



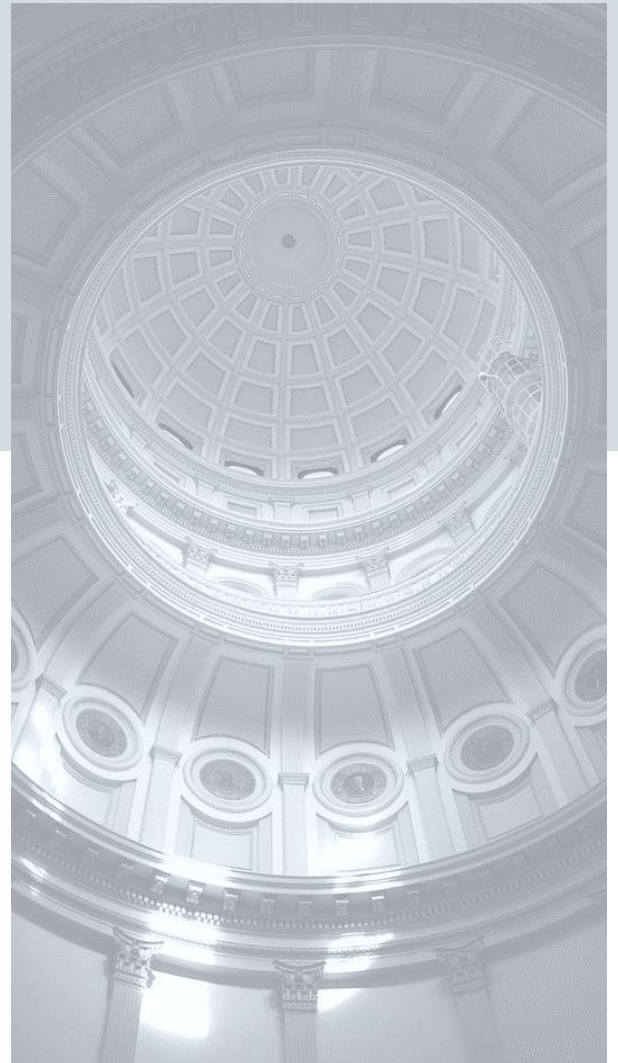
COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review

Water and Wastewater Facility Operators
Certification Board



October 15, 2019



COLORADO

Department of
Regulatory Agencies

Executive Director's Office

October 15, 2019

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Since that time, Colorado's sunset process has gained national recognition and is routinely highlighted as a best practice as governments seek to streamline regulation and increase efficiencies.

Section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), directs the Department of Regulatory Agencies to:

- Conduct an analysis of the performance of each division, board or agency or each function scheduled for termination; and
- Submit a report and supporting materials to the Office of Legislative Legal Services no later than October 15 of the year preceding the date established for termination.

The Colorado Office of Policy, Research and Regulatory Reform (COPRRR), located within my office, is responsible for fulfilling these statutory mandates. Accordingly, COPRRR has completed the evaluation of the Water and Wastewater Facility Operators Certification Board. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2020 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 9 of Title 25, C.R.S. The report also discusses the effectiveness of the Colorado Department of Public Health and Environment in carrying out the intent of the statutes and makes recommendations for statutory changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Patty Salazar
Executive Director





COLORADO

Department of Regulatory Agencies

Colorado Office of Policy, Research &
Regulatory Reform

2019 Sunset Review

Water and Wastewater Facility Operators Certification Board

SUMMARY

What is regulated?

The Colorado Department of Public Health and Environment's (CDPHE) Water and Wastewater Facility Operators Certification Board (Board) administers Colorado's water and wastewater facility operator certification program. The program certifies that water treatment and distribution facility operators have met the qualifications necessary to help ensure an acceptable water supply.

Why is it regulated?

Passed into law in 1973, the Safe Drinking Water Act authorized the U.S. Environmental Protection Agency (EPA) to establish minimum quality standards for drinking water and baseline standards for certified water facility operators. This program satisfies the mandate by requiring that the individuals who operate water treatment and water distribution facilities meet minimum standards.

Who is regulated?

There are multiple classifications of facilities and multiple levels of operator certification for each type of facility. Importantly, each facility must have a designated operator in responsible charge (ORC). Many operators hold multiple certificates. In 2018, there were 11,685 certifications held by 5,743 individuals.

How is it regulated?

To become certified, every applicant for a facility operator certificate must pass an examination at the desired certification level. Prior to March 1, 2019, Colorado Environmental Certification and Testing and the Certification Council, Incorporated operated the certification program for the CDPHE. After that date, the Colorado Rural Water Association has operated the program.

What does it cost?

In 2018, CDPHE expended \$121,983 and allotted 1.2 full-time equivalent employees to program administration. In addition, contractor expenses totaled \$804,488.

What disciplinary activity is there?

Complaints and subsequent discipline are rare. During the years examined for this review, an average of approximately 12,000 certificates were active annually and complaints averaged less than three per year. The Board revoked one certificate during the entire five-year period studied for this sunset reviewed.

KEY RECOMMENDATIONS

Continue the Board for 11 years, until 2031.

Colorado's water and wastewater facility operator certification program satisfies a directive of the EPA calling for the certification of individuals who operate water treatment and water distribution facilities.

Clean water is necessary to sustain life and consumers use water and wastewater systems many times every day. Inadequately treated water could harm citizens and devastate communities through the spread of disease. Untreated wastewater could damage the natural environment and harm people who are recreating by releasing harmful toxins into streams and rivers.

By promulgating rules assuring water and wastewater facility operators are qualified, checking that there is an ORC in facilities, and confirming the ORC directs facility functions, the Board protects the public's health, safety, and welfare.

Amend the definition of "domestic wastewater treatment facility" to exclude small on-site wastewater treatment systems, unless such system discharges to state waters.

Currently, there is a conflict between two laws. The Water and Wastewater Treatment Facility Operators laws specifically exclude "on-site wastewater treatment systems" from regulation. On-site water treatment systems, commonly known as septic systems, are regulated by local public health agencies, which do not require an ORC to oversee such systems.

However, under the Colorado Water Quality Control Act, larger on-site water systems that have a capacity of more than 2,000 gallons are defined as a "domestic wastewater treatment works" and are subject to regulation by the state. While there are very few such systems, they do require a state discharge permit, and oversight by an ORC is preferred.

Statutory change is necessary to align the Water and Wastewater Treatment Facility Operators laws with the Water Quality Control Act and to clarify which systems are actually subject to state regulation.

