



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

eFILED

10/26/2023 10:43:32 AM

Office of West Virginia
Secretary Of State

NOTICE OF AN EMERGENCY RULE

AGENCY: Health TITLE-SERIES: 64-05

RULE TYPE: Legislative Amendment to Existing Rule: Yes

RULE NAME: WASTEWATER SYSTEMS AND OPERATORS

CITE STATUTORY AUTHORITY FOR PROMULGATING EMERGENCY RULE:

16-1-4(a)(4), 16-1-9a(b)(4)(B), 29A-3-15(f)

IF THE EMERGENCY RULE WAS PROMULGATED TO COMPLY WITH A TIME LIMIT ESTABLISHED BY CODE OR FEDERAL STATUTE OR REGULATION, CITE THE CODE PROVISION, FEDERAL STATUTE OR REGULATION AND TIME LIMIT ESTABLISHED THEREIN:

n/a

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THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY THE SECRETARY OF STATE OR THE 42ND DAY AFTER FILING, WHICHEVER OCCURS FIRST. THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

An emergency exists due to an immediate need to preserve the public health and safety due to a shortage of drinking and wastewater operators in the state and to prevent substantial harm to the public.

DOES THIS EMERGENCY RULE REPEAL A CURRENT RULE? No

HAS THE SAME OR SIMILAR EMERGENCY RULE PREVIOUSLY BEEN FILED AND OR EXPIRED? No

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

n/a

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

n/a

C. ECONOMIC IMPACT ON THE STATE OR ITS RESIDENTS:

n/a

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2023 Increase/Decrease (use "-")	2024 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			0
Personal Services			0
Current Expenses			0
Repairs and Alterations			0
Assets			0
Other			0
2. Estimated Total Revenues			0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

n/a

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

April L Robertson--By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

64CSR5

TITLE 64
LEGISLATIVE RULE
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BUREAU FOR PUBLIC HEALTH

SERIES 5
WASTEWATER SYSTEMS AND OPERATORS

§64-5-1. General.

1.1. Scope. -- This rule governs the examination and certification of wastewater operators, establishes a system for the classification of wastewater systems, and specifies certain responsibilities of wastewater systems. ~~The W. Va. Code is available in public libraries and on the Legislature's web page, <http://www.legis.state.wv.us/>.~~

1.2. Authority. -- W. Va. Code ~~§16-1-4(e)~~ §16-1-4(a)(4) and §16-1-9a(b)(4)(B).

1.3. Filing Date. -- ~~May 2, 2012.~~

1.4. Effective Date. -- ~~May 2, 2012.~~

1.5. ~~Repeal and Replace.~~ ~~— This rule repeals and replaces Wastewater Treatment Works and Operators, 64CSR5, effective May 1, 1995.~~ Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2029.

§64-5-2. Application and Enforcement.

2.1. Application. -- This rule applies to owners and certified operators of wastewater systems and to applicants for certification. This rule does not apply to industrial wastewater systems which are regulated by the West Virginia Department of Environmental Protection (WV DEP) or to the operators of the industrial wastewater systems. This rule does not apply to septic tanks serving individual homes unless the systems have a centralized component.

2.2. Enforcement. -- This rule is enforced by the Commissioner of the Bureau for Public Health.

§64-5-3. Definitions.

3.1. Adequate. -- A sufficient amount of time, as determined by the Commissioner, considering treatment complexity, collection system, and other factors such as personnel leave.

3.2. Advanced Operator. -- An individual holding a valid advanced West Virginia wastewater operator designation issued by the Commissioner.

3.3. Certified Operator. -- An individual holding a valid West Virginia wastewater operator certification issued by the Commissioner.

3.4. Chief Operator. -- The certified operator whom the owner designates to be responsible for managing the daily operational activities of a wastewater system or a collection system in a manner that ensures meeting state and federal Clean Water Act rules and regulations.

3.5. Class I Operator. -- An individual holding a valid Class I West Virginia wastewater operator certification issued by the Commissioner.

3.6. Class II Operator. -- An individual holding a valid Class II West Virginia wastewater operator certification issued by the Commissioner.

3.7. Class III Operator. -- An individual holding a valid Class III West Virginia wastewater operator certification issued by the Commissioner.

3.8. Class IV Operator. -- An individual holding a valid Class IV West Virginia wastewater operator certification issued by the Commissioner.

