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Reply to: Oakland Office

August 5, 2014

Janis Hoagland  
Director, Office of Legal Affairs  
NJ Department of Environmental Protection  
401 E. State Street  
Mail Code 401-04L, P.O. Box 402  
Trenton, NJ 08625-0402

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NJDEP-OFFICE OF  
LEGAL AFFAIRS

Re: Request for Rule Making  
Amendment to N.J.A.C. 7:10A-1.9

Dear Director Hoagland:

Please be advised that I serve as counsel to the New Jersey Water Environment Association (NJWEA), an association consisting of more than 2000 operators, engineers, academia, and other related water and wastewater professionals. The NJWEA Executive Committee on June 19, 2014 authorized the filing of a Request for Rule Making (“Request”) to address an ongoing issue regarding retired license operators.

Specifically, the NJWEA is seeking an amendment to N.J.A.C. 7:10A-1.9, as set forth below:

- 1. Nature:** The nature of the request is to amend the N.J.A.C. 7:10A-1.9 to provide for the creation of a class of operators to be known as “Retired Status.” This matter was originally brought to the attention of the New Jersey Department of Environmental Protection (“Department”) in 2008, as noted in several attachments, and again in 2013 and 2014.
- 2. Reasons for Request:** By way of background, the Division of Consumer Affairs (“DCA”) regulates numerous professional licensees, including engineers, surveyors, planners and architects. For many years, the DCA has permitted these licensed personnel to claim retired status, thereby releasing them from continuing education requirements, but also restricting them from practicing as license holder. Such personnel may return to full standing upon completion of a required number of courses or education credits. This retired status, however, is not currently available to water and wastewater operators.

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This petition for rule making seeks to eliminate this discrepancy. (See attached DCA regulations for engineers and surveyors).

Specifically, we are requesting an amendment to the regulation to allow licensed operators to change their statuses accordingly. This will allow for the development of a “bench of operators” who could be recalled if necessary. This is critical as the number of operators, particularly those at the upper license class, is diminishing. For example, the number of professionals holding an S-4 license, the highest in wastewater treatment, has dropped by more than 30% in the last 11 years — from 451 in 2002 to 313 in 2013.

Analyzed in the context of asset management and resiliency/redundancy, pumps, pipes and concrete items can be replaced and repaired within months, but it takes years to develop an operator who can step up and be an operational and compliance leader. The experienced operator has endured many scenarios, including storms, seasonal changes, outages, and power failures to name a few. Failures and emergencies are great teachers, which is why the experienced operator is one of our most valuable assets.

Our industry has learned valuable lessons from Hurricanes Sandy, Lee and Irene, and from the straight line wind Derecho storms, and has developed 72-hour self-sufficiency plans in response. While fuel, generators, and pumps are at a premium during an emergency, so too are experienced operators. After approximately 72 to 96 hours in an emergency situation, operator burn-out is a significant. The professionals are not only exhausted by working 12-16 hour days, but also by having to worry about their own homes and families during this time. In widespread emergencies, the number of spare operators is extremely limited. This proposed amendment to the regulation would provide a pool of retired operators who could be called upon to assist. Currently, there is no central database containing the contact information for retired operators whose licenses have expired. If the “Retired Status” is recognized, however, the Department and other authorities and municipalities would have up-to-date contact information for these professionals, which could be utilized during emergencies and/or in anticipation of a major storm.

It is our understanding from communications with Department staff that New Jersey Emergency Management Services can handle this new license status.

3. **Authority of the Agency:** The cited regulation is up for renewal at the end of 2015. The NJWEA began working with the Department in 2013 to incorporate this requested modification at the time of re-adoption. The Department has full authority to incorporate this change.
4. **Proposed Wording for Rule Change:** Below is suggested wording, similar to that which is utilized by the DCA:

N.J.A.C. 7:10A-1.9 (New Section)

(l) A licensed operator who has held his or her highest license a minimum of 25 years and is at least 62 years of age may apply to the Board for status as a retired licensee, but must still submit the annual licensing fee.

