate water and wastewater treatment facilities throughout the Commonwealth as prescribed in Chapter 23, Title 54.1, sections 2300 through 2302 of the Code of Virginia. The board has the authority to examine operators and issue licenses to them, fine, suspend or revoke a license, or refuse to grant or renew a license to any person who has violated the regulations of the profession. The board consists of seven members as follows: the Director of the Office of Water Programs of the State Department of Health, or his designee, the Executive Director of the State Water Control Board (now the Department of Environmental Quality), or his designee, a currently employed waterworks operator having a valid license of the highest classification issued by the board, a currently employed wastewater works operator having a valid license of the highest classification issued by the board, a faculty member of a state university or college whose principal field of teaching is management or operation of a waterworks or wastewater works, a representative of an owner of wastewater works, and a representative of an owner of a waterworks. The board meets quarterly in Richmond and relies on the staff of the Department of Professional and Occupation Regulation to assist applicants seeking a license, assisting those already licensed with the renewal process, and investigating any alleged infraction of the regulations. All costs are borne by the department and funded through license fees paid by the applicants and licensed operators. All current and future regulants of this Board will be effected by any regulatory change; there are currently approximately 4,900 licensees. The department has considered the current fee structure, anticipated expenditures and the current regulant population in estimating the impact of the lowered fee structure on the Callahan Percentage. A detailed fiscal impact analysis is attached.

Board for Waterworks and Wastewater Works Operators Analysis of Expenses by Category

Background

All Boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113) and the general provisions of section 54.1-201. As such, each program's fee revenues must support both its direct and a proportionate share of its indirect costs. To ensure the provisions of the Callahan Act are met, the Department allocates costs to its regulatory programs based on consistent and equitable, yet cost-effective methodologies. In keeping with this, the following presents a summary of expenses within the various departmental categories of expense. The data includes actual revenues and expenditures for the 1996-98 biennium, FY99, and estimates for the other years. Also note that due to some changes to the department's internal reporting system, some category of fees, as well as the allocation methodologies, were edited as of July 1, 1998.

Waterworks and Wastewater Works Operators

Direct Board & Board Administration Expenses

Direct costs are directly incurred by the Board, for meetings, notices and conduct of public hearings. Board Administration expenses are those costs associated with Departmental staff to administer the program, review applications, issue licenses, respond to licensee questions, and conduct Board meetings. Beginning in FY99, fee processing was added to this category.

| | |
|---------|-----------|
| 1996-98 | \$239,064 |
| 1998-00 | \$240,227 |
| 2000-02 | \$247,434 |

Fee Processing

These costs are charged to each Board program based on the number of financial transactions processed by the Department's fee processing unit. *Beginning in FY99, the Fee Processing expenditure was combined with the category above, Direct Board and Board Administration.*

| | |
|---------|---------|
| 1996-98 | \$8,634 |
|---------|---------|

Administration of Exams

These costs represent the allocated costs of the examination section, and are allocated based upon the time required to administer the examination process for those boards that test their regulants prior to licensure.

| | |
|---------|----------|
| 1996-98 | \$51,254 |
| 1998-00 | \$49,474 |
| 2000-02 | \$50,958 |

Enforcement

These are costs associated with the intake of complaints, the investigation of allegations against licensees, and the adjudication of cases. Costs are allocated to programs based upon actual complaint and investigative caseloads and the number of investigator hours required investigating allegations.

| | |
|---------|----------|
| 1996-98 | \$ 7,471 |
| 1998-00 | \$16,786 |
| 2000-02 | \$17,290 |

Legal Services

This is the category for the fees to the Office of the Attorney General, as well as the legal fees incurred by the board when they hold Informal Fact Finding.

| | |
|---------|---------|
| 1998-00 | \$1,198 |
| 2000-02 | \$1,234 |

Information Systems/Records Management

These are the proportionate share of costs associated with systems processing, maintaining information systems, maintaining licensee record information on the information system database, and an allowance for investment in technology to make the information system more efficient and useful.

| | |
|---------|----------|
| 1996-98 | \$52,606 |
| 1998-00 | \$47,923 |
| 2000-02 | \$49,361 |