3.9. Class C Operator. -- An individual holding a valid Class C West Virginia wastewater operator certification issued by the Commissioner. This classification was previously referred to as 1C.

3.10. Class H Operator. -- An individual holding a valid Class H West Virginia wastewater operator certification issued by the Commissioner.

3.11. Class HR Operator. -- An individual holding a valid Class H West Virginia wastewater operator certification issued by the Commissioner with restricted (R) operations. This certification only applies to an individual homeowner who was grandfathered in accordance with this rule or has taken the Class H course and passed the Class H exam who is limited to operating only his or her individually owned Class H system. Class HR certification does not have a certification fee and does not require a high school diploma or GED.

3.12. Class S Operator. -- An individual holding a valid Class S West Virginia wastewater operator certification issued by the Commissioner. This classification was previously referred to as 1S.

3.13. Collection System. -- Facilities upstream of the wastewater treatment plant used to convey wastewater to the treatment plant.

3.14. Commissioner. -- Commissioner of the West Virginia Bureau for Public Health or his or her designee.

3.15. Continuing Education Hour (CEH). -- One hour of participation in an organized continuing education experience under responsible sponsorship approved by the Commissioner for renewal of wastewater operator certification.

3.16. Continuing Education Unit (CEU). -- 10 CEHs.

3.17. Experience. -- Hands-on work performing certified operator duties at a wastewater system.

3.18. ~~gpd~~ GPD. -- Gallons per day.

3.19. Home Aeration Unit (HAU). -- Sewage treatment and disposal system of domestic sewage only permitted capability of 600 gpd or less, serving individual residences and/or certain commercial establishments. It is also known as aerobic treatment unit (ATU).

3.20. MGD. -- Million gallons per day.

3.21. National Pollutant Discharge Elimination System (NPDES). -- The federal wastewater discharge permit issued by the WV DEP.

3.22. Operate. -- To perform the practical work and apply the technical knowledge and operational skills in the treatment and collection of wastewater.

3.23. Operator-in-Training (OIT). -- An individual holding a valid operator-in-training certificate, issued by the Commissioner, who is training under the responsibility of the Chief Operator at a wastewater system while completing the educational and experience requirements to become a Class I operator.

3.24. Owner. -- The person legally responsible for the operation of a wastewater system.

3.25. Person. -- An individual, partnership, association, syndicate, company, firm, trust, corporation, government, institution, department, division, bureau, federal agency, or any other entity recognized by law.

3.26. Secretary. -- Secretary of the WV DEP or his or her designee.

3.27. Wastewater. -- Water containing human, animal, or domestic waste, except this definition does not include industrial wastewater regulated by the WV DEP.

3.28. Wastewater System. -- A facility collecting, treating, and discharging wastewater, except this definition does not include industrial wastewater systems regulated by the WV DEP.

§64-5-4. Classification of Wastewater Systems.

4.1. A wastewater system is classified on the basis of the permitted flow capacity and complexity of the wastewater treatment processes.

~~4.1.a.~~ 4.1.1. Class H – A lagoon, aerated lagoon, stabilization pond, recirculating media filter, package treatment plant, or a small wastewater system with flows less than 600 gpd. This rule does not apply to septic tanks serving individual homes.

~~4.1.b.~~ 4.1.2. Class S – A lagoon, aerated lagoon, stabilization pond, recirculating media filter, package treatment plant, or a small wastewater system with flows greater than 600 gpd, but less than or equal to 0.05 MGD. It can also be multiple individual septic tanks within a managed residential district. Individual homeowner septic tanks are only included in this class if they are maintained under the jurisdiction of a responsible management entity. This classification was previously referred to as 1S.

~~4.1.e.~~ 4.1.3. Class C – A facility upstream of the wastewater treatment plant used to collect and convey wastewater. It may include pumps, valves, manholes, tanks, and other appurtenances. These facilities are also known as a collection system. This class does not include Class S facilities.

~~4.1.d.~~ 4.1.4. Class I – A lagoon, aerated lagoon, stabilization pond, or wastewater system with flows greater than 0.05 MGD, but less than or equal to 1.0 MGD. This class includes extended aeration package treatment plants with flows greater than 0.05 MGD, but less than or equal to 0.1 MGD.

