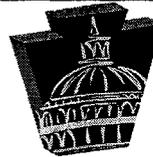


# Regulatory Analysis Form

(Completed by Promulgating Agency)



# IRRC

Independent Regulatory Review Commission

## SECTION I: PROFILE

**(1) Agency:**

State Board for Certification of Water and Wastewater System Operators (Certification Board)  
Department of Environmental Protection (Department)

**(2) Agency Number:**

Identification Number: #7-433

**(3) Short Title:**

CHAPTER 302. Administration of the Water and Wastewater Systems Operators' Certification Program

**(4) PA Code Cite:**

25 Pa. Code § Chapter 301, et seq.  
25 Pa. Code § Chapter 303, et seq.  
25 Pa. Code § Chapter 305, et seq.  
25 Pa. Code § Chapter 302, et seq. (proposed new chapter)

**(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):**

Primary Contact: Michelle Tate, 783-8727, [mtate@state.pa.us](mailto:mtate@state.pa.us)  
Secondary Contact: Duke Adams, 783-8727, [ranadams@state.pa.us](mailto:ranadams@state.pa.us)

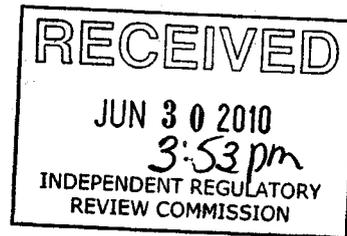
**(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5:**

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(All Comments will appear on IRRC'S website)

**(7) Type of Rulemaking (check applicable box):**

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
  - Certification by the Governor
  - Certification by the Attorney General



IRRC Number: 2774.

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**(8)** Briefly explain the regulation in clear and nontechnical language. (100 words or less)

This final rulemaking eliminates Chapters 301, 303, and Chapter 305. The new Chapter 302 establishes the administrative requirements for:

- Conducting the State Board for Certification of Water and Wastewater Systems Operators (Certification Board) administrative hearings.
- Processing certification, certification renewal and recertification applications,
- Administering certification examinations.
- Reviewing and acting on an operator's criminal history records.

Chapter 302 also defines the:

- Classification and subclassification method for approximately 10,000 system operators and their treatment systems.
- Minimum education, experience and examination requirements for all operators to become certified.
- Requirements and conditions that must be met to maintain certification.
- Duties and responsibilities of operators and owners related to the operation of a community or nontransient noncommunity water system, water distribution system, wastewater treatment system treating more than 2,000 gallons per day, and a satellite wastewater collection system with a pump station.

**(9)** Include a schedule for review of the regulation including:

- |   |                          |
|---|--------------------------|
| A. The date by which the agency received all public comments:                               | <u>February 26, 2010</u> |
| B. The date or dates on which public meetings or hearings will be held:                     | <u>None Held</u>         |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | <u>November 2010</u>     |
| D. The expected effective date of the final-form regulation:                                | <u>November 2010</u>     |
| E. The date by which compliance with the final-form regulation will be required:            | <u>See below</u>         |
| F. The date by which required permits, licenses or other approvals must be obtained:        | <u>October 1, 2002</u>   |

NOTE: To meet federal requirements, the Act gave the Department the authority to implement provisions of this program through the development of technical guidance. The Department finalized these guidelines in July of 2002. Revisions have been made twice to these guidelines. The final guidelines, as revised, were published in the Pennsylvania Bulletin on June 25, 2005. Compliance with many of the provisions of this proposed rulemaking has been required since October 1, 2002. EPA requires a permanent operator certification program established in regulation be put in place for long-term program approval. The Certification Board has also made revisions to its guidelines, "Operator Certification Program Guidelines," Document ID: 150-0200-002, published as final in the *Pennsylvania Bulletin* on January 31, 2004. These revisions were completed in July 2007 and merged into the latest

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version of the proposed regulations. This final rulemaking provides additional program enhancements needed to insure continued federal approval of Pennsylvania's program by the U.S. Environmental Protection Agency.

**(10)** Provide the schedule for continual review of the regulation.

A comprehensive external review of the entire program including regulations is required by the US Environmental Protection Agency once every three to five years. In addition, periodic internal reviews are suggested on an annual basis. These internal reviews may, or may not, include a review of the regulations. Finally, the regulations require the Department to review the fee structure every three years to insure the fees continue to cover program costs. The Department must submit this review, along with any changes in fees, to the Environmental Quality Board for promulgation as a revision to these regulations.

## **SECTION II: STATEMENT OF NEED**

**(11)** State the statutory authority for the regulation. Include specific statutory citation.

Section 4(c) of the Water and Wastewater Systems Operators' Certification Act (63 PS § 1001 et seq.) and section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20).

**(12)** Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

This final rulemaking is required by both state and federal legislation. The Pennsylvania Sewage Treatment Plant and Waterworks Operator's Certification Act, (P.L. 790, No.112) was amended February 21, 2002 (P.L 134, No. 11); known as the Water and Wastewater Systems Operators' Certification Act (Act). These legislative amendments and proposed rulemaking are in response to the federal requirements established by the 1996 Amendments to the Federal Safe Drinking Water Act, Section 1419 (SDWA). The US Environmental Protection Agency (EPA) administrator was directed by the SDWA to establish requirements for a drinking water operator certification program. EPA published these requirements in the "Final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Water Systems, FRL-6230-8, Federal Register/Vol. 64. No. 24/ Friday, 5, 1999." States not implementing a program that meets these requirements will lose 20 percent of their federal grant funding for the State Revolving Loan Fund. This is approximately \$5.8 million per year for Pennsylvania. EPA approved an "Interim Program for Operator Certification" established by guidelines in lieu of this final-form rulemaking. This interim program will be eliminated when this final rulemaking is finalized.

**(13)** State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

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Pennsylvania has invested billions of dollars into its drinking water and wastewater treatment system infrastructure. The certified operator is the key component that directs the treatment process for these systems. The certified operator's process control decisions impact the environment, aquatic life and the public health and safety of Pennsylvania's citizens. Pennsylvania does not have a sufficient number of certified operators to meet the current and future needs of the Commonwealth. Many systems do not have qualified operators making these complex decisions. The previous training and examination framework for operators no longer met the needs of the program to insure compliance with new federal requirements and needed to be enhanced to insure sufficient, relevant training was available to all operators across the state. These issues are further complicated by the need to protect our water and wastewater treatment system infrastructure from internal and external terrorism. The certified operator is the first line of defense against terrorist attacks on our drinking water and wastewater treatment systems. This final rulemaking will formalize the restructuring of the operator certification program that has been done to address these issues. Training opportunities have been expanded through privatization. New technology-based certification classes and subclassifications allow operators to train and test for the types of treatment technology they choose to operate. This has streamlined the entire training and examination process and is producing operators that are more qualified in a shorter time. Certified operators are required to continually upgrade their abilities by participating in continuing education. With the finalization of these regulations, all certified operators in Pennsylvania will also be required to successfully take and pass a basic system security-training program. This core training increases their awareness of possible vulnerabilities to a terrorist attack at their system.

In addition, a significant number of Pennsylvania's water and wastewater treatment systems do not have appropriately certified operators making process control decisions. Process control decisions are defined as any decision that changes or maintains water quantity or quality to protect public health and the environment. This shortfall represents a significant public health and environmental risk for Pennsylvania's citizens. Further complicating this problem, a recent survey of the age of existing certified operators indicates the shortage of certified operators will dramatically increase in the next five to ten years. Over 80% of the state's certified operators are over the age of 42. These factors, plus the ever-increasing complexity of drinking water and wastewater treatment, demands more certified operators be available to make daily process control decisions. An improper process control decision made in a public water system can have a serious impact on public health. Customers can become ill as highlighted by a number of well-publicized waterborne outbreaks. In addition, when a wastewater treatment system fails to meet their discharge permit requirements, the consequences for down stream industrial and drinking water users can be serious. Failure to put these regulations in place will negatively affect the national effort to protect our water and wastewater infrastructure. This final rulemaking is the last step in implementing an improved and streamlined operator certification program to meet these needs.

The biggest beneficiary of this proposed rulemaking is the public. The benefits of improved, effective water and wastewater treatment impact everyone. Benefits to the operator include the establishment of a standard process for certification testing, experience and security review and the application of consistent standards and requirements for certification, reciprocity, certificate upgrade and certificate renewal. System owners will have more qualified certified operators available to make process control decisions for their systems. Further cost savings may be realized by owners through the more effective, efficient operation of their systems by qualified, certified operators.

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(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

Not applicable.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

Pennsylvania's approximately 10,400 certified operators will be required to successfully take continuing education and security training as a condition of certification renewal. The cost of this continuing education will be borne by the individual or the water or wastewater system owner. Approximately 1,157 nontransient noncommunity water systems (schools, factories and shopping malls) are now required to employ a certified operator for the first time. All wastewater collection systems with at least one pump station that depend upon some other entity to provide treatment services must also have a certified operator for the first time. Both of these types of systems were able to have their existing operators "grandparented" into the certification program without passing an examination. However, less than half of the eligible systems took advantage of this provision by the deadline.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

The following are an estimate of the number of different groups impacted by this final-form rulemaking:

1,157 nontransient noncommunity water systems

2,077 community water systems

2,544 wastewater treatment systems  
collection systems with pump stations

10,400 certified operators

non-certified operators

## SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The following is an approximation of the costs for certified operators. All certified operators are responsible to obtain continuing education from the private sector or their industry associations.

Initial certification	\$100 - \$150 (depending on level of certification)
Registration fee	\$25 - \$75 (depending on the Approved Examination Provider)
Examination fee	\$35 (per examination session)
Criminal History	\$10 (one time fee)
Certification renewal	\$60 (every three years)
Continuing education	\$240 - \$900 (depends upon provider)

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There are additional costs for owners. These regulations propose to charge an annual service fee for system owners, based on the amount of flow the system is permitted to treat as follows:

Class A Systems	Greater than 5 mgd	\$500
Class B Systems	1 mgd to 5 mgd	\$150
Class C Systems	100,000 gpd to 1 mgd	\$100
Class D Systems	Less than 100,000 gpd	\$ 65
Class E Systems	Distribution and Collection Systems	\$ 65

The assessment of this fee is tied to the classification of the system and the certification class needed by the system owner's designated available operator(s). The maximum fee that any one owner of more than one system pays is \$10,000. The only other cost for compliance for the owner is the actual costs for hiring a certified operator. The average cost to hire a certified operator is between \$30,000 and \$80,000 per year, based on a limited survey of operators completed in 2003. It is strongly advised that owners hire more than one certified operator. However, unless there are problems at the system, this responsibility is left to the owner. If necessary, the Department does have the authority to order the owner to hire additional certified operators, to address specific environmental compliance problems. In addition, the owner may choose to cover the operator's costs for obtaining continuing education contact hours. This is an arrangement negotiated between the owner(s) and their certified operator(s).

There may be a cost savings to owners and customers as the result of better process control decision-making by qualified and trained certified operators. Better quality drinking water and wastewater has a value. An owner may also benefit by being in compliance with federal and state permit requirements, thus avoiding fines. A long-term benefit of these regulations is to provide more qualified, certified operators in the state. Based on the survey of operator's age distribution, the availability of certified operators could have a significant impact on operator's salaries in the near future.

**(18)** Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

All owners of community water systems, water distribution systems and wastewater treatment systems treating more than 2,000 gallons per day have been required to employ certified operators since 1971. There should be no additional cost for owners of these systems, unless they currently aren't in compliance with this requirement or their existing certified operator does not have the correct level of certification for the system. Owners of nontransient, noncommunity systems and satellite wastewater collection systems with pump stations may incur an increase in costs, due to the fact they will now need a certified operator(s). Many of these owners are local governments, such as school districts or municipal authorities. The proposed fee structure proposes to distribute the costs of this program between the operator, the system owners and the training providers and approved examination providers.

While some owners may wish to pay for all or some of the costs of their operator to maintain their current certification, it is not required by these regulations. In some cases, these issues will be resolved as a condition of accepting employment, or a union/management contract.

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**(19)** Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no additional costs to the state for the implementation of this regulation above the existing cost to carry for this program. A significant savings to the program will be realized when refinements to the data management systems used for program administration is completed and a costly contract with the Association for Boards of Certification is closed in 2009.

- <sup>1</sup> Savings reflect federal grant dollars that will be unavailable if this program is not implemented according to federal guidelines. A significant increase in this funding was provided with the change in federal administration. At this point in time, it can only be assumed that the same level of commitment will remain through the next four years..
- <sup>2</sup> Increases in costs to the regulated community assume fee increases will be put in place by the end of 2010.
- <sup>3</sup> Decrease in costs in 2010 assumes less dependence on costly contracts for eFACTS program development and the scoring and maintenance of examinations.
- <sup>4</sup> Fees will be re-assessed on a three year basis. Every effort will be made to further streamline the program to keep costs down, but a 3% cost-to-carry increase is projected.
- <sup>5</sup> Costs identified for FY2009 are projected based on estimated costs should all components of the program been in place. These costs do not take into account the cuts to the program due to the reduction in general fund monies for the program and the staff cuts that resulted.

**Figures do NOT include funds received from the US Environmental Protection Agency for the administration and delivery of this program.**

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### Current Fee Structure:

#### ***Fees Paid to the Department:***

##### **Operator:**

580 licenses issued x \$40 (\$20 fee for each examination session, average 2 sessions) =	\$23,200
275 upgrades and reciprocity licenses x \$20 (\$20 application fee) =	\$ 5,500
3200 renewals x \$15 (processing fee) =	\$48,000
210 Department Online Course Registrations x \$30 per hour x 2.5 hours avg. length	\$15,750
240 Department Classroom Course Registrations x \$10 per hour x 5 hours avg. length	<u>\$12,000</u>
SUBTOTAL:	\$104,450

#### ***Fees Paid to Another Entity:***

##### **Operator:**

1420 operators tested x \$50 (average fee charged by approved examination provider) =	\$71,000
10,000 operators x 5 hours continuing education x \$30 (average fee charged) =	<u>\$1,500,000</u>
SUBTOTAL:	\$1,571,000
<b>TOTAL:</b>	<b>\$ 1,675,450</b>

### Proposed Fee Structure:

#### ***Fees Paid to the Department:***

##### **Operators:**

1420 examination session fees x \$35 per session =	\$49,700
580 initial certification fees x \$150 =	\$87,000
3200 renewals x \$60 (processing fee) =	\$192,000
210 Department Online Course Registrations x \$30 per hour x 2.5 hours avg. length	\$15,750
240 Department Classroom Course Registrations x \$10 per hour x 5 hours avg. length	<u>\$12,000</u>
SUBTOTAL:	\$356,450

##### **Training Providers/Examination Providers**

15 Training Provider Approval Applications x \$90 =	\$1,350
50 Full Course Approval Applications x \$300 =	\$15,000
250 Brief Course Approval Applications x \$115 =	\$28,750
131 Conference Approval Applications x \$70 =	\$9,170
21,900 Course Roster Names x \$1 per name =	\$21,900
Approved Examination Provider Fees (based on number of sessions offered)	<u>\$ 5,600</u>
SUBTOTAL:	\$81,770

##### **Drinking Water and Wastewater Treatment System Owners:**

Drinking Water Systems Service Fees (Fee prorated by Certification Class)	\$282,785
Wastewater Treatment Systems Service Fees (Fee prorated by Certification Class)	<u>\$240,365</u>
SUBTOTAL:	\$523,150
<b>TOTAL TO DEPARTMENT:</b>	<b>\$961,370</b>

#### ***Fees Paid to Another Entity:***

##### **Operator:**

1420 operators tested x \$50 (average fee charged by approved examination provider) =	\$71,000
10,000 operators x 5 hours continuing education x \$30 (average fee charged) =	<u>\$1,500,000</u>
SUBTOTAL:	\$1,571,000
<b>TOTAL:</b>	<b>\$ 2,532,370</b>

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**(20)** In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	\$	\$	\$	\$	\$	\$
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	5.8	7.9	7.9	7.9	7.9	7.9
<b>Total Savings</b>	<b>5.8</b>	<b>7.9</b>	<b>7.9</b>	<b>7.9</b>	<b>7.9</b>	<b>7.9</b>
<b>COSTS:</b>						
Regulated Community**	2.5	2.5	2.5	2.6	2.6	2.6
Local Government	0	0	0	0	0	0
State Government ***	1.1	0.9	0.9	1.0	1.0	1.0
<b>Total Costs</b>	<b>\$3.6</b>	<b>\$3.4</b>	<b>3.4</b>	<b>3.6</b>	<b>3.6</b>	<b>3.6</b>
<b>REVENUE LOSSES:</b>						
Regulated Community	0	0	0	0	0	0
Local Government	0	0	0	0	0	0
State Government	0	0	0	0	0	0
<b>Total Revenue Losses</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

The significant savings projected in state government is due to the expected increases in federal allocations to the Drinking Water State Revolving Loan Fund. EPA is required to withhold 20% of these funds if federal guidelines for the Operator Certification Program are not met. By continuing to implement this program in accordance with these guidelines the state will continue to receive these funds.

These numbers also differ slightly from earlier figures calculated as part of the proposed regulations submitted in April 2009 to allow for the projected increase in program costs should it be decided to allow for the "banking" of continuing education credit hours.

**(20a)** Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY**
Environmental Program Management (#161-10382)	\$36,868,000	\$39,685,000	\$37,664,000	\$32,694,000

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\*\*Current year costs are based on estimates of what actual costs for the program would be if all elements of the program were being implemented. Due to budget cuts to the General Fund and the resultant furloughs, all services related to the administrative costs for examination preparation and delivery, the issuance of new operator licenses and license upgrades, technical and compliance assistance and training were curtailed indefinitely.

Costs include:

- 3.5 FTEs for administrative support in the office of general business administration funded with general funds
- 3 FTEs for training development and support funded with general funds. An additional 4 FTEs are federally funded.
- 1 FTE for technical support in the Division of Technical and Financial Assistance. An additional FTE is federally funded.
- Outreach assistance to systems to promote compliance and the development and delivery of wastewater training courses. Drinking water courses are covered with federal funds.
- Contracts for eFACTS support and the scoring of examinations.
- Salaries for wage payroll staff who serve as proctors.
- Administrative support to the State Board for Certification of Water and Wastewater Systems Operators and the Certification Program Advisory Committee.

**Figures do NOT include funds received from the US Environmental Protection Agency for the administration and delivery of this program.**

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

This costs incurred to implement this program are essential to insure long-term compliance with federal and state statutory requirements. Failure to remain in compliance with the federal requirements will result in the US Environmental Protection Agency being forced to withhold up to 20% of the Federal State Revolving Loan Fund, or approximately \$5.8 million per year. This funding is essential for the upgrade, repair and replacement of the Commonwealth's drinking water systems. This loss in funding is double the costs incurred by the regulated community and the state for the implementation of this program.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

This final rulemaking had extensive public input during its development. Early in the development process, numerous statewide meetings were held throughout the state as part of different industry association conferences and workshops. In addition, over 400 system owners attended 9 workshops designed to highlight how this final rulemaking will impact them. In addition, over 1,000 operators attended over 10 workshops held across the state designed to highlight those provisions that impact operators, both certified and non-certified. Finally, another 8 workshops were held specifically to explain the grandparenting provisions to operators and owners of nontransient noncommunity water systems and wastewater collection systems. The Department and the Certification Board have had extensive input over a twelve -year period from the Small Systems Technical Assistance Center Advisory Board and later the Certification Program Advisory Committee. A few of the other associations that provided input

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included the American Water Works Association (Pennsylvania section), the Pennsylvania Rural Water Association, the Pennsylvania Water Environment Association, the Water Works Operators Association of Pennsylvania, the Society of Professional Engineers, and the Pennsylvania Municipal Authorities Association.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

There were a number of regulatory and legislative schemes considered during program development. The basic program schemes included:

- Program Funding (self funded with a restricted account vs. funded by general revenue funds)
- Program Coverage (drinking water vs. drinking water and wastewater certification)
- Program Training (state providers vs. private sector providers)
- Program Examination Methods (single national recognized examination vs. technology-based examinations)

### *Program Funding*

The cost of administering the operator certification program could have been very significant. With thousands of operators and owners, each requirement could have created a tremendous resource commitment for the state.