Facilities Management and Support Services

These are costs associated with contract and building management, purchasing, and the mailroom staff costs. They are allocated based on the relative percentage of licensees regulated by each board.

| | |
|---------|----------|
| 1996-98 | \$25,055 |
| 1998-00 | \$52,832 |
| 2000-02 | \$54,417 |

Agency Administration

These costs are the proportionate share of costs for the office of the Agency Director, Personnel Office, Administration, Finance, and Legislative Affairs.

| | |
|---------|----------|
| 1996-98 | \$38,079 |
| 1998-00 | \$45,758 |
| 2000-02 | \$47,131 |

Indirect Costs/Transfers

These costs are the program's proportionate share of the amount included in Appropriations Act which the Department must transfer to the General Fund to reimburse the State for services provided by central State agencies.

| | |
|---------|---------|
| 1996-98 | \$ 449 |
| 1998-00 | \$1,042 |
| 2000-02 | \$1,073 |

Revenues

All program revenues are the result of fees collected for Board-approved charges. The program receives no general fund support.

| | |
|---------|-----------|
| 1996-98 | \$460,679 |
| 1998-00 | \$430,130 |
| 2000-02 | \$430,130 |

Callahan Calculations

At the end of the biennium, the Callahan Projections will be as follows:

| | |
|---------|-------|
| 1996-98 | 27.2% |
| 1998-00 | 16.9% |
| 2000-02 | 8.1% |

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

Section 18 VAC 160-20-10 has been amended to add, delete or modify the definitions of terms used throughout the regulation document.

The definition of "contact hour" has been added to the exact amount of time an individual must spend in a structured training activity to earn one hour of continuing professional education.

The definition of "continuing professional education (CPE)" has been added to implement the continuing education standards mandated by the new federal guidelines.

The definition of "department" has been added to replace the term "Virginia Department of Professional and Occupational Regulation" in the body of the regulations. The document has become easier to read as a result.

The definition of "experience" has been added to specify the nature of the occupation-related work that may be considered by the Board in determining eligibility or other decisions under the proposed regulations.

The definition of "licensed operator" has been added to define the classification appropriate for the operator of a waterworks or wastewater works.

The definition of "licensee" has been added to specify the nature of the license that is required in order to operate specific facilities in compliance with the proposed regulations.

The definition of "operate" has been added to clarify that the term only applies to an individual (rather than a firm) who holds a valid (rather than an expired) license.

The definition of "operating staff" has been added to clarify which individuals the regulations will view as performing functions requiring a license.

The definition of "person" has been deleted to eliminate confusion. The deleted definition included individuals and all forms of business organization. Use of the term "person" in the regulations gives the impression that firms as well as individuals may apply for a license. The same definition remains in the enabling statute. However, the phrasing in the enabling statute makes clear that the Board's authority is limited to individuals. Throughout the proposed regulations, the term "person" has been replaced with the term "individual." A bill has been drafted to revise the definition in the enabling statute.

The definition of "renewal" has been added to give specificity to the term as used in the proposed regulation document.

The definition of "structured training activity" has been added to specify the activities that qualify for CPE. "Structured training activity" is cited in the CPE definition to describe activities that maintain and increase licensee competence.

The definition of "waterworks" has been amended to include the substance of the EPA Guidelines' definitions of "community water system (CWS)" and "nontransient noncommunity (NTNC) water system." The current definition does not include the small size facilities addressed in the EPA CWS and NTNC definitions. The amendment is necessary to implement the EPA Guidelines. The definition of a "waterworks" in the enabling legislation (Section 54.1-2300 of the Code of Virginia) provides the Board with the authority to certify these facilities as waterworks facilities.

Sections 18 VAC 160-20-20, 18 VAC 160-20-30, 18 VAC 160-20-40, 18 VAC 160-20-50, 18 VAC 160-20-60, 18 VAC 160-20-70, and 18 VAC 160-20-100 are proposed for repeal in their entirety.