~~4.1.e.~~ 4.1.5. Class II – A lagoon, aerated lagoon, stabilization pond, or wastewater system with flows greater than 1.0 MGD, but less than or equal to 1.75 MGD. This class includes extended aeration treatment plants with flows greater than 0.1 MGD, but less than or equal to 1.75 MGD.

~~4.1.f.~~ 4.1.6. Class III – A facility with flows greater than 1.75 MGD but less than 6.0 MGD.

~~4.1.g.~~ 4.1.7. Class IV – A facility with flows equal to or greater than 6.0 MGD.

~~4.1.h.~~ 4.1.8. Advanced – A system designation held in addition to Class S and Class I through Class IV classifications, where advanced treatment methods are used such as: membrane filtration or

separate nitrification; denitrification; phosphorus removal; ammonia stripping; breakpoint chlorination; carbon adsorption; chemical coagulation; flocculation; precipitation; demineralization ion exchange, reverse osmosis, or electro dialysis; or other processes considered advanced by the Commissioner.

§64-5-5. Required Personnel and Conditions of Employment.

5.1. Any individual who operates a Class S, Class C, Class I, Class II, Class III, or Class IV wastewater system in West Virginia shall be certified by the Commissioner. Any individual who operates a Class H wastewater system in West Virginia shall be certified by the Commissioner or Secretary.

5.2. A certified wastewater operator shall:

~~5.2.a.~~ 5.2.1. Be responsible for his or her certification in accordance with all aspects of this rule.

~~5.2.b.~~ 5.2.2. Carry his or her current certification card issued by the Commissioner upon them at all times the operator is operating the wastewater system.

~~5.2.e.~~ 5.2.3. Not work in a wastewater system using the certification of another person; only the person whose name appears on the operator certification is certified by that document. Certifications are not transferable.

~~5.2.d.~~ 5.2.4. Notify the Commissioner at least 30 calendar days in advance of the voluntary termination of his or her employment at a wastewater system.

~~5.2.e.~~ 5.2.5. Comply with the provisions of Bureau for Public Health legislative rule, Sewer Systems, Sewage Treatment Systems, and Sewage Tank Cleaners, 64CSR9.

~~5.2.f.~~ 5.2.6. Demonstrate data integrity by providing complete, accurate, and true information for the period in which he or she was responsible for data collection including, but not limited to, records, reports, and lab results.

5.3. A Class H and Class S system and the collection system portion only of a wastewater system under the direct jurisdiction of the treatment plant are not required to designate a Chief Operator.

~~5.3.a.~~ 5.3.1. The owner of a Class H wastewater system shall ensure it is operated by a Class H, Class I, or higher wastewater operator.

~~5.3.b.~~ 5.3.2. The owner of a Class S wastewater system shall ensure it is operated by a Class S wastewater operator.

~~5.3.e.~~ 5.3.3. The owner of a Class C wastewater system shall ensure it is operated by a Class C, Class I, or higher wastewater operator.

5.4. The owner of a wastewater system shall:

~~5.4.a.~~ 5.4.1. Employ a Chief Operator with certification equal to or higher than the system classification, except for Class H, Class S, and Class C systems. A wastewater system shall have more than one Chief Operator if jurisdiction is bifurcated between the collection system and treatment plant or otherwise approved in writing by the Commissioner based upon written request;

~~5.4.a.1.~~ 5.4.1.a. In the case of collection systems not under the direct jurisdiction of the treatment plant Chief Operator, employ an additional Chief Operator with a Class C, Class I, or higher

certification and an adequate number of certified operators to operate the collection system. The owner shall:

~~5.4.a.1.A.~~ 5.4.1.a.1. Employ a Chief Operator to be on-site at all new wastewater systems, except for Class H, Class S, and Class C, when construction is 25 percent complete; and

~~5.4.a.1.B.~~ 5.4.1.a.2. Place direct supervision of the wastewater system, including each treatment facility and collection system, under the responsible charge of the Chief Operator holding an adequate certification;

~~5.4.b.~~ 5.4.2. Employ an adequate number of certified operators to operate the system;

~~5.4.e.~~ 5.4.3. Not employ more OITs than the number of employed certified operators of higher classification, unless written permission is granted by the Commissioner;

~~5.4.d.~~ 5.4.4. Notify the Commissioner and Secretary within 24 hours, in a manner approved by the Commissioner, of any employment status changes of the system's certified operators, including their reassignment, except for Class H systems;