The program is designed to be self-supporting. These rules and regulations reflect no increase in funding from the state general fund. The proposed fees will cover the cost of this program. Revisions to the business processes of the program have significantly reduced the cost for administering this program. The proposed fees also reflect national averages of cost of similar sized programs in other states.

### *Program Coverage*

The operator certification program is administered through the authority provided by the Act. Training, examination development and administration, operator qualification review, and certification actions were provided for both drinking water and wastewater system operators. The requirements of the SDWA set new standards for certifying the operators of drinking water systems. It did not require that wastewater operators meet the same standards. After careful consideration, it was decided to apply the federal standards to both drinking water and wastewater treatment system operators. The reasons for this decision includes:

1. The requirements for water and wastewater treatment system operators have been the same for over 35 years.
2. Different standards for water and wastewater system operator certification would require expensive and duplicative program elements such as different forms, account codes, and separate rules and regulations.
3. Two different and separate programs, one for drinking water system operators, and one for wastewater treatment system operators would significantly increase the cost of program administration.
4. Improvements to the drinking water operator certification program would be unfair to the wastewater

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operator certification program. Both programs needed to be restructured to meet current-day demands.

The EPA Set-Aside Grant provided by the SDWA funded the cost of developing most of the new administrative systems for this program. By simply piggy backing the wastewater elements of the program on to these administrative systems, the entire operator certification program improved. Wastewater costs do not qualify for federal funding, but some limited state funding has been provided.

### *Program Training*

The requirements of the final regulations require approximately 80,000 person hours of training each year. The cost to the Department to provide for this additional training would be approximately \$2.4 million per year. This is based on a \$30/hour cost.

The Department decided the private sector must be used to meet this training demand. Through the creation of a Department-approved training program, individual training providers and their courses are now meeting this need. Training is being delivered by a combination of state colleges and universities, trade schools, industry associations, and for-profit companies. The free market is keeping the costs for this training at a reasonable rate. This alternative regulatory scheme greatly reduces the cost of program training for the state.

Due to the success of this effort Department staff has now been re-assigned to training development and the auditing of training programs, rather than the costly, ineffective delivery of training programs. However, certain regulatory training initiatives will have to remain as the responsibility of the Department.

### *Program Examination Methods*

The entire examination process for the operator certification program was completely revised in 2005. As a result, the cost of administering the exam has been reduced from \$250 per person to less than \$25 per person. This excludes staff costs associated with processing the application for certification, determining qualifications, and issuing the certification license. The new examinations allow the applicant to obtain training and take the examination for the specific technology(s) at their system. Training modules for use by approved training sponsors have also been finalized for each of the examination and certification classifications. This should improve the pass/fail rate of the examination. It should also reduce the training cost associated with enrolling in classes that cover unneeded material.

**(24)** Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

Yes, the federal standards only apply to the drinking water operator certification program. The Department and the Certification Board found it appropriate to also apply these standards to the wastewater operator certification program. These reasons were provided in Section 23.

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**(25)** How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

A nationwide survey of all state operator certification programs was used to develop this final rulemaking. Requirements for experience, training and continuing education were established based on national averages for these requirements. A comparison of the fee structure of other states with similar programs was utilized as a comparison tool to insure the fees are reasonable. This final rulemaking would not put Pennsylvania at a competitive disadvantage. It will actually be easier to keep certified operators from moving into neighboring states for employment.

**(26)** Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

Yes, there is some overlap between this final rulemaking and the rules and regulations for the Environmental Laboratory Accreditation Act. This overlap relates to the designation of a certified operator as a laboratory supervisor for a water or wastewater treatment system. Once these proposed regulations are put in place, a subclass for laboratory supervisor can be created as another tool for systems to insure compliance with the Environmental Laboratory Accreditation Act requirements.

There is also some overlap with the Department's regulations for Chapter 109, Safe Drinking Water Regulations. Revisions to Chapter 109 are now in place to insure consistency between the two regulations. These revisions eliminated the requirement for training in corrosion control treatment in favor of operators becoming certified for this technology. Additionally, the specifications for when a certified operator is required are being updated to insure consistency with federal guidelines for the Operator Certification Program.

**(27)** Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

For the past three years, much of the record keeping and paperwork done to register applicants for the certification examination has been completed by universities and colleges, industry associations and private firms who have become Approved Examination Providers. For this service, the operator is charged a nominal fee to sit for the examination. Department staff previously did this work.

The new business processes developed for this program have significantly reduced the amount of paperwork required by an operator to become certified. Operators only have to document their experience and education once to become certified. They may apply for an upgrade in their license by simply documenting completion of the additional experience requirements or passing any required additional examinations.

Operators must obtain a Criminal History Record from the Pennsylvania State Police. This needs to be submitted with initial applications for certification or re-certification. The requirement to submit this

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paperwork for certificate renewal has been completed for all operators who were certified at the time the Act passed.

Certified operators must report to the system owner any known violations or system conditions that may be or are causing violations of any federal or state law or rules and regulations promulgated thereto or permit conditions and requirements applicable to the operation of water or wastewater systems. This report must include any recommendations the operator may have to address the issue.

It is recommended that the certified operator maintain records of their continuing education contact hours as a backup, just in case the state-approved training providers fail to provide such information to the Department. The training provider is required to provide a certificate of completion to the certified operator upon course completion. The provider is also required to submit a class roster of those who attended and completed the course to the Department.

Owners of treatment systems, upon written request from the Department, must identify their available, certified operators to the Department. Any changes in employment must also be reported to the Department within 10 days.

Training providers must submit a one-time application for designation as an approved training sponsor. An application for approval of each course must also be submitted. This process and all the applicable forms are described in the Department's guidelines, "Training Provider Manual for the Pennsylvania Water and Wastewater System Operator Training Program," DEP ID: 383-2300-002.

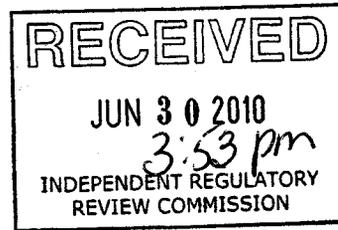
Approved Examination Providers must submit a one-page application to schedule examinations. They must also comply with Board guidelines for the scheduling and administration of examinations.

**(28)** Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

Special certification classifications and training for small water system operators is provided for in this final rulemaking.

FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
BUREAU

(Pursuant to Commonwealth Documents Law)



DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality.  
Attorney General

By: \_\_\_\_\_  
(Deputy Attorney General)

DATE OF APPROVAL \_\_\_\_\_

Check if applicable  
Copy not approved. Objections attached.

Copy below is hereby certified to be true and  
correct copy of a document issued, prescribed or  
promulgated by:

DEPARTMENT OF ENVIRONMENTAL  
PROTECTION  
ENVIRONMENTAL QUALITY BOARD

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 7-433

DATE OF ADOPTION JUNE 15, 2010

BY John Hanger

TITLE JOHN HANGER  
CHAIRPERSON

EXECUTIVE OFFICER CHAIRMAN OR SECRETARY

Copy below is hereby approved as to form and legality  
Executive or Independent Agencies

BY Andrew C. Clark  
DATE OF APPROVAL JUN 17 2010

(Deputy General Counsel)  
(~~Chief Counsel - Independent Agency~~)  
(~~Strike inapplicable title~~)

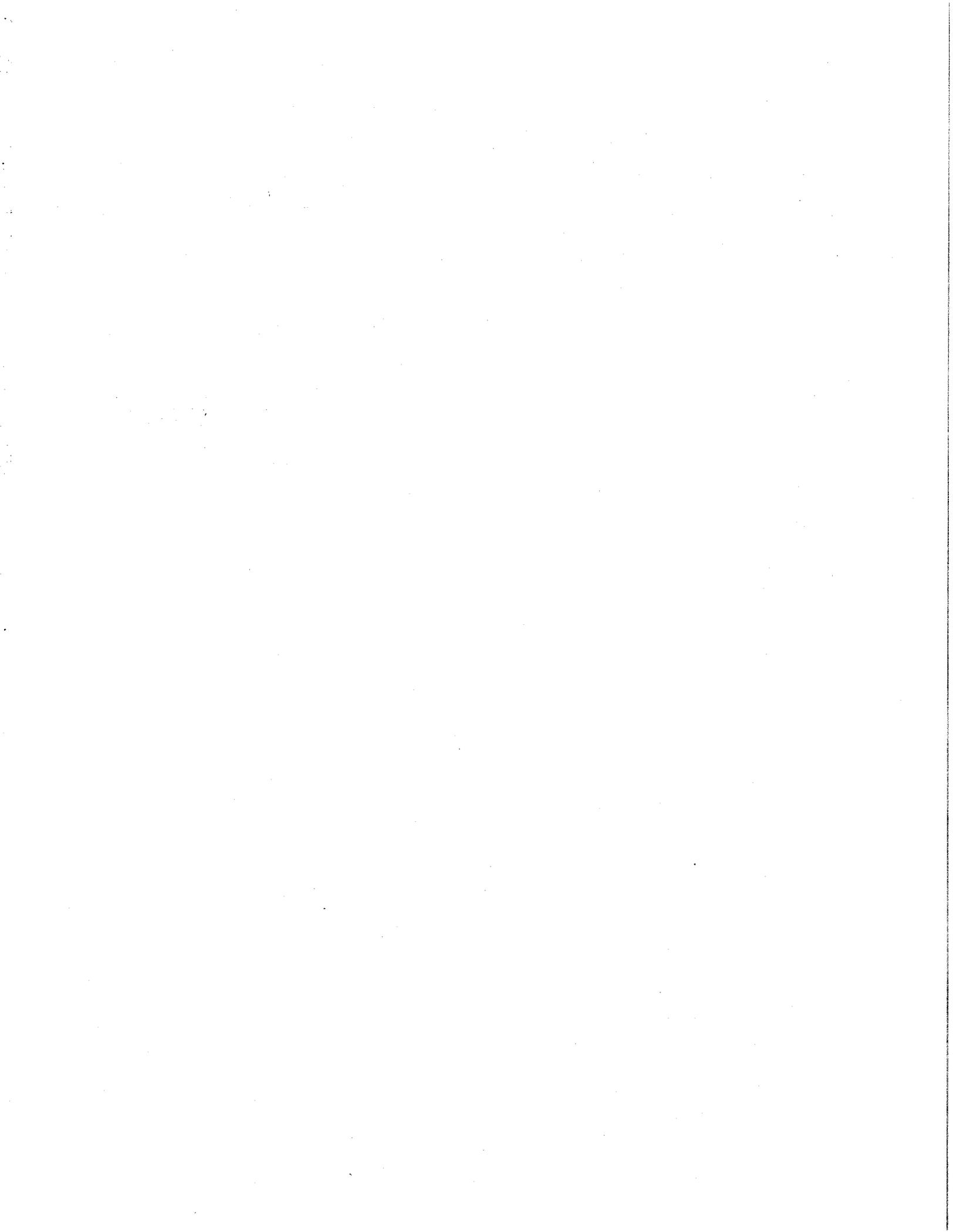
Check if applicable. No Attorney General Approval  
or objection within 30 days after submission.

NOTICE OF FINAL RULEMAKING

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
ENVIRONMENTAL QUALITY BOARD

Administration of the Water and Wastewater Systems Operators' Certification Program

25 Pa. Code, Chapters 301 – 303 and 305



**Notice of Final Rulemaking**  
**Department of Environmental Protection**  
**Environmental Quality Board**  
**(25 Pa. Code Chapter 302)**

**Administration of the Water and Wastewater Systems Operators' Certification Program**

**Order**

The Environmental Quality Board (Board) by this order creates 25 Pa. Code Chapter 302 and deletes existing Chapters 301, 303, and 305 (relating to the administration of the water and wastewater systems operators' certification program). This final rulemaking describes the process the State Board for Certification of Water and Wastewater System Operators (Certification Board) will follow to administer the program and identifies the duties and responsibilities of the Department of Environmental Protection (Department) and the operators and owners of this Commonwealth's drinking water and wastewater treatment systems. Additionally, it establishes standards for operator certification, recertification, certification renewal and security training; defines the certification renewal period and requirements for certification renewal; establishes appropriate fees; and defines classifications and subclassifications for certification.

This order was adopted by the Board at its meeting of June 15, 2010.

**A. Effective Date**

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

**B. Contact Persons**

For further information, contact Veronica Kasi, Chief, Division of Technical and Financial Assistance, P. O. Box 8467, Rachel Carson State Office Building, Harrisburg, PA 17105-8467, (717) 772-4053 or William Cumings, Bureau of Regulatory Council, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the Pennsylvania AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final rule is available electronically through the Department's web site at [www.depweb.state.pa.us](http://www.depweb.state.pa.us).

**C. Statutory Authority**

The final rulemaking is being made under the authority of section 4(c) of the Water and Wastewater Systems Operators' Certification Act (63 P.S. § 1004(c)) (Act), which directs the adoption of rules and regulations necessary to implement the act and section 1920-A of the Administrative Code of 1929 (71 P.S. § 510-20) which authorizes the Board to

promulgate rules and regulations necessary for the performance of the work of the Department.

#### **D. Background and Purpose**

This final rulemaking describes the policies and procedures the Certification Board and the Department will follow to implement their responsibilities and duties under the Drinking Water and Wastewater Systems Operators' Certification Act (63 P.S. §§1001 – 1015.1). (Act) This includes the procedures to be followed by applicants to become certified to operate a water or wastewater treatment system for the first time, to renew their certification, and to apply for reciprocity based on certification received from another state. The regulations also describe the procedure the Certification Board will follow for the review of all applications for certification, including the review of criminal history records. The regulations also define requirements for the suspension or revocation of an operator's certificate, upon petition by the Department and for the review of Department decisions related to operator training programs and courses. The final rule also establishes the standards and requirements for operators of water and wastewater systems to become certified and maintain their certification. It also establishes the duties and responsibilities of operators and owners related to the operation of a community or nontransient, noncommunity water system, water distribution system, wastewater treatment system treating more than 2,000 gallons per day (gpd) and a satellite wastewater collection system with a pump station. Finally, fees to cover the costs of program administration are established.

This final rule ensures that Pennsylvania's Operator Certification Program will continue to meet the Federal requirements established in the 1996 Amendments to the Federal Safe Drinking Water Act (SDWA) for all State drinking water programs. This rule is more stringent than the Federal guidelines in one area. The federal guidelines apply only to drinking water system operators; this rule also applies to wastewater system operators. The decision to include wastewater system operators in the new requirements was made early in the process by the Certification Board and the Department after significant public input. This was done to improve program consistency and implementation.

The Department and the Certification Board worked very closely with the Small Systems Technical Assistance Center for Small Systems (TAC) and the Certification Program Advisory Committee (CPAC) to draft Chapter 302. All elements of the overall structure of the Operator Certification Program were discussed in-depth with the respective committees. This resulted in consensus on the essential requirements and standards for certification and the roles and responsibilities of operators and system owners.

#### **E. Summary of Final-Form Rulemaking and Changes From Proposed to Final Form-Rulemaking**

The Environmental Quality Board approved the proposed rulemaking with a 30-day public comment period on April 21, 2009. A notice of proposed rulemaking was published in the *Pennsylvania Bulletin* at 39 PaB. 3591 (July 11, 2009). Public

comments were accepted from July 11, 2009 through September 9, 2009. The comment period was extended at the request of the regulated community and the Independent Regulatory Commission. The Department received comments from 77 commentators. Based on comments received during this official comment period and because the proposed regulation contained significant changes in several areas, the Department prepared an Advanced Notice of Final Rulemaking (ANFR) package for additional public comment. A notice of the availability of the ANFR was published in the *Pennsylvania Bulletin* at 40 PaB. 560 (January 23, 2010). This notice was optional as it is not required by the Regulatory Review Act. However, this procedure allowed the Department to solicit additional comments prior to presenting a final rulemaking package to the Board. Comments submitted to the Department on the ANFR are summarized and responded to by the Department in this Order and in a separate more detailed comment and response document. Comments from the ANFR were received through February 26, 2010 with the Department receiving comments from 13 commentators. In addition to the previous opportunities for public comment on the proposed regulations, the public was again provided an opportunity to comment at the Certification Board meeting on March 19, 2010. These comments were taken into consideration by the Certification Board in the preparation of their final comments on the regulations and both comment response documents prepared by the Department.

The following is a summary of each subchapter and the changes made from proposed to final-form rulemaking.

Subchapter A – This subchapter defines the universe of the regulated community impacted by these regulations, establishes definitions and clarifies the standards that must be met for certification. This subchapter was re-structured to split the universe of the regulated community between drinking water and wastewater systems and to highlight the standards of certification. A number of definitions were deleted. The following terms were added or edited:

*Activated Sludge*  
*Board Designated Agent*  
*Board Secretary*  
*Client ID*  
*Conventional Filtration*  
*Direct Filtration*  
*Environmental Quality Board*  
*Groundwater*  
*Permitted Average Daily Discharge Flow*  
*Political Subdivision*  
*Programmable Logic Controls (PLC)*  
*Recertification*  
*SCADA System*  
*Site Specific*  
*Ultraviolet Disinfection*

*Administrative Hearing*  
*Board Guidelines*  
*Certificate Program*  
*Contact Hour*  
*Department*  
*Environmental Hearing Board*  
*Fee*  
*Membrane Filtration*  
*Person*  
*Post-presentation Credits*  
*Public Water System*  
*Satellite Collection System*  
*Single Entity Collection System*  
*Upgrade*

Subchapter B – This subchapter prescribes what a complete application should include for certification, recertification, upgrade, renewal and reciprocity along with how to obtain the appropriate Department approved application forms. In addition, this subchapter discusses Operator Certification Program Fees. Revisions to this subchapter were made to clarify how to obtain appropriate Department approved application forms from the Board Secretary or through the Department’s web site and to refine how the fees will be applied.

Subchapter C – This subchapter covers the procedures the State Board for Certification of Water and Wastewater Systems Operators (Certification Board) will follow in implementing its powers and duties as defined in the Act. These include the issuance of certificates for certification or recertification, upgrade, reciprocity, renewal, and extensions. Also, this subchapter prescribes the actions the Board can take to suspend, revoke, modify or reinstate an operator’s certificate upon petition by the Department or review Department training decisions. Revisions to this subchapter were made to provide more definitive time frames for these procedures.

Subchapter D – This subchapter identifies and explains the requirements for submission of a Criminal History Record (CHR), the investigation and review procedures the Board must adhere to, the prescribed actions the Board can take as a result of a CHR, and the time frame for action by the Certification Board. Changes in this section further clarified the requirements and responsibilities of the applicant, the Department and the Certification Board.

Subchapter E – This subchapter prescribes the general requirements for Administrative Hearings. These hearings will be conducted by the Certification Board in accordance with these procedures whenever the Department petitions the Certification Board to suspend, modify or revoke an operator’s license. There were no substantive changes to this Subchapter.

Subchapter F – This subchapter discusses the examination requirements. This includes general provisions for developing and administering valid certification examinations (using psychometric principles and recognized industry standards) to measure an applicant’s knowledge, skills and abilities to make process control decisions. Additionally, this subsection discusses the roles and responsibilities for the Department, the Certification Board and approved examination providers in the preparation and administration of these examinations. Eligibility requirements that an applicant must comply with in order to take an examination are also defined. Revisions to this subchapter were made to limit the situations where an operator must re-take an examination.

Subchapter G – This subchapter discusses the minimum education, examination, and experience requirements; defines the methodology for determining qualifying experience and creates an accelerated certification option for systems having to upgrade the system for various reasons that will require the available operators to also upgrade their license. Provisions for accelerated certification were modified in response to comments to clarify

that operators who meet the requirements for accelerated certification do not have to meet additional experience requirements.

Subchapter H – This subchapter establishes standards for the training approval program, establishes the continuing education requirements for certificate renewal and defines the system security training requirements. Significant revisions were made to Section 302.804 in response to comments to add criteria to define when the Department would require additional training. The Department would also be required to notify the operators needing to take this additional training in writing.