The substance of Sections 18 VAC 160-20-20 and Section 18 VAC 160-20-70 has been moved to 18 VAC 160-20-74. The language now found in 18 VAC 160-20-74 continues to require an operator to apply for and hold a valid license in the class and category of the facility operated. Language has been added to void a lower classification of license when a higher classification authorizes practice in all lower classifications. The new language simplifies the regulatory program for licensees and for DPOR.

The substance of Section 18 VAC 160-20-30 has been moved to Section 18 VAC 160-20-106. The language now found in Section 18 VAC 160-20-106 continues to specify the license renewal procedure and adds the requirement for licensed waterworks operators to comply with the CPE requirement. The language in the current subsection E, concerning licenses issued under the Board's August 27, 1992 regulations has been deleted.

The substance of Section 18 VAC 160-20-40 has been moved to Section 18 VAC 160-20-102. In Section 18 VAC 160-20-102, the fee structure remains the same. Language has been added to make clear that the date a fee is received by the Board is the date that will determine whether the fee is received timely. In addition, language is added to make clear that an additional fee of

\$25 will be charged to anyone who submits a check that is dishonored by the institution on which it is drawn.

The substance of Section 18 VAC 160-20-50 has been moved to Section 18 VAC 160-20-120. In Section 18 VAC 160-20-120, a new Class VI facility has been added in order to implement the EPA Guidelines. The descriptions of the other facilities have been modified to reflect current operation practice. The new language makes clear that a licensee may lawfully operate a facility of a lower classification than the classification on his license.

The substance of Section 18 VAC 160-20-60 has been moved to Section 18 VAC 160-20-130. In Section 18 VAC 160-20-130 the descriptions have been modified to reflect current operation practice. The new language makes clear that a licensee may lawfully operate a facility of a lower classification than the classification which appears on his license.

Section 18 VAC 160-20-74 is a new section that continues the substance of repealed Sections 18 VAC 160-20-20 and 18 VAC 160-20-70 requiring an individual to hold a license pertinent to the facility to be operated and prohibits the possession of more than one classification of license in the same category by a single individual.

Section 18 VAC 160-20-76 is a new section that continues the substance of repealed Section 18 VAC 160-20-100, except for the language describing practices that do not comply with the Virginia Administrative Process Act (APA). Language is added that more accurately describes the application procedure, establishes the age of majority as an entry standard and requires disclosure of conviction and disciplinary actions. The language also requires the applicant to disclose his physical address and makes clear that receipt of an application and deposit of fees in no way indicates application approval.

Section 18 VAC 160-20-80 has been amended to simplify the language. In substance, any individual licensed in another jurisdiction that can document that he meets the experience and education requirements of the Board may take the Virginia license examination.

Section 18 VAC 160-20-85 is a new section that implements a provision of the EPA Guidelines recommending the grandparenting of operators of small water systems described as Class VI in the proposed regulations. The EPA is concerned that there are currently many competent operators who should be allowed to continue to function as operators until they can meet the new entry requirements, in order to allow a transition period. States who include grandparenting are mandated to meet the following requirements:

- Grandparenting is permitted only for existing operator(s) in responsible charge of existing systems, which, because of State regulation changes to meet these guidelines, must, for the first time, have a certified operator.
- The system owner must apply for grandparenting for the operator(s) in responsible charge within two years of the effective date of the State's regulation.
- The certification for the grandparented operator must be site specific and non-transferable to other operators.
- The grandparented operator must, within some specific period of time, be required to meet all requirements to obtain license renewal, including the payment of fees,

acquiring necessary skills, and demonstrating skills, knowledge, ability and judgement for that classification.

- The grandparented operator's license will become void if the facility is upgraded to a higher classification.
- The grandparented operator's license will become void if he chooses to work for a different facility.

Section 18 VAC 160-20-90 has been amended to clarify language, to reflect the suggestions of the Office of the Attorney General, by deleting "Table 1," which caused confusion, and by adding the entry requirements for the new restricted Class VI waterworks license.

Section 18 VAC 160-20-100 has been proposed for repeal as addressed above under the comments for Section 18 VAC 160-20-76.