~~5.4.e.~~ 5.4.5. Submit a personnel status report as of July 1 by July 15 every year, except for Class H systems. The report ~~is to~~ shall be in a manner approved by the Commissioner and required information includes, at a minimum: a list of all certified operators employed, the Chief Operator, and the system owner;

~~5.4.f.~~ 5.4.6. Post a copy of the current certification of all certified operators employed at the wastewater system in a conspicuous location in the wastewater system treatment plant or the wastewater system office, except for Class H systems; and,

~~5.4.g.~~ 5.4.7. Employ an advanced certified operator to be on-site at all new advanced systems when construction is 50 percent complete.

5.5. The Chief Operator of a wastewater system shall:

~~5.5.a.~~ 5.5.1. Be responsible for the operation of the wastewater system;

~~5.5.b.~~ 5.5.2. Be employed on a full-time basis by the wastewater system owner except in Class C and Class I systems;

~~5.5.e.~~ 5.5.3. Attend a course approved by the Commissioner for training as a Chief Operator. ~~Current Chief Operators shall attend the Chief Operator course within three (3) years of the effective date of this rule.~~ A person newly designated by the owner as the Chief Operator after the effective date of this rule shall attend within one year;

~~5.5.d.~~ 5.5.4. Apply to the Commissioner for OIT certification, on behalf of an OIT applicant, within 30 calendar days of his or her hire at the wastewater system. An applicant's experience gained for certification starts only upon the issued date of the OIT certificate;

~~5.5.e.~~ 5.5.5. Be responsible for the training and job duty assignments of OITs and other certified operators and proper documentation of this experience towards a certification upgrade;

~~5.5.f.~~ 5.5.6. Renew the certification of each OIT employee every two years or until all requirements for Class I certification are met. Applicants must submit their renewal application at least 30

calendar days prior to their certificate's expiration date, in a manner approved by the Commissioner. The OIT shall attempt to pass the Class I examination at least once during each two-year renewal; and,

~~5.5.g.~~ 5.5.7. Be automatically designated as the Chief Operator if he or she is the only certified operator who meets the requirements of subsection 5.4 of this section for the system.

5.6. Adequate Operator Coverage:

~~5.6.a.~~ 5.6.1. Class H systems shall be operated by a Class H, Class I, or higher wastewater operator who shall be on call 24 hours a day/seven days a week. A Class H, Class I, or higher operator shall conduct an adequate number of on-site visits to ensure proper operation in accordance with the NPDES permit.

~~5.6.b.~~ 5.6.2. Class S systems shall be operated by a Class S operator who shall be on call 24 hours a day/seven days a week. A Class S operator shall conduct an adequate number of on-site visits to ensure proper operation in accordance with the NPDES permit. If a Class S system is designated as an advanced system, the individual providing adequate coverage in accordance with this section shall have the advanced designation.

~~5.6.c.~~ 5.6.3. Class C systems shall be operated by a Class C, Class I, or higher operator who shall be on call 24 hours a day/seven days a week. A Class C, Class I, or higher operator shall conduct an adequate number of on-site visits to ensure proper operation in accordance with the NPDES permit.

~~5.6.d.~~ 5.6.4. Class I systems shall be operated by a Class I or higher operator who shall be on call 24 hours a day/seven days a week. A Class I or higher operator shall conduct an adequate number of on-site visits to ensure proper operation in accordance with the NPDES permit. If a Class I system is designated as an advanced system, the individual providing adequate coverage in accordance with this section shall have the advanced designation.

~~5.6.e.~~ 5.6.5. Class II, Class III, and IV systems shall be operated on-site at least 40 hours per week by an operator with certification equal to or greater than the system classification, unless the Commissioner grants a written ~~exception~~ limited waiver to this requirement in response to a written request by the system owner. If granted, a limited waiver shall permit an operator who has, at a minimum, passed the next highest level certification examination to perform the tasks of an operator certified one grade higher. An operator certified at a level equal to or greater than the system classification shall be on call 24 hours a day/seven days a week. Class II, Class III, and IV systems shall have at least one certified operator (except Class H, Class S, or Class C level) in addition to the Chief Operator. If a Class II or higher system is designated as an advanced system, the individual providing adequate coverage in accordance with this section shall have the advanced designation. Adequate operator coverage shall be maintained at all times to ensure proper operation in accordance with the NPDES permit.