Subchapter I – This subchapter deals with the classification and subclassification of water and wastewater systems. Revisions to Sections 302.901 and 302.902 identified what conditions or circumstances the Department would consider when defining a change in classification and/or subclassification of a water or wastewater system. These include an increase in capacity that changes the class of the system, the addition or loss of a treatment technology, other federal or state regulatory changes relating to a treatment technology used at a system and the issuance of a permit changing the class or subclassification of a system.

Subchapter J – This subchapter outlines the certification classes and subclassifications for water and wastewater operators. Also, operator-in-training status, grandparented operators and laboratory supervisor certification are discussed. Section 302.1006 was revised to ensure consistency with Chapter 252, Laboratory Accreditation regulations.

Subchapter K – This subchapter applies to a professional engineer registered under the Engineer, Land Surveyor and Geologist Registration Law (63 P. S. §§ 148 – 158.2) who has been successfully examined in civil, environmental or sanitary engineering and is a certified operator, or an applicant for operator certification. Also, provisions for issuance of initial certification and experience requirements for professional engineers are discussed.

Subchapter L – This subchapter defines the duties owners and operators may perform, identifies who can make process control decisions, lists the components of a process control plan, defines Standard Operating Procedures and its contents, characterizes the number of operators required at a system and defines the role of the operator in responsible charge. In addition, this subchapter defines the conditions under which an owner can choose to use a circuit rider or a Programmable Logic Controls (PLCs) and supervisory control and data acquisition system (SCADA) to ensure process control decisions are made properly by a certified operator. Significant changes were made to this Subchapter to refine the duties of operators and owners to address concerns of commentators about the level of operator liability, define criteria under which the Department would require a process control plan, to further refine who can make process control decisions at a system and to eliminate the need for an operator to submit written reports to the owner when the operator suspects conditions exist that are, or may, result in a violation. The operator would still be required to report such conditions to the owner, orally or otherwise. Required compliance was clarified to only include those federal or

state laws or rules and regulations promulgated thereto or permit conditions and requirements applicable to the operation of water or wastewater systems. The final section in this Subchapter was added to provide that fines and penalties for violations of certain sections of the Act will only be assessed after an order of the Department has been violated.

#### **F. Summary of Comments and Responses Regarding the Proposed Rulemaking**

The Environmental Quality Board approved the proposed rulemaking with a 30-day public comment period on April 21, 2009. A notice of proposed rulemaking was published in the *Pennsylvania Bulletin* at 39 PaB. 3591 (July 11, 2009). Public comments were accepted from July 11, 2009 through September 9, 2009. The comment period was extended at the request of the regulated community and the Independent Regulatory Commission. The Department received comments from 77 commentators. Based on comments received during this official comment period and because the proposed regulation contained significant changes from existing regulations in several areas, the Department prepared an Advanced Notice of Final Rulemaking (ANFR) package for additional public comment. A notice of the availability of the ANFR was published in the *Pennsylvania Bulletin* at 40 PaB. 560 (January 23, 2010). Comments from the ANFR were received through February 26, 2010 with the Department receiving comments from 13 commentators. In addition to the previous opportunities for public comment on the proposed regulations, the public was provided an opportunity to comment at the Certification Board meeting on March 19, 2010. These comments were taken into consideration by the Certification Board in the preparation of their final comments on the regulations and both comment response documents prepared by the Department.

The major changes made to the final rulemaking in response to comments received during the public comment period can be categorized as follows:

- **Definitions** – A number of definitions were revised as suggested by the commentators. In addition, the definitions for conventional filtration, membrane filtration and ground water were revised to insure continued consistency with Department regulations for the Safe Drinking Water Program.
- **Scope** – This section was revised to more accurately capture the standards that must be met to ensure compliance.
- **Fees** – While the actual fee structure did not change, further clarification as to how the fees would be applied was added. Several commentators requested that a dedicated fund for the program fees be established.
- **Collection Systems** – The Section distinguishing the requirement for a certified operator based on ownership was deleted. The definitions for single entity and satellite collection systems were revised to parallel statutory language.
- **Laboratory Supervisor Subclassification** – Sections referring to this subclassification were revised to insure consistency between Chapter 302 and provisions of Chapter 252, relating to Laboratory Accreditation. Provisions for the grandparenting of existing laboratory supervisors were added. In addition, language

providing existing certified operators, who want to continue as the laboratory supervisor, will have twelve months after the Certification Board starts offering this subclass to satisfy the standards for certification.

- **Operator Liability** – A new section 1209 (Assessment of Fines and Penalties) has replaced the previous Section 1209 (Satellite Collection Systems). Section 1209 was added to provide the Department’s assessment of a penalty for violations of certain sections of the act will be based on a person’s failure to comply with an order of the Department. This has always been the intention of the Department and the way the program has been implemented since 2002. In addition operator responsibility for compliance was limited to only those laws, rules and regulations and permit conditions related to the operation of a water or wastewater system. Responsibility for results of Standard Operating Procedures was limited to only those actions taken by operators under the direct supervision of the operator in responsible charge.
- **Duties of Operators** – The duties of operators were revised to parallel statutory language. Additional language to further clarify the statutory requirement for a report from the operator to an owner regarding violations and potential violations was deleted.
- **Process Control Decisions** – Language pertaining to Department staff making process control decisions under specific situations was deleted.
- **Process Control Plans** – Language was added to clarify when the Department would ask for the development of these plans and who would be responsible for their development.
- **Security Training** – Further definition as to when and how the Department could require additional security training beyond the initial training course was added.

The major changes made to the final rulemaking in response to comments received during the ANFR can be categorized as follows:

- **Scope** – This section was revised to more accurately capture who is impacted by the regulations.
- **SCADA Systems** – Language was revised to more accurately reflect the level of input an available operator should have in the programming, operation and maintenance of a SCADA system and how the use of these systems impact the operation of a water or wastewater system.
- **Circuit Riders** – Language was changed to insure the requirements for the use of a circuit rider only apply to those systems owned by different entities but operated by the same available operator. In addition the content and requirements for a general workplan were modified.

The following were comments received during the public comment period that did not result in a change in the final rulemaking. The same topic was also raised by some commentators as part of the ANFR:

- **Available Operator Report** – Commentators wanted the submittal of this report eliminated. However, the Department feels this report is an essential tool to ensure

accuracy of the Department's records to comply with federal and statutory requirements.

- **Consequences of Process Control Decisions** – A complete level of comfort with the issue of operator liability and the consequences of process control decisions can not be reached in regulation because of the need to consider each situation on a case-by-case basis. Language provided by commentators as part of the ANFR process would have transferred much of this responsibility to the owner, instead of the operator. Federal guidelines and requirements do not allow for this transference.

The following comment was received during the ANFR process that did not result in a change in the final rulemaking:

- **Automatic Extensions** – Commentators wanted an automatic 90-day extension of an operator's renewal cycle if the operator had completed some, but not all, of the continuing education hours needed for certificate renewal. The existing framework allows for these extensions to be awarded upon request to the Certification Board. The Certification Board needs to continue to review these situations on a case-by-case basis and award the extensions when warranted.

One final issue identified by the commentators during the public comment period that did not result in a change in the final rulemaking at this time is allowing operators to "bank" extra continuing education credits from one renewal cycle to the next cycle. At the request of CPAC, TAC and the Certification Board, the Department has initiated further research on the feasibility of implementing a "banking" option. To that end, the Department has committed to working with CPAC, TAC, the Certification Board and other representatives of the regulated community, including approved training providers and certified operators, to explore issues relevant to the successful implementation of a "banking" option. If such an option appears to be feasible, the Department may initiate regulatory revisions to allow for the banking of extra continuing education credits. The Department's analysis will be done as soon as possible, but no later than three years from now when the Department is required to submit its first review of the proposed fee structure.

#### **G. Benefits, Costs and Compliance**

**Benefits** - The intended results of these regulations are to protect the environment, ensure the public's health and safety and promote the long-term sustainability of the Commonwealth's drinking water and wastewater treatment systems by ensuring that certified operators with the appropriate knowledge, skills and abilities are available to make the necessary process control decisions. Therefore, the biggest beneficiary of these regulations is the general public.

The classification and subclassification framework more accurately reflects what the operator needs to understand to operate a system effectively and successfully. This framework was developed in partnership with representatives of the regulated community to meet their needs. In addition, in some instances, once certified, many operators will

receive an increase in pay. Finally, the system owners may also benefit from cost savings realized through more effective and efficient operation of their water or wastewater system.

Implementation of these regulations will ensure continued approval of Pennsylvania's Operator Certification Program by EPA. This approval is reviewed on an annual basis. If the EPA chooses not to approve the program, the state stands to lose approximately \$5.8 million per year in federal funding for the State Revolving Loan Fund, administered by the Pennsylvania Infrastructure Investment Authority.

**Compliance Costs** - Any individual responsible for making process control decisions at a drinking water or wastewater treatment system in Pennsylvania must be appropriately certified for that system. A process control decision is any decision that changes or maintains water quality or water quantity to protect public health or the environment. All owners of a drinking water community or nontransient noncommunity water system, drinking water distribution system, wastewater treatment system treating more than 2000 gallons per day or a satellite wastewater collection system with a pump station must designate at least one certified operator to make all the process control decisions for the system.

The estimated costs to the operator to comply with provisions of these regulations are summarized below in Table 1.

**Table 1. Estimated Costs to the Operator**

<b>Requirement</b>	<b>Cost</b>	<b>Description / Comments</b>
Initial certification	\$150	Paid to the Department, this fee is incurred when a person submits an application to become a certified operator. This certification is valid for 3 years.
Certification Renewal	\$60	Paid to the Department, this cost is incurred once every 3 years after the initial certification period.
Examination fee: for both initial certification and certain upgrades to license	\$35 per examination session	Paid to the Department. Operators are allowed to take as many examinations as they think they can complete in four hours. Most operators are able to complete the necessary examinations needed for the more common treatment systems within one or two sessions.
Examination Provider Registration fee	Varies	Paid to the Approved Examination Provider. These fees are not established by the Department, however, we recommend less than \$100. Fees are designed to allow the Approved Examination Provider the ability to recover incurred costs.
Criminal History Record	\$10	One time fee charged by the Pennsylvania

		State Police.
Continuing Education	\$240 – \$900	Paid to one of the Department’s Approved Training Providers. Depends on number of hours needed and average cost per hour for training

These regulations authorize an annual service fee for system owners, based on the amount of flow the system is permitted to treat. The assessment of this fee is tied to the classification of the system and the certification class needed by the system owner’s designated available operator(s). The maximum fee that any one owner of more than one system pays is \$10,000. The only other cost for compliance for the owner is the actual costs for hiring a certified operator. The average cost to hire a certified operator is between \$30,000 and \$80,000 per year (based on a limited survey of operators completed in 2003). It is strongly advised that owners hire more than one certified operator. However, unless there are problems at the system, this responsibility is left to the owner. If necessary, the Department does have the authority to order the owner to hire additional certified operators, to address specific environmental compliance problems. In addition, the owner may choose to cover the operator’s costs for obtaining continuing education contact hours. This is an arrangement negotiated between the owners and their certified operators.

**Compliance Assistance Plan**

The Department is implementing a comprehensive training and compliance assistance strategy to assist operators and owners who are required to comply with provisions of the Operator Certification Program. This includes web-based training through the Department’s EarthWise Academy, additional classroom training as needed, a comprehensive training approval process and packaged training programs. This comprehensive strategy is designed to take advantage of existing training expertise in the industry; and promote a market for training providers to meet the training needs of this program. Additional compliance assistance is available through the Drinking Water Capability Enhancement Program, the Wastewater Diagnostics Program and the Drinking Water and Wastewater Outreach Assistance Provider Programs.

**Paperwork Requirements**

The following is a list of paperwork requirements for the operator as established in Chapter 302. Beyond the operator’s time and the program fees identified above, there are no additional costs for this paperwork.

1. Certification Examination Registration Form (to register to take an examination)
2. Application for Certification Action (for certification, re-certification, certification upgrade, or certification through reciprocity)

3. Application for Certification Renewal (done once every three years)
4. Criminal History Report from the Pennsylvania State Police
5. Application for Exemption (only needed if operator will not be able to complete requirements for initial certification or certification renewal due to extenuating circumstances such as military service or health problems)
6. The development and approval of Standard Operating Procedures, if the operator and owner choose to utilize this tool to ensure all process control decisions are made by an available operator.
7. The development and approval of a Process Control Plan that describes all the operational procedures for a drinking water or wastewater treatment system. This will only be required by the Department on a case-by-case basis; depending on the level of non-compliance at the system and the existence of equivalent plans, such as an Operation and Maintenance Plan, an Emergency Response Plan or Standard Operating Procedures.
8. The development of a Management Plan or contract, if an operator wants to serve as a circuit rider, where he or she is responsible for more than one drinking water or wastewater treatment system. The Management Plan or contract should identify the systems, their characteristics, points of contact, and the number of visits or expected hours the operator will complete in a designated time frame. System specific plans must also be developed for each system to include procedures to be followed by personnel at the system when the circuit rider isn't at the system.
9. The operator must notify the owner of any violations or potential violations at the system. Recommendations, if the operator has any, for resolving the problem should also be included.

The owner will need to report the names, addresses and level of certification of all operators designated as available operators for the system upon written request from the Department. Changes in available operators must be reported within ten days. If the owner(s) chooses to designate an operator(s) in responsible charge in order to utilize standard operating procedures, the name(s), addresses and level of certification of these operators must also be reported to the Department upon request.

Any training provider who would like to provide training to operators to meet the training or continuing education requirements must become an approved training sponsor, and have all courses approved. This process is documented in the "Training Provider Manual for the Pennsylvania Water and Wastewater System Operator Training Program," DEP ID: 383-2300-002.

Any entity which would be an Approved Examination Provider must become approved and comply with the Certification Board guidelines for the scheduling of examinations and the registration of applicants.

## **H. Pollution Prevention**

The Federal Pollution Prevention Act of 1990 (42 U.S.C. §§ 13101-13109) established a national policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This regulation has incorporated the following pollution prevention incentives by ensuring that qualified, certified operators are making all operational decisions in Pennsylvania's drinking water and wastewater treatment systems. The water and wastewater treatment system operator is the key element in overall process control. By improving the certified operator's capabilities, more effective treatment and removal of pollutants and better use of available resources will result. Testing and training programs are designed to focus on different ways the operator can more effectively operate his or her system to minimize and prevent pollution and conserve energy.

## **I. Sunset Review**

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

## **J. Regulatory Review**

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on June 30, 2009, the Department submitted a copy of the notice of proposed rulemaking, published at 39 *Pa.B.* 3591, and a copy of the Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the official public comment period and other documents when requested. In preparing these final-form regulations, the Department has considered all comments from IRRC, the Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act, on \_\_\_ (blank) \_\_\_, these final-form regulations were deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_ (blank) \_\_\_ and approved the final-form regulations.

## **K. Findings of the Board**

The Board finds that:

1. Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at *1 Pennsylvania Code* §§ 7.1 and 7.2.
2. A public comment period was provided as required by law, and all comments were considered. Also, the Department undertook an ANFR (optional process not required by law), to allow an additional 30 day comment period. Notice of the ANFR was published in the *Pennsylvania Bulletin* at 40 PaB. 560 (January 23, 2010).
3. These regulations do not enlarge the purpose of the proposal published in the *Pennsylvania Bulletin* at 39 PaB. 3591 (July 11, 2009).
4. These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

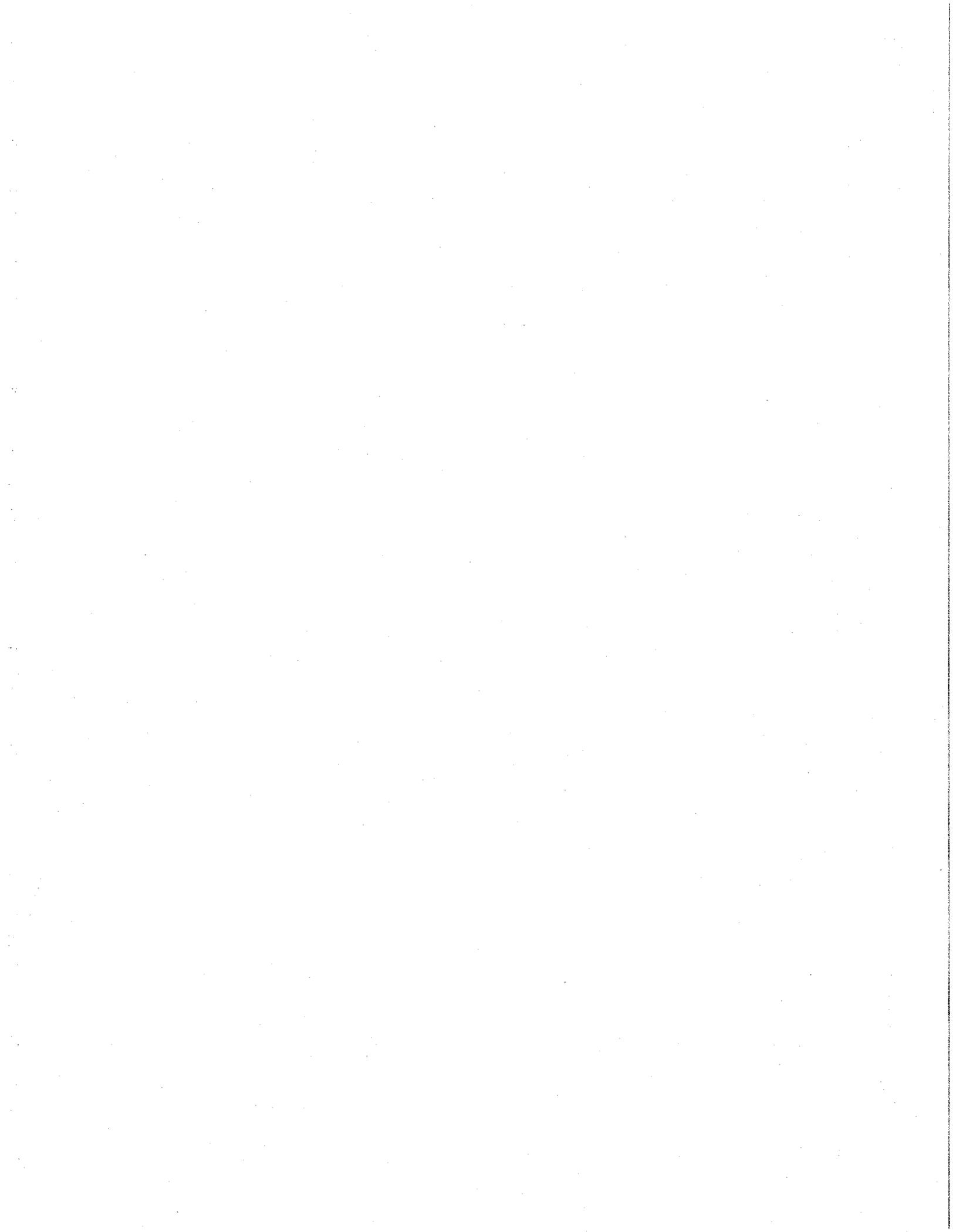
**L. Order of the Board**

The Board, acting under the authorizing statutes, orders that:

- (a) The regulations of the Department of Environmental Protection, *25 Pennsylvania Code*, Chapter 302, are adopted to read as set forth in Annex A.
- (b) Existing regulations at *25 Pennsylvania Code* Chapters 301, 303, and 305 are deleted and the sections reserved as set forth in Annex A.
- (c) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.
- (d) The Chairperson of the Board shall submit this order and Annex A to the Independent Regulatory Review Commission and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.
- (e) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.
- (f) This order shall take effect immediately.