METHODOLOGY

As part of this review, Colorado Office of Policy, Research and Regulatory Reform staff attended Board meetings; interviewed CDPHE staff, Board members, and certified operators; and reviewed Board records, statutes and rules, federal laws, and the laws of other states.

MAJOR CONTACTS MADE DURING THIS REVIEW

Colorado Department of Public Health and Environment, Water Quality Control Division
Colorado Water and Wastewater Facility Operators Certification Board
Colorado Rural Water Association

What is a Sunset Review?

A sunset review is a periodic assessment of state boards, programs, and functions to determine whether they should be continued by the legislature. Sunset reviews focus on creating the least restrictive form of regulation consistent with protecting the public. In formulating recommendations, sunset reviews consider the public's right to consistent, high quality professional or occupational services and the ability of businesses to exist and thrive in a competitive market, free from unnecessary regulation.

Sunset Reviews are prepared by:
Colorado Department of Regulatory Agencies
Colorado Office of Policy, Research and Regulatory Reform
1560 Broadway, Suite 1550, Denver, CO 80202
www.dora.colorado.gov/opr



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Background

Introduction

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are based on the following statutory criteria:

- I. Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- II. If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- III. Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- IV. Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- V. Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- VI. The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- VII. Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- VIII. Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;

¹ Criteria may be found at § 24-34-104(6)(b), C.R.S.

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- IX. Whether the agency through its licensing or certification process imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses or certifications that the agency denied based on the applicant's criminal history, the number of conditional licenses or certifications issued based upon the applicant's criminal history, and the number of licenses or certifications revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification; and
- X. Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether a particular regulatory program is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To ascertain a second aspect of the first sunset criterion--whether conditions that led to initial regulation have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the third sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the tenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review.

Types of Regulation

Consistent, flexible, and fair regulatory oversight assures consumers, professionals and businesses an equitable playing field. All Coloradans share a long-term, common interest in a fair marketplace where consumers are protected. Regulation, if done appropriately, should protect consumers. If consumers are not better protected and competition is hindered, then regulation may not be the answer.

As regulatory programs relate to individual professionals, such programs typically entail the establishment of minimum standards for initial entry and continued participation in a given profession or occupation. This serves to protect the public from incompetent practitioners. Similarly, such programs provide a vehicle for limiting or removing from practice those practitioners deemed to have harmed the public.

From a practitioner perspective, regulation can lead to increased prestige and higher income. Accordingly, regulatory programs are often championed by those who will be the subject of regulation.

On the other hand, by erecting barriers to entry into a given profession or occupation, even when justified, regulation can serve to restrict the supply of practitioners. This not only limits consumer choice, but can also lead to an increase in the cost of services.

There are also several levels of regulation.

Licensure

Licensure is the most restrictive form of regulation, yet it provides the greatest level of public protection. Licensing programs typically involve the completion of a prescribed educational program (usually college level or higher) and the passage of an examination that is designed to measure a minimal level of competency. These types of programs usually entail title protection - only those individuals who are properly licensed may use a particular title(s) - and practice exclusivity - only those individuals who are properly licensed may engage in the particular practice. While these requirements can be viewed as barriers to entry, they also afford the highest level of consumer protection in that they ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Certification

Certification programs offer a level of consumer protection similar to licensing programs, but the barriers to entry are generally lower. The required educational program may be more vocational in nature, but the required examination should still measure a minimal level of competency. Additionally, certification programs typically involve a non-governmental entity that establishes the training requirements and owns and administers the examination. State certification is made conditional upon the individual practitioner obtaining and maintaining the relevant private credential. These types of programs also usually entail title protection and practice exclusivity.

While the aforementioned requirements can still be viewed as barriers to entry, they afford a level of consumer protection that is lower than a licensing program. They ensure that only those who are deemed competent may practice and the public is alerted to those who may practice by the title(s) used.

Registration

Registration programs can serve to protect the public with minimal barriers to entry. A typical registration program involves an individual satisfying certain prescribed requirements - typically non-practice related items, such as insurance or the use of a disclosure form - and the state, in turn, placing that individual on the pertinent registry. These types of programs can entail title protection and practice exclusivity. Since the barriers to entry in registration programs are relatively low, registration programs are generally best suited to those professions and occupations where the risk of public harm is relatively low, but nevertheless present. In short, registration programs serve to notify the state of which individuals are engaging in the relevant practice and to notify the public of those who may practice by the title(s) used.

Title Protection

Finally, title protection programs represent one of the lowest levels of regulation. Only those who satisfy certain prescribed requirements may use the relevant prescribed title(s). Practitioners need not register or otherwise notify the state that they are engaging in the relevant practice, and practice exclusivity does not attach. In other words, anyone may engage in the particular practice, but only those who satisfy the prescribed requirements may use the enumerated title(s). This serves to indirectly ensure a minimal level of competency - depending upon the prescribed preconditions for use of the protected title(s) - and the public is alerted to the qualifications of those who may use the particular title(s).

Licensing, certification and registration programs also typically involve some kind of mechanism for removing individuals from practice when such individuals engage in

enumerated proscribed activities. This is generally not the case with title protection programs.

Regulation of Businesses

Regulatory programs involving businesses are typically in place to enhance public safety, as with a salon or pharmacy. These programs also help to ensure financial solvency and reliability of continued service for consumers, such as with a public utility, a bank or an insurance company.

Activities can involve auditing of certain capital, bookkeeping and other recordkeeping requirements, such as filing quarterly financial statements with the regulator. Other programs may require onsite examinations of financial records, safety features or service records.

Although these programs are intended to enhance public protection and reliability of service for consumers, costs of compliance are a factor. These administrative costs, if too burdensome, may be passed on to consumers.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at: www.dora.colorado.gov/opr.

The functions of Water and Wastewater Facility Operators Certification Board (Board) as enumerated in Article 9 of Title 25, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2020, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued and to evaluate the performance of the Board and the Colorado Department of Public Health and Environment (CDPHE). During this review, the Board must demonstrate that the program serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff attended Board meetings; interviewed Division staff, Board members, and certified operators; and reviewed Board records, statutes and rules, and the laws of other states.

Profile of the Profession

In a sunset review, COPRRR is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less, or the same degree of regulation.

In order to understand the need for regulation, it is first necessary to understand what the profession does, where they work, who they serve and any necessary qualifications.

