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JAN 10 9 57 AM '01

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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January 07, 2001

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Beth Marquart
Health, Division of
Capitol Complex
Building 3, Room 265

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Public Water Systems Operator Regulations, 64CSR4**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency

_____ ✓
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.

3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.

4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.

5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: Division of Health

Subject: Public Water Systems Operator Regulations, 64CSR4

PERTINENT DATES

Filed for public comment: June 16, 2000

Public comment period ended: July 17, 2000

Filed following public comment period: August 29, 2000

Filed LRMRC: August 29, 2000

Filed as emergency: June 16, 2000

Fiscal Impact: \$7,248 increase

OFFICE OF THE
SECRETARY OF STATE

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ABSTRACT

The proposed rule repeals and replaces a current legislative rule. The following is a section-by-section synopsis of the substantive amendments made by the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 relates to application and enforcement. It states that the rule applies to owners, operators and operators-in-training of a public water system and to applicants for operator, operator-in-training or fluoride certification.

Section 3 states that this rule repeals and replaces the current legislative rule.

Section 4 defines terms.

Section 5 states that a public water system is classified on the basis of the complexity of water treatment processes according to the point rating in Table 4A and the application of the system's point rating to classifications in Table 4B.

Section 6 relates to required personnel. It requires owners of public water systems to employ a chief operator and an adequate number of certified operators to effectively operate the system. It sets forth the required certification levels for the various systems and their operators. This section also requires a public water system to display the operators' certifications.

This section requires the owner of a public water system to notify the Commissioner of employment status changes of the system's certified operators in advance or no later than 5 working days following the change. It also requires operators to give the Commissioner 30 days notice prior to voluntarily terminating employment with a public water system.

Section 7 relates to certified operators-in-training who are persons training to become certified operators. It requires the chief operator to submit to the Commissioner an application for an operator-in-training certification within 30 working days after a person's initial employment as an intended operator-in-training. Experience toward certification begins on the date the Commissioner issues the operator-in-training certification. The certification is valid for one year.

Section 8 relates to qualifications for certification. It requires persons applying for certified operator or operator-in-training certification to be 18 years of age or older. It states that certification as an operator is based on education, a passing grade on the examination and experience.

Section 9 states that the education and experience requirements for the various certifications are listed in Table 4C and the number of CEU credited for courses and operating experience are contained in Table 4D. It also provides for the substitution of education for experience and experience for education.

Section 10 relates to the certification application and examination. It requires an applicant to submit proof of education and, if requested by the Commissioner, separate proof of work experience along with the application. It requires the Commissioner to give applicants 14 days notice before an exam and provides that 70% is a passing grade for the examination. This section also sets forth provisions regarding an applicant's eligibility for reexamination, if the applicant fails to pass the exam.

Section 11 provides that certifications expire two years from the date of issuance and that an application for renewal must be submitted by either the chief operator or the operators prior to the expiration. This section requires certified operators, other than Class 1D-certified operators, to complete 24 continuing education hours during each two-year certification period. This section also provides for re-certification of formerly certified operators. In addition, this section sets forth the basis upon which the Commissioner may suspend or revoke the certification of an operator.

Section 12 allows the Commissioner to grant certification to a public water system operator certified by another jurisdiction, if the applicant meets the educational and work requirements of this rule and passes the West Virginia certification examination.

Section 13 provides penalties for the violation of this rule.

Section 14 references the Division's rule for administrative due process.

Table 4A contains the point rating system for classification of public water systems.

Table 4B contains the classification of public water systems.

Table 4C contains operator education and experience requirements for certification.

Table 4D contains the CEUs for courses in operating experience

AUTHORITY

Statutory authority: W.Va. Code, §16-1-4, which provides, in part, as follows:

The secretary may propose rules, in accordance with the provisions of article three, chapter twenty-nine-a of the code, that are necessary and proper to effectuate the purposes of this chapter. The secretary may appoint or designate advisory councils of professionals in the areas of hospitals, nursing homes, barbers and beauticians,

postmortem examinations, mental health and mental retardation centers and any other areas necessary to advise the secretary on rules.

The rules may include, but are not limited to, the regulation of:

...(c) Occupational and industrial health hazards, the sanitary conditions of streams, sources of water supply, sewerage facilities and plumbing systems and the qualifications of personnel connected with any of those facilities, without regard to whether the supplies or systems are publicly or privately owned; and the design of all water systems, plumbing systems, sewerage systems, sewage treatment plants, excreta disposal methods and swimming pools in this state, whether publicly or privately owned...

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISIONS OF THE CODE?

Yes.

VIII. OTHER

Counsel has technical modifications to suggest.