BY:

JOHN HANGER  
Chairman  
Environmental Quality Board



**Annex A**

**TITLE 25. ENVIRONMENTAL PROTECTION**

**Part I DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**Subpart C. PROTECTION OF NATURAL RESOURCES**

**Part II. STATE BOARD FOR CERTIFICATION OF SEWAGE TREATMENT PLANT AND  
WATERWORKS OPERATORS**

**CHAPTER 301. [Reserved]**

**§§ 301.1—301.3. (Reserved).**

**§§ 301.11—301.13. (Reserved).**

**CHAPTER 302. ADMINISTRATION OF THE WATER AND WASTEWATER SYSTEMS  
OPERATORS' CERTIFICATION PROGRAM**

**CHAPTER 303. [Reserved]**

**§§ 303.1—303.3. (Reserved).**

**§§ 303.11—303.14. (Reserved).**

**§§ 303.21—303.28. (Reserved)**

**§§ 303.31—303.34. (Reserved).**

**CHAPTER 305. [Reserved]**

**§§ 305.1—305.7. (Reserved).**

(Editor's Note: As part of this final rule, the Environmental Quality Board is rescinding the existing text of Chapters 301, 303 and 305, which currently appears in 25 Pa Code pages 301-1 – 301-4, 303-1 – 303-11, and 305-1 – 305-3, serial pages (228347) to (228350), (252853), (252854), (281973), (281974), and (252857) – (252867). The following text is for a new Chapter 302 and printed in regular type to enhance readability.)

## CHAPTER 302. ADMINISTRATION OF THE WATER AND WASTEWATER SYSTEMS OPERATORS' CERTIFICATION PROGRAM

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##### **§ 302.101. Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

*Accelerated certification* – A method of upgrading a system's available operators' certificates to accommodate a change in the system's capacity or treatment technology.

*Act* - The Water and Wastewater Systems Operators' Certification Act, (63 P.S. §§1001 – 1015.1).

*Activated carbon adsorption* – A water treatment process designed to improve the quality of water being treated by using activated granular or powdered carbon to remove specific organic chemical compounds by adsorption.

*Activated sludge* – The treatment technology that mechanically introduces air into wastewater to achieve microbiological suspended growth treatment such as extended aeration, sequential batch reactors, contact stabilization, conventional, step **[fed] FEED** or oxidation ditch.

~~[Administrative Code—The Administrative Code of 1929 (71 P. S. §§51—732).]~~

*Administrative hearing* – A meeting of the Board, or Board-designated agent, held upon petition of the Department to revoke, suspend, modify or reinstate an operator’s certificate in accordance with 2 Pa. C.S. Chapter 5 Subchapter A ~~[and Chapter 7 Subchapter A]~~ (relating to Administrative Agency Law).

*Aeration* – A water treatment process designed to improve the quality of water being treated by introducing air or oxygen into water to remove undesirable dissolved gases, to remove volatile organic compounds or to oxidize inorganic compounds so they can be removed as particulates.

*Applicant* – A person seeking certification as a water or wastewater system operator.

*Application for certification action* – A written request for the Board to take a certification action using approved Department forms.

*Available operator* – A certified operator who is onsite or able to be contacted as needed to make process control decisions in a timely manner to protect public health and the environment.

*Bioperable operator* – A certified operator who holds a valid certificate for both water and wastewater systems.

*Bioperable training* – Department-approved continuing education training that has content that is applicable to both water and wastewater systems.

*Board* – The State Board for Certification of Water and Wastewater Systems Operators.

*Board-designated agent* – A Board MEMBER, CERTIFICATION PROGRAM ADVISORY [committee] COMMITTEE member OR DEPARTMENT STAFF PERSON who completes certain duties on behalf of the Board.

*Board guidelines* – The guidelines established to carry out the powers and duties of the Board. [These guidelines are documented in the State Board for Certification of Water and Wastewater Systems Operator’s Guidelines, “Operator Certification Program,” DEP ID: 150-0200-002.]

*Board Secretary* – A Department [recommended] staff member [who acts on behalf of the] ELECTED BY THE Board to implement administrative aspects of the DRINKING WATER AND WASTEWATER SYSTEM OPERATOR’S CERTIFICATION [program] PROGRAM.

*CHR - Criminal History Record* – A report of criminal history record issued by the Pennsylvania State Police under 18 Pa. C.S. Chapter 91 (relating to criminal history record information).

*Cartridge or bag filtration* – For drinking water, a process for the purpose of substantial particulate removal by straining with bag or cartridge filters manufactured of various materials and pore sizes.

*Certificate program* – ~~[A type of Department-approved training.]~~ **A DEPARTMENT-APPROVED CURRICULUM OR SERIES OF TRAINING COURSES LEADING TO A CERTIFICATE OR DIPLOMA IN WATER OR WASTEWATER TREATMENT.**

*Certification* – The process by which an individual obtains a water or wastewater system operator's certificate.

*Certification action* – Action taken by the Board related to a certification examination or re-certification or the issuance of an initial certificate, certificate renewal or certificate through reciprocity.

*Certification Program Advisory Committee* – The advisory committee created under the act.

*Certified operator* – An operator who holds a valid certificate in accordance with the act.

*Chemical addition* – A water treatment process designed to improve the quality of the water being treated through the addition of chemicals such as lime, soda ash, caustic soda and permanganate.

*Circuit rider* – A management program in which a certified operator may make process control decisions at more than one system of different ownership.

*Class* – An alphabetic letter assigned by the Department to a water or wastewater system based upon the classification of a system or an alphabetic letter assigned to an individual's certificate.

*Classification* – The size or type of a water or wastewater system.

*Clean Streams Law* – The Clean Streams Law (35 P. S. §§ 691.1 – 691.1001).

**CLIENT ID – THE UNIQUE, DATA MANAGEMENT SYSTEM GENERATED IDENTIFICATION NUMBER ASSIGNED TO THE OPERATOR USED TO TRACK THE OPERATOR'S CERTIFICATION RECORDS.**

*Collection system* – A system of pipelines or conduits, pumping stations and force or gravity mains used for collecting and conveying wastes to a point of treatment and disposal.

*Community water system* – A public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

*Consecutive system* –

(i) A public water system that obtains all of its water from another public water system and resells the water to a person, provides treatment to meet a primary maximum contaminant level or provides drinking water to an interstate carrier.

(ii) The term does not include bottled water and bulk water systems as defined in 25 Pa. Code § 109.1 (relating to definitions).

*Contact hour* – The standard unit of measure ASSIGNED BY THE DEPARTMENT for participation in a Department-approved [education experience] TRAINING EVENT BASED ON THE AMOUNT OF INSTRUCTION TIME RECEIVED.

*Continuing education* – Approved activities to include training, outreach programs, contact hours, meetings, presentations and other activities designed to increase the knowledge, skills and abilities of system operators.

*Conventional filtration* – For drinking water, [a] THE series of processes [implemented] for the purpose of substantial particulate removal consisting of coagulation, flocculation, [sedimentation] CLARIFICATION and GRANULAR MEDIA filtration. THE CLARIFICATION STEP MUST BE A SOLID/LIQUID SEPARATION PROCESS WHERE ACCUMULATED SOLIDS ARE REMOVED DURING THIS SEPARATE COMPONENT OF THE TREATMENT SYSTEM.

*Corrosion control and sequestering* – A water treatment process designed to mitigate the adverse effects of corrosion in drinking water.

DEPARTMENT – THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OF THE COMMONWEALTH.

*Diatomaceous earth filtration* – For drinking water, a process for the purpose of substantial particulate removal, in which a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum) and, while the water is filtered by passing through the cake on the septum, additional filter media, known as body feed, is continuously added to the feed water, to maintain the permeability of the filter cake.

*Direct filtration* – [(i)] For drinking water, a series of processes implemented for the purpose of substantial particulate removal consisting of coagulation and filtration. [(ii)] The term [normally] includes flocculation after coagulation, but does not include sedimentation.

*Distribution system* – Pipelines, appurtenances, devices and facilities that convey potable water under pressure to customers.

*Drinking water environmental laboratory supervisor* – An individual having the knowledge, skills and abilities necessary to supervise laboratory procedures and the reporting of analytical data

for an environmental laboratory operated by a drinking water system in accordance with industry, State and Federal standards.

**ENVIRONMENTAL HEARING BOARD – THE BOARD ESTABLISHED UNDER THE ENVIRONMENTAL HEARING BOARD ACT (35 P. S. § 7511 – 7516).**

*Environmental laboratory* – A facility engaged in the testing or analysis of environmental samples.

**ENVIRONMENTAL QUALITY BOARD – THE BOARD ESTABLISHED UNDER SECTION 1920-A, THE ADMINISTRATIVE CODE (71 P. S. § 510 – 20).**

*Environmental sample* – A solid, liquid, gas or other specimen taken for the purpose of testing or analysis as required by an environmental statute.

*Environmental statute* – A statute administered by the Department **OR THE U. S. ENVIRONMENTAL PROTECTION AGENCY** relating to the protection of the environment or protection of public health, safety and welfare.

*Examination* – A test module or grouping of test modules administered by the Board or its designated agent used in part to determine the competency of applicants for certification or recertification.

*Fee* – A nonrefundable cost **charged to an applicant** assigned to cover the expenses of the program.

*Fixed film treatment* – A wastewater treatment technology that uses a fixed contact media to achieve treatment such as trickling filters and rotating biological contactors.

*Gaseous chlorine disinfection* – A water treatment process designed to inactivate pathogenic organisms from water being treated utilizing gaseous chlorine.

*GED* – General equivalency diploma.

*Grandparented* – The temporary exemption for an existing operator of an existing system, as of February 21, 2002, from the initial educational and examination requirements for certification where a system was not required by prior law to have a certified operator. A grandparented operator may be the operator in responsible charge.

*Groundwater* – **Water beneath the surface of the ground that exists in a zone of saturation. WATER THAT IS LOCATED WITHIN THE SATURATED ZONE BELOW THE WATER TABLE AND IS AVAILABLE TO SUPPLY WELLS AND SPRINGS.**

*Hydraulic design capacity* – The maximum monthly design flow at which a drinking water or wastewater system is expected to consistently provide the required treatment or at which a

distribution or collection system is expected to properly function without creating a backup, surcharge or overflow.

*Industrial wastewater treatment system* – Any system that treats industrial waste or pollution, but not sewage, as those terms are defined in section 1 of The Clean Streams Law (35 P.S. § 691.1 ).

*Ion exchange and greensand* – A water treatment process such as greensand filtration, ion exchange or activated alumina designed to improve the quality of water being treated by removal of inorganic constituents.

*Investigation* – A detailed inquiry as to the nature, circumstances and official records regarding an applicant or certified operator’s criminal conviction as identified in a criminal history record.

*Master certificate* – A certificate authorizing an operator to make process control decisions at any water or wastewater system of a specific size, regardless of the treatment technology subclassifications used by that system.

*Membrane filtration* – For drinking water, **(i) A PRESSURE OR VACUUM DRIVEN SEPARATION process [that uses a thin film that acts as a selective barrier (semipermeable) to the transport of matter to remove contaminants from water and includes such processes as electro dialysis, reverse osmosis, nanofiltration, ultrafiltration or microfiltration or other similar technologies,] IN WHICH PARTICULATE MATTER LARGER THAN ONE MICROMETER IS REJECTED BY AN ENGINEERED BARRIER, PRIMARILY THROUGH A SIZE-EXCLUSION MECHANISM, AND WHICH HAS A MEASURABLE REMOVAL EFFICIENCY OF A TARGET ORGANISM THAT CAN BE VERIFIED THROUGH THE APPLICATION OF A DIRECT INTEGRITY TEST. (ii) THE TERM INCLUDES THE COMMON MEMBRANE TECHNOLOGIES OF MICROFILTRATION, ULTRAFILTRATION, NANOFILTRATION AND REVERSE OSMOSIS.**

*NPDES* – The National Pollutant Discharge Elimination System as authorized under section 402 of the Federal Clean Water Act (33 U.S.C.A. § 1342).

*Nongaseous chemical disinfection* – A water treatment process designed to inactivate pathogenic organisms from water being treated utilizing nongaseous chemical elements or compounds.

*Noncommunity water system* – A public water system which is not a community water system.

*Nontransient noncommunity water system* – A noncommunity water system that regularly serves at least 25 of the same persons over 6 months per year.

*Operator* –

(i) An individual who works with water or wastewater system processes or portions thereof.

(ii) The term includes, but is not limited to, an individual who may be gaining experience to obtain certification in appropriate sub-classifications within classifications of certification. These individuals will have a working knowledge of system operation.

*Operator-in-responsible-charge* – An individual designated by the owner to be the certified operator who makes the process control decisions that directly impact the quality and or quantity of water.

*Operator-in-training* – An applicant for certification who has passed the certification examination but does not meet the experience requirements.

*Order of the Department* - An order of the Department issued under section 4(b)(2) of the act (63 P.S. § 1004(b)(2)) and also include orders of the Department issued under section 4(b)(1.1) of the act.

*Owner* – A person who owns or is the holder of an applicable permit for the operation of a water or wastewater system.

*Ozonation* – The water treatment process designed to inactivate pathogenic organisms from water being treated utilizing ozone.

*Permitted average daily discharge flow* – [~~The hydraulic design capacity of a wastewater treatment system.~~] **THE PERMITTED ANNUAL AVERAGE DAILY DISCHARGE FLOW, AS STATED IN THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) OR WATER QUALITY MANAGEMENT (WQM) PERMIT.**

*Person* –

(i) An individual, company, corporation, [~~political subdivision,~~] municipality, municipal authority, partnership, firm, association, trust, estate, public or private institution, or any agency of Federal or State government.

(ii) The term also includes the officers, directors, employees and agents of any partnership, firm, association, company, corporation, municipality, municipal authority, public or private institution or any agency of Federal or state government.

*Petition* – A written request from the Department to the Board to take an action to modify, suspend, revoke or reinstate a certified operator's certificate.

**[Political subdivision – Any county, city, borough, town, township, school district, institution or any authority created by any one or more of the foregoing.]**

**[Postpresentation credit] POST-PRESENTATION CREDIT – CONTACT HOURS FOR [Precertification] PRE-CERTIFICATION** or continuing education credit for a training course not previously approved by the department. An operator may obtain post-presentation credit upon application to the department.

*Process control decision* – A decision that maintains or changes the water quality or quantity of a water system or wastewater system in a manner that may affect the public health or environment.

*Process control plan* – A plan developed by an operator in responsible charge that outlines the facilities, methods, activities and treatment alternatives necessary to meet permit requirements and provide long term and reliable system operations.

*Professional engineer* – An engineer registered under the Engineer, Land Surveyor and Geologist Registration Law (63 P. S. §§ 148 – 158.2), who has been examined in civil, sanitary or environmental engineering and determined proficient.

**PROGRAMMABLE LOGIC CONTROLS (PLC) – A SMALL COMPUTER USED FOR AUTOMATED CONTROL OF MACHINERY USED FOR WATER AND WASTEWATER TREATMENT. THE PLC REPLACES THE MANY TIMERS, RELAYS AND OTHER DEVICES USED TO CONTROL START/STOP, RUN TIME AND LEVEL CONTROLS OF THIS MACHINERY.**

*Psychometrics* – The analytical methodology and design of tests to evaluate and measure psychological variables such as intelligence and aptitude.

**PUBLIC WATER SYSTEM – A SYSTEM WHICH PROVIDES WATER TO THE PUBLIC FOR HUMAN CONSUMPTION WHICH HAS AT LEAST 15 SERVICE CONNECTIONS OR REGULARLY SERVES AN AVERAGE OF AT LEAST 25 INDIVIDUALS DAILY AT LEAST 60 DAYS OUT OF THE YEAR. THE TERM INCLUDES COLLECTION, TREATMENT, STORAGE AND DISTRIBUTION FACILITIES UNDER CONTROL OF THE OPERATOR OF THE SYSTEM AND USED IN CONNECTION WITH THE SYSTEM. THE TERM INCLUDES COLLECTION OR PRETREATMENT STORAGE FACILITIES NOT UNDER CONTROL OF THE OPERATOR WHICH ARE USED IN CONNECTION WITH THE SYSTEM. THE TERM ALSO INCLUDES A SYSTEM WHICH PROVIDES WATER FOR BOTTLING OR BULK HAULING FOR HUMAN CONSUMPTION. WATER FOR HUMAN CONSUMPTION INCLUDES WATER THAT IS USED FOR DRINKING, BATHING AND SHOWERING, COOKING, DISHWASHING OR MAINTAINING ORAL HYGIENE**

*Recertification* – The process by which an individual [~~s water or wastewater system operator certificate,~~] previously certified under the act, obtains a new certificate following expiration, suspension or revocation of the previous certificate.

*Renewal of certification* – The process by which an individual extends for another period of time an existing, valid water system or wastewater system operator's certificate under the act.

*Satellite collection system* – A wastewater system **CONSISTING ONLY OF COLLECTION FACILITIES** with at least one pump station, which is designed to convey in excess of 2000 gallons per day of untreated wastewater to a wastewater system owned by a different entity.

*Serving an average* – The hydraulic design capacity of a water system.

*Single entity collection system* – A wastewater [~~collection~~] system [~~where the collection system relies on treatment~~] **CONSISTING ONLY OF COLLECTION FACILITIES WITH AT LEAST ONE PUMP STATION WHICH IS DESIGNED TO CONVEY IN EXCESS OF 2000 GALLONS PER DAY OF UNTREATED WASTEWATER TO** a wastewater treatment system owned by the owner of the collection system.

~~[Site-specific—A certificate to allow a grandparented operator to make process control decisions for an identified system or part thereof, which is not transferable and is not valid if treatment methods change or the grandparented operator no longer works at a system.]~~

*Slow sand filtration* – For drinking water, a process for the purpose of substantial particulate removal by physical and biological mechanisms during the passage of raw water through a bed of sand at low velocity, generally less than 0.4 meter per hour.

*Subclassification* – A number assigned by the Department to a water or wastewater system based upon the treatment process used by that system or the number assigned to an operator's certificate based upon meeting the certification requirements for a specific treatment process.

**SUPERVISORY CONTROL AND DATA ACQUISITION SYSTEM (SCADA) – A SPECIALIZED COMPUTER SYSTEM DESIGNED TO MONITOR AND CONTROL MANY OF THE PROCESSES AND OPERATIONS FOR WATER AND WASTEWATER TREATMENT. A SCADA SYSTEM CONTROLS EQUIPMENT BASED ON PRE-DETERMINED CRITERIA, MONITORS THE STATUS OF TREATMENT PROCESSES AND EQUIPMENT AND INITIATES COMMANDS AUTOMATICALLY BASED ON CONDITIONS OR THRESHOLDS DEFINED BY THE AVAILABLE OPERATOR. THE AVAILABLE OPERATOR CAN ALSO INITIATE PROCESS CONTROL CHANGES FROM A WORKSTATION CONNECTED TO THE SCADA SYSTEM.**

*System* – A water or wastewater system.

*Track* – A combination of approved education and experience requirements necessary to qualify for operator certification.

*Training approval process guidelines* – Department guidelines authorized by the act that set standards for training sponsors, courses, course content, training approval criteria and training provider approval criteria.

*Training provider* – A person who designs or delivers any type of education or training activities, courses or programs.

*Training sponsor* – A training provider approved by the Department to provide training to water and wastewater system operators in this Commonwealth in accordance with the Department's training approval process guidelines.

*Treatment* – The physical, chemical or biological process necessary to change, modify or maintain the chemical or biological nature of water.

*Treatment ponds and lagoons* – A wastewater treatment technology that utilizes a pond, lagoon or wetlands with anaerobic or facultative biological processes for the treatment of wastewater and meets the following criteria:

- (i) A design hydraulic detention time in the treatment process of 15 days or greater.
- (ii) A biological treatment process that does not have any return activated sludge system.
- (iii) A biological treatment process that is impacted by diurnal fluctuations as a result of photosynthesis.

*Trigger parameter* – A set-point for a designated biological, chemical or physical parameter that requires a response by the operator in responsible charge.

*Ultraviolet disinfection* – A water treatment process that inactivates pathogenic organisms using light with a wavelength range of ~~[4,000 to 40]~~ **1000 TO 4000** angstroms.

*Upgrade* – The certification process an existing certified operator follows to increase the operator's **[authority] ABILITY** to make process control decisions at a system **[of a specific flow or a system with specific] WITH A HIGHER FLOW OR ADDITIONAL** treatment technologies.