Generally, water and wastewater facility operators oversee and manage all aspects of systems that execute critical functions:

- Treat water from rivers and other natural sources to make it suitable for drinking,
- Assure the water is distributed to customers,
- Treat wastewater that has flowed into drains and sewers, and
- Treat the collected wastewater to ensure it is safe to flow back into streams and reservoirs or to be used for irrigation.

Accordingly, facility operators work in the following types of facilities:

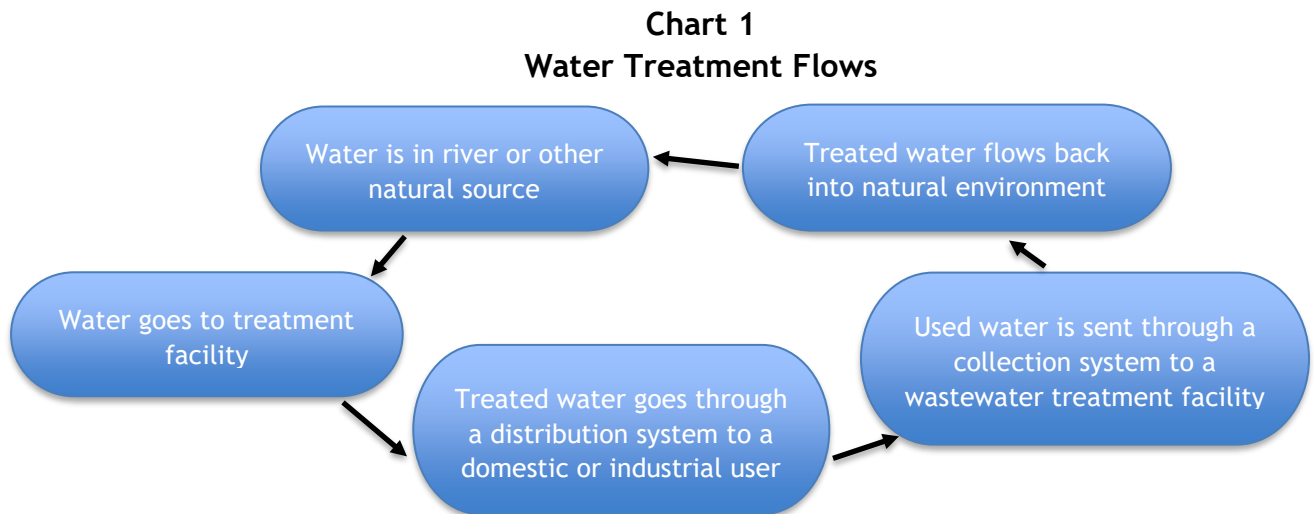
- Water and wastewater facilities, which alter the physical, chemical, or bacteriological quality of the water;
- Water distribution systems, which are any combination of pipes, tanks, pumps, or other facilities that deliver water from a source or treatment facility to the consumer; and
- Wastewater collection systems, which are the pipes and conduits that transport domestic wastewater from the point of entry (e.g., a storm drain) to a domestic wastewater treatment facility.

The daily duties of water and wastewater treatment system operators can include:

- Operating equipment to purify water or to process or dispose of sewage;
- Cleaning, maintaining, and inspecting equipment;
- Adding chemicals, such as ammonia, chlorine, or lime, to disinfect or condition water;
- Monitoring and recording operating conditions, meters, and gauges;
- Collecting and testing water and sewage samples; and
- Ensuring safety standards are met.

The specific duties of facility operators vary depending on the type, size, and complexity of the facility.

Chart 1 indicates the manner in which water flows through the different treatment systems and facilities.



Wastewater treatment facilities, are grouped into two categories. Both of which must have certified operators:

- Domestic wastewater treatment facilities are used to treat domestic wastewater or handle solids and gases removed from such wastewater.
- Industrial wastewater treatment facilities are used for the pretreatment, treatment, or handling of industrial waters, wastewater, and wastes that are discharged into state waters.

Facilities serving small communities are sometimes designed to handle multiple aspects of the community’s water and wastewater needs. For example, a single facility might handle both water treatment and distribution. Operators of such facilities are generalists familiar with all aspects of facility operation.

Urban areas tend to have multiple, separate facilities for water treatment, water distribution, wastewater collection, and wastewater treatment. Operators of those facilities specialize in specific areas and are likely to use automated systems to help them monitor processes.

In evaluating the need for regulation, COPRRR also takes into consideration regulation in other states.

Federal law requires states to certify water facility operators and mandates that water facilities operate under the supervision of a certified operator. Consequently, all states require water facility operators to meet certain education, experience or

examination requirements, although the exact requirements vary widely from state to state.

Most states, including Colorado, also require wastewater facility operators to meet education, experience, and examination requirements. These exact requirements also vary considerably from state to state.

States typically classify water and wastewater facilities based upon their size and complexity and offer levels of operator certification that mirror the facility classifications. For example, an operator who oversees a facility with the highest classification would have to obtain the highest level of certification.

The sixth sunset criterion requires COPRRR to evaluate the economic impact of regulation. One way this may be accomplished is to review the expected salary of the profession and the projected growth in the profession.

Facility operators typically work for local municipalities. In 2018, the median annual salary of operators was \$46,780.² The Bureau of Labor Statistics projected that the total number of operators will show an overall five percent decline between 2018 and 2028, primarily due to increased automation at water and wastewater treatment facilities.³

Importantly, the focus of this sunset review is the regulation of facility operators, not the facilities themselves.

² U.S. Department of Labor, Bureau of Labor Statistics. *Occupational Outlook Handbook: Water and Wastewater Treatment Plant and System Operators*. Retrieved on October 1, 2019, from <https://www.bls.gov/ooh/production/water-and-wastewater-treatment-plant-and-system-operators.htm>

³ U.S. Department of Labor, Bureau of Labor Statistics. *Occupational Outlook Handbook: Water and Wastewater Treatment Plant and System Operators*. Retrieved on February 25, 2019, from <https://www.bls.gov/ooh/production/water-and-wastewater-treatment-plant-and-system-operators.htm>

Legal Framework

History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset criterion questions whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less, or the same degree of regulation.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

The General Assembly created the nine-member Water and Wastewater Treatment Plant Operators Certification Board in 1973. The powers and duties of the board included certifying qualified applicants, promulgating rules, and promoting operator training programs. The bill established four tiers of classification for both water treatment plant operators and wastewater treatment plant operators, with each successive level of classification requiring higher levels of knowledge and work experience. The bill established monetary penalties for individuals who represent themselves as certified operators without being so certified and for facility owners who operate such plants without the supervision of a certified operator of the appropriate level of certification.

