

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Public Health

Division of Public Health Protection and Safety

(Amendment)

902 KAR 10:140. On-site sewage disposal system installer certification program standards.

RELATES TO: KRS 211.015, 211.360, 211.375, 211.970, 211.990(2)

STATUTORY AUTHORITY: KRS Chapter 13B, 211.350, 211.357

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.350 requires the cabinet to regulate the construction, installation, or alteration of on-site sewage disposal systems except for systems with a surface discharge. KRS 211.357 requires the cabinet to establish a program of certification for installers of on-site sewage disposal systems. This administrative regulation establishes the certification program including competency testing, training, continuing education, and enforcement procedures relative to maintenance of an acceptable standard of competency for installers.

Section 1. Definitions.

- (1) "Approved" is defined by KRS 211.970(1).
- (2) "Cabinet" is defined by KRS 211.015(1)(a).
- (3) "Certification level" means the level of technical skills and knowledge attained by an installer as categorized below:
 - (a) "Provisional" or "Probationary level" means the certification entry level for an installer as specified in KRS 211.357(2) and Section 2(3) of this administrative regulation;
 - (b) "Full level" means the certification level attained by an installer as specified in KRS 211.357(2) and Section 2(4) of this administrative regulation;
 - (c) "Advanced level" means the certification level attained by an installer as specified in Section 2(5) of this administrative regulation; and
 - (d) "Master level" means the certification level attained by an installer as specified in Section 2(6) of this administrative regulation.
- (4) "Certified inspector" means a person employed by the cabinet or by a local health department who has met the requirements for certification contained in KRS 211.360.
- (5) "Certified installer" means a specific individual person who has met the requirements for certification contained in KRS 211.357 and the certification maintenance requirements contained in this administrative regulation.
- (6) "Competency" means an acceptable level of professional conduct, workmanship, and technical knowledge in the design and installation of on-site sewage disposal systems.
- (7) "On-site sewage disposal system", "on-site sewage system", or "on-site system" means a complete system installed on a parcel of land, under the control or ownership of any person, that accepts sewage for treatment and ultimate disposal under the surface of the ground, including:
 - (a) A conventional system consisting of a sewage pretreatment unit or units, distribution devices, and lateral piping within rock-filled trenches or beds;
 - (b) A modified system consisting of a conventional system enhanced by shallower trench or bed placement, artificial drainage systems, dosing, alternating lateral fields, fill soil over the lateral field, or other necessary modifications to the site, system or wasteload to overcome site limitations;
 - (c) An alternative system consisting of a sewage pretreatment unit or units, necessary site modifications, wasteload modifications, and a subsurface soil treatment and

dispersal system using other methods and technologies than a conventional or modified system to overcome site limitations;

(d) A cluster system; and

(e) A holding tank that provides limited pretreatment and storage for off-site disposal where site limitations preclude immediate installation of a subsurface soil treatment and dispersal system, or connection to a municipal sewer.

(8) "Person" is defined by KRS 211.970(6).

Section 2. Application for Certification.

(1) A person shall not offer services to construct, install, alter, or repair on-site sewage disposal systems without:

(a) Meeting the application requirement of this administrative regulation; and

(b) Obtaining a valid certification card from the cabinet.

(2) Certification shall be:

(a) Nontransferable from one (1) person to another;~~and~~

(b) Valid statewide subject to the provisions of KRS 211.357 and this administrative Regulation; and

(c) Renewed annually by submitting to the Environmental Management Branch a certification fee of forty-five (45) dollars by check or money order made payable to the Kentucky State Treasurer.

(3)

(a) A person seeking provisional or probationary level certification shall:

1. Be of legal age to conduct business in Kentucky;

2. Have sufficient skills and knowledge of administrative regulations and construction techniques to pass a minimum competency examination;

3. Submit a completed DFS-303, Application for Certification or Registration, incorporated by reference in 902 KAR 45:065, to the local health department;

4. Provide proof of liability insurance; and

5. Pay the test registration fee of twenty-five (25) dollars by check or money order made payable to the local health department.

(b) A passing score of at least seventy (70) percent shall be achieved on the exam.

(c) An individual failing to achieve a passing score may retake the exam by re-registering and submitting another registration fee.