§64-5-6. Qualifications for Certification.

6.1. An individual desiring certification shall submit an application for certification to the Commissioner. The application shall be on a form provided by the Commissioner.

6.2. Certification of a wastewater operator is based on his or her application, education, a passing score on the applicable certification exam, and in some cases experience as an OIT or higher certified operator.

6.3. Class H, Class S, and Class C certifications are not sequential towards OIT and Class I through IV certifications. Class H, Class S, or Class C applicants seeking to obtain a Class I or higher classification shall begin with an application for an OIT.

6.4. A person working in a Class I, II, III, or IV system shall begin certification as an OIT.

6.5. Applicants shall obtain Class I through IV certifications in sequential roman numerical order.

6.6. Applicants for certification shall be 18 years of age or older. The age requirement may be waived to a minimum age of 16 upon a written request to the Commissioner and in accordance with subsection 7.3. of this rule.

6.7. Applicants who qualify for Class H, Class S, or Class C certification in addition to a current Class I or higher certification shall hold the certifications concurrently, but only maintain the renewal requirements for the highest certification held.

6.8. The Commissioner shall charge an initial fee for certification provided as listed in Table 64-5A of this rule.

§64-5-7. Education Requirements.

7.1. The education requirements for each certification are listed in Table 64-5B of this rule.

7.2. The Commissioner may waive Class H education requirements, if requested in writing, and the individual agrees to restricted operations.

7.3. The Commissioner may waive OIT education requirements, if requested in writing, to completion of the 10th grade. The student must provide verification each semester that he or she is currently attending school and maintaining a minimum of a 2.0 average on a 4.0 scale towards graduation requirements. Certification may be revoked for failure to meet the above requirements.

7.4. The Commissioner may waive the education requirements, if requested in writing, for applicants who are actively working towards a GED. The student must provide verification each semester that he or she is currently enrolled in an adult education program and completing graduation requirements. Certification may be revoked for failure to meet the above requirements.

7.5. The number of CEUs credited for courses and operating experience are in Table 64-5C of this rule.

7.6. The Commissioner evaluates all education courses for CEU. ~~100 percent credit~~ Credit of 100 percent shall be awarded for those determined to be directly related to wastewater treatment and collection, such as mathematics, science, computer, engineering, and business courses. If the Commissioner determines the course is not directly related, 50 percent credit shall be awarded.

7.7. Class III and IV applicants may request in writing to the Commissioner to be allowed to substitute up to half of the required CEU education as specified in Table 64-5B of this rule with additional experience.

~~7.7.a.~~ 7.7.1. An applicant may not use experience used as a substitute for educational requirements ~~and~~ to also satisfy experience requirements.

~~7.7.b.~~ 7.7.2. An applicant may use the Class H, Class S, Class C, Class I, Class II, and advanced courses towards the educational requirements for a Class III or higher class-level 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 may count towards the experience required for the purposes of this rule.

8.3. Experience as an operator, unless substituted pursuant to subsection 8.6.1. of this rule, should be predominantly “hands-on” or the 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, calculation of chemical dosages, and the subsequent adjustment of chemical feeders or backwashed filters.

8.4. Experience obtained exclusively in collection, maintenance, and other non-operational or treatment duties shall not count as more than 600 hours of the total experience required for Class I through IV certification.

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

8.6. An applicant may substitute the experience requirements as set forth in this rule with education and training as specified in this subsection:

~~8.6.a.~~ 8.6.1. 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.~~ 8.6.2. An applicant may not 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 of this rule.

9.2. An applicant shall first meet the Commissioner-approved certification course requirements before examinations will be administered, 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 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 for applicants meeting the requirements for examination and notify applicants before the examination date.

9.5. An individual shall make a score of 70 percent or better on the examination in order to be considered a passing grade.

9.6. The results of certification examinations are valid for five years. If the applicant has not met the requirements for education, experience, or both within those five years, the applicant shall reapply for examination.

9.7. An applicant who has failed an examination shall wait a minimum of 60 calendar days from the date he or she took the examination before reapplying to retake the examination.

§64-5-10. Renewal Requirements.

10.1. The applicant shall submit a renewal application at least 30 calendar days before, but no earlier than 60 calendar days prior to, the expiration date of their certification in a manner approved by the Commissioner.