The General Assembly did not make any substantive changes to the law until 1996, with the passage of House Bill 1074. This bill made numerous changes, including creating separate definitions for domestic and industrial wastewater treatment facilities and establishing classes of facility operator certifications for each, and establishing criteria for disciplinary action against certified operators.

In 2000, the General Assembly passed House Bill 1431, which renamed the board the Water and Wastewater Facility Operators Certification Board (Board). The bill vested the Water Quality Control Division (Division) within the Department of Public Health and Environment (CDPHE) with the responsibility to investigate possible misconduct by facility operators and make recommendations to the Board regarding appropriate disciplinary action. The bill also added language allowing the Board to contract with a nonprofit entity to administer the operator certification program and authorized the nonprofit to collect certification and renewal fees to operate the program. However, the bill required the nonprofit to direct \$5 per certification to the state's General Fund.

The General Assembly passed House Bill 04-1211 following the 2003 sunset review. The bill made numerous technical changes and mandated that the Board approve all contracts the designated nonprofit enters into with subcontractors.

In 2011, the General Assembly passed Senate Bill 21, which removed the provision restricting Board members to two terms of service.

The Board underwent sunset review in 2012. The most notable change allowed the Board to exempt certain domestic wastewater facilities from the requirement that they operate under the supervision of a certified operator.

Legal Summary

The second and third sunset criteria question

Whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent; and

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters.

A summary of the current statutes and rules is necessary to understand whether regulation is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

Federal Law

Passed into law in 1973, the Safe Drinking Water Act (Act) authorized the U.S. Environmental Protection Agency (EPA) to establish minimum quality standards for drinking water.

The Act directs⁴ the EPA to establish rules specifying minimum standards for the certification and recertification of the operators of community water systems—defined as systems that provide drinking water to at least 15 service connections to year-round residents of a given area or regularly serve at least 25 year-round⁵—and non-transient non-community (NTNC) water systems, which include all other public water systems.⁶

Accordingly, the EPA has established baseline standards for certified operators and laid out criteria that state operator certification programs must meet. Notably, states must classify water treatment facilities and systems based on indicators for potential health risks; develop specific operator certification and renewal

⁴ 42 U.S.C. § 300g-8(a).

⁵ 42 U.S.C. § 300f(15).

⁶ 42 U.S.C. § 300f(16).

requirements for each level of classification; and require owners of all community and NTNC water systems to place the direct supervision of their facilities under the responsible charge of an operator certified at or above the classification of the facility.⁷

If a state fails to implement an operator certification program that complies with EPA guidelines, the EPA must withhold 20 percent of the funds a state is otherwise entitled to receive in its Drinking Water State Revolving Fund capitalization grants.⁸

The Act and EPA rules do not require that states certify operators of wastewater treatment facilities or collection systems.

Colorado Law

The laws relating to water and wastewater facility operators regulation in Colorado are contained within Article 9 of Title 25, C.R.S. The laws establish the classifications for water and wastewater facilities and the minimum qualifications for the operators of such facilities and mandate that a certified operator must supervise the operation of all water and wastewater facilities. The Board is housed within the Executive Directors Office (EDO) in the Colorado Department of Public Health and Environment (CDPHE).

The fifth sunset criterion questions whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.

One way that COPRRR addresses this is by examining the composition of the Board.

The Board is a Type 1, policy-autonomous board⁹ comprised of 10 Governor-appointed members:¹⁰

- A water treatment or domestic wastewater treatment facility operator holding the highest level of certification available in Colorado;
- A certified industrial wastewater treatment facility operator or a representative of a private entity that operates an industrial wastewater treatment facility;
- A manager of a city, special district, or utility in a local jurisdiction that operates a domestic water or wastewater treatment facility;
- A representative of CDPHE, who serves as an *ex officio*, nonvoting member;
- A water distribution or wastewater collection system operator holding the highest level of certification available in Colorado;

⁷ 64 Fed. Reg. 5919 (1999).

⁸ 42 U.S.C. § 300j-12(a)(1)(G).

⁹ § 25-9-104(8), C.R.S.

¹⁰ §§ 25-9-103(1) and 103(2), C.R.S.

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- A representative of water or wastewater facilities serving rural areas; and
 - Four members appointed to achieve geographical representation—including at least one member who resides west of the Continental Divide and at least one from rural Eastern Colorado—and to reflect the various interests in the water and wastewater facility certification program.

At least four voting Board members must be certified facility operators, some representing the water industry and others representing the wastewater industry.¹¹

Board members serve four-year terms.¹² They receive no compensation for their service, but are reimbursed for the actual expenses they incur.¹³

The Division classifies water and wastewater facilities based on each facility’s size, the size of the population it serves, its complexity, and other factors. Similarly, the Board establishes classes of water and wastewater facility operators based upon the level of skill required to operate each classification of facility¹⁴ and sets the minimum education, experience, examination, and ongoing training requirements for each class.¹⁵

The Board must create rules that establish the requirements for the certification of water and wastewater facility operators, including application requirements, procedures for certification issuance and renewal, minimum standards for operator performance, and standards for the accreditation of training programs.¹⁶ The Board must also create rules that establish criteria for reprimanding or taking disciplinary action against a certified operator.¹⁷

The Board may contract with one or more nonprofit organizations to administer the certification program.¹⁸ Contracted nonprofits must have experience in training and testing procedures and demonstrate knowledge of the water and wastewater treatment systems.¹⁹ With Board approval, contracted nonprofits may enter into “subsidiary agreements with other nonprofit corporations, educational institutions, and for-profit corporations to carry out the duties assigned by the Board.”²⁰ The Board maintains responsibility and final authority for all actions and decisions made on behalf of the Board, and “may modify, suspend, or reverse” any action or decision made by a contracted party.²¹

¹¹ § 25-9-103(2), C.R.S.

¹² § 25-9-103(3)(a), C.R.S.

¹³ § 25-9-104(7), C.R.S.

¹⁴ § 26-9-104(3)(a), C.R.S.

¹⁵ § 26-9-104(3)(b), C.R.S.

¹⁶ § 26-9-104(1)(a), C.R.S.

¹⁷ § 26-9-104(6), C.R.S.

¹⁸ § 25-9-104.2(1), C.R.S.

¹⁹ § 25-9-104.2(2), C.R.S.

²⁰ § 25-9-104.4(3), C.R.S.

