

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulation
Department of the Environment
(DLS Control No. 16-084)**

Overview and Legal and Fiscal Impact

This regulation reduces various fees assessed by the State Board of Waterworks and Waste Systems Operators for specified items and services related to the certification of superintendents, operators, and industrial operators of waterworks, wastewater works, and industrial waterworks.

The regulation presents no legal issues of concern.

General fund revenues decrease, likely by an average of \$130,600 annually, beginning in fiscal 2017, as a result of a reduction in fees assessed by the State Board of Waterworks and Waste System Operators. Expenditures for certain State agencies (primarily the Maryland Environmental Service) and local governments that operate waterworks or waste systems decrease as a result of the reduction in fees.

Regulation of COMAR Affected

Department of the Environment:

Waterworks and Waste Systems Operators: General Provisions: COMAR 26.06.01.07

Legal Analysis

Background

The State Board of Waterworks and Waste Systems Operators was created by Chapter 430 of 1957. The board was initially created to examine and certify the superintendents of waterworks and waste systems. In 1982, the board's regulatory purview increased to include operators in addition to the superintendents. An operator of either waterworks or waste systems participates in the control of the flow, treatment, or discharge of water or wastewater; a superintendent is certified as the individual who is in charge at the facility. By also certifying operators, the State intends to more adequately protect the public from the harmful effects of ill-treated water. It should be noted that Maryland established the board more than four decades before being required to by federal law and was certifying operators nearly two decades before the federal requirement.

On September 15, 2015, Governor Larry Hogan announced a plan to reduce or eliminate a number of fees across State government. Governor Hogan announced a second round of fee reductions or eliminations on May 12, 2016. This regulation is not part of these reductions or

eliminations, but is in response to the regulatory reform effort in the State. Additional information regarding Governor Hogan’s fee reduction initiative may be found [here](#).

Summary of Regulation

The regulation reduces various fees shown below that are assessed by the State Board of Waterworks and Waste Systems Operators for specified items and services related to the certification of superintendents, operators, and industrial operators of waterworks, wastewater works, and industrial waterworks.

Type of Service or Certification	Current Fee	Proposed Fee
Examination Fee – Operator	\$100	\$50
Reciprocity	\$200	\$150
Fee for Initial Certification – Operator	\$100	\$50
Fee for Initial Certification – Temporary	\$100	\$50
Fee for Initial Certification – Superintendent	\$100	\$50
Certificate Renewal Fee	\$100	\$50
Wastewater Certification – Operator	\$100	\$50
Wastewater Certification – Temporary	\$100	\$50
Wastewater Certification – Superintendent	\$100	\$50
Water Treatment Certification – Operator	\$100	\$50
Water Treatment Certification – Temporary	\$100	\$50
Water Treatment Certification – Superintendent	\$100	\$50
Water Treatment Certification – Grandparented	\$100	\$50
Industrial Wastewater Certification – Operator	\$100	\$50
Industrial Wastewater Certification – Temporary	\$100	\$50
Industrial Wastewater Certification – Superintendent	\$100	\$50
Wastewater Collection Certification – Operator	\$100	\$50
Wastewater Collection Certification – Temporary	\$100	\$50
Wastewater Collection Certification – Superintendent	\$100	\$50
Wastewater Distribution Certification – Operator	\$100	\$50
Wastewater Distribution Certification – Temporary	\$100	\$50
Wastewater Distribution Certification – Superintendent	\$100	\$50
Wastewater Distribution Certification – Grandparented	\$100	\$50
Maximum Certification Renewal Fee	\$200	\$100
Maximum Late Fee for Certification Renewal for Operator with Multiple Certificates	\$200	\$100