10.2. The Commissioner shall approve continuing education hour (CEH) courses based on their relevance to wastewater systems.

10.3. The number of CEHs required by each classification each renewal period are:

~~10.3.a.~~ 10.3.1. Class S: three CEHs;

~~10.3.b.~~ 10.3.2. Class C: six CEHs;

~~10.3.c.~~ 10.3.3. OIT: six CEHs;

~~10.3.d.~~ 10.3.4. Class I and II: 12 CEHs;

~~10.3.e.~~ 10.3.5. Class III and IV: 24 CEHs; and

~~10.3.f.~~ 10.3.6. Class H and advanced designation: No CEHs.

10.4. An applicant may not repeat CEHs in consecutive renewal periods.

10.5. Operators shall not carry over additional CEHs completed during the two-year period to satisfy the CEH requirements for the next certification renewal period.

10.6. The Commissioner may grant extensions upon written request by the applicant.

10.7. The Commissioner may specify certain courses an operator shall attend in order to qualify for renewal.

10.8. The Commissioner shall charge a renewal fee for certification provided as listed in Table 64-5A of this rule.

§64-5-11. Expiration.

11.1. All wastewater operator certifications expire two years from the date of issuance. An individual with an expired certification shall not operate a wastewater system in West Virginia.

11.2. An applicant seeking reinstatement of his or her previous certification shall pass the examination at the certification level previously held if his or her certification has been expired for more than one year.

11.3. Advanced designation of an individual does not expire.

11.4. If an individual holds a Class H, Class S, or Class C in addition to a Class I or higher certification, the Class H, Class S, or Class C shall not expire so long as the Class I or higher certification is properly maintained.

~~§64-5-12. Grandfathering.~~

~~12.1. The specifications in this section only apply to grandfathering or facilitated implementation of the newly revised rule to currently certified operators.~~

~~12.1.a. Individuals operating Class H systems approved by WVDEP as of the effective date of this rule shall apply to the Commissioner for restricted Class H (Class HR) or Class H certification within one year of the effective date of this rule. At a minimum, the application shall document Class H system operated by the individual prior to the effective date of this rule. Class HR shall be given to an individual operating his or her own home system.~~

~~12.1.b. Current 1S certificates, as of the effective date of this rule, expire October 31st two years after the effective date of this rule and are referred to in this rule as Class S.~~

~~12.1.c. Current 1C certificates, issued prior to the effective date of this rule expire one year from the effective date of this rule and are referred to in this rule as Class C.~~

~~12.1.d. Current OIT certificates as of the effective date of this rule expire in accordance with the terms of the current certificate, which is one year from date of issuance.~~

~~12.1.e. Current Class I certificates, as of the effective date of this rule, expire April 30th two years after the effective date of this rule.~~

~~12.1.f. Current Class II certificates, as of the effective date of this rule, expire July 31st two years after the effective date of this rule.~~

~~12.1.g. Current Class III and IV certificates, as of the effective date of this rule expire in accordance with the terms of the current certificate, which is three years from date of issuance.~~

~~12.1.h. Upon designation as advanced, in accordance with this rule, an operator currently employed at an advanced wastewater system classified under this rule shall complete an approved advanced course within three years of the effective date of this rule to be grandfathered as an advanced certified operator without examination.~~

~~12.1.i. Approved CEH courses taken by individuals within one 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~~ §64-5-12. Certification from Another Jurisdiction.

~~13.1. 12.1.~~ The Commissioner shall grant certification to a wastewater operator certified by another jurisdiction if the applicant:

~~13.1.a. 12.1.1.~~ Is actively seeking, has been offered, or has accepted employment which requires a certified operator in West Virginia;

~~13.1.b. 12.1.2.~~ Submits a completed application in a manner approved by the Commissioner;

~~13.1.c. 12.1.3.~~ Meets the educational and work experience requirements of this rule; and,

~~13.1.d. 12.1.4.~~ Passes the West Virginia certification examination equivalent to the certification level of the other jurisdiction, as determined by the Commissioner. Demonstrates he or she has successfully passed an examination in another jurisdiction substantially equivalent to the certification level sought, as determined by the Commissioner.