²¹ § 25-9-104.4(4), C.R.S.

Unless exempt, every water or wastewater facility must operate under the supervision of a certified operator of the classification level appropriate for that facility. Board rule refers to this supervising operator as the “certified operator in responsible charge” (ORC), and defines it as:²²

[T]he certified operator designated by the water or wastewater facility owner to be responsible for making process control and/or system integrity decisions about water quality or quantity that may affect public health or the environment. A facility owner may designate one or more certified operators to serve in this capacity. Such an operator must be certified at a level equal to or higher than the classification of the facility he or she is operating.

The Board determines the minimum class of certified operator required for the supervision of each level of water and wastewater facility.²³

The Division has the primary responsibility for investigating instances of possible misconduct by water and wastewater facility operators. The Division must report the results of any investigation to the Board and make recommendations regarding appropriate disciplinary action.²⁴ Possible disciplinary actions are defined in rule and include reprimand, suspension, and revocation,²⁵ and if it is necessary to protect the public health or the environment, the Division may immediately suspend or revoke an operator’s certification.²⁶

The Board may take disciplinary action against certified operators for numerous reasons, including:²⁷

- Failing to exercise reasonable care and judgment consistent with the operator’s level of certification and degree of responsibility for the operation of a water or wastewater facility;
- Failing to properly perform or supervise activities pertinent to controlling the operation of a water or wastewater facility;
- Willfully or negligently violating, causing, or allowing the violation of the Board’s rules, the Colorado Primary Drinking Water Regulations, the Colorado Discharge Permit System Regulations or a discharge permit issued under those regulations, and any other relevant regulations;
- Submitting false or misleading information on any document provided to CDPHE, the Division, the Board, or a contractor of the Board;
- Engaging in fraud or deception in the course of employment as a certified operator;

²² 5 CCR § 1003-2-100.2(4), Water and Wastewater Facility Operators Certification Board Rules.

²³ § 25-9-104(4), C.R.S.

²⁴ § 25-9-104.3, C.R.S.

²⁵ 5 CCR 1003-2, 100.13.4-6, Water and Wastewater Facility Operators Certification Board Rules.

²⁶ 5 CCR 1003-2, 100.13.7, Water and Wastewater Facility Operators Certification Board Rules.

²⁷ 5 CCR 1003-2, 100.13.2, Water and Wastewater Facility Operators Certification Board Rules.

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- Failing to conform with minimum standards of performance of a certified operator's duty;
 - Engaging in dishonest conduct during an examination;
 - Obtaining a certificate through fraud, deceit, or the submission of materially inaccurate application information;
 - Representing oneself as holding a valid operator's certificate after the expiration, suspension, or revocation of the certificate;
 - When acting in the capacity of a certified operator, behaving in a threatening, intimidating, demeaning or similar manner in verbal or written communications or in interactions with the public, the regulated community or regulators; and
 - Failing to follow the Colorado Certified Water Professionals Code of Conduct.

The Board has established additional grounds for discipline against ORCs. The Board may take disciplinary action against an ORC who fails to fulfill the responsibilities of an ORC as defined by rule, or who willfully or negligently causes or allows any other person under his or her supervision to act in a manner inconsistent with an operator's duties and obligations.²⁸

Any person lacking current Board certification who represents himself or herself as a certified operator is guilty of a misdemeanor and, upon conviction, is subject to a fine of up to \$3,000.²⁹

It is unlawful for the owner of a water or wastewater treatment facility to allow the facility to operate without the supervision of a certified operator of the appropriate classification level.³⁰ When the Division has reason to believe such a violation has occurred, it must serve written notice to the alleged violator. The notice must state the allegations and may include the specific action required to come into compliance.³¹ Upon being served, the alleged violator has 30 days to request a public hearing on the matter. The Board's decision following a hearing is considered final.³² Facility owners who are found to have violated the ORC requirement are subject to a civil penalty of up to \$300 per day for each day of the violation. All civil penalties are credited to the state's General Fund.³³

The Board is authorized to exempt facilities from the ORC requirement as long as the exemption does not pose a threat to the public health.³⁴

²⁸ § 25-9-104(1)(a)(VII), C.R.S. and 5 CCR 1003-2, 100.13.3, Water and Wastewater Facility Operators Certification Board Rules.

²⁹ § 25-9-110(1), C.R.S.

³⁰ § 25-9-110(2)(a), C.R.S.

³¹ § 25-9-110(3), C.R.S.

³² § 25-9-110(4), C.R.S.

³³ § 25-9-110(5), C.R.S.

³⁴ §§ 25-9-104.4(1) and (2), C.R.S.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes, (C.R.S.). The third, fourth and fifth sunset criteria question:

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;

Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively; and

Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

The Colorado Water and Wastewater Facility Operators Certification Board (Board) is vested with the authority to regulate water and wastewater facility operators in Colorado. The Board is comprised of 10 Governor-appointed members:³⁵

- A water treatment or domestic wastewater treatment facility operator holding the highest level of certification available in Colorado;
- A certified industrial wastewater treatment facility operator or a representative of a private entity that operates an industrial wastewater treatment facility;
- A manager of a city, special district, or utility in a local jurisdiction that operates a domestic water or wastewater treatment facility;
- A representative of CDPHE, who serves as an *ex officio*, nonvoting member;
- A water distribution or wastewater collection system operator holding the highest level of certification available in Colorado;
- A representative of water or wastewater facilities serving rural areas; and
- Four members appointed to achieve geographical representation—including at least one member who resides west of the Continental Divide and at least one from rural Eastern Colorado—and to reflect the various interests in the water and wastewater facility certification program.

At least four voting Board members must be certified facility operators, some representing the water industry and others representing the wastewater industry.³⁶

³⁵ § 25-9-103(1), C.R.S.

³⁶ § 25-9-103(2), C.R.S.

The Board meets at least six times per year. The Board’s duties include establishing minimum standards of competence for certified operators, certifying facility operators meeting those standards, taking disciplinary action against individual operators, and promulgating rules to administer the program.

The Water Quality Control Division (Division) within the Colorado Department of Public Health and Environment (CDPHE) is responsible for enforcing the requirement that every water and wastewater facility operate under the direct supervision of a certified operator of the appropriate level of certification, or operator in responsible charge (ORC). The Division also investigates complaints against certified operators. The Division’s other duties include conducting outreach, providing educational opportunities for the regulated community, and helping facilities achieve and maintain compliance with the law.

Table 1 illustrates, for the five calendar years indicated, CDPHE’s expenditures and staff associated with facility operator certification.

