



State of Idaho
Division of Occupational and Professional Licenses
Idaho Board of Drinking Water and Wastewater
Professionals

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Draft Minutes of 03/29/2023

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| Board Members | Stacy Stewart, Chair | Division | John Nielsen, Executive Officer |
| Present: | Bryson Ellsworth | Staff: | Lea Kear, Legal Counsel |
| | Paul Sifford | | Don Morse, Investigation Units Supv. |
| | A. J. Gray | | Jessica Spoja, Lic. & Regist. Prog. Mgr. |
| | Michael Parker | | Linda Pratzner, Brd. Support Specialist |
| | Jerri Henry | | |

The meeting was called to order at 9:00 AM MT by Stacy Stewart.

APPROVAL OF THE MINUTES

A motion was made and seconded to approve the 02/08/2023 meeting minutes. The motion carried unanimously.

DIVISION BUSINESS

Division Honoraria Policy: Legal Counsel Kear addressed the Division's Honoraria Policy for the Board members' review.

Zero-Based Regulation – Review of the Rules: An updated version of the redlines being reviewed were sent to the Board prior to today's meeting.

010. DEFINITIONS

06. Experience: Executive Officer Nielsen recommended increasing the one year work experience from 1,600 hours to 2,000 hours and changing everything to all 'years' or all 'hours'. The Board chose to remain with the 1,600 hours worked, equaling one year of experience, and stay with all 'hours'.

12. Very Small Public Drinking Water System and 13. Very Small Wastewater System: Board Member Ellsworth agreed with the comment to delete from section 12 *Very Small Public Drinking Water System*, the words '...community or non-transient non-community...'. DOPL was asked to work with the Department of Environmental Quality (DEQ) on licensure to correct that section as well. The Lagoon classification has been removed in DEQ's rules. Although surrounding states have a small or Class 1 license, they still look at Lagoon licenses.

Board Member Henry asked to revisit the definition of 'Very Small Public Drinking Water System' since the definition came from DEQ's rules. Board Member Ellsworth affirmed it is important to match DEQ's rules or put a reference to DEQ's rules in the document specific to the 'Very Small Public Drinking Water System'.

Board Member Sifford agreed the Board needs to stay in line with DEQ, following their concerns and lead in this matter. In addition, all Lagoon licensees should be grandfathered into a Level 1 as they have enough experience and hold other licenses. Executive Officer Nielsen's intent was not to redefine 'very small' but rather how to proceed with the Lagoon licenses. Currently, there are 29 active Lagoon licenses.

175. LICENSE TYPES AND CLASSIFICATIONS: A box has been added with 'License Type' and 'Classifications'. Board Member Ellsworth appreciated the \$35.00 reinstatement fee being inserted in place of the reference to Section 67-2614, Idaho Code.

250. LICENSED REQUIRED – SCOPE OF PRACTICE

01. Drinking Water and Wastewater Operator Scope: Board Member Parker stated land application should be listed as a license type in the last sentence of this section.

300. GENERAL REQUIREMENTS FOR LICENSE

03. Experience Requirement: Board Member Ellsworth asked for a rephrase with respect to hours; stating this plays into the earlier conversation when it comes to experience. Board Member Ellsworth doesn't want to see the language go away but rather have it be explained more clearly. Executive Officer Nielsen agreed it needs clarification.

04. Apprenticeship Program: Executive Officer Nielsen stated there has been discussion on whether or not the statute allowed the Board to approve an apprenticeship program. It is in rule, nobody is against it, but with this ZBR process we need to have backing by statute regarding this section.

310 REQUIREMENTS FOR OPERATOR-IN-TRAINING LICENSE

02. Examination: This section needs clarification. Board Member Henry asked about passing the exam or being in an apprenticeship program to receive an Operator-in-Training license.

Board Member Ellsworth commented on section 300.03 *Experience Requirement*, highlighting Legal Counsel Dunbar's comment that this is contrary to state and federal law, which define 2,080 as full-time hours. The Board has set a standard that only hours worked on site are considered. It was questioned whether the Board should consider vacation and sick time. Executive Officer Nielsen feels the Board can stick with accepting the onsite 1,600-hour requirement.

Board Member Gray stated on the application a supervisor verifies the onsite hours, so this is almost a moot point. Being onsite 1,600 hours is verifiable. The Board agreed they like the 1,600 hours.

335 REQUIREMENTS FOR A CLASS III OPERATOR LICENSE

02. Experience: There was discussion whether the words "of a major segment" should stay in or be removed. Executive Officer Nielsen stated these words seem arbitrary and leave things up to interpretation by whomever is reviewing the application. Board Member Parker agreed the words "major segment" can be stricken; however, has a concern with another part of the paragraph that says, "...a Class I or higher system for collection or distribution or Class II or higher system for

treatment..." Board Member Parker suggested, and Board Member Ellsworth agreed, the sentence should read, "Document four (4) years of relevant on-site operating experience, including two (2) years of responsible charge of a system in the same or next lower class, and pass a board approved written exam." Board Member Henry stated it should read "at a system." All agreed. Executive Officer Nielsen suggested making this change on all *Experience* sections.

375 SUBSTITUTIONS

01.a. Substituting Education for Experience: Board Member Henry commented that striking this section makes sense.

04. Equivalency Policy: Executive Officer Nielsen asked, and Legal Counsel Kear agreed, the material in this section could be removed from the rules and added to DOPL's website as a guidance document. Board Member Ellsworth asked if this equivalency section can be added to applications. Legal Counsel Kear will check with the licensing department. A discussion ensued regarding college credits and what classes should or should not count. Board Member Parker suggested the college credit section needs a guidance document for the future for the Board members who are going to review applications. Board Member Henry stated concern that a guidance document would be a weaker basis to make college credit decisions. Legal Counsel Kear stated a guidance document can be updated more easily than rules.

450. WASTEWATER GRANDPARENT PROVISIONS: After a discussion with Board Member Henry, Executive Officer Nielsen will un-strike this section in its entirety. The Board agreed.

500 CONTINUING EDUCATION

02. Subject Material: Board Member Parker stated this section should remain in the rules. Legal Counsel Kear suggested, and Executive Officer Nielsen offered, to rewrite this section for clarification.

APPENDIX A - IDAHO BACKFLOW ASSEMBLY TESTER CODE OF ETHICS AND STANDARDS OF CONDUCT: Executive Officer Nielsen read Legal Counsel Dunbar's comments and asked the Board for feedback with regard to issuing civil penalties. Board Member Henry would like to see an Operator Code of Ethics added. Executive Officer Nielsen would like language added that can be enforced. All Board members agreed more discussion is needed.

EXECUTIVE SESSION – APPLICATIONS AND DISCIPLINE

Motion to go into Executive Session: A motion was made and seconded for the Board to enter Executive Session under Idaho Code § 74-206(1)(d) to consider records that are exempt from disclosure under the Public Records Act, Idaho Code § 74-106(9). The purpose of the Executive Session is to discuss documents relating to the fitness of an applicant to retain a license or registration. Roll Call: Stacy Stewart-aye, Paul Sifford-aye, Jerri Henry-aye, A. J. Gray-aye, Michael Parker-aye, and Bryson Ellsworth-aye. The motion carried unanimously.

Motion to Leave Executive Session: A motion was made and seconded to leave Executive Session. The motion carried unanimously.

Motion(s) re: Application: A motion was made and seconded to approve BATA-26152 for examination. The motion carried unanimously.

Motion(s) re: Discipline: A motion was made and seconded for staff to proceed with a warning letter, signed by the Board Chair, and close case number I-WWP-2023-1. The motion carried unanimously.

A motion was made and seconded for staff to proceed with the investigation process in I-WWP-2022-3 and I-WWP-2023-3. The motion carried unanimously.

Board Business

DOPL Application Form: Licensing & Registration Program Manager Spoja presented the latest version of the application. A note will be added to the application for applicants to include their personal addresses. A motion was made and seconded to approve the application with modifications. The motion carried unanimously.

Class III Apprenticeship Program (IRWA): Information on the Class III Apprenticeship program by the Idaho Rural Water Association (IRWA) was provided to the Board prior to today's meeting. A motion was made and seconded to accept the apprenticeship standards of IRWA updated ACE 2 and 3. The motion carried unanimously.

Licensure Application Review: A motion was made and seconded to approve WWPA-25146 and WWPA-25147 with staff sending a letter requiring additional information. The motion carried unanimously.

Executive Officer Nielsen will send a Perspective Analysis to the Board; comparing Idaho's rules with the surrounding state's rules. Board member Parker asked Executive Officer Nielsen to provide a comparison of endorsement rules.

A motion was made and seconded to approve WWPA-25917, WWPA-26006, and WWPA-26071 pending additional information. The motion carried unanimously.

A motion was made and seconded to approve WWPA-25919 and WWPA-26100. The motion carried unanimously.

Public Comment

Shelly Roberts, IRWA, requested the Board consider creating a clearer pathway for progression from a very small water systems to a class 1 in the drinking water rules. Another suggestion is "ethics" training for backflow assembly testers to protect the health and safety of the citizens of Idaho.

As a point of clarification to Board Member Parks question regarding licensing for mentors, Gary Sievers, IRWA, stated in IRWA's standards, Section 6 *Supervision of Apprentices and Ratios*, "No apprentice shall work without proper or adequate supervision of an experienced system operation specialist mentor. The mentor must maintain a valid and appropriate license in accordance with the laws of the state of employment through the term of apprenticeship."

Mr. Sievers brought forth a concern of an applicant in the one year apprenticeship program about getting an application approved. It was recommended the individual contact the Division's licensing.

Leslie Wilder, BAT & Supply, LLC, is in favor of the Board beginning the Zero-Based Regulations process to resurrect the "ethics" standards to get another exam process placed for Idaho to accept backflow tester certification exams. Executive Officer Nielsen explained the negotiated rulemaking process; offering to send the redlines as presented to the Board.

ADJOURNMENT

There being no further business, the meeting adjourned at 12:00 PM.

4/20/23cz
5/01/23krb

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