1. A licensee who obtains retired license status shall not offer to practice as a licensed operator within the State;

2. A licensee who seeks retired license status shall forward to the Department the following: a completed application form furnished by the Department which contains the licensee's current address, telephone number and license for which retired status is being sought;

3. A licensed operator holding retired license status who wishes to resume the practice as a licensed operator shall forward the following to the Department: a completed resumption of practice application form furnished by the Department which contains the licensee's current address, telephone number, the license for which the licensee is seeking reinstatement and proof of current competency pursuant to § N.J.A.C. 7:10A-19 (1)4;

4. Each retired licensed operator shall provide information on the resumption of practice application regarding current knowledge, competency, and skill. The Department shall review the information submitted by the applicant and determine if the applicant has demonstrated the ability to practice as a licensed operator in such away so as to insure the safety of life, public health, and property. Each retired licensed operator seeking to resume practice shall furnish proof of completion of a minimum of 12, 18 or 36 training contact hours, respectively, for very small water systems, levels 1 and 2 systems, or levels 3 and 4 systems, to have been completed in the three-year cycle preceding the active status request.

Thank you for consideration of this request. If you have any questions or wish to discuss this matter further, please do not hesitate to contact me.

Very truly yours,



John A. Napolitano, Esq.  
Attorney for the NJWEA

cc: Richard Eustace, President NJWEA  
Dennis W. Palmer, Chair NJWEA Legislative Committee  
Peggy Gallos, Executive Director AEA

TITLE 13. LAW AND PUBLIC SAFETY  
CHAPTER 40. STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS  
SUBCHAPTER 12. RETIRED LICENSE AND NO-FEE RETIRED LICENSE STATUS

N.J.A.C. 13:40-12.1 (2014)

§ 13:40-12.1 Eligibility requirements

(a) A licensed professional engineer or professional land surveyor who has been licensed for a minimum of 25 years and is at least 62 years of age may apply to the Board for status as a retired licensee or a no-fee retired licensee.

(b) A licensee who obtains retired license status or no-fee retired license status shall not offer or practice professional engineering or professional land surveying within the State.

§ 13:40-12.2 Retired licensee: application; entitlement

(a) A licensee who seeks retired license status shall forward to the Board the following:

1. A completed application form furnished by the Board which contains the licensee's current address, telephone number, and information concerning disciplinary matters; and
2. The retired license fee pursuant to N.J.A.C. 13:40-6.1.

(b) The Board shall review the submission set forth in (a) above and if the applicant meets the requirements of N.J.A.C. 13:40-12.1(a), the Board shall declare the licensee retired and place the licensee on the retired status list.

(c) Each retired licensee shall be entitled to the following:

1. A retired licensee when using the title "Professional Engineer" or "Land Surveyor" or any substantial equivalent shall use the designation "Retired" following his or her name;
2. The name of each retired licensee shall appear in the roster of licensees;
3. Each retired licensee shall receive a certificate from the Board; and
4. Each retired licensee shall receive any mailings from the Board that are sent to active licensees.

(d) Each retired licensee who wishes to maintain retired status shall renew the license biennially and shall remit the retired license fee pursuant to N.J.A.C. 13:40-6.1.

§ 13:40-12.3 No-fee retired licensee

(a) A licensee who seeks no-fee retired licensee status shall submit a completed application form furnished by the Board which contains the licensee's current address, telephone number, and information concerning disciplinary matters.

(b) The Board shall review the submission as set forth in (a) above. If the applicant meets the requirements of N.J.A.C. 13:40-12.1(a), the Board shall declare the licensee retired, and shall place the licensee on the retired status list. The licensee shall not be required to renew the no-fee status biennially.

#### 13:40-12.4 Resumption of practice

(a) A professional engineer or professional land surveyor who has been on retired license status or no-fee retired license status who wishes to resume the practice of professional engineering or professional land surveying shall forward the following to the Board:

1. A completed resumption of practice application form furnished by the Board which contains the licensee's current address, telephone number, details of any disciplinary matters, information concerning whether the licensee has signed and sealed any projects while on retired status, and proof of current competency pursuant to (a)3 below;

2. The reactivation fee for retired licensees or no-fee retired licensees pursuant to N.J.A.C. 13:40-6.1; and

3. For a professional engineer or professional land surveyor who has been on the retired status list for five or more years, satisfactory evidence of current knowledge, competency, and skill in the practice of professional engineering or professional land surveying as follows:

i. Each retired licensee shall provide information on the resumption of practice application regarding current knowledge, competency and skill. The Board shall review the information submitted by the applicant and determine if the applicant has demonstrated the ability to practice in such a way, so as to insure the safety of life, health and property.

ii. Each retired licensee seeking to resume practice shall submit satisfactory proof to the Board that he or she has successfully completed all delinquent CPC credits. If the total credits required to become current exceeds 30, then 30 shall be the maximum number required. In the case of a person licensed as both a professional engineer and professional land surveyor, if the total credits required to become current exceeds 45, then 45 shall be the maximum number required. However, an additional 24 CPC credits (or 36 CPC credits in the case of a dual licensee) will still be required at the next biennial renewal. The credits required to become current shall not be counted towards the CPC credits required for the next biennial renewal.