**Table 1
CDPHE Personnel Expenses³⁷**

Calendar Year	Total CDPHE Expenditure	Full-Time Equivalent Employees
2014	\$134,046	1.2
2015	\$137,607	1.2
2016	\$138,912	1.2
2017	\$144,367	1.2
2018	\$121,983	1.2

The costs associated with the routine tasks assigned to over 76 CDPHE staff (individuals not FTE) are not included in Table 1.

CDPHE staff assigned to program administration, include:

- Liaison to the Board, Environmental Protection Specialist III – 1.0 FTE – Who is the liaison between the Board and the Division; and
- Board Administrator, Administrator III – 0.2 FTE – Who handles administrative duties.

These positions are paid through CDPHE funds with a combination of state General Funds, federal grants, and drinking water and facility fees.

The decline in expenditures in 2018 was in part due to the liaison position being vacant for one month and a program assistant position being vacant for five months.

³⁷ Program Report 2018: To the Water and Wastewater Facility Operators Certification Board, CDPHE Water Quality Control Division (2019), P.15.

Until March 1, 2014, the Board contracted with two nonprofit companies to administer the operator certification program. Colorado Environmental Certification and Testing, Incorporated (CECTI) operated the water and wastewater treatment certification program and the Certification Council operated the water distribution and wastewater collection certification program. Both CECTI and the Certification Council are comprised of volunteer, certified facility operators who provide subject matter expertise in water and wastewater facility operation. CECTI and the Certification Council merged in October 2013 and the Board contracted with the merged CECTI until March 1, 2019.

CECTI and the Certification Council had subcontracts in place with two entities. The Associated Boards of Certification (ABC) develops validated examinations for the various classifications of certified operators. Total Events and Management Services, Inc. (TEAMS) ran the Operator Certification Program Office and oversaw the daily activities of the program. Daily activities include processing applications for certification, depositing fees, administering examinations, renewing operator certifications, and maintaining records of operator certifications and approved training courses.

The Board implemented a different structure beginning on March 1, 2019. From that date forward, the Board contracted with the Colorado Rural Water Association to run the Colorado Certified Water Professionals program. The ABC still develops and validates the examinations. The examinations are now available at PSI testing sites.

Table 2 illustrates, for the five calendar years indicated, CECTI’s expenditures associated with facility operator certification.

**Table 2
Contractor Fiscal Information³⁸**

Calendar Year	Contractor Volunteer Contribution	TEAMS Expenses	Total Contractor Administration
2014	\$387,092	\$188,192	\$577,298
2015	\$391,100	\$238,590	\$631,705
2016	\$386,040	\$342,275	\$730,331
2017	\$412,625	\$350,931	\$765,573
2018	\$440,310	\$362,160	\$804,488

Table 2 indicates that the cost of operating the program has risen steadily during the period covered by this sunset review. Staff indicated that those increases were due to general increased costs and vendor fee increases. The contractor volunteer

³⁸ Program Report 2018: To the Water and Wastewater Facility Operators Certification Board, CDPHE Water Quality Control Division (2019), P.14.

contribution is the cash value of volunteer hours. The TEAMS expenses were paid through operator examination and certification fees collected directly by TEAMS.

Table 3 enumerates the fees paid by individuals for training, certification, and renewal.

Table 3
Operator Training and Certification Fees³⁹

Type of fee	Amount
Certification by examination application	\$50
Certification by reciprocity application	\$85
Certification renewal application	\$85
Examination	\$100
Late renewal	\$50
Course, seminar, or batch course approval	\$50
Application by operator for an unapproved class	\$25

The fees are set in rule. Under section 25-9-108, C.R.S., the contractor may collect the fees and use them to pay for the costs of the program, but they must pay \$5 from every certification or renewal fee into the General Fund.

Certification

The eighth sunset criterion questions whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

Recall from the “Profile of the Profession” section of this report that operators work in the following types of facilities:

- Water treatment facilities, which alter the physical, chemical, or bacteriological quality of the water;
- Water distribution systems, which are any combination of pipes, tanks, pumps, or other facilities that deliver water from a source or treatment facility to the consumer;

³⁹ 5 CCR 1003-2 § 100.17, Water and Wastewater Facility Operators Certification Board Rules.

- Wastewater collection systems, which are the pipes and conduits that transport domestic wastewater from the point of entry (e.g., a storm drain) to a domestic wastewater treatment facility; and
- Wastewater treatment facilities, which are grouped into two categories:
 - Domestic wastewater treatment facilities are used to treat domestic wastewater or handle solids and gases removed from such wastewater; and
 - Industrial wastewater treatment facilities are used for the pretreatment, treatment, or handling of industrial waters, wastewater, and wastes that are discharged into state waters.

An operator is any person who executes activities necessary for the operation of a water or wastewater facility. An operator need not be certified. However, an ORC must be certified. The Board is responsible for establishing the appropriate level of operator certification for the ORC in each class of facility.

A person can apply for certification either with the Board or the contractor.⁴⁰ Each person who wants to become certified is evaluated based on the classification level in which he or she desires certification. The basic requirements are the completion of an approved regulatory training course before applying⁴¹ and a high school diploma, general equivalency diploma or experience and relevant training.⁴²

Every certified operator must renew his or her certificate every three years. Each renewal carries continued training units that must be approved by the contractor.⁴³

Table 4 indicates the number of active certificates held by operators during the calendar years examined for this sunset review.

**Table 4
Active Certificates**

Year	Active Certificates
2014	11,423
2015	13,057
2016	12,170
2017	10,376
2018	11,685

Many operators hold multiple certificates. At the end of 2018, 5,743 individuals were certified to work in the industry at some level.

⁴⁰ 5 CCR 1003-2 § 100.14.1, Water and Wastewater Facility Operators Certification Board Rules.

⁴¹ 5 CCR 1003-2 § 100.14.5(b), Water and Wastewater Facility Operators Certification Board Rules.

⁴² 5 CCR 1003-2 § 100.14.5(e), Water and Wastewater Facility Operators Certification Board Rules.

⁴³ 5 CCR 1003-2 § 100.15.1, Water and Wastewater Facility Operators Certification Board Rules.

Classifications

WATER AND DOMESTIC WASTEWATER TREATMENT

The Division classifies water and domestic wastewater treatment facilities into four classes: A, B, C, and D, with A being the highest level of classification. The Board issues four corresponding levels of certification for water facility operators and four levels for domestic wastewater facility operators.