(d) An individual who passes the exam shall submit to the Environmental Management Branch~~feacabinet~~ a forty-five (45) dollar certification fee by check or money order made payable to the Kentucky State Treasurer.

(4) A person seeking full level certification shall:

(a) Have continuously maintained provisional or probationary level status in good standing;

(b) Meet the requirements as specified in KRS 211.357(2);

(c) Submit the documentation required in subsection (3)(a)3 and ~~4(4)~~ of this section; and

(d) Maintain requirements for certification as specified in Section 4 of this administrative regulation.

(5) A person seeking advanced level certification shall:

(a) Have continuously maintained full level status in good standing;

(b) Submit the documentation required in subsection (3)(a)3 and ~~4(4)~~ of this section;

(c) Complete the necessary training workshops with passing scores on workshop tests to obtain advanced level certification as required by the cabinet; and

(d) Maintain requirements for certification as specified in Section 4 of this administrative regulation.

(6) A person seeking master level certification shall:

- (a) Have continuously maintained advanced level status in good standing;
- (b) Submit the documentation required in subsection (3)(a)3 and ~~4[(4)]~~ of this section;
- (c)
 - 1. Installed a minimum of two (2) systems as specified in Section 3(4) of this administrative regulation; and
 - 2. Submit written verification of passed inspection from a certified inspector employed by the local health department having jurisdiction; and
- (d) Maintain requirements for certification as specified in Section 4 of this administrative regulation.

(7) A certified installer advancing to the next level certification shall submit the documentation required by subsections (4), (5), and (6) of this section, and a certification fee of forty-five (45) dollars by check or money payable to the Kentucky State Treasurer to the Environmental Management Branch.

Section 3. Certification Level Standards. Certification level standards shall be limited to on-site systems that utilize only the following:

- (1) Provisional or probationary certification level is limited to residential, on-site systems utilizing:
 - (a) Gravity distribution;
 - (b) Rock-filled trenches or beds;
 - (c) Leaching chamber trenches or beds; or
 - (d) Evaporation-absorption lagoons.
- (2) Full certification level is able to install residential, commercial, industrial, or public facility systems utilizing:
 - (a) Dosed systems;
 - (b) Fill and wait systems;
 - (c) Leaching chambers at grade; or
 - (d) Constructed wetlands; and
 - (e) Provisional or probationary certification level system listings.
- (3) Advanced certification level is able to install residential, commercial, industrial, or public facility systems utilizing:
 - (a) Low pressure pipe systems;
 - (b) Mounds;
 - (c) Drip irrigation;
 - (d) Advanced treatment;
 - (e) Experimental technology; or
 - (f) Cluster systems; and
 - (g) Provisional, probationary, and full certification level system listings.
- (4) Master certification level is able to install residential, commercial, industrial, or public facility systems utilizing provisional, probationary, full, and advanced certification level system listings.

Section 4. Maintenance of Certification.

- (1) Each person holding a valid certification under KRS 211.357 shall be required to:
 - (a) Attend training workshops offered by the cabinet to maintain certification and improve competency based on the level of certification attained;
 - (b) Maintain and submit proof of liability insurance annually to the local health department; and
 - (c) Annually pay the certification fee as required by Section 2(3)(d) of this administrative regulation ~~[to the Kentucky Department for Public Health]~~.
- (2) An installer whose certification has expired shall:
 - (a) Comply with subsection (1) of this section;
 - (b) Submit proof of completion of continuing education units; and

- (c) Receive a renewal certification card prior to installing an on-site sewage system.
- (3)
- (a) For ~~provisional, probationary, full and advanced~~^{full} certification levels, a minimum of two (2) training workshops for a total of six (6) approved continuing education units per year with passing scores on workshop tests shall meet certification maintenance requirements.
- (b) For master certification level, a minimum of two (2) training workshops for a total of six (6) approved continuing education units every two (2) years with passing scores on workshop tests shall meet certification maintenance requirements.
- (4) Attendance at workshops, seminars, or conferences not sponsored by the cabinet may be substituted on a one (1) for one (1) basis to meet certification maintenance requirements at the determination of the cabinet. Requests for consideration of other training for substitution shall be based upon the following:
- (a) Submission of a copy of the training agenda, speaker or presenter biographies, and course outlines; and
- (b) Submission of proof of attendance and results of any testing or other performance measurement with verification by the training sponsor.
- (5) Upon receipt of a request for training substitution the cabinet shall compare that training for equivalency with similar training it provides. If equivalency is demonstrated, the cabinet shall accept that training for substitution as specified in subsection (4) of this section.
- (6) Any person failing to meet certification maintenance requirements shall be subject to administration action under Section 7 of this administrative regulation and KRS 211.357(4).

Section 5. Training.

- (1) The cabinet shall develop and implement a series of training workshops for certified installers in the areas of on-site sewage disposal system design, technology, application and function.
- (2) Training workshops shall be conducted throughout the state at frequencies, times, and locations necessary to provide all certified installers a reasonable opportunity to attend a number of workshops sufficient to maintain certification.
- (3) A schedule of training workshops, including dates, times, location, and topics shall be prepared and made available to all certified installers to notify them of training opportunities and allow for scheduling attendance.
- (4) A series of training courses shall be developed including instructor and student manuals, and other audiovisual and written materials.
- (5) The cabinet may charge a reasonable fee at each training workshop to support program costs.
- (6) The cabinet shall establish, through grants or contracts, a training staff composed of local health department fully certified inspectors to conduct training workshops on a regional basis. These local instructors shall serve as supplemental staff to the cabinet and act under the direct supervision of the cabinet.
- (7) Training workshops for staff and supplemental staff instructors shall be conducted to assure uniformity of training for certified installers.
- (8) The cabinet may contract with other governmental agencies, private consultants, or professional organizations for specialized instructor services.

Section 6. Materials and Equipment.

- (1) Each training course shall be developed into a training materials packet consisting of the following:
- (a) Course outline;
- (b) Instructor script;

- (c) Trainee guide;
 - (d) Audiovisual materials;
 - (e) Trainee worksheets and reference sheets;
 - (f) Test;
 - (g) Instructor comment sheet; and
 - (h) Trainee comment sheet.
- (2) A complete training materials packet, in hardcopy or digital format shall be provided to each instructor for each course.
 - (3) A training material packet, excluding subsection (1)(b), (d) and (g) of this section, shall be provided to each trainee for each course.
 - (4) Sufficient stocks of instructor and trainee material packets shall be maintained for each course to meet demand.
 - (5) Audiovisual equipment shall be available to each instructor.

Section 7. Enforcement.

- (1) Failure of any certified installer to comply with the requirements of KRS 211.350, 211.357(4) and (5), 902 KAR 10:081, 902 KAR 10:085, or this administrative regulation shall result in administrative action being taken.
- (2) A minimum six (6) months probationary period shall be assigned to any certified installer who:
 - (a) Fails final inspection on any two (2) consecutive systems that require follow-up inspections before approval is granted;
 - (b) Backfills any system before final inspection is conducted and approval to backfill is given;
 - (c) Fails final inspection on any system that results in reconstruction of the system before approval can be given;
 - (d) Fails to place, cause to be placed, or fails to supervise placement of any required additional fill soil over an installed system;
 - (e) Fails to call for final inspection of any system;
 - (f) Fails to be present on the site anytime work is being performed on the system under construction;
 - (g) Fails to provide name, certification number, and notification of intent on application of permit when performing excavation and backfilling work on permitted homeowner installations; or
 - (h) Performs work on any system outside of the designated certification level.
- (3) Probation may be assigned to a certified installer by the cabinet or by the certified inspector having local jurisdiction. Terms of the probationary period shall stipulate any restrictions, requirements, or additional training determined necessary to correct performance.
- (4) For other violations, the provisions of KRS 211.357(4) and (5) relating to suspension or revocation of certification shall apply.
- (5) In all instances of administrative action being taken for probation, suspension or revocation, a certified installer shall have the right to request an administrative conference. The request shall be submitted in writing on form DFS-212 - Request for Conference, incorporated by reference in 902 KAR 1:400, to the local health department having jurisdiction or to the cabinet. All administrative conferences shall be conducted pursuant to 902 KAR 1:400.
- (6) If immediate legal action is necessary to prevent the creation or continuance of a health hazard, damage to the environment, or compel compliance with KRS 211.350(5), (7), (8), and (9), 211.357(4) and (5) or administrative regulations pursuant to those statutes, the cabinet or local health department concerned may maintain, in its own name,

injunctive action against any person engaged in the construction, installation, or alteration of an on-site sewage disposal system.

(7) The cabinet shall be notified within two (2) business days of any administrative action taken by a local health department against any certified installer, so that other local health departments can be alerted to that installer's status.

STEVEN J. STACK, MD, MBA, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 25, 2022

FILED WITH LRC: May 4, 2022 at 12:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 25, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by July 18, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until July 31, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Julie Brooks or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the certification process and standards for installers of on-site sewage disposal systems.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to ensure persons seeking to install on-site sewage disposal systems meet the minimum competencies for certification.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 211.357 authorizes the cabinet to establish a program to certify persons as installers of on-site sewage disposal systems.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation ensures all installers of on-site sewage disposal systems are properly trained and certified based on their level of experience.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment to this administrative regulation clarifies that probational and provisional certification are equal, clarifies that the fee for certification is to be paid to the Environmental Management Branch in the Department for Public Health, outlines the requirements to progress to the next level certification, and tiers the continuing education requirements for installers certified at the master level to be six (6) hours every two (2) years.

(b) The necessity of the amendment to this administrative regulation:

The amendment to this administrative regulation is necessary to ensure those seeking certification to install on-site sewage disposal systems are aware of the requirements to progress to the next level certification, to ensure certified installers are aware of the continuing education requirements, and to clarify the annual certification fee requirements.

(c) How the amendment conforms to the content of the authorizing statutes:

KRS 211.357 authorizes the cabinet to establish a program to certify persons as installers of on-site sewage disposal systems, to establish as a part of the certification program a means of issuing a probationary certification for installers of on-site sewage disposal systems, and to promulgate administrative regulations to establish a fee that shall be the total of the operational and administrative costs of the programs to the cabinet.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment to this administrative regulation will ensure those certified to install on-site sewage disposal systems are properly trained for the level and type of system they propose to install.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Currently there are 1,540 certified septic system installers. On average the department certifies twenty-five (25) new installers on a yearly basis.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Certified installers will need to be aware of the different certification levels and ensure they obtain the required number of continuing education credits based on their certification.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

The costs to the certified installer will be dependent on the type of continuing education credits they obtain.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Certified installer will be incentivized to continuously seek opportunities to advance their certification level. Master level installers will benefit from a reduction in the continuing education requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

The total operating costs for the Environmental Management Branch is \$1,980,301. There is no anticipated increase in costs associated with this administrative regulation initially.

(b) On a continuing basis:

There is no anticipated increase in costs on a continuing basis for this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Agency funds and revenue received from the permitting fees are the source of funding for enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

An increase in fees or funding is not necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

The fees established in this administrative regulation are not increased.

(9) TIERING: Is tiering applied?

Tiering is applied. Installers who reach master level certification will only need six (6) hours of continuing education training every two (2) years while installers at the provisional, probationary, full, and advanced certification levels will need six (6) hours of continuing education training every year.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This administrative regulation will impact local health departments and the Environmental Management Branch within the Department for Public Health.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 211.350 and 211.357.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

The increase in the annual registration fee will generate an average revenue of \$69,300 in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

The increase in the annual registration fee will generate an average revenue of \$70,425 in subsequent years.

(c) How much will it cost to administer this program for the first year?

The total operating costs for the Environmental Management Branch is \$1,980,301. There is no anticipated increase in costs associated with this administrative regulation initially.

(d) How much will it cost to administer this program for subsequent years?

There is no anticipated increase in costs on a continuing basis for this administrative regulation.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

This administrative regulation will result in minor costs savings for the regulated entities in the first year.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

This administrative regulation will result in minor costs savings for the regulated entities in subsequent years.

(c) How much will it cost the regulated entities for the first year?

This administrative regulation will result in minor costs to the regulated entities in the first year.

(d) How much will it cost the regulated entities for subsequent years?

This administrative regulation will result in minor costs to the regulated entities in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] This administrative regulation does not have a major economic impact.