(b) For the purposes of this section, the reactivation fee shall mean the reinstatement fee provided in N.J.S.A. 45:8-36.2.

Retired Operator Status Meeting  
NJDEP May 20, 2008

A. Purpose of requesting Retired Status:

- 1) Remedy the inequality with the several dozen licenses that DCA issues, which have both inactive and retired status, some which also require some form of continuing education.
- 2) Prepare for highly possible need to have retired licensees return to the work force as baby boomers exit for retirement.

B. Proposal Retired Status:

Establish a minimum age of **62** and minimum years of holding a specific class of license (S,C,T,W, VSWS or N) of at least **20** years.

If an operator wishes to return to active status, he must have acquired the associated minimum hours (12, 18 or 36) in the three (3) years immediately prior to the reactivation and must meet the contact hour requirement for the 3 year contact hour requirement at the end of the then current 3 year cycle.

While in Retired Status the operator may not make process control decisions or represent himself as a licensed operator for employment as a licensed operator for the class of license for which he is in the inactive (retired) status.

C. Inactive Status:

An Inactive Status should also be considered for those called up for military service by prorating the contact hours in a direct relationship to time in service, i.e. one year in service 2/3 of contact hours required. **(Withdrawn as we understand this is being covered)**



**FEDERATION DIRECTORS**

Thomas Grencl  
Henry Penley  
William Muszynski, P.E.

# New Jersey Water Environment Association

*(Formerly called the NJ Water Pollution Control Association)*

**PRESIDENT**  
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Robert Sokolowski

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Robert C. Fischer

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**May 30, 2008**

**Ms. Nancy Wittenberg, Assistant Commissioner  
NJ Department of Environmental Protection  
P.O. Box 423  
401 East State Street  
Trenton, NJ 08625-0423**

**Re: N.J.A.C. 7:10A Licensing and Water Supply and Wastewater Treatment System  
Operators**

**Dear Assistant Commissioner Wittenberg:**

On behalf of Joseph Bonaccorso, Rocco J. Maiellano and this writer, we would like to thank you and your staff for meeting with us on May 20, 2008 to discuss and re-open the dialogue on the subject of inactive retired status for licensed operators associated with the water and wastewater fields.

We laid out that the reasoning behind our request is primarily being two-fold; that being to remedy to the inequity with the several dozen licenses issued by the DCA that provide both an inactive and retired status and the future staff resource drain due to retirement by the baby boomers and the need to have licensed operators possibly return to the field after retirement to plug in the holes where vacancies occur and the need arises.

We suggested several different scenarios and we are flexible on the idea of minimum age, years of service, and the years associated with holding the license, for which the licensee would request retired status. However, we are absolutely dedicated to the concept of having this proposal adopted by the Department.

We don't wish to disrupt or interfere with the current proposal working its way through the Department so as to at least maintain the licensed operator regulatory process. We would like to hold you and your staff to the goal of having our request to deal with the retired status proposed at the time of the adoption of the present rule package. Frankly, at the meeting, I don't believe anyone raised a serious and substantive issue as to why this should not proceed other than the administrative



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process (while we recognize that it may be a high hurdle) to have the computer and NJEMS system to handle and recognize this proposed change.

We agree with your suggestion of having an ad hoc committee review and work on this proposal and I would like to recommend that it be a minority of the members on both the Advisory Committee and the Board of Examiners so that the representatives would not constitute a quorum and thereby trigger the Open Public Meeting Act public notice and publication requirements. This is not to say we are against an open process, but rather to provide for scheduling flexibility. We also request that this move forward timely so that this matter does not languish in committee and it that remains a viable regulatory proposal.

Objectives that we took from this meeting include the following:

1. Establishment of the ad hoc committee, as noted above, for continued dialogue, discussion and development of a final product throughout 2008.
2. Your contact with others within the Department to establish a higher priority in the hierarchy of the NJEMS modification to accommodate the retired status.

