

MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION

MARCH 16, 2004

BASIS STATEMENT: Chapter 531: Regulations for Wastewater Operator Certification

This proposed amendment to the existing Chapter 531 rule contains changes to make the rule consistent with recent amendments to 38 M.R.S.A. Sections 413(3), 414(3-A), 414-A(1)(B), 464 (4)(A), 464 (4)(G), 464 (7), 464(8). The amendments change the requirements at time of transfer, and the determination of seasonal use.

The changes include:

The Board of Environmental Protection gave permission to hold a public hearing on the proposed rule changes on November 3, 2005, the rule was posted on November 3, 2004, a hearing was held on December 15, 2005 and the deadline for accepting public comment closed at 5:00 p.m. on Tuesday, December 27, 2005.

The following persons testified on the proposed changes to Chapter 531 at the hearing:

Mr. John Lowell, Boothbay Harbor, Maine

Comment: Mr. Lowell testified neither for nor against the proposed amendments to the rule. He described the operation of the spray irrigation wastewater system at the campground he runs in Boothbay Harbor. He noted that he employs a certified wastewater treatment plant operator to advise him regarding the operation of his wastewater system. He also noted that he was attending the hearing mainly to educate himself about the proposed changes to the rule and to ask questions.

Response: DEP staff spoke to Mr. Lowell before the hearing and assured him that his relationship with a who holds an active Grade 2 of higher wastewater operator certificate would meet the requirements of the proposed rule.

The following persons submitted written comments to the proposed changes to Chapter 531 on or before the posted deadline of December 27, 2005:

Mr. Steve Levy on behalf of the Maine Rural Water Association, Brunswick, Maine

Comment: “The proposed rulemaking does not address the educational needs of wastewater operators nor does it protect the environment.”

Response: It is not the intent of Chapter 531 to address the educational needs of wastewater operators. Title 32 MRSA §4179 (attached) states: “The Board of Environmental Protection shall adopt rules which include, but are not limited to, provisions establishing the basis for classification of treatment plants in accordance with section 4172 and provisions establishing requirements for certification and procedures for examination of candidates.” While Chapter 531 does establish requirements for ongoing training that must be met by wastewater operators before renewing their certifications,

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the rule has never addressed how operators would obtain that training. The purpose of the rule, as stated in its summary is to “establish the criteria that a person must meet in order to be certified as an operator of a wastewater treatment plant.” By establishing the criteria for training and experience and the examination requirements that must be met to be qualified to operate a wastewater treatment facility in Maine, the rule creates standards for the operators who are directly responsible for protecting the environment.

Comment: “According to the Rule Summary, DEP anticipates transferring the administration of the Certification Program to an outside organization. At MRWA’s annual meeting, DEP stated they planned to have NEIPCC/JETCC take over administration of the certification program. Essentially, this rulemaking is designed to fund the non-profit educational organization that DEP chose not to fund out of its budget and the Legislature chose not to fund out of a general fund appropriation.”

Response: A Memorandum of Understanding (MOU) has been negotiated between the Department and the New England Interstate Water Pollution Control Commission (NEIWPCC) and the Joint Environmental Training Coordinating Committee (JETCC) for administration of the wastewater treatment plant operator certification program. That MOU establishes the fees to be charged by NEIWPCC/JETCC and specifically states that, “The funds generated may not be expended for any purpose other than those outlined within this agreement.” Chapter 531 provides no funding for NEIWPCC/JETCC for administration of that program.

Comment: “In Section 4.D., this rulemaking eliminates all references to operator certification fee structure, removing any oversight or control of fees via the rulemaking (or legislative) process. This rulemaking provides no assurances, no budgetary constraints and no processes to protect wastewater operators or POTW’s budgets.”

Response: As noted above, a Memorandum of Understanding (MOU) has been negotiated between the DEP and NEIWPCC/JETCC. That MOU sets the initial level of fees which will be in place for the first two years of the term of the MOU. Any proposed increases in the fees after the initial two-year period will be presented to the Executive Committee of the Maine Wastewater Control Association (MWWCA) and will be approved if and only if NEIWPCC/JETCC demonstrates that the initial fees do not cover the costs legitimately incurred by NEIWPCC/JETCC while performing the tasks specified in the MOU.

Comment: “During a powerpoint presentation at MRWA’s annual meeting DEP projected that all certification fees would significantly increase under this proposal.”

Response: The fees delineated in the MOU do represent a substantial increase over the fees established in the current rule. However, the proposed fee schedule is comparable to

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or significantly lower than the fee schedules charged by the other New England States. The fee schedule was presented to the Executive Committee of the Maine Wastewater Control Association (MWWCA), the association representing the majority of the operators who are affected by the transfer of the administration of the Wastewater operator certification Program to NEIWPC/JETCC.