INDUSTRIAL WASTEWATER TREATMENT

The Division classifies industrial wastewater treatment facilities into two classes: Class 1 and Class 2. Class 2 facilities are exempt from the requirement to operate under the supervision of a certified operator. Class 1 facilities are subdivided into four classes: A, B, C, and D, with A being the highest level. The Board issues four corresponding levels of certification for industrial wastewater facility operators.

WATER DISTRIBUTION AND COLLECTION

The Division classifies water distribution and collection systems into four classes: 1, 2, 3, and 4, with 4 being the highest level of classification. The Board issues four corresponding levels of certification for water distribution and collection operators.

SPECIALIZED CERTIFICATIONS

The Board issues specialized certifications:

- Class S water and wastewater certifications for operators of small systems serving fewer than 3,300 people; and
- Class T water certifications for operators of transient, non-community water systems that serve fewer than 100 people per day, draw from groundwater only, and meet other requirements specified in rule. Common examples of transient non-community water systems include campgrounds and gas stations.

Table 5 enumerates the certifications issued by the Board by classification for each calendar year examined for this sunset review.

**Table 5
Certificates Issued
By Category⁴⁴**

Category	2014	2015	2016	2017	2018
Water Treatment	873	208	1,069	857	964
Water Distribution	1,110	206	1,131	1,125	1,225
Class S Water	207	Not reported	189	191	59
Class T Water	23	Not reported	10	16	2
Wastewater Treatment	708	137	806	695	721
Industrial Treatment	205	33	224	186	197
Wastewater Collection	845	181	852	842	919
Class S Wastewater	61	Not reported	81	59	15
Total	4,029	765	4,362	3,971	4,102

The contractor did not have a complete data set for 2015, consequently the total certifications for that year does not match the other years. The remainder of the data indicate that the number of certifications in each category remained steady. There is some fluctuation in the specialty certifications but that has to do with renewals rather than total active certifications.

Examinations

The eighth sunset criterion questions whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

An applicant for a new certificate must pass an examination, with a minimum 70 percent score, in the category and level in which the application is made.

Table 6 aggregates the examination data. It includes all levels and classifications by the year in which they were taken.

⁴⁴ Program Report 2018: To the Water and Wastewater Facility Operators Certification Board, CDPHE Water Quality Control Division (2019), P 8.

Table 6
Examinations⁴⁵

Calendar Year	Examinations	Number Passing	Passing Percentage
2014	2,844	1,678	59.0
2015	3,046	1,768	58.0
2016	3,075	1,636	53.2
2017	3,248	1,684	51.8
2018	3,790	1,461	38.5

Table 6 indicates that the passing rate was generally between 50 and 60 percent for the examinations that are developed and validated by ABC. However, there was significant drop off to 38.5 percent in 2018. The Division stated that it is not clear why the rate dropped from previous years.

Appendix A contains examination data broken out by category, level, and delivery method: written or electronic.

Complaint and Disciplinary Activity

The seventh sunset criterion requires COPRRR to examine whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.

The Board is empowered to discipline a certificate holder including the revocation, suspension, annulment, limitation, or modification of a license for violating the Act or any rules promulgated to implement the Act.⁴⁶ The grounds for discipline are listed on pages 13-14 of this report.

Table 7 lists the disciplinary actions taken by the Board during the period covered by this sunset review.

⁴⁵ *Program Report 2018: To the Water and Wastewater Facility Operators Certification Board*, CDPHE Water Quality Control Division (2019), P 6.

⁴⁶ § 24-4-104(2), C.R.S.

Table 7
Disciplinary Actions⁴⁷

Action Taken	2014	2015	2016	2017	2018
Letter of reprimand	0	0	1	0	0
Consent agreement	0	1	0	0	0
Suspension or revocation	0	0	1	0	0
Conference with staff	0	1	0	2	0
Warning letter	0	0	1	0	4
Closed, lack of evidence	0	0	1	1	1
Total investigations	0	2	4	3	5

It is extremely rare that there is a complaint and subsequent discipline taken against a certificate holder. During the years examined for this review, an average of approximately 12,000 certificates were active. Complaints averaged less than three per year (0.00025 percent) and there was only one certificate revoked during the entire five-year period. The revocation was based on the violation of several program rules.

Collateral Consequences - Criminal Convictions

The ninth sunset criterion requires COPRRR to examine whether the agency under review, through its licensing processes, imposes any sanctions or disqualifications based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

There are no current sanctions or disqualifications based on past criminal history associated with this program.

⁴⁷ Program Report 2018: To the Water and Wastewater Facility Operators Certification Board, CDPHE Water Quality Control Division (2019), P 11.

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

Recommendation 1 - Continue the Water and Wastewater Facility Operators Certification Board for 11 years, until 2031.

Colorado's water and wastewater facility operator certification program satisfies a mandate of the U.S. Environmental Protection Agency requiring that the individuals who operate water treatment and water distribution facilities meet minimum standards.

Article 9 of Title 25, Colorado Revised Statutes (C.R.S.), creates the Water and Wastewater Facility Operators Certification Board (Board). The Board is a Type 1, policy-autonomous board housed within the Water Quality Control Division (Division) of the Colorado Department of Public Health and Environment (CDPHE). The primary duty of the Board is the certification of water and wastewater facility operators in Colorado. Regulation includes certifying that operators meet Board-determined qualifications, promulgating rules, and taking disciplinary action when necessary.

According to the first sunset criterion, the foremost question this sunset review must consider is whether this regulation serves to protect the public health, safety and welfare.

Clean water is necessary to sustain life and consumers use water and wastewater systems many times every day, both directly and indirectly. Inadequately treated water could harm citizens and devastate communities through the spread of disease. Untreated wastewater could damage the natural environment and harm people who are recreating by releasing harmful toxins into streams and rivers.

Certified professionals help keep harm in check. Water treatment facility operators verify that water is safe to drink. Water distribution facility operators ensure that consumers have access to potable water. Collection facility operators make sure used water transfers to wastewater treatment facilities. Wastewater treatment facility operators treat water before returning it to the natural environs. These activities are quite necessary in today's setting.

By promulgating rules assuring water and wastewater facility operators are qualified, checking that there is an operator in responsible charge (ORC), and confirming the ORC directs a facility's functions, the Board protects the public's health, safety, and welfare. The Board and certificate program are therefore necessary and should be continued. Because this sunset review did not uncover any issues with the program

that would require scrutiny by the General Assembly in the near future, the General Assembly should continue the program for 11 years, until 2031.