To have a starting point, I believe the memo provided on May 20, 2008 is a good starting point for dialogue and discussion. Again, as noted above, while we are not wedded to the exact wording, this remains a high priority among operators in the state and will most likely generate many comments being received by the Department when the existing licensing proposal is published in the register.

Very truly yours,

/s/

**DENNIS W. PALMER, P.E., P.P.**  
Legislative Chair

DWP/md

cc: J. Bonaccorso  
R. Maiellano  
Ellen Gulbinsky, AEA  
Rick Howlett, NJ Water Association



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August 26, 2008

Alice A. Previte, Esq.  
Attention: DEP Docket No. 06-08-05/621  
Office of Legal Affairs  
Department of Environmental Protection  
P.O. Box 402  
401 East State Street – 4<sup>th</sup> Floor  
Trenton, NJ 08625

Re: Proposed Re-adoption with Amendments NJAC 7:10A  
DEP Docket Number: 06-08-05/621

Dear Ms. Previte:

This letter is written with respect to comments on the licensing of water supply and wastewater treatment operators as noted above. My question is directly related to Section 7:10A-1.8 Fees. First I would like to note that the 100% increase in many of these fees seems exorbitant and will generate significant amounts of revenue way beyond what is necessary to run this portion of the Department. By the very own background documents, the amount to run the current budget is \$293,800.00 whereas the projected fees will generate \$466,960.00. The question has to arise what is going to happen to the extra \$173,166.00 being raised from taxpayers, licensed holders and frankly, I believe, predominately public agencies who reimburse their operators for their license fee and therefore at a cost to the ratepayers and taxpayers of New Jersey. The economic impact portion of the rules does not address this real world situation whereas public bodies will be bearing the increased costs at multiples over the individual cost to each operator.

Will these funds be placed in the theoretical lockbox or become dedicated funds and be utilized to offset rising costs in the future? What this writer finds very alarming is the wording contained in fiscal 2009 budget language changes under A2800/S209 specifically, Resolution No. 17 Table No. ENV40#43D. (copy attached) Under this Section of the budget bill language, receipts in excess of the amount anticipated from fees from the water and wastewater operator licensing program are appropriated subject to the approval of the Director of Division and Budget and Accounting. This apparent decision to move excess funds was made prior to publication of the rule proposal.

Alice A. Previte, Esq.  
Aug. 26, 2008  
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This appears to show bad faith, which is prejudging the transfer of excess funds prior to the rate increase. To where would these appropriated funds be utilized and in what programs? The appearance is that the Department would be generating substantial excess funds into the future years and these funds would be diverted away from the intended purpose of running the program associated with water and wastewater operators. If funds are not being set aside for future offsets to this one specific program, or for computer upgrades, as well as one additional staff, then this is a dishonest and deceitful increase in fees if these funds go to some other program. We hope to hear otherwise, but what other conclusion can we draw from the wording in ENV40#43D?

We support the requirements noted under 7:10A-1.9 (g) which supports service people that will be in military service of the United States and during their absence they will be allowed additional time to acquire the contact hours. This is also true for the wording contained in 7:10A-1.9(h) with respect to specifically laying out the criteria for a medical condition or hardship. This is supported and our servicemen and women deserve this consideration.

Since the Department appears to be raising additional funds, an item we would like to see supported with these funds (and funds should not be disbursed or transferred to any other portion of the Department) is the additional work needed to support establishment of a retired operator status. Attached to this letter is a signed petition by over 300 individuals, from all of the different license classes, requesting this change for retired status. It is requested that one of two things occur. One is in the response to comments that the Department adopts a policy for retired status where operators would not be required to obtain contact hours or two, come out with a proposal at the same time as this regulation is published for adoption. Perhaps the extra funds could be utilized to help effectuate this change and any data management modifications to NJEMS. Also, some funding be earmarked to further develop the database to allow easier entry and recovery of TCH data and data sharing with training providers.

The request is similar to where the Department of Community Affairs grants dozens of licenses the ability to not require continued education and they may place their license in retired status. However, the provision is that once an operator would wish to reactive the license they would have to demonstrate that they have accumulated contact hours. Some of the items we request to be included with the proposal is to establish a minimum age of 62 and the minimum years of holding a specific class of licenses, S,C,T,W,VSWS & N) of at least 20 years. If an operator wishes to return to active he must have acquired the associated minimum hours (12, 18 or 36) in the three years immediately preceding the re-activation request and must meet the three year contact hour requirement at the end of the then current three year cycle. While in retired status the operator may not make any process control decisions or represent himself as a licensed operator for employment as a licensed operator for a class of license for which he is in the inactive (retired) status. It is also suggested that the operator will not only have the twenty years of holding a specific class of license that way they should hold the last license for which they are receiving an inactive status for at least five years. As discussed in a meeting with Assistant

Alice A. Previte, Esq.  
Aug. 26, 2008  
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Commissioner, Nancy Wittenberg, on May 20, 2008, the outcome in this matter being that a committee would be formed to review other states programs and to bring equity to the New Jersey Operators so they can be on par with those licenses under the DCA. We fully anticipate that the Department will honor this committee establishment as well as the recommendations from this committee to be incorporated in a new proposal to be issued at the time of adoption of this proposal.

Very truly yours,

NJWEA

DENNIS W. PALMER, P.E., P.P.  
Legislative Chairman

DWP/md  
enc.

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**FEDERATION DIRECTORS**

Blake Maloney  
Dennis Palmer, P.E.  
Robert Sokolowski

# New Jersey Water Environment Association

*(Formerly called the NJ Water Pollution Control Association)*

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## Meeting w/ Michele Siekerka And NJWEA Members August 15, 2013

Without question there is a present and future need for succession planning at water and wastewater facilities. This especially true for facilities which do not provided incentives or promote skill set building and certification among staff members at the positions other than the Operator of Record. This will be exacerbated as baby boomers leave the work force for retirement.

Our longstanding proposal to help ameliorate this situation is to use a sports analogy and develop a "bench of substitute players" with the implementation of "Retired License Operator" class of license holder. This has been a long running and proven option for over 30 licenses under the supervision of the Division of Consumer Affairs. Water and wastewater operators are very proud of their licenses, but at times find it difficult to maintain the educational hours after retirement.

Attached for your immediate use is the Division of Consumer Affairs' law with respect to the numerous licensing boards from doctors, dentist and engineers to cosmetology and hairstyling. Also attached are the specific pages with respect to engineers who can request retired status after age 62 and being licensed for 25 years. We recommend licensed operators have the similar time frame requirements, however most licensed operators have held different levels of licenses as they advanced from say a level 1 or 2 to the highest level 4. My suggestion is 20 years from the last license held and age 62 and if in retired status they may not operate facilities as a licensed operator.

We also recognize there is a need for administrative costs even with a retired status and therefore we are not suggesting a lessening of the annual fee. Therefore an operator who requests retired status would have to meet the age and time criteria and no longer would have to gain continuing education or contact hours. However if an operator wished to "come off the bench" and become employed as a licensed operator, the operator would have to demonstrate one cycle of hours either 12, 18 or 36 hours respectively for very small water systems, level 1 and 2 or 3 and 4 systems, to have been completed immediately prior to requesting active status. We have also discussed with staff and we have a NJEMS solution to tracking the retired operator status. Attached is proposed regulatory wording.

## **N.J.A.C. 7:10A-1.9 (New Section)**

**(I) A licensed operator who has held his or her highest license licensed minimum of 20 years and is at least 62 years of age may apply to the Board for status as a retired licensee, but must still submit the annual licensing fee.**

**1. A licensee who obtains retired license status shall not offer to practice as a licensed operator within the State.**

**2. A licensee who seeks retired license status shall forward to the Department the following: a completed application form furnished by the Department which contains the licensee's current address, telephone number and license for which retired status is being seek.**

**3. A licensed operator holding retired license status who wishes to resume the practice as a licensed operator shall forward the following to the Department: a completed resumption of practice application form furnished by the Department which contains the licensee's current address, telephone number, the license for which the licensee is seeking reinstatement and proof of current competency pursuant to (I) 4 below;**

**4. Each retired licensed operator shall provide information on the resumption of practice application regarding current knowledge, competency, and skill. The Department shall review the information submitted by the applicant and determine if the applicant has demonstrated the ability to practice as a licensed operator in such away so as to insure the safety of life, public health, and property. Each retired licensed operator seeking to resume practice shall furnish proof of completion of a minimum 12, 18 or 36 training contact hours respectively for very small water systems, level 1 and 2 or 3 and 4 systems, to have been completed in the current three year cycle prior to requesting active status.**