*Wastewater* – A substance that contains the waste products or excrement or other discharge from the bodies of human beings or animals and noxious or deleterious substances being harmful or inimical to the public health, or to animal or aquatic life, or to the use of water for domestic water supply or for recreation, or which constitutes pollution under The Clean Streams Law.

*Wastewater environmental laboratory supervisor* – An individual having the necessary knowledge, skills and abilities necessary to supervise laboratory procedures and reporting of analytical data for an environmental laboratory operated by a wastewater or industrial waste system in accordance with industry, State and Federal standards.

*Wastewater system* – A structure designed to collect, convey or treat wastewater and from which effluent in excess of 2,000 gallons per day is discharged into waters of this Commonwealth.

*Water system* – A community water system or a nontransient noncommunity water system as those terms are defined in section 3 of the Pennsylvania Safe Drinking Water Act (35 P. S. § 721.3).

### **§ 302.102. Purpose.**

(a) The purpose of this chapter is to protect the environment and the public's health and safety by ensuring that certified operators with the appropriate knowledge, skills and abilities make appropriate process control decisions during the operation of water and wastewater treatment systems, water distribution systems and wastewater collection systems.

(b) This chapter establishes the training, education, experience and examination standards necessary for operator certification.

(c) This chapter also establishes the administrative processes and procedures the Board will follow to implement the Board's duties and responsibilities under the act.

§ 302.103. Scope.

~~[(a) A person may not make a process control decision at a water or wastewater system unless that person is board-certified with a valid certificate with the appropriate class and subclassifications for the size and treatment technologies of a water or wastewater system and is designated by the owner as the available operator.~~

~~(b) To become certified by the board, the applicant shall:~~

~~(1) Apply for certification in accordance with § 302.201 (relating to form of application);~~

~~(2) Pass the appropriate examinations as defined in § 302.702 (relating to examination requirements) or an equivalent examination as defined in § 302.304 (relating to issuance of a certificate through reciprocity);~~

~~(3) Meet minimum education requirements as defined in § 302.701 (relating to minimum education requirements);~~

~~(4) Meet the experience requirements as defined in § 302.703 (relating to experience requirements);]~~

(a) OWNERS AND OPERATORS OF THE FOLLOWING PUBLIC WATER SYSTEMS SHALL COMPLY WITH THE REQUIREMENTS OF THIS CHAPTER:

(1) COMMUNITY WATER SYSTEMS.

(2) NONTRANSIENT NONCOMMUNITY WATER SYSTEMS.

(3) CONSECUTIVE SYSTEMS.

(b) OWNERS AND OPERATORS OF THE FOLLOWING WASTEWATER SYSTEMS SHALL COMPLY WITH THE REQUIREMENTS OF THIS CHAPTER:

(1) WASTEWATER SYSTEMS.

(2) COLLECTION SYSTEMS WITH PUMP STATIONS.

(c) OWNERS AND OPERATORS OF the following SYSTEMS are exempt from the requirements of this chapter:

(1) A wastewater treatment system with a permitted average daily discharge flow of less than 2,000 gallons per day.

(2) A wastewater treatment system regulated under Chapter 73 (relating to standards for onlot sewage treatment facilities).

(3) An industrial wastewater system used to treat, recycle or impound industrial or agricultural wastes within the boundaries of the industrial or agricultural property.

~~[(3)]~~ (4) An industrial waste WATER pretreatment system in which treated wastewater is released to a collection system of a wastewater treatment plant that is regulated by this chapter.

~~[(4)]~~ (5) An industrial waste WATER treatment system that is an NPDES permitted point source discharge.

~~[(5) A water treatment device that serves a single private residence.]~~

(6) A system designed to only collect and treat stormwater.

(7) Other systems that are exempted by the Department by rules and regulations, guidelines or policy.

(d) Operators of industrial wastewater treatment facilities may voluntarily obtain a wastewater system operator's certificate consistent with this chapter.

#### § 302.104. CERTIFICATION REQUIREMENTS

(a) A PERSON MAY NOT MAKE A PROCESS CONTROL DECISION AT A WATER OR WASTEWATER SYSTEM UNLESS THAT PERSON IS BOARD-CERTIFIED WITH A VALID CERTIFICATE WITH THE APPROPRIATE CLASS AND SUBCLASSIFICATIONS FOR THE SIZE AND TREATMENT TECHNOLOGIES OF A WATER OR WASTEWATER SYSTEM AND IS DESIGNATED BY THE OWNER AS AN AVAILABLE OPERATOR AS DEFINED IN §302.1202 (RELATING TO THE DUTIES OF OWNERS).

(b) TO BECOME CERTIFIED BY THE BOARD, THE APPLICANT SHALL:

(1) APPLY FOR CERTIFICATION IN ACCORDANCE WITH § 302.201 (RELATING TO FORM OF APPLICATION).

(2) PASS THE APPROPRIATE EXAMINATIONS AS DEFINED IN § 302.702 (RELATING TO EXAMINATION REQUIREMENTS) OR AN EQUIVALENT EXAMINATION AS DEFINED IN § 302.304 (RELATING TO ISSUANCE OF A CERTIFICATE THROUGH RECIPROCITY).

**(3) MEET MINIMUM EDUCATION REQUIREMENTS AS DEFINED IN § 302.701 (RELATING TO MINIMUM EDUCATION REQUIREMENTS).**

**(4) MEET THE EXPERIENCE REQUIREMENTS AS DEFINED IN § 302.703 (RELATING TO EXPERIENCE REQUIREMENTS).**

**Subchapter B. GENERAL REQUIREMENTS FOR APPLICATIONS FOR CERTIFICATION ACTIONS**

Sec.

302.201. Form of application.

302.202. Operator certification program fees.

**§ 302.201. Form of application.**

(a) An applicant for examination or a certification action shall submit a complete application with required documentation using the appropriate Department-approved forms to the Board's Secretary. **THESE FORMS CAN BE OBTAINED BY CONTACTING THE BOARD SECRETARY, P.O. BOX 8454, HARRISBURG, PA 17105-8454, OR THROUGH THE DEPARTMENT'S WEBSITE AT WWW.DEPWEB.STATE.PA.US., KEYWORD: "OPERATORS".**

(b) In addition to the forms described in subsection (a), an application for certification action for either certification or recertification must include:

(1) An original or copy of the applicant's Pennsylvania State Police criminal history record, issued no more than 90 days prior to the date the application is received by the Board Secretary.

(2) For education purposes, one of the following:

(i) A copy of the applicant's high school diploma or GED or a statement of completion of high school or achievement of GED.

(ii) Written verification by the applicant's supervisor or another certified operator with direct knowledge of the applicant's experience working as an operator in a water or wastewater system before February 21, 2002.

(3) Documentation of the applicant's experience as defined in § 302.704 (relating to determining qualifying experience) and verified by the applicant's supervisor or another certified operator with the knowledge of the applicant's experience.

(4) An official copy of the applicant's college transcripts, if applicable.

- (5) Copies of certificates of completion of Department-approved training courses if applicable.
- (6) The applicant's **NOTARIZED** signature [~~affirmed by a notary public~~].
- (7) The applicable fees specified in § 302.202 (relating to operator certification program fees).

(c) In addition to the forms described in subsection (a), an application for certification action for certificate upgrade must include:

- (1) An official copy of the applicant's college transcripts, if applicable.
- (2) Documentation of the applicant's additional experience for the additional class or subclassification as defined in § 302.703 and § 302.704 (related to experience requirements; and determining qualifying experience), verified by the applicant's supervisor or another certified operator with the knowledge of the applicant's experience.
- (3) Copies of certificates of completion of Department-approved training courses, if applicable.
- (4) The applicant's **NOTARIZED** signature [~~affirmed by a notary public~~].
- (5) The applicable fees specified in § 302.202.

(d) In addition to the forms described in subsection (a), an application for certification action for certificate renewal must include:

- (1) Proof of completed continuing education.
- (2) The applicant's **NOTARIZED** signature [~~affirmed by a notary public~~].
- (3) The applicable fees specified in § 302.202.

(e) In addition to the forms described in subsection (a), an application for certification action for reciprocity must include:

- (1) An original or copy of the applicant's Pennsylvania State Police criminal history record, issued no more than 90 days prior to the date the application is received by the Board Secretary.
- (2) A copy of the applicant's operator certificate issued by another state, territory or Board-approved register as defined in § 302.305 (relating to Board-approved reciprocity register).
- (3) For education purposes, one of the following:
  - (i) A copy of the applicant's high school diploma or GED or a statement of completion of high school or achievement of GED.

(ii) Written verification by the applicant's supervisor or another certified operator with direct knowledge of the applicant's experience working as an operator in a water or wastewater system before February 21, 2002.

(4) Documentation of the applicant's experience as defined in § 302.704 and verified by the applicant's supervisor or another certified operator with the knowledge of the applicant's experience.

(5) A copy of the applicant's official transcripts from college, if applicable.

(6) Copies of certificates of completion of Department-approved training courses if applicable.

(7) The applicant's NOTARIZED signature. [~~affirmed by a notary public~~].

(8) The applicable fees specified in § 302.202.

#### **§ 302.202. Operator certification program fees.**

(a) An application for a certification action or post-presentation credit must be accompanied by a nonrefundable check or money order payable to the "Commonwealth of Pennsylvania." The applicant's client ID should be printed on the check or money order.

(b) Applications to become an approved training provider, course and conference approvals, course rosters and requests for examination sessions must be accompanied by a nonrefundable check or money order payable to the "Commonwealth of Pennsylvania".

(c) [~~Annual reports as described in § 302.1202(b) (relating to the duties of owners)~~] **THE ANNUAL SERVICE FEE PAID BY SYSTEM OWNERS** must be accompanied by a nonrefundable check or money order payable to the "Commonwealth of Pennsylvania." The system Public Water Supply ID or NPDES Permit Number should be printed on the check or money order. **THE ANNUAL SERVICE FEE FOR SYSTEMS IN SUBSECTION (D) IS A FEE PER PUBLIC WATER SUPPLY ID, NPDES PERMIT NUMBER (FOR DISCHARGE SYSTEMS), CLEAN STREAMS LAW PERMIT NUMBER (FOR NON-DISCHARGE SYSTEMS) OR SATELLITE COLLECTION SYSTEM. IF THIS ANNUAL SERVICE FEE IS NOT REMITTED WITHIN 60 DAYS OF NOTIFICATION BY THE DEPARTMENT THAT THE FEE IS DUE, INTEREST SHALL ACCRUE ON THE ENTIRE AMOUNT FROM THE ORIGINAL DATE PAYMENT WAS DUE, AT A RATE OF TWELVE PERCENT (12%) PER ANNUM UNTIL PAYMENT IS REMITTED.**

**(d) ALL FEES SHALL BE PAID INTO THE STATE TREASURY INTO A SPECIAL RESTRICTED REVENUE ACCOUNT IN THE GENERAL FUND KNOWN AS THE SAFE DRINKING WATER ACCOUNT ADMINISTERED BY THE DEPARTMENT FOR USE IN PROTECTING THE PUBLIC FROM THE HAZARDS OF UNSAFE DRINKING WATER AND WHICH FUNDS ARE HEREBY APPROPRIATED TO THE DEPARTMENT FOR SUCH PURPOSES AS ARE AUTHORIZED IN THE ACT.**

**[(d)](e)** The fees are as follows:

*Operators:*

Initial Certification Class A, B, C, D	\$150
Initial Certification Class Dc, <b><u>[(Dn)]</u></b> , Class E	\$100
Certification through Reciprocity Class A, B, C, D	\$150
Certification through Reciprocity Class Dc; <b><u>[(Dn)]</u></b> , Class E	\$100
Certificate Renewal	\$60
Examination Session	\$35
Replacement of Certificate or Pocket Card	\$25
Post-presentation Credit Application	\$250

*Training:*

Training Provider Approval Application	\$90
Brief Course Approval	\$115
Full Course Approval	\$300
Conference Approval	\$70
Course Rosters	\$1 per name

Classroom Courses offered by the Department are \$10 per contact hour maximum per person.  
Web-based Courses offered by the Department are \$30 per contact hour maximum per person.  
Onsite Training offered by the Department is \$1600 per event.

*Approved Examination Providers:*

Ten or more examination sessions per year	\$800
Five to ten examination sessions per year	\$700
Two to five examination sessions per year	\$600
One examination session per year	\$400

*Owners:*

Annual Service Fee Class A System	\$500
Annual Service Fee Class B System	\$150
Annual Service Fee Class C System	\$100
Annual Service Fee Class D and E Systems	\$65

**[(e) The maximum fee a training provider or owner will be charged is \$10,000 per year.]**

(f) An operator holding a valid certificate as of \_\_\_\_\_ (*Editor's Note: The blank refers to the effective date of adoption of this **[(proposed rulemaking) FINAL RULE]***), is not required to pay the **INITIAL** certification fees identified in subsection **[(b)](e)**. **[The] THIS** operator is subject to all other fees in this section.

(g) The fees identified in subsection **[(b)](d)** are in addition to any fees charged by an approved examination provider as defined in § 302.602 (relating to approved examination providers)

**(h) THE FEES IDENTIFIED IN SUBSECTION (e) RELATED TO COURSE APPROVAL ARE A ONE-TIME FEE ASSESSED FOR THE COURSE. TRAINING PROVIDERS THAT HAVE COURSES APPROVED AS OF \_\_\_\_\_ (EDITOR'S NOTE: THE BLANK REFERS TO THE EFFECTIVE DATE OF ADOPTION OF THIS FINAL RULE) ARE NOT REQUIRED TO PAY THIS FEE FOR THESE APPROVED COURSES.**

**(i) A CONFERENCE APPROVAL FEE IS A ONE-TIME FEE ASSESSED FOR THE ENTIRE CONFERENCE AND IS NOT BASED ON THE NUMBER OF TRAINING SESSIONS IN THE CONFERENCE.**

**(h)(i)** No person regulated by **[this] THE** act shall pay more than a total of \$10,000 annually to the Commonwealth **FOR** operator certification fees specified under **[this act] SUBSECTION (e).**

**(k) NO FEDERAL OR STATE AGENCY THAT PROVIDES FUNDING TO THE DEPARTMENT THROUGH TERMS AND CONDITIONS OF A MUTUAL AGREEMENT FOR THE ADMINISTRATION OF THIS PROGRAM SHALL BE SUBJECT TO THE FEES IN SUBSECTION (e).**

**(f) (l)** The Department will review the adequacy of the fees established in this section at least once every 3 years and provide a written report to the Environmental Quality Board. The report will identify any disparity between the amount of program income generated by the fees and the costs to administer these programs, and it will contain recommendations to modify fees to eliminate the disparity, including recommendations for regulatory amendments to modify program fees.

## **Subchapter C. BOARD PROCEDURES AND ACTIONS**

Sec.

- 302.301. Board procedures for certification action.
- 302.302. Issuance of certificate for certification or recertification.
- 302.303. Issuance of upgraded certificate.
- 302.304. Issuance of certificate through reciprocity.
- 302.305. Board-approved reciprocity register.
- 302.306. Certificate renewal.
- 302.307. Extensions.
- 302.308. Suspensions, revocation or modification of an operator's certificate.
- 302.309. Board review of Department training decisions.

### **§ 302.301. Board procedures for certification action.**

(a) **[The Department, under the supervision of the] THE** Board Secretary, will review the application for certification action for completeness.

(b) If the application is not complete, the applicant will be notified [~~in a timely manner~~] **WITHIN 14 DAYS** from receipt of the application, of the specific information required to make the application complete.

(c) When an application is complete, the Board Secretary will review the application using policy and procedures defined by the Board in guidelines and make a recommendation for action to the Board designating the appropriate class and subclassification. **[The Board will make the final determination on the appropriate class and subclassification]**

(d) The Board, **OR THE BOARD SECRETARY, AS AUTHORIZED BY THE BOARD,** will take action **ON AN APPLICATION FOR CERTIFICATION WITHIN 120 DAYS OF RECEIPT OF** a complete application. **[within two scheduled Board meetings after the Board Secretary has completed the review of the application, provided the application is complete and contains sufficient information for the Board to make a decision]** **IF THE BOARD DETERMINES ADDITIONAL INFORMATION FROM THE APPLICANT IS NECESSARY TO COMPLETE THE REVIEW OF THE BOARD SECRETARY'S RECOMMENDATION, FINAL ACTION ON THE APPLICATION WILL BE DELAYED UNTIL SUCH TIME AS THIS INFORMATION IS PROVIDED. WITHIN 120 DAYS OF RECEIPT OF THE REQUESTED INFORMATION, THE BOARD WILL TAKE FINAL ACTION ON THE APPLICATION FOR CERTIFICATION.**

(e) The Board Secretary will issue the operator's certificate within 60 days of Board action. A certificate will include the issuance and expiration dates, class and subclassifications, client ID and certification identification numbers and pocket card for identification purposes.

(f) The issuance date on the certificate corresponds with the date of Board action and the operator is assigned to the current 3-year renewal cycle (either the first day of January, April, July or October). The certificate is valid for a 3 year period and will expire on the date indicated unless suspended, modified or revoked by the Board prior to expiration.

(g) The Board will deny an application for certification action for failure to meet the requirements of the act, **[the regulations promulgated under this act] THIS CHAPTER, and [other Department rules and regulations related] ANY OTHER FEDERAL OR STATE LAW OR RULES AND REGULATIONS PROMULGATED THERETO APPLICABLE** to the operation of water and wastewater systems.

(h) The Board authorizes the Board Secretary to deny an application for certification action without Board review for failure to:

(1) Meet the requirements for reciprocity as defined in § 302.304 (relating to issuance of certificate through reciprocity).

(2) Meet processing deadlines.

(3) Successfully pass an examination for certification.

(i) When the Board denies an application for certification action, the Board Secretary will notify the applicant in writing within 60 days of the Board decision, describing the applicant's right to appeal the action to the Environmental Hearing Board.

(j) Within 4 weeks of receiving a written request of a certified operator and payment of a fee as established in § 302.202 (relating to operator certification program fees) for the replacement of a certificate or wallet card, the Board Secretary will fulfill the request.

### **§ 302.302. Issuance of certificate for certification or recertification.**

The Board may approve a complete application for certification action for either certification or recertification with a designated class and subclassification when the applicant has met the requirements for certification as defined in § 302. ~~103 (relating to scope)~~ 104 (RELATING TO CERTIFICATION REQUIREMENTS). The Board will also complete the review of the applicant's criminal history record in accordance with § 302.402 and 302.403 (relating to CHR investigations; and review of CHRs by the Board) before approving a complete application for certification action for certification or recertification.

### **§ 302.303. Issuance of upgraded certificate.**

(a) The Board will approve a complete application for certification action to upgrade an existing certificate to the appropriate class when the applicant meets the additional experience requirements defined in § 302.703 (relating to experience requirements) for the upgrade in class. The Board will also approve a complete application for certification action to upgrade an operator-in-training as defined in § 302.1004 (relating to operator-in-training status) when the operator-in-training has met the minimum experience requirements for certification defined in § 302.703.

(b) The Board will approve a complete application for certification action to upgrade an existing certificate to add another subclassification when the applicant passes the Part II Treatment Technology Specific Examination as defined in § 302.601 (relating to general provisions) that corresponds to a subclassification defined in §§ 302.1002 and 302.1003 (relating to the certification classes and subclassifications of water system operators; and certification classes and subclassifications of wastewater system operators) and completes 1 year additional experience requirement, if applicable, as defined in § 302.703 and § 302.704 (relating to experience requirements; and determining qualifying experience).

(c) The Board will replace the applicant's existing certificate with an upgraded certificate that maintains the operator's current 3 year renewal cycle. Those applicants that were upgraded from the operator-in-training status will be issued a certificate in accordance with procedures defined in § 302.301 (relating to Board procedures for certification action).

(d) Additional changes in continuing education requirements as defined in § 302.803 (relating to phased schedule for continuing education requirements) resulting from an upgrade will not be enforced until the certified operator's next full 3 year renewal cycle.

(e) Class Dc, Dn and grandparented DRINKING WATER SYSTEM certificates will not be upgraded.