Legal Issues

The regulation presents no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites Title 12 of the Environment Article as statutory authority for the regulation as the board operates under the provisions of Title 12. More specifically, section 12-301 requires an individual to be certified by the board in an appropriate classification before a waterworks, wastewater works, or industrial wastewater works may employ the individual as a superintendent, an operator, or an industrial operator. Section 12-206 authorizes the board to set reasonable fees for the issuance and renewal of certificates and other services provided by the board. The fees may be set at an amount that will cover the costs of maintaining the board.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

Fiscal Analysis

General fund revenues decrease, likely by an average of \$130,600 annually, beginning in fiscal 2017, as a result of a reduction in fees assessed by the State Board of Waterworks and Waste System Operators. Expenditures for certain State agencies (primarily the Maryland Environmental Service) and local governments that operate waterworks or waste systems decrease as a result of the reduction in fees.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulation results in a decrease in general fund revenues of an estimated \$130,600 annually. With approximately 12 individuals seeking reciprocity each year, the lower fee for reciprocity results in a \$600 revenue loss. The rest of the estimate (\$130,000) is based on an analysis completed in 2014, when the board increased its fees. The department further advises that, of the waterworks and waste system facilities statewide, State agencies operate approximately 12% and local governments operate approximately 28%. According to the department, this results in a decrease in expenditures of approximately \$15,000 and \$35,000 for State agencies and local governments, respectively. The Department of Legislative Services (DLS) generally concurs that (1) general fund revenues decrease, likely by an *average* of \$130,600 annually, beginning in fiscal 2017 and (2) expenditures decrease for State agencies and local governments that operate such facilities and cover certification fees for agency employees. However, DLS did not receive sufficient information to independently verify the \$130,000 portion of the estimate provided by the department, primarily because the number of operators who hold multiple certificates and benefit from the fee cap was not available.

DLS further notes that waterworks and wastewater system operators must renew the affected certificates every three years, rather than annually. Thus, the annual reduction in general fund revenues and corresponding reduction in expenditures for affected State agencies and local governments varies during the triennial renewal cycle. For example, only about 10% of certificate holders are expected to renew in fiscal 2017, the first year this regulation takes effect. Accordingly, the bulk of the revenue decrease due to the fee reductions will be realized in fiscal 2018 and 2019. In addition, it is unclear to what extent new certificates issued each year represent additional revenues due to new operators entering the field or existing operators obtaining additional certifications and possibly benefiting from not paying for them due to the fee cap.

DLS also advises that the State Board of Waterworks and Waste Systems Operators is general funded and, as such, the decrease in fee revenues does not have a direct impact on board operations. Further, although there is no requirement that the revenues generated by the board cover its expenditures, the General Assembly has a policy of regulatory boards and commissions being self-supporting to the extent possible. DLS completed a full sunset evaluation of the board in 2009. At that time, DLS concluded that the board's revenue was inconsistent in covering expenditures and recommended continuing to adjust and monitor fees to cover annual expenditures. In response to that recommendation, the board increased its fees in 2014 for the first time since 1997. This regulation reduces fee levels to below 1997 levels. Given the board's funding history and the conclusions drawn during the 2009 sunset evaluation, it is likely that, under this regulation, the board's annual fee revenues will not cover its annual expenditures.

Impact on Budget

General fund revenues decrease, likely by an *average* of \$130,600 annually, beginning in fiscal 2017. Even so, neither the State operating nor capital budget is materially affected. State expenditures for certain agencies (primarily the Maryland Environmental Service, which is an independent, nonbudgeted agency) decrease by, on average, approximately \$15,000 (all funds) each year.

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has a meaningful economic impact on small businesses in the State. DLS disagrees. Although the number of affected small businesses is unknown, overall, the decrease in initial and renewal certification fees for affected entities is likely not significant compared to their annual operating costs. Because a fee cap is already in place, an individual employee who holds more than one certificate likely realizes no more than \$100 in triennial savings; an individual employee who holds only one certificate realizes only \$50 in triennial savings. To the extent that an affected small business employs multiple certified individuals, the decrease in expenditures is more meaningful.

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