Section 18 VAC 160-20-102 has been added and contains the substance of Section 18 VAC 160-20-40, which has been proposed for repeal, as addressed above under comments for Section 18 VAC 160-20-40. In addition, language has been added to make clear that an additional fee of \$25 will be charged to anyone who submits a check that is dishonored by the institution on which it is drawn.

Section 18 VAC 160-20-104 has been added and contains a requirement for regulants to notify the board in writing of any change in name and address, and mandates that regulants practice under the name in which their license is issued.

Section 18 VAC 160-20-106 has been added and contains the substance of deleted Section 18 VAC 160-20-30. The language continues to specify the license renewal procedure and adds the requirement for licensed waterworks operators to comply with the CPE requirement. The language in the current Section 18 VAC 160-20-30 E, concerning licenses issued under the Board's August 27, 1992 regulations, has been deleted because it is obsolete.

Section 18 VAC 160-20-109 has been added to articulate the new CPE requirement mandated by the new EPA Guidelines. The number of contact hours of CPE required varies depending on the class of license held. More hours are required for higher classes because of the more complicated nature of the higher-class facility operation. CPE is not required for license renewal for less than two years from the date of expiration, because the Board feels the effort to qualify for the examination meets the CPE requirement for the first renewal cycle. CPE subject matter is limited to those areas covered on the Board's current examination. Copies of the examination content are available from DPOR free of charge and will be posted to the DPOR web site. Courses approved by the Board to substitute for training credits or formal education are acceptable as CPE. The nature of the evidence of CPE completion to be submitted and maintained by licensee is specified. Evidence of completion must be maintained for a period of at least one-year following the license renewal cycle for which the CPE was completed. The same training may not be taken more than once for CPE credit during a single license renewal cycle unless it is an annual training requirement of Virginia or federal regulations. A provision has been included to allow the licensee to petition the Board for additional time to complete the CPE requirement. The Board will make decisions on these requests on a case-by-case basis. It is

anticipated that these requests will result from licensee injury, illness or family situation that makes additional time appropriate.

Section 18 VAC 160-20-110 has been repealed and its substance moved to new Section 18 VAC 160-20-140. The new language contains the provisions of the repealed section, one of which has been revised for clarity. A provision concerning criminal convictions has been added to make clear that individuals convicted of felonies and certain misdemeanors are subject to license denial, suspension or revocation. Licensees are required to notify the Board of convictions of certain felonies. Gross negligence or a continued pattern of incompetence has been added as grounds for disciplinary action.

Section 18 VAC 160-20-160 is the former "Appendix A," that contained the standards for approval of specialized training courses. The appendix has been restyled as Section 18 VAC 160-20-160 and contains the language found in the appendix with some clarifying amendments. The language specifies how the training can be substituted for the experience required for licensure and the standards the training courses must meet to be approved. The information to be submitted by those seeking training course approval is specified. Additional provisions are included for recurring training programs, which will save some cost and effort for both providers of the training and the Board.

Alternatives

Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

In every case, the Board considered whether there was a less burdensome alternative. Alternatives that failed to meet this consideration were rejected. Throughout the process, the Board considered the costs of each provision in achieving the essential purpose.

Due to the mandates of the new EPA guidelines, the Board had little discretion in promulgating its regulations.

The Board incorporated the minimum standards to implement the EPA's "Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems; Notice" (1999). This includes the establishment of Class VI waterworks operators and the establishment of waterworks CPE requirements.

The fee structure adopted for the regulations is evaluated at the end of every biennium and adjusted in accordance with Section 54.1-113 of the Code of Virginia.

Effective with the February 2003 license renewal cycle, each licensed waterworks operator shall have completed the following number of CPE contact hours required for his class of license:

1. Class I, II, and III operators shall obtain a minimum of 20 contact hours during each license renewal cycle.

2. Class IV operators shall obtain a minimum of 16 contact hours during each license renewal cycle.
3. Class V operators shall obtain a minimum of eight contact hours during each license renewal cycle.
4. Class VI operators shall obtain a minimum of four contact hours during each license renewal cycle.

The Board discussed a greater number of contact hours and uniform contact hours for CPE. These proposals by the Board were turned down as being too burdensome to the regulant.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS
WATERWORKS AND WASTEWATER WORKS OPERATORS REGULATIONS
SUMMARY OF NOTICE OF INTENDED REGULATORY ACTION (NOIRA)
COMMENTS

A Notice of Intended Regulatory Action (NOIRA) was published in the January 17, 2000 issue of the Virginia Register of Regulations to obtain public comment on the effectiveness of and the continued need for the Board's current regulations. The public comment period expired on February 17, 2000.

The following is a staff-prepared summary of the comments received.

1. Mitchell Bernard

Requiring recertification is a good idea because it would revitalize discussions of state of the art knowledge and procedures among our staff.

2. Wilbur H. St. Germain

Establishing a license renewal program similar to the State of Kentucky program will ensure operators are kept abreast of the latest developments, as well as, have the opportunity to take refresher classes.

3. Donald Foote

I would like the renewal to stay the way it is and if there are new rules and regulations to notify the operators of this. I don't think it is fair to the older operators of your changes to recertify.

4. Melvin Roberson

If it is being considered that operators be recertified through retesting I have no problem with that, but a college course in wastewater should be put in effect comparable to the exam that will be given.

5. Richard D. Hartman

- a. Change the existing operator classes. It does not differentiate between those "in responsible charge" and those acting as helpers on a shift. Possibly a way to address this situation would be to have three classes of Operators: trainee, assistant operator and operator.
- b. Chief Operator's Certification - An option might be to require the chief operator at each plant to certify that he has observed the applicant and feels the individual can operate that plant before an individual could sit for the Operator's exam.
- c. I would strongly suggest that the Board and the State Health Department work with VPISU in developing a short course that could be given twice a year that would allow operators of all classes to attend and fulfill the educational requirement of the new Safe Drinking Water Act certification renewals.

6. Nathan B. White

Mr. Kossan, I urge you and the Board not to change current regulations to comply with EPA guidelines. The operators that this will effect need time to realize all the implications of the changes. No one outside of the Board has had time to really study the proposed changes.

7. Janet D. Gosselin

I consider the present regulations strict enough, and see no need to add to them. Specifically, the idea of making renewal of licenses harder (recertification), is a terrible one. As to "continuing education", much of it is information, which has nothing to do with our day-to-day work.

8. Paul Musgrave

As a current operator and prior educator I feel that operators should only be able to become licensed through experience and/or classwork. The current system works quite well in my opinion.

9. Joseph D. Hutton Jr.

The first suggestion is to change the structure of the license path. The other thing is grandfather/renewal idea is probably okay however this goes back to the issues of the level of technological advancements that are very much needed.

10. Charles D. Nixon

I would like to propose that the regulations be amended to allow operators to obtain licensure to the highest class that they are capable of without regard to the facility rating.

11. E. Sinclair

I believe that the holder of a current license in wastewater should be allowed to substitute some experience requirements to sit for examination for a water license.

12. Clark S. Wisman Jr.

I would be in favor of going to a class every two years over having to sit again for some license.

13. Marshall L. Johnson

Give the certification tests at other locations than Richmond. Begin the testing no earlier than 10:00 am.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

These proposed regulations modify and make permanent changes necessary to implement the new federal guidelines and amendments suggested by the Office of the Attorney General.

The experiences of the Department of Professional and Occupational Regulation staff, the Board members and the public expressed through their comments have been considered during the regulation development process and have resulted in a more easily understandable document. Both the members of the Board and the Department of Professional and Occupational Regulation staff made considerable effort to identify unnecessarily complicated language.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Board will enter into regulatory review in late 2002. The review will be conducted to determine if the regulations should be continued, amended or terminated, including a description of specific and measurable goals the regulations are intended to achieve.

It should be noted that Section 54.1-113 of the Code of Virginia mandates regulatory boards to examine its fee structure at the end of each biennium. It is the Department's custom to encourage its affiliated boards to examine its regulations as described above at the same time the fee structure is examined for compliance.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is believed to be no adverse effect for families in the Commonwealth.