#### **§ 302.304. Issuance of certificate through reciprocity.**

(a) The Board may issue a certificate to an applicant holding a valid water or wastewater, or both, operator certificate from another state, territory, the District of Columbia or a Board-approved reciprocity register, when the applicant meets the requirements for certification defined in § 302. ~~[103 (relating to scope)]~~ 104(RELATING TO CERTIFICATION REQUIREMENTS) and demonstrates the out-of-State certificate was issued as the result of passing an examination comparable to one administered by the Board.

(b) The Department will determine whether the content of the examination is comparable to an examination prepared by the Department and obtain confirmation from the state, territory or Board approved registry that issued the applicant's certificate that the applicant holds a valid certificate, and is in compliance with applicable laws, regulations and other requirements.

(c) Operators previously certified in this Commonwealth are not eligible to apply for reciprocity if:

(1) The Board revoked, suspended or modified their certificate in accordance with § 302.308 (relating to suspensions, revocation or modification of an operator's certificate).

(2) The operator failed to meet the continuing education requirements for their most recent 3 year renewal cycle.

#### **§ 302.305. Board-approved reciprocity register.**

(a) The Board recognizes the Association of Boards of Certification Registry and United States Military or Coast Guard discharge papers documenting water or wastewater operation as reciprocity registers.

(b) The Board may recognize additional certification registers upon request by ~~[a certified operator]~~ AN APPLICANT or the entity maintaining the register.

#### **§ 302.306. Certificate renewal.**

(a) Certified operators meeting the requirements of the act, this ~~[part, other Department rules and regulations related]~~ CHAPTER, AND ANY OTHER FEDERAL OR STATE LAW OR

**RULES AND REGULATIONS PROMULGATED THERETO APPLICABLE** to the operation of water and wastewater systems and **[Department and Board guidelines]** **ANY ORDERS OF THE BOARD OR THE DEPARTMENT RELATIVE TO CERTIFICATION** will be eligible for certificate renewal without further examination.

(b) The Board will attempt to notify certified operators when renewal is due at least 60 days prior to certificate expiration. Failure to receive a renewal application from the Board does not release a certified operator from the requirements of the act, this **[part, other Department rules and regulations related]** **CHAPTER, AND ANY OTHER FEDERAL OR STATE LAW OR RULES AND REGULATIONS PROMULGATED THERETO APPLICABLE** to the operation of water and wastewater systems.

(c) Certified operators shall meet the continuing education requirements as defined in § 302.803 (relating to phased schedule for continuing education requirements) as a condition of renewal.

(d) Continuing education must be successfully obtained during the certified operator's 3 year certification period. A certified operator who fails to complete the continuing education requirements within the 3 year cycle shall apply for recertification.

(e) The Board will not renew a certificate for an operator who fails to meet the continuing education requirements, unless the operator has applied for and been granted, an extension in accordance with § 302.307 (relating to extensions).

(f) A certificate will not be deemed expired if the Board Secretary has received a complete application for certification action for renewal before the expiration date of the certificate. This provision will be in force until the Board takes action on the application. If approved, the certificate will be issued with an expiration date that maintains the operator's prior 3 year cycle.

(g) A certificate renewal issued by the Board after the certificate has expired will have the effective issuance date of **WHEN THE BOARD SECRETARY FINALIZES THE RENEWED CERTIFICATE AS AUTHORIZED BY THE BOARD. THE BOARD SECRETARY WILL SEND THE RENEWED CERTIFICATE NO LATER THAN 90 DAYS AFTER RECEIVING A COMPLETE APPLICATION. [the first day of the month in the next quarter (January, April, July or October) following Board action.]** The expiration date will be 3 years after the expiration date of the lapsed certificate.

(h) Within 24 months following the date of expiration, an operator who has completed the continuing education, but whose certificate has expired, may renew the certificate by submitting a complete application for certification action for renewal. A certified operator who fails to renew the certificate within 24 months of the expiration date shall apply for recertification.

(i) The Board Secretary will submit a listing of applicants for certificate renewal to the Board that the Department has determined have not met the continuing education requirements as defined in § 302.802 (relating to continuing education requirements for certificate renewal). The listing will include the applicants' names, their classes and subclassifications of certification and the number of approved hours of continuing education completed.

(j) An operator shall submit any post-presentation credit applications for training that ~~[was]~~ **WERE** not preapproved by the Department in accordance with training approval process guidelines within 90 days after certificate expiration.

(k) After the Board has taken action to deny an application for certificate renewal due to lack of continuing education, the Board Secretary will send a certified letter to the operator notifying them of the Board's decision. ~~[If possible, the]~~ **THE** Board Secretary will send a copy of this letter to the appropriate Department regional program manager and the owners of **ANY** systems ~~[when the operator is identified by the owners as an available operator for the systems]~~ **WHO IDENTIFIED THE OPERATOR AS AN AVAILABLE OPERATOR FOR THEIR SYSTEMS.**

(l) The operator has 14 days from receipt of the certified letter to submit additional documentation of completed continuing education for review by the Department to the Board Secretary. If the Department approves the additional documentation showing compliance with the requirement for continuing education, the Board Secretary will issue a valid certificate to the operator. If not, the operator is no longer certified, and shall apply for recertification.

#### **§ 302.307. Extensions.**

(a) The Board may grant a time extension to a certified operator to meet the requirements of the act, this ~~[part, other Department rules and regulations related]~~ **CHAPTER, AND ANY OTHER FEDERAL OR STATE LAW OR RULES AND REGULATIONS PROMULGATED THERETO APPLICABLE** to the operation of water and wastewater systems provided that:

(1) The certified operator requests an extension in writing with appropriate justification no later than 90 days after certificate expiration, except in extenuating circumstances.

(2) The certified operator agrees to meet all requirements within a specific time period established by the Board.

~~**[(3) Any Board extension is consistent with only those specific powers and duties granted to the Board.]**~~

(b) ~~[The]~~ **WITHIN 14 DAYS OF BOARD ACTION,** the Board Secretary will provide an explanation of the Board's decision and any requirements for compliance in writing to the certified operator.

(c) Circumstances that justify an extension include:

(1) Military service that curtails an operator's ability to access continuing education, mandated training or Board testing,

(2) Health related circumstances that curtail an operator's ability to participate in continuing education, mandated training or Board testing,

(3) Other extreme circumstances.

**§ 302.308. Suspensions, revocation or modification of an operator's certificate.**

(a) The Board may take action to suspend, revoke, modify or reinstate an operator's certificate upon petition by the Department.

(b) The Board may suspend, revoke or modify a certificate for misconduct for reasons including:

(1) Negligence in ~~operating~~ **THE OPERATION OF A WATER OR WASTEWATER** system.

(2) Fraud.

(3) Falsification of **AN APPLICATION OR OTHER** State, local or Federal documents or records **RELATING TO THE OPERATION OF A WATER OR WASTEWATER SYSTEM.**

(4) ~~Failure~~ **INCOMPETENCE OR** failure to use reasonable care and professional judgment in performing the duties of a certified operator **AS DESCRIBED IN §302.1201 (RELATING TO DUTIES OF OPERATORS).**

(5) Violation of State or Federal laws and the rules and regulations promulgated thereunder associated with the operation of a water or wastewater treatment system.

~~**[(6) Creating a clear or potential threat to public health, safety or the environment.**~~

~~**[(7) Failure to comply with the duties assigned to a certified operator.]**~~

(c) Suspension, revocation, modification or reinstatement of an operator's certificate will become effective immediately upon the Board's action.

(d) The Board may suspend or modify a certificate for a specific time period or require additional education, training or reexamination as a condition of reinstatement.

(e) Within 5 days of the Board taking an action to suspend, revoke, modify or reinstate an operator's certificate, the Board Secretary will notify the Department, the certified operator and the certified operator's employer in writing of the Board action to suspend, revoke or modify an operator's certificate.

**(f) FINAL ACTIONS TAKEN BY THE BOARD RELATED TO THIS SECTION ARE APPEALABLE TO THE ENVIRONMENTAL HEARING BOARD.**

**§ 302.309. Board review of Department training decisions**

(a) A training provider or sponsor may request the Board to review a Department action to do the following:

(1) Approve, disapprove, revoke or suspend a training provider's status as an approved sponsor of training for certification and continuing education.

(2) Approve, deny, revoke or suspend the approval of any course for certification and continuing education.

(3) Assess an instructor's qualifications.

(4) Assign appropriate continuing education contact hours.

(b) Within 75 days of receiving notification from the Department, a training provider or sponsor **[will] MAY** submit a request to the Board to review the Department's decision. The request must include the following:

(1) The reasons for the Department's decision.

(2) The reasons why the Board review is necessary.

(3) Any circumstances that merit consideration by the Board to reverse or modify the Department's decision.

(4) The desired action from the Board.

(c) The Board will take action on any training decision request within 120 days of completion of a scheduled Board meeting dealing with the training action.

**(d) FINAL ACTIONS TAKEN BY THE BOARD RELATED TO THIS SECTION ARE APPEALABLE TO THE ENVIRONMENTAL HEARING BOARD.**

**Subchapter D. CRIMINAL HISTORY RECORDS**

Sec.

302.401. Submission of CHRs.

302.402. CHR investigation.

302.403. Review of CHRs by the Board.

302.404. Board actions as the result of its review of a CHR.

**§ 302.401. Submission of CHRs.**

(a) The Board requires a CHR to accompany an application whenever an applicant does one or more of the following:

- (1) Submits an application for certification. A CHR is not required for subsequent renewals.
- (2) Submits an application requesting certification by reciprocity.
- (3) Submits an application for recertification.

(b) An applicant holding a bioperable certification shall meet the requirements in subsection (a) for each separate water and wastewater certificate.

(c) The date of issuance on a CHR must be no more than 90 days before the date when the application is received by the Board Secretary.

**§ 302.402. CHR investigations.**

(a) The following criminal activities require further investigation:

(1) A felony.

(2) A misdemeanor that appears to be related directly to activities associated with carrying out **THE** duties and responsibilities as a certified operator.

~~**(3) A misdemeanor that appears to pose a threat to public health, safety or the environment.**~~

**§ 302.403. REVIEW OF CHRs BY THE BOARD.**

(a) The Board will review all CHRs submitted with applications for certification action in accordance with the act and this chapter.

(b) A preliminary review committee will conduct a review, and if necessary, conduct appropriate investigations and make a recommendation to the Board for action. The membership of this committee will include:

- (1) A Board member.
- (2) A Department employee.
- (3) Board legal counsel.

(c) The Board or Board-designated agent will conduct an evaluation of all applicants with a conviction noted on their CHR to determine the appropriate category in this section. Convictions meeting the criteria in § 302.402 (relating to CHR investigations) require the Department to conduct an investigation and submit a written report to the Board or Board-designated agent.

(d) If the preliminary review committee feels the conviction may be related to the operation of a drinking water or wastewater treatment system, they will instruct the Board Secretary to send the applicant a certified letter notifying them of this potential and offering them the opportunity to appear at the next regularly scheduled Board meeting to present any information they feel is relevant or related to the conviction. The Department employee on the committee will also solicit further information from the appropriate regional office as it relates to the circumstances that resulted in the conviction and the applicant's record as an operator.

(e) The preliminary review committee will [provide] PRESENT THE reasons for their recommendation and any associated documentation TO THE BOARD BEFORE THE BOARD TAKES ACTION ON THE APPLICATION FOR CERTIFICATION ACTION.

(f) These recommendations will be assigned into the following two categories:

(1) Recommend approval of the application for certification action.

(2) Recommend that the full Board review the CHR and investigation findings.

~~[(g) A certified operator will not be denied a temporary certification for renewal pending a final action of the Board on a CHR. In this case a letter will be sent extending the certified operator's existing certificate until the Board takes final action.]~~

~~[(h)](g)~~ An applicant for certification will not be denied admittance to the certification exam pending a final action on a CHR.

~~[(h)](h)~~ The Department will complete the investigation [in a timely manner] WITHIN 120 DAYS UNLESS GRANTED AN EXTENSION BY THE PRELIMINARY REVIEW COMMITTEE based on circumstances related to the necessary collection of information needed to make a recommendation.

#### § 302.404. Board actions as the result of a CHR.

(a) The Board will act on all CHR's submitted with an application for certification action.

(b) The Board will find no further action is necessary when an applicant's CHR shows no convictions.

(c) Based on the Board's authority under 18 Pa. C.S. Chapter. 91 (relating to criminal history record information), the Board may deny an application for certification action based on a conviction of either:

- (1) A felony related to the trade, occupation or profession for which the certification is sought.
- (2) A misdemeanor related to the trade, occupation or profession for which the certification is sought.

(d) The Board will review the recommendations of the preliminary review committee before taking action. Based on this review, the Board will do one of the following:

- (1) Agree with the preliminary review committee and take action on the CHR accordingly.
- (2) Disagree with the preliminary review committee and take action on the CHR accordingly.

(e) ~~[The]~~ **WITHIN 14 DAYS OF BOARD ACTION, THE** Board Secretary will notify an applicant in writing of the Board's ~~[decision]~~ **ACTION** to deny an application for certification action based on the applicant's CHR. **THIS NOTIFICATION WILL ALSO IDENTIFY THE BOARD'S REASONS FOR THE DECISION.**

~~[(f) If an application for certification action is denied, the Board will identify the reasons for the decision, since this decision prohibits the individual from practicing as a certified operator in this Commonwealth.]~~

~~[(g) An applicant wishing to appeal a Board action shall petition the EHB]~~ **(f) FINAL ACTIONS TAKEN BY THE BOARD RELATED TO THIS SECTION ARE APPEALABLE TO THE ENVIRONMENTAL HEARING BOARD.**

## Subchapter E. ADMINISTRATIVE HEARINGS OF THE BOARD

Sec.

302.501. General requirements.

### § 302.501. General requirements.

(a) The Department may file with the Board Secretary a written petition under section 4(b)(1) of the act (63 P. S. § 1004(b)(1)), by submitting a written request containing the following information:

(1) The factual basis of the petition including the dates, times and places of the occurrences and the names of the responsible parties with sufficient specificity that the respondent can file an answer and prepare a defense to the allegations.

(2) The statutes or regulations, or both, allegedly violated and underlying the petition.

(3) The relief requested.

(4) An identification of the Department attorney or contact person, including the address and telephone number, who can receive service on behalf of the Department.

(b) Upon receipt of a petition, the Board Secretary will:

(1) Provide a copy of the petition to the operators named in the petition, sent by certified mail.

(2) Schedule the petition for hearing before the Board or a hearing officer appointed by the Board. As necessary, the Board Secretary may schedule prehearing conferences and issue orders needed to dispose of prehearing issues.

(c) Requests to reschedule or cancel a hearing must be in writing and be received by the Board Secretary at least 14 days prior to the date of the hearing. Continuance of a hearing is at the discretion of the Board. The Board may continue a hearing upon its own motion.

(d) The hearings of the Board will be in accordance with 2 Pa.C.S.A. Chapter 5 Subchapter A ~~and Chapter 7 Subchapter A et seq.~~ (relating to Administrative Agency Law).

(e) The Chairperson of the Board is authorized to sign decisions and orders on behalf of the Board.

(f) An order of the Board will be effective immediately unless otherwise indicated within the order.

(g) ~~[Decisions]~~ **FINAL BOARD ACTIONS** on the petition may be appealed to the ~~[EHB.]~~ **ENVIRONMENTAL HEARING BOARD.**

## **Subchapter F. PREPARATION AND ADMINISTRATION OF CERTIFICATION EXAMINATIONS**

Sec.

302.601. General provisions.

302.602. Approved examination providers.

302.603. Examination eligibility.

302.604. Examination administration.

302.605. Use of materials and electronic devices by the applicant during examination.

§ 302.601. General provisions.

(a) The Department will prepare and the Board will administer valid certification examinations using ~~[general psychometric principles]~~ **INDUSTRY RECOGNIZED PSYCHOMETRIC PRINCIPLES AND STANDARDS** to measure the applicant's knowledge, skills and abilities necessary to make process control decisions that meet permit requirements, maintain system reliability and ensure the protection of the environment, public health and safety.

(b) Certification and recertification examinations will consist of a two part examination. Part I of the examination will measure the applicant's knowledge, skills and abilities common to all water or wastewater systems regardless of size. Part II of the examination will measure the applicant's knowledge, skills and abilities necessary to operate specific treatment technologies or system components.

(c) There will be separate stand-alone examinations for wastewater collection systems, either satellite or single entity; water distribution or consecutive systems without treatment and Dc ~~[or Dn]~~ systems.

(d) There will be a Part II examination for laboratory supervisor for a water system and a Part II examination for laboratory supervisor for a wastewater system.

(e) There will be a master examination for either water or wastewater systems for operators wanting a master certificate to operate all available treatment technologies and system components.

(f) The Department will annually review examinations for relevancy. The Department may use third party contractors, members of the Board or the Certification Program Advisory Committee, Department staff ~~[of]~~ **OR ANY** other qualified individuals as subject matter experts for the content and validation of the examinations.

(g) The Board may use third-party examination proctors for administration of examinations, provided the proctors have completed the necessary training defined by Board guidelines.

(h) Paper and test materials remain the property of the Board.

(i) **THE BOARD, BOARD SECRETARY OR THE DEPARTMENT WILL NOT DISCLOSE** individual examination scores ~~[will be confidential and will not be disclosed]~~ to the public.

**§ 302.602. Approved examination providers.**

(a) The Board may use consultants, nonprofit water and wastewater industry associations and organizations, the Department or educational institutions to assist in the administration of the examinations for certification. The Board Secretary will approve all examination providers in accordance with Board guidelines.

(b) Approved examination providers may charge a fee to an applicant to cover the cost of personnel, facility rental and other incurred costs related to the registration and administration of the examination.

(c) Approved examination providers will not at any time be in possession of any Department-developed examination materials or examination content.

(d) Approved examination providers will administer examinations in accordance with Board guidelines.

**§ 302.603. Examination eligibility.**

(a) An applicant for examination must submit a request for examination using approved Board forms to one of the approved examination providers. The applicant shall also pay any fees defined by the approved examination provider for processing this request.

(b) An individual is not required to meet experience requirements of the act, regulations or guidelines as a condition for examination.

(c) An individual is not required to successfully attain any training as a condition for examination.

(d) An individual that attends five or more examination sessions without applying for certification shall pay the examination session fees as defined in § 302.202 (relating to operator certification program fees) before being allowed to attend additional examination sessions.

(e) A certified operator is not required to retake an examination already successfully passed unless **EITHER ONE OF THE FOLLOWING CONDITIONS OCCURS:**

(1) The individual fails to renew their certification within 2 years from the expiration date of the certification.

(2) The individual fails to complete the required amount of continuing education within the 3-year renewal cycle.

**~~[(3) The Board takes action to suspend or modify the certification. A certified operator whose license is revoked may not apply to become recertified or to reexamine.]~~**

#### **§ 302.604. EXAMINATION ADMINISTRATION.**

(a) The proctors and Department staff shall follow all procedures for the administration of an examination as defined in Board guidelines.

(b) The examination proctor will provide a written report to the Board regarding any applicant violating this section or Board guidelines.

(c) The Board may make exceptions to a written examination or other examination requirements when an applicant or representative makes a “reasonable accommodation” request under the Americans With Disabilities Act of 1990 (42 U. S. C. A §§ 12101 – 12213) in written form to the Board, the request documents the reason for the accommodation and the request is submitted to the Board Secretary in writing. ~~at least 15 days before the date of the examination.~~ **THE BOARD SECRETARY WILL NOTIFY THE APPLICANT WITHIN FOURTEEN DAYS AFTER BOARD ACTION ON THE REQUEST.**

(d) The Board may make exceptions to the scheduled date and location of an examination upon written request by an applicant based on religious preference, jury duty or other compelling reasons.

#### **§ 302.605. Use of materials and electronic devices by the applicant during examination.**

(a) The use of nonprogrammable calculators by applicants during the examination is permitted.

(b) The use of hand held computers or other devices that can store technical information, electronic communication devices, personal music players or other memory storage devices or printed materials other than the materials provided by the examination proctor during the examination is not permitted during the examination.