Recommendation 2 - Amend the definition of “domestic wastewater treatment facility” to exclude small on-site wastewater treatment systems, unless such system discharges to surface waters.

Currently, the water and wastewater facility operator’s law defines a “domestic wastewater treatment facility” as:⁴⁸

any facility or group of units used for the treatment of domestic wastewater or for the reduction and handling of solids and gases removed from such wastes, whether or not the facility or group of units is discharging into state waters.

The definition goes on to specifically exclude “on-site wastewater treatment systems.”⁴⁹ On-site water treatment systems, commonly known as septic systems, are regulated by local public health agencies, which do not require that an operator in responsible charge (ORC) oversee such systems.

However, larger on-site water systems—those that have a designed capacity of more than 2,000 gallons of domestic wastewater per day—also meet the definition of a “domestic wastewater treatment works” under the Colorado Water Quality Control Act⁵⁰ and *are* subject to regulation by the state. The state must review and approve design and discharge permits for such systems and requires that an ORC oversee them.

The current definition in the Water and Wastewater Treatment Facility Operators laws implies that all on-site wastewater treatment systems are exempt from state regulation. This conflicts with the provisions in the Colorado Water Quality Control Act. The only on-site wastewater systems having a capacity of less than 2,000 gallons per day that are subject to state regulation are those that discharge directly into surface water, e.g., a stream. While there are very few such systems, they do require a state discharge permit, and oversight by an ORC is preferred.

The third sunset criterion asks, in part:

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances.

⁴⁸ § 25-9-102(4.5), C.R.S.

⁴⁹ § 25-9-102(4.5), C.R.S.

⁵⁰ § 25-8-103(5), C.R.S.

To align the Water and Wastewater Treatment Facility Operators laws with the Water Quality Control Act, and to clarify which systems are actually subject to state regulation, the General Assembly should amend the definition of “domestic wastewater treatment facility” to exclude only those on-site wastewater treatment systems with a designed capacity of 2,000 gallons or less, unless the system discharges directly to surface water.

Recommendation 3 - Revise the definition of “industrial wastewater treatment facilities” to repeal the exemption for facilities designed to operate for less than one year or facilities with *in situ* discharge.

Current law defines an “industrial wastewater treatment facility” as:

[A]ny facility or group of units used for the pretreatment, treatment, or handling of industrial waters, wastewater, reuse water, and wastes that are discharged into state waters.

While “facilities that clean up contaminated groundwater or spills” are included in the definition, “facilities designed to operate for less than one year or facilities with *in situ* discharge” are specifically excluded from having to employ an ORC.⁵¹ Given that runoff from such facilities could pose a risk to the public health, this blanket exclusion merits scrutiny.

One of the questions the first sunset criterion asks is whether conditions have changed that merit a change in regulation.

Prior to 1996, there was a single definition for “wastewater treatment plant.” In 1996, the General Assembly passed House Bill 96-1074, which created two new definitions for “domestic wastewater treatment plant” and “industrial wastewater treatment plant.” When these new definitions were added, so was the exception for facilities designed to operate for less than one year or facilities with *in situ* discharge. Legal counsel for the Board researched the legislative history of this provision, including listening to the audio recordings of the committee hearings when the exclusion was added, but did not discover anything in the record to shed light on the reason for the exclusion.

By no means all, but some, facilities that operate for less than one year or that have *in situ* discharge could pose a risk to the public health: consider a hypothetical construction site in lower downtown Denver, where industrial runoff could discharge directly into the Platte River. Such a facility might require the oversight of an ORC.

Excluding all such facilities from the expertise necessary to ensure clean discharge and of Board oversight might endanger the public health. Further, the exclusion

⁵¹ § 25-9-102(4.7), C.R.S.

seems to infringe upon the Board’s authority: the Board should have the authority to consider such exclusions on a case-by-case basis. For these reasons, the General Assembly should repeal the language excluding all facilities designed to operate for less than one year or facilities with *in situ* discharge from the definition of “industrial wastewater facility.”

Recommendation 4 - Create a Water and Wastewater Facility Operators Fund and direct that any fees the Board receives directly should be deposited in the fund for the exclusive use of such program.

Section 25-9-108, C.R.S., addresses the fees the Board collects and administers in connection with the certified operator program. The wording in the section reflects the program’s unusual administrative structure, where many of the program’s routine activities are outsourced to the contracted non-profit. The statute also states that all certification and renewal fees the Board receives directly must be deposited with the Department of the Treasury. In essence, this means that such fees would be deposited in the General Fund and could be used for any legitimate purpose.

This wording is acceptable as long as the Board continues to contract with a non-profit entity to administer the certification program. If the state were to administer the program itself at any point in the future, however, this wording could prevent the certification and renewal fees the Board collects from being directed to the certification program.

Other licensing programs in CDPHE, including home care agencies⁵² and health facilities,⁵³ have language establishing dedicated funds for their respective programs. Such language ensures that fees collected are designated for the exclusive use of the licensing programs.

To assure that the certification program would continue to have stable funding in the event that the Division assumes responsibility for it, the General Assembly should create a Water and Wastewater Facility Operators Fund, and mandate that all the certification and renewal fees the Board collects be deposited in the fund for the exclusive use of the certification program.

Recommendation 5 - Make technical changes to the law.

The tenth sunset criterion asks the General Assembly to consider if changes are necessary to improve agency operations and promote the public interest.

⁵² § 25-27.5-105, C.R.S.

⁵³ § 25-3-103.1, C.R.S.

The law contains instances of obsolete language that can be removed. These changes are technical in nature, meaning they have no substantive impact on the regulation of water and wastewater facility operators.

The General Assembly should make the following technical change:

- **Section 25-9-103(3)(b), C.R.S.:** Repeal this provision as the dates referenced therein have passed.

Appendix A -Examinations

2018 Certification Examination Pass Rate And Certification Category

Category	Percent Passing Written	Percent Passing Electronic
Water	36	39
Wastewater	36	38
Industrial	52	45
Distribution	36	36
Collection	47	47

2018 Treatment Certification Examination Pass Rate And Certification Level

Level	Percent Passing Written	Percent Passing Electronic
A	29	32
B	22	34
C	34	49
D	44	44
S and T	36	31

2018 Collection and Distribution Examination Pass Rate And Certification Level

Level	Percent Passing Written	Percent Passing Electronic
4	44	41
3	41	39
2	27	36
1	23	40