12.1.4.a. To be considered substantially equivalent, the other jurisdiction's examination must contain questions covering the following topics, including related mathematics: System process monitoring; Evaluation and adjustment of wastewater treatment processes; Evaluation and maintenance of equipment; Equipment operation; Laboratory analysis; and Compliance, which must equate to the standards set forth in the Clean Water Act, 3 U.S.C. §1251 *et seq.* If the Commissioner determines that the other jurisdiction has substantially different regulations that solely prevent the examination from being substantially equivalent, then the Commissioner may require an applicant to take a West Virginia-specific operator course within 24 months of granting a Reciprocal Operator License but without a requirement that the applicant take an additional examination.

12.1.4.b. If the Commissioner determines the other jurisdiction's examination is substantially equivalent, a Reciprocal Operator License will be issued for the equivalent West Virginia certification level. The Commissioner may condition and limit renewal of the License on a requirement for additional education classes as allowed under subsection (a).

12.1.4.c. If the Commissioner determines the other jurisdiction's examination is not substantially equivalent, the applicant must pass the West Virginia certification examination equivalent to the certification level of the other jurisdiction.

~~§64-5-14~~ §64-5-13. Suspension and Revocation.

~~14.1.~~ 13.1. The Commissioner may suspend or revoke the certification of a wastewater operator if the individual:

~~14.1.a.~~ 13.1.1. Uses fraud or deceit in obtaining certification;

~~14.1.b.~~ 13.1.2. Fails to comply with this rule;

~~14.1.e.~~ 13.1.3. Performs the duties of a wastewater operator in a grossly negligent or incompetent manner;

~~14.1.d.~~ 13.1.4. Knowingly or negligently submits misleading, inaccurate, or false reports to the Commissioner; or

~~14.1.e.~~ 13.1.5. Violates or causes to be violated, any portion of the WV Department of Environmental Protection's legislative rule, NPDES Program, 47CSR10, or the U.S. Clean Water Act.

~~14.2.~~ 13.2. The Commissioner shall notify the certified wastewater 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.~~ 13.3. The suspension of a wastewater operator's certification is effective for an initial period of not more than one year, during which time the certification is not valid and the individual cannot operate a wastewater system. The individual shall obtain the CEHs required for that certification level, as if the suspension had not occurred.

~~14.4.~~ 13.4. The revocation of a wastewater operator's certification is for a period of not less than one year during which time the certification is not valid and the individual cannot operate a wastewater system. After the period of ineligibility caused by the revocation has expired, the formerly certified wastewater operator shall pass the examination at the certification level previously held at a minimum to regain certification.

~~§64-5-15~~ §64-5-14. Penalties.

~~15.1.~~ 14.1. 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.~~ 14.2. 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 \$500, as provided under W. Va. Code §16-1-18. Each day there is a failure to comply with a provision of this rule is a separate offense.

~~§64-5-16~~ §64-5-15. **Administrative Due Process.**

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

64CSR5

Table 64-5A

FEES

Type	Amount
Class HR Initial and Renewal	No Fee
Class H Initial and Renewal	\$100
Class S Initial and Renewal	\$100
Class C Initial and Renewal	\$100
OIT Initial and Renewal	No Fee
Class I Initial and Renewal	\$125
Class II Initial and Renewal	\$150
Class III Initial and Renewal	\$175
Class IV Initial and Renewal	\$200
Advanced Designation	No Fee
Renewal Late Fee	\$25

Note: Individuals who hold multiple wastewater operator certifications shall pay the initial fee for each and only the renewal fee associated with the highest-level certification held thereafter.

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.	2,000 hours (one year full-time) wastewater system experience as an OIT.**
Class II	HS diploma or GED, Commissioner-approved certification course & passing the Class II exam.***	4,000 hours (two 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, 90 CEUs* & passing the Class III exam.***	8,000 hours (four years full-time) wastewater system experience, 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, 180 CEUs* & passing the Class IV exam.***	10,000 hours (five years full-time) wastewater system experience, at least 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.	None

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

*** Refer to section 5 of this rule which allows public water systems to apply for a limited waiver of education and experience requirements which, if granted, shall permit a certified operator to perform the tasks of an operator one grade higher.

Table 64-5C

CEUs FOR COURSES AND OPERATING EXPERIENCE

10 CEHs	1 CEU
1 College Semester Credit Hour	1.5 CEUs
1 College Quarter Credit Hour	1 CEU
2,000 hours of experience	45 CEUs

Note Section 7.6.