(c) An applicant may use special electronic devices, if the applicant has submitted a written request to the Board Secretary for approval and has received written approval from the Board.

#### **Subchapter G. EDUCATION, EXAMINATION AND EXPERIENCE REQUIREMENTS**

Sec.

302.701. Minimum education requirements.

302.702. Examination requirements.

302.703. Experience requirements.

302.704. Determining qualifying experience.

302.705. Accelerated certification requirements for system modifications.

**§ 302.701. Minimum education requirements.**

(a) An applicant for certification shall obtain a high school diploma or a GED to meet one of the minimum education requirements.

(b) The Board may grant an education exemption to the requirements in subsection (a) if the applicant provides written verification by the applicant's supervisor or another certified operator with direct knowledge of the applicant's experience working as an operator in a water or wastewater system before February 21, 2002.

(c) Experience used to meet the equivalency for a high school diploma or GED cannot be used as experience for certification.

**§ 302.702. Examination requirements.**

(a) An applicant for certification in wastewater shall obtain a passing score on a Part I General Examination and one or more of the Part II Treatment Technology Specific Examinations, a Master Examination or a Collection System Examination.

(b) An applicant for certification in drinking water shall obtain a passing score on a Part I General Examination and one or more of the Part II Treatment Technology Specific Examinations for Class A, B and C, a Part I General Examination for Class D, a Master Examination, a Dc or Dn Small System Examination or a Distribution Examination.

(c) An applicant shall obtain a minimum numerical score of correctly answered questions based on ~~[general psychometric principles]~~ **INDUSTRY RECOGNIZED PSYCHOMETRIC PRINCIPLES AND STANDARDS** to pass an examination for certification.

(d) An applicant's score on an examination is independent and not conditional on the results of any other type of certification examination.

(e) Test results are valid indefinitely, unless the applicant must apply for recertification as determined by the Board.

**§ 302.703. Experience requirements.**

(a) To meet the requirements for certification, the Department will provide an applicant with two different experience tracks.

(b) Track I identifies the experience requirement necessary to qualify for certification when the applicant meets the basic educational requirement in § 302.701 (relating to minimum education requirements).

(1) Track I experience requirements for wastewater treatment system operators.

Class	Minimum Experience
A	4 years
B	3 years
C	2 years
D	1 year
E	1 year

(2) Track I experience requirements for water system operators.

Class	Minimum Experience
A	4 years
B	3 years
C	2 years
D	1 year
E	1 year
Dc	6 months
Dn	6 months

(c) An applicant for operator certification using Track I may supplement up to 50% of the required experience by successfully completing additional education beyond the minimum education requirement defined in § 302.701. One month of experience can be credited for the successful completion of every 10 contact hours of Department-approved training courses in water or wastewater **TREATMENT**, as applicable, or 1.5 months experience may be credited for the successful completion of one college credit in water or wastewater **TREATMENT RELATED COURSES** from an accredited college or university. **THE DEPARTMENT WILL APPROVE THESE COURSES IN ACCORDANCE WITH ITS TRAINING APPROVAL PROCESS GUIDELINES.**

(d) Track II provides a reduction in the experience requirements defined in subsection (b) when the applicant has successfully earned one of the following:

(1) A certificate of completion of a Department-approved certificate program in water or wastewater **TREATMENT**, or both (CP). **THE DEPARTMENT WILL APPROVE THIS PROGRAM IN ACCORDANCE WITH ITS TRAINING APPROVAL PROCESS GUIDELINES.**

(2) An associate degree in a water or wastewater operations, or both, approved by the Department (ASP). **THE DEPARTMENT WILL APPROVE THIS PROGRAM IN ACCORDANCE WITH ITS TRAINING APPROVAL PROCESS GUIDELINES.**

(3) An associate degree in environmental sciences, physical sciences, engineering or engineering technology not approved by the Department (AS).

(4) A bachelor's or graduate degree in biology, chemistry, environmental sciences, physical sciences, sanitary or environmental engineering or engineering technology from a nationally accredited college or university (BS/BA).

(e) The required experience under Track II is:

(1) *Track II experience requirements for wastewater treatment system operators.*

Class	CP	ASP	AS	BS/BA
A	2 years	1 year	3.5 years	2 years
B	1 year	6 months	2.5 years	1 year
C	6 months	6 months	1.5 years	6 months
D	6 months	6 months	6 months	6 months
E	6 months	6 months	6 months	6 months

(2) *Track II experience requirements for water system operators.*

Class	CP	ASP	AS	BS/BA
A	2 years	1 year	3.5 years	2 years
B	1 year	6 months	2.5 years	1 year
C	6 months	6 months	1.5 years	6 months
D	6 months	6 months	6 months	6 months
E	6 months	6 months	6 months	6 months
Dc	0	0	6 months	0
Dn	0	0	6 months	0

(f) When education is applied to meet the experience requirements for certification under Track II, the credit can only be applied once and is not cumulative.

**§ 302.704. Determining qualifying experience.**

(a) The Board will determine if the applicant's experience meets the experience requirements defined in § 302.703 (relating to experience requirements).

(b) Experience for certification is achieved by participating in a combination of activities related to process control under the supervision of a certified operator who holds the appropriate subclassifications.

(c) The Board will consider the following activities for qualifying experience:

- (1) Operating mechanical equipment related to process control.
- (2) Maintaining mechanical equipment related to process control.
- (3) Collecting and analyzing chemical and biological samples related to process control and regulatory compliance activities.
- (4) Performing calculations related to process control.
- (5) Preparing or standardizing chemical and biological solutions.
- (6) Interpreting, compiling and completing monitoring data.
- (7) Recommending appropriate process control measures.
- (8) Participating in onsite assessment, inspection or evaluation of plant processes.
- (9) Calibrating chemical feed systems.
- (10) Using equipment to monitor and measure flows through a water or wastewater system.

(d) An applicant for a wastewater certificate may apply experience as defined in subsection (c) as follows:

(1) Experience working at an activated sludge wastewater system qualifies an applicant for an activated sludge wastewater certificate (Subclassification 1), the fixed film wastewater certificate (Subclassification 2) and the treatment pond and lagoon wastewater certificate (Subclassification 3).

(2) Experience working at a fixed film wastewater system qualifies an applicant for a fixed film wastewater certificate (Subclassification 2) and a treatment pond and lagoon wastewater certificate (Subclassification 3).

(3) Experience working at a treatment pond and lagoon wastewater system qualifies the applicant for the treatment pond and lagoon wastewater certificate (Subclassification 3).

(4) Experience working at a satellite collection system or a single entity collection system qualifies the applicant for a Class E Subclassification 4 wastewater certificate.

(5) Experience for class may be obtained at a wastewater system with the classification level requested or two classification levels alphabetically lower.

(e) An applicant for a water certificate may apply experience as defined in subsection (c) as follows:

(1) Experience working at a conventional filtration, direct filtration, diatomaceous earth filtration or slow sand filtration water system qualifies an applicant for any of the following:

(i) The filtration water certificates (Subclassifications 1, 2, 3, 4, 5 and 6).

(ii) The chemical treatment water certificates (Subclassifications 7, 8, 9 and 10).

(iii) The gaseous chlorine and nongaseous chemical disinfection water treatment certificates (Subclassifications 11 and 12).

(2) Experience working at a cartridge or bag filtration or membrane filtration water system qualifies an applicant for any of the following:

(i) The cartridge or bag filtration and the membrane filtration water certificates (Subclassifications 5 and 6).

(ii) The chemical treatment water certificates (Subclassifications 7, 8, 9 and 10).

(iii) The gaseous chlorine and nongaseous chemical disinfection water treatment certificates (Subclassifications 11 and 12).

(3) Experience working at a corrosion control and sequestering, chemical addition, ion exchange and greensand or aeration and activated carbon adsorption water system qualifies an applicant for any of the following:

(i) The chemical treatment water certificates (Subclassifications 7, 8, 9 and 10).

(ii) The gaseous chlorine and nongaseous chemical disinfection water treatment certificates (Subclassifications 11 and 12).

(4) Experience working at a gaseous chlorine disinfection or nongaseous chemical disinfection water system qualifies an applicant for the gaseous chlorine and nongaseous chemical disinfection water treatment certificates (Subclassifications 11 and 12).

(5) Experience working at an ultraviolet water system qualifies an applicant for the ultraviolet water treatment certificate (Subclassification 13).

(6) Experience working at an ozonation water system qualifies an applicant for the ozonation water treatment certificate (Subclassification 14).

(7) Experience for a class may be obtained at a water system at the classification level requested or two classification levels alphabetically lower.

(8) Experience working at a Dc water system qualifies an applicant for only the Class D water certificate with the gaseous chlorine and nongaseous chemical disinfection water treatment certificates (Subclassifications 11 and 12).

(9) Experience working at a Dn water system qualifies an applicant for only the Class D water certificate without any subclassifications.

(f) One year of experience is equal to 220 working days or 1,760 hours of employment.

(g) Experience will be prorated for time periods less than 1 year.

(h) Experience is counted up to the first day of the month after the applicant submits an application for certification action.

(i) An applicant's experience at a wastewater system may be used to meet no more than half the experience requirement for a drinking water certification of the same classification level or a level alphabetically lower. The remaining experience must be operating experience at a drinking water system as defined in subsection (c).

(j) An applicant's experience at a water system may be used to meet no more than half the experience requirement of a wastewater certification of the same classification level or a level alphabetically lower. The remaining experience must be operating experience at a wastewater system as defined in subsection (c).

#### **§ 302.705. Accelerated certification requirements for system modifications.**

(a) An operator certificate upgrade is required when an increase in treatment capacity of the system no longer qualifies the available operator to make process control decisions for that system. When the capacity of the system is increased **SO AS TO CHANGE THE CLASSIFICATION OF THE SYSTEM**, the existing available operators will qualify for an accelerated certification upgrade by applying for an upgrade in class before the larger system becomes operational. Additional experience or training is not required.

(b) An operator certificate upgrade is required when the addition of a different treatment technology to a system no longer qualifies the available operators to make process control decisions for that system. When a different treatment technology is added **[to] THAT RESULTS IN A CHANGE OF THE SUBCLASSIFICATION OF** the system, the existing available operators may qualify for an accelerated certification upgrade if:

(1) The owner obtains the appropriate NPDES, public water supply or The Clean Streams Law permit from the Department. **[with approval of the accelerated certification program.]**

(2) The operator successfully completes an onsite, Department-approved training program from the manufacturer or consulting engineer on the proper operation and maintenance of the new treatment technology.

(3) The operator passes, **OR PREVIOUSLY PASSED**, the appropriate Part II Technology Specific examination for the new treatment technology. **ADDITIONAL EXPERIENCE REQUIRED UNDER § 302.303(b) (RELATING TO ISSUANCE OF UPGRADED CERTIFICATE) WOULD BE WAIVED.**

(4) The manufacturer or consulting engineer provides the Board and the Department with written documentation that the available operators for the system have successfully completed the formalized startup training and assistance program and are competent in the operation of the treatment technology.

(c) The available operators of the system undergoing an upgrade may continue to make process control decisions for the system if the conditions for accelerated certification as defined in subsection (a) or (b) are met. If not, the owner of the system will find another available operator with the appropriate class and subclassifications to make process control decisions until the existing certified operators at the system meet the additional examination requirements defined in § 302.702 (relating to examination requirements) and any additional experience requirements defined in § 302.703 (relating to experience requirements).

## **Subchapter H. CONTINUING EDUCATION AND TRAINING**

Sec.

302.801. Training and continuing education.

302.802. Continuing education requirements for certificate renewal.

302.803. Phased schedule for continuing education requirements.

302.804. System security training requirements.

### **§ 302.801. Training and continuing education.**

(a) The Department will designate all approved training and continuing education into one of the following categories:

(1) Wastewater.

(2) Water.

(3) Bioperable.

(4) Security training as established in § 302.804 (relating to system security training requirements).

(b) The Department may approve, deny, suspend or revoke any training sponsor, training program, training course or conference session.

(c) The Department may audit, examine, inspect, and review the activities and documentation of approved training sponsors, training programs, approved instructors, courses, course content, conference sessions, teaching materials and facilities as related to water operator training and wastewater operator training and continuing education.

(d) The Department will develop training approval process guidelines that define the standards for the approval of training providers as training sponsors, training programs, instructors, courses and course content, conference sessions and other teaching materials and facilities used for the development and delivery of water and wastewater operator training and continuing education.

**(e) DECISIONS OF THE DEPARTMENT RELATED TO THIS SECTION ARE REVIEWABLE BY THE BOARD.**

**§ 302.802. Continuing education requirements for certificate renewal.**

(a) Only contact hours for training approved by the Department will be used by a certified operator to meet the continuing education requirements for certificate renewal.

(b) A certified operator is required to successfully obtain the designated continuing education contact hours as defined in § 302.803 (relating to phased schedule for continuing education requirements) for certification renewal for the appropriate class.

(c) Bioperable operators will meet the continuing education requirements for each water and wastewater certificate held.

(d) A certified operator may not apply excess contact hours to a subsequent 3 year renewal cycle.

(e) For the purpose of meeting the continuing education requirement, the contact hours associated with a Department-approved course may only be applied once within an operator's 3 year renewal cycle.

(f) A Department-approved instructor holding an operator's certificate may be granted continuing education contact hours for teaching a Department-approved training course provided the instructor delivers the course within the instructor's 3 year renewal cycle and provides documentation to the Department that the course was completed, with the total amount of hours of training delivered. The contact hours for a specific course can be granted only once within the 3 year renewal cycle in which the course is taught.

(g) A certified operator is credited continuing education contact hours in the 3 year renewal cycle in which the training ~~[provider documents successful completion of the training.]~~ **WAS COMPLETED, AS DOCUMENTED BY THE TRAINING PROVIDER.**

(h) Certified operators that have successfully completed the Department's Drinking Water Corrosion Control Treatment Course or Bio-solids Management Course may be granted a one-time

credit for the contact hours for continuing education during the initial renewal cycle, regardless of the date of completion.

**§ 302.803. Phased schedule for continuing education requirements.**

(a) The number of required contact hours of continuing education for certificate renewal is as follows:

*(1) Contact hour requirements for wastewater system certified operators.*

<b>Operator Class</b>	<b>Contact Hours for First 3 Year Renewal Cycle</b>	<b>Contact Hours for Subsequent 3 Year Renewal Cycle</b>
A	15	30
B	15	30
C	15	30
D	8	15
E	8	15
Grandparented	8	15

*(2) Contact hour requirements for water system certified operators.*

<b>Operator Class</b>	<b>Contact Hours for First 3 Year Renewal Cycle</b>	<b>Contact Hours for Subsequent 3 Year Renewal Cycle</b>
A	15	30
B	15	30
C	15	30
D	8	15
E	8	15
Dc	4	9
Dn	3	6
Grandparented	8	15

(b) The first 3 year renewal cycle is defined as either the first 3 year period in which a certified operator holds a valid certificate after being transferred from an annual renewal cycle, or the first cycle after receiving certification.

(c) The subsequent 3 year renewal cycle is every 3 year period after the operator's first three-year renewal cycle.

§ 302.804. System security training requirements.

(a) Every certified operator shall successfully complete a Department-approved system security training course.

(b) A certified operator shall meet the system security training requirement [~~before the conclusion of the operator's first subsequent 3-year renewal period~~] **IN THE CERTIFIED OPERATOR'S FIRST RENEWAL PERIOD COMMENCING ON OR** after \_\_\_\_\_ (Editor's Note: The blank refers to the effective date of adoption of this **[proposed rulemaking] FINAL RULE**).

(c) A certified operator shall successfully demonstrate the knowledge, skills and abilities contained in the Department's system security training course using a Department-approved learning assessment method.

(d) The contact hours associated with the system security training also qualifies as approved continuing education within an operator's 3 year renewal cycle.

(e) A Department-approved training sponsor may, upon written agreement with the Department, deliver the Department's system security course that is approved to meet the requirements of this section.

(f) Bioperable operators need to successfully complete the Department-approved system security training course only once.

(g) The Department may require certified operators to attend and successfully complete additional Department-approved system security courses upon written notification **WHEN ANY OF THE FOLLOWING OCCUR:**

**(1) THE OPERATOR FAILED THE DEPARTMENT-APPROVED SYSTEM SECURITY COURSE REQUIRED IN SUBSECTION (a).**

**(2) THERE IS A HISTORY OF SECURITY ISSUES AT A WATER OR WASTEWATER SYSTEM WHERE THE CERTIFIED OPERATORS WORK.**

**(3) THERE IS A HISTORY OF SECURITY ISSUES WITH THE CERTIFIED OPERATOR.**

**(4) NEW OR UPDATED SECURITY COURSES BECOME AVAILABLE.**

**(5) THE DEPARTMENT DETERMINES A SITUATION OR THREAT (FEDERAL, STATE, LOCAL) EXISTS THAT REQUIRES ADDITIONAL SPECIFIC SECURITY COURSES.**

**(h) WHEN ESTABLISHING ADDITIONAL SECURITY TRAINING REQUIREMENTS AS PROVIDED FOR IN SUBSECTION (g), THE DEPARTMENT SHALL INCLUDE THE FOLLOWING IN THE WRITTEN NOTIFICATION:**

- (1) IDENTIFICATION OF THE CERTIFIED OPERATORS WHO MUST COMPLETE THE TRAINING.**
- (2) THE DEADLINE FOR COMPLETING THE SECURITY TRAINING.**
- (3) THE AMOUNT AND TYPE OF SECURITY TRAINING TO BE COMPLETED.**

**Subchapter I. SYSTEM CLASSIFICATION AND SUBCLASSIFICATIONS**

Sec.

302.901. Classification and subclassifications of water systems.

302.902. Classification and subclassifications of wastewater systems.

**§302.901. Classification and subclassifications of water systems.**

(a) Water systems will be classified into one of five classifications being designated as Classification A, B, C, D or E as follows:

(1) *Classification A.* Water systems serving an average of more than 5 million gallons **[a] PER** day.

(2) *Classification B.* Water systems serving an average of greater than 1 million gallons **[a] PER** day but less than or equal to 5 million gallons **[a] PER** day.

(3) *Classification C.* Water systems serving an average of greater than 100,000 gallons **[a] PER** day but less than or equal to 1 million gallons **[a] PER** day.

(4) *Classification D.* Water systems serving an average of less than or equal to 100,000 gallons **[a] PER** day.

(5) *Classification E.* Distribution and consecutive water systems, without treatment.

(b) Upon written request by the owner, the Department may reclassify a water system serving no more than 500 individuals or having no more than 150 connections, where the source of water for the system is exclusively groundwater, as a Dc **[or Dn]** water system. A water system that requires only disinfection will be classified as a Dc system. **[ , a water system that requires no treatment as a Dn system.]**

(c) Each water system Classification A, B and C must be assigned one or more of the following 14 treatment subclassifications that identifies the treatment methods used to process water at that system. Classifications D and E may have one or more of the following 14 treatment subclassifications if the system or operator uses the specified treatment methods to process drinking water at that system.

- (1) Subclassification 1 – Conventional Filtration.
- (2) Subclassification 2 – Direct Filtration.
- (3) Subclassification 3 – Diatomaceous Earth Filtration.
- (4) Subclassification 4 – Slow Sand Filtration.
- (5) Subclassification 5 – Cartridge or Bag Filtration.
- (6) Subclassification 6 – Membrane Filtration.
- (7) Subclassification 7 – Corrosion Control and Sequestering.
- (8) Subclassification 8 – Chemical Addition.
- (9) Subclassification 9 – Ion Exchange and Greensand.
- (10) Subclassification 10 – Aeration and Activated Carbon Adsorption.
- (11) Subclassification 11 – Gaseous Chlorine Disinfection.
- (12) Subclassification 12 – Nongaseous Chemical Disinfection.
- (13) Subclassification 13 – Ultraviolet Disinfection.
- (14) Subclassification 14 – Ozonation.

(d) Upon written notice provided to the owners and available operators of the system, the Department may change the classification or subclassification of a water system because of changes in the conditions or circumstances at the system, **INCLUDING, BUT NOT LIMITED TO:**

- (1) AN INCREASE IN CAPACITY THAT CHANGES THE CLASS OF THE SYSTEM.**
- (2) THE ADDITION OR LOSS OF A TREATMENT TECHNOLOGY.**
- (3) OTHER FEDERAL OR STATE REGULATORY CHANGES IN REQUIREMENTS RELATING TO THE TREATMENT TECHNOLOGY USED AT THE SYSTEM.**

**(4) THE ISSUANCE OF A PERMIT CHANGING THE CLASS OR SUBCLASSIFICATION OF A SYSTEM.**

**§ 302.902. Classifications and subclassifications of wastewater systems.**

(a) Wastewater systems will be classified into one of five classifications being designated as Classification A, B, C, D or E as follows:

(1) *Classification A.* Wastewater systems with a permitted average daily discharge flow greater than 5 million gallons **[a] PER** day or unlimited permitted discharge flows.

(2) *Classification B.* Wastewater systems with a permitted average daily discharge flow greater than 1 million gallons per day but less than or equal to 5 million gallons **[a] PER** day.

(3) *Classification C.* Wastewater systems with a permitted average daily discharge flow greater than 100,000 gallons **[a] PER** day but less than or equal to 1 million gallons **[a] PER** day.

(4) *Classification D.* Wastewater systems with a permitted average daily discharge flow equal to or less than 100,000 gallons.

(5) *Classification E.* A **[wastewater]** satellite collection system **[with at least one pump station.]**

(b) Each wastewater system Classification A, B, C and D must be assigned one or more of 4 treatment subclassifications that identifies the treatment or collection methods, or both, used to process wastewater at that system:

(1) Subclassification 1 – Activated Sludge.

(2) Subclassification 2 – Fixed Film.

(3) Subclassification 3 – Treatment Ponds and Lagoons.

(4) Subclassification 4 – Single Entity Collection System**[s.]**

(c) Upon written notice provided to the owners and available operators of the system, the Department may change the classification or subclassification of a wastewater system because of changes in the conditions or circumstances at the system, **INCLUDING, BUT NOT LIMITED TO:**

**(1) AN INCREASE IN CAPACITY THAT CHANGES THE CLASS OF THE SYSTEM.**

**(2) THE ADDITION OR LOSS OF A TREATMENT TECHNOLOGY.**

**(3) OTHER FEDERAL OR STATE REGULATORY CHANGES IN REQUIREMENTS RELATING TO TREATMENT TECHNOLOGY USED AT THE SYSTEM.**

**(4) THE ISSUANCE OF A PERMIT CHANGING THE CLASS OR SUBCLASSIFICATION OF A SYSTEM.**

**Subchapter J. OPERATOR CLASSES AND SUBCLASSIFICATIONS**

Sec.

- 302.1001. General provisions.
- 302.1002. Certification classes and subclassifications of water system operators.
- 302.1003. Certification classes and subclassifications of wastewater system operators.
- 302.1004. Operator-in-training status.
- 302.1005. Grandparented operators.
- 302.1006. Laboratory supervisor certification.

**§ 302.1001. General provisions.**

(a) A certified operator may hold only one valid water certificate and one valid wastewater certificate. Each valid certificate may include one or more appropriate classes and subclassifications.

(b) A certified operator holding a valid Class A, B, C or D and the Class E water or wastewater certificate and all the water or wastewater treatment technology subclassifications, will be issued either a water or wastewater master certificate for that class.

**§ 302.1002. Certification classes and subclassifications of water system operators.**

(a) There are 7 6 water classes and 14 water treatment technology subclassifications that correspond to the water system classifications and treatment technology subclassifications defined in § 302.901 (relating to classification and subclassifications of water systems).

(b) To hold a valid Class A, B or C water certificate, the operator shall meet all the certification requirements set forth in § 302. ~~103 (relating to scope)~~ 104 (RELATING TO CERTIFICATION REQUIREMENTS) for at least one water treatment technology subclassification defined in § 302.901 (relating to classification and subclassifications of water systems).

(c) To hold a valid Class D or E water certificate, the operator shall meet the certification requirements in § 302. ~~103~~ 104 but is not required to have a subclassification, unless the operator

is involved in making process control decisions involving one of the subclassification treatment technologies defined in § 302.901.

(d) A Dc or Dn certificate is a stand-alone certificate and does not include any water treatment technology subclassifications.

(e) Water operators with a Class A, B, C or D water certificate that also make process control decisions in the distribution system shall also have the Class E certificate.

### **§ 302.1003. Certification classes and subclassifications of wastewater system operators.**

(a) There are five wastewater classifications and four wastewater treatment technology subclassifications that correspond to the wastewater treatment system classifications and treatment technology subclassifications defined in § 302.902 (relating to classifications and subclassifications of wastewater systems).

(b) Certified wastewater operators holding an A, B, C or D classification will have at least one wastewater treatment technology subclassification.

(c) The Class E wastewater classification will be combined with Subclassification 4 as a stand alone certificate for operators of wastewater collection systems who meet the requirements for certification as defined in § 302. ~~103 (relating to scope)~~ 104 (RELATING TO CERTIFICATION REQUIREMENTS).

(d) Wastewater operators with a Class A, B, C or D wastewater certificate that also make process control decisions in the collection system shall also have the E4 certificate.

### **§ 302.1004. Operator-in-training status.**

(a) The operator-in-training status shall apply to an individual passing the certification examinations who has not yet met the minimum education and experience requirements in § 302.701 and § 302.703 (relating to minimum education requirements; and experience requirements).

(b) An operator-in-training status is valid until the individual demonstrates the education and experience requirements as defined in § 302.701 and § 302.703 have been met and the Board issues a certificate.

(c) An individual with operator-in-training status will not independently make process control decisions or serve as the available operator for a water or wastewater system.

(d) An operator-in-training may concurrently hold a water and wastewater operator-in-training status.

**§ 302.1005. Grandparented operators.**

(a) This section applies to those operators of nontransient noncommunity water systems, satellite wastewater collection systems containing a pump station[s] or single entity wastewater collection systems who were granted a grandparented certificate by the Board.

(b) Grandparented certificates are site, size and technology specific and not transferable to any other water or wastewater system.

(c) A grandparented certificate is temporary and will expire within 3 years of the date of issuance. A certified operator who was grandparented shall meet the conditions for certification renewal including the submittal of an application for certification action for renewal defined in § 302.201 (relating to form of application) and completion of the continuing education requirements defined in § 302.802 (relating to continuing education requirements for certificate renewal).

(d) The grandparented certificate is no longer valid if one of the following applies:

(1) The certified operator moves to another water or wastewater system.

(2) The system subclassification changes because of a modification or addition, or both, of treatment technology.

(3) ~~[There are violations attributed to the operator that threaten the public health, the environment and public safety.]~~ **THE BOARD MODIFIES, SUSPENDS OR REVOKES THE CERTIFICATE UPON PETITION OF THE DEPARTMENT.**

(e) If a grandparented certificate is no longer valid, the operator shall meet all the requirements for certification as identified in § 302. ~~[103 (relating to scope)]~~ **104(RELATING TO CERTIFICATION REQUIREMENTS).**

**§ 302.1006. Laboratory supervisor certification.**

(a) There will be a laboratory supervisor subclassification (15) for individuals responsible for the supervision of testing or analysis of environmental samples and reporting of analytical data for water supply systems in a Pennsylvania-accredited environmental laboratory operated by a water system.

(b) There will be a laboratory supervisor subclassification (5) for individuals responsible for supervision of the testing or analysis of environmental samples and reporting of analytical data for wastewater systems in a Pennsylvania-accredited environmental laboratory operated by a wastewater or industrial waste system.

(c) A certified operator, including those holding a master certificate, will not be qualified by the Department for a laboratory supervisor certificate without meeting the requirements in this section.

(d) Laboratory supervisor certification is not required to qualify for a master certificate in water or wastewater.

(e) An applicant for laboratory supervisor's certification for drinking water or wastewater shall have 2 years of experience in the testing and analysis of environmental samples for water or wastewater systems.

(f) An applicant for laboratory supervisor's certification for drinking water or wastewater systems shall hold a valid operator's certificate and demonstrate the knowledge, skills and abilities needed to be a laboratory supervisor by obtaining a passing score on either the Part II Laboratory Supervisor for Water Systems or Part II Laboratory Supervisor for Wastewater Systems examination.

**(g) IN ACCORDANCE WITH 25 Pa CODE §252.302(h)(3) (RELATING TO THE QUALIFICATIONS OF THE LABORATORY SUPERVISOR), CERTIFIED OPERATORS WHO ARE SERVING AS THE LABORATORY SUPERVISOR FOR A DRINKING WATER OR WASTEWATER SYSTEM ON \_\_\_\_\_ (EDITOR'S NOTE: THE BLANK REFERS TO THE EFFECTIVE DATE OF ADOPTION OF THIS FINAL RULE) WILL HAVE TWELVE MONTHS AFTER THE BOARD MAKES THE WATER OR WASTEWATER LABORATORY SUBCLASSIFICATION EXAMINATION AVAILABLE TO MEET THE STANDARDS FOR CERTIFICATION AS DEFINED IN THIS SECTION.**

**(h) CERTIFIED OPERATORS WHO MEET THE OTHER QUALIFICATIONS DEFINED IN 25 Pa CODE § 252.302 OR 252.303 (RELATING TO GRANDFATHERING PROVISIONS FOR LABORATORY SUPERVISORS) DO NOT NEED TO OBTAIN THE LABORATORY SUPERVISOR CERTIFICATION IN ORDER TO CONTINUE SERVING AS A LABORATORY SUPERVISOR FOR A WATER OR WASTEWATER SYTEM.**

## **Subchapter K. PROFESSIONAL ENGINEERS**

Sec.

302.1101. General provisions.

302.1102. Issuance of initial certification for a professional engineer.

302.1103. Experience requirements for professional engineers.

### **§ 302.1101. General provisions.**

(a) This subchapter applies to a professional engineer registered under the Engineer, Land Surveyor and Geologist Registration Law (63 P. S. §§ 148 – 158.2) who has been successfully examined in civil, environmental or sanitary engineering and is a certified operator, or an applicant for operator certification.

(b) A professional engineer applying for certification action shall meet the same requirements as provided for by the act, this ~~[part, other Department rules and regulations related]~~ **CHAPTER, AND ANY OTHER FEDERAL OR STATE LAW OR RULES AND REGULATIONS PROMULGATED THERETO APPLICABLE** to the operation of water and wastewater systems except for those provided for in this subchapter.

**§ 302.1102. Issuance of initial certification for a professional engineer.**

A professional engineer shall submit an application for certification action in accordance with § 302.201 (relating to form of application). The engineer shall also meet the requirements for certification in § 302. ~~[103 (relating to scope)]~~ **104 (RELATING TO CERTIFICATION REQUIREMENTS)**. When requesting a certificate under this subchapter, the applicant shall provide **A COPY OF, OR OTHER** written proof of, a valid professional engineer's license.

**§ 302.1103. Experience requirements for professional engineers.**

In addition to those activities defined in § 302.704 (relating to determining qualifying experience), other activities specifically associated with the responsibilities and duties of a professional engineer may be eligible as qualifying experience for an applicant. These activities include the following:

- (1) Plant start-up activities.
- (2) Development of standard operating procedures.
- (3) **DEVELOPMENT OF** an operation and maintenance plan or an emergency response plan for a water or wastewater system.
- (4) Consulting activities associated with water or wastewater system operations.
- (5) Activities associated with testing pilot technology.
- (6) Activities related to operational inspections completed by a professional engineer.

**Subchapter L. SYSTEM OPERATION**

Sec.

- § 302.1201. Duties of operators.
- § 302.1202. Duties of owners.
- § 302.1203. Process control decisions.
- § 302.1204. Standard operating procedures.
- § 302.1205. Number of required certified operators.

- § 302.1206. Operator in responsible charge.
- § 302.1207. Operation of multiple treatment systems (Circuit Rider).
- § 302.1208. Programmable logic controls (PLCs) and supervisory control and data acquisition systems (SCADA).
- § 302.1209. ~~[Satellite collection systems.]~~ **ASSESSMENT OF FINES AND PENALTIES.**

**§ 302.1201. Duties of operators.**

(a) A certified operator shall comply with ~~[applicable Federal and State laws, the act, this part, and other Department rules and regulations related]~~ **THE ACT, THIS CHAPTER, AND ANY OTHER FEDERAL OR STATE LAW OR RULES AND REGULATIONS PROMULGATED THERETO APPLICABLE** to the operation of water and wastewater systems to protect the environment and public health and safety. A certified operator shall provide for the suitable operation and maintenance of a water or wastewater system utilizing available resources needed to comply with applicable laws, rules and regulations and permit conditions or requirements. The Department will ~~[recognize the ability of the certified operator to meet these requirements is in part dependent upon the available resources and responsibilities assigned by the system owner.]~~ **CONSIDER REPORTS SUBMITTED TO THE OWNER IN ACCORDANCE WITH SUBSECTION (c) AND THE OWNER'S RESPONSE AS DEFINED IN § 302.1202(a)(4) (RELATING TO DUTIES OF OWNERS) WHEN DECIDING IF A CERTIFIED OPERATOR IS IN COMPLIANCE.**

(b) Available operator tasks necessary to control the operation and provide for the maintenance of a water or wastewater system may include:

- (1) Controlling the selection of, or flow from, an existing permitted source to a water system.
- (2) Controlling the selection of flow to a water distribution system.
- (3) Controlling the flow from a wastewater system to the waters of this Commonwealth as defined in the NPDES or The Clean Streams Law permit for the system.
- (4) Controlling the processing of raw, treated or finished water or wastewater.
- (5) Preparing and controlling chemical or biological, or both, addition for water or wastewater treatment.
- (6) Observing and taking the necessary actions in response to variations in operating conditions.
- (7) Adjusting system processes based on monitoring data.
- (8) Performing calculations for process control.
- (9) Operating valves or gates, or both, either manually or by remote control.

- (10) Starting or stopping pumps or increasing or decreasing pump rates.
- (11) Providing for proper source water protection.
- (12) Directing the actions of certified and noncertified operators.
- (13) Taking an action to maintain a system's equipment to prevent pollution or a permit violation.
- (14) Overseeing or performing the collection, analysis and interpretation of all process control and ~~self-~~COMPLIANCE monitoring samples of the water or wastewater systems.
- (15) Preparing, REVIEWING and submitting applicable NOTICES AND reports to the appropriate persons or agencies.
- (16) Developing, approving or using a process control plan that is specific to the treatment needs and conditions of the system.

(c) Certified operators shall ~~submit a written~~ report to the system owner ~~documenting~~ any known violations or system conditions that may ~~BE~~ ~~potentially cause~~ or are causing violations of ~~any Department regulation or permit conditions or requirements. This written report shall be sent to the owner by registered mail with a return receipt requested, by hand carrying the report to the owner and receiving a signed receipt, or by any mail service with a receipt requested.] ANY FEDERAL OR STATE LAW OR RULES AND REGULATIONS PROMULGATED THERETO OR PERMIT CONDITIONS AND REQUIREMENTS APPLICABLE TO THE OPERATION OF WATER OR WASTEWATER SYSTEMS. WHEN SUBMITTED, [The] THE~~ report must include the following:

- (1) The name of the certified operator ~~filing~~ MAKING the report.
- (2) The date.
- (3) The nature of the violation or system conditions.
- (4) The suspected cause of the violation or system conditions, including the lack of needed resources.
- (5) The degree of severity or threat to public health, safety or the environment of the violation or system conditions.
- (6) Any actions or mitigating measures associated with process control necessary to prevent or eliminate a violation of ~~applicable water or wastewater system laws, rules and regulations and permit conditions and requirements.] ANY FEDERAL OR STATE LAW OR RULES AND REGULATIONS PROMULGATED THERETO OR PERMIT CONDITIONS AND REQUIREMENTS APPLICABLE TO THE OPERATION OF WATER OR WASTEWATER SYSTEMS.~~

(d) The available operators making process control decisions are responsible for those decisions and consequences, unless the owner fails to respond to a **[written]** report as required in subsection (c) or there is a deliberate action with malice or negligence on the part of an employee under the supervision of the available operator.

**§ 302.1202. Duties of owners.**

(a) An owner of a water or wastewater system shall:

(1) Comply with the ~~[applicable Federal and State laws,]~~ **ANY FEDERAL OR STATE LAW OR RULES AND REGULATIONS PROMULGATED THERETO OR PERMIT CONDITIONS AND REQUIREMENTS APPLICABLE TO THE OPERATION OF WATER OR WASTEWATER SYSTEMS.**

~~[(2) Comply with the rules and regulations and permits associated with a water or wastewater system to protect the environment, public health and safety.]~~

~~[(3)](2)~~ Insure all process control decisions at the systems are made by available operators with a valid operator's certificate with the appropriate classes and subclassifications.

~~[(4)](3)~~ Post the names of the available operators in the treatment area of the system, including the method of contacting them if they are not onsite.

~~[(5)](4)~~ Take appropriate action in a timely manner **IN RESPONSE** to **[written]** reports required under § 302.1201(c) (relating to duties of operators) from certified operators ~~[and make a "good faith" effort to address problems and concerns identified in these reports.]~~

~~[(6)](5)~~ Provide a copy of all current, relevant water and wastewater permits to all available operators, **UNLESS THE OWNER SUBMITS A WRITTEN REQUEST TO THE DEPARTMENT. UPON RECEIPT OF THIS WRITTEN REQUEST, THE DEPARTMENT WILL PROVIDE THE CURRENT WATER AND WASTEWATER PERMITS TO THE AVAILABLE OPERATOR DESIGNATED BY THE OWNER.**

(b) ~~[On an annual basis,]~~ **UPON WRITTEN REQUEST,** a system owner shall report to the Department:

(1) The system name, address, phone number and e-mail address (if available).

(2) The name and title of the system representative providing the information.

(3) The system owner name, address, phone number and e-mail address (if available).

(4) The Public Water System Identification number, NPDES permit numbers or Water Quality Management Part II permit numbers for the system.

(5) The name, client ID, address, phone number and email (if available) of all available operators employed by the owner at the system and the operators' classes and subclassifications.

(6) The designation of an operator in responsible charge if the owner chooses to develop and utilize standard operating procedures.

(c) A system owner shall notify the Department in writing within 10 calendar days of the addition, loss, change or replacement of an available operator. The owner shall provide at that time the name, client ID, and class and subclassification of all operator changes.

**~~[(d) Upon written request from an owner, the Department will provide current water and wastewater permits to the operator in responsible charge designated by the owner.]~~**

### **§ 302.1203. Process control decisions.**

(a) An available operator shall make all process control decisions. These decisions may be made onsite, from a remote site, by the use of standard operating procedures approved by the operator in responsible charge, or by using a programmable logic control (PLC) system as provided by § 302.1208 (relating to programmable logic controls (PLCs) and supervisory control and data acquisition systems (SCADA)).

(b) A certified operator can make process control decisions for systems with a smaller hydraulic design capacity, provided they are certified with the appropriate treatment technology-based subclassifications.

(c) The Department may require a system to have a process control plan that includes, as necessary, the following:

(1) A flow diagram of the entire treatment process.

(2) The identification of individual treatment units by type.

(3) A description of the treatment process provided by each treatment unit.

(4) The anticipated level of treatment provided by each treatment unit.

(5) The normal influent and effluent operating ranges for each wastewater or water treatment unit.

(6) A description of the average and seasonal characteristics of the raw water or wastewater influent.

(7) Any standard operating procedures.

- (8) The methods to be utilized to monitor and adjust treatment processes
- (9) The identification of the key processes and equipment associated with these processes.
- (10) An outline of how key processes and equipment will be monitored if the system is without staff during daily operations.
- (11) The trigger parameters for each unit that requires a process control decision.
- (12) A preventive and emergency maintenance plan for all process control-related equipment including a replacement parts inventory and emergency repair method.
- (13) The procedures for emergency operations when security has been breached or natural disasters threaten public safety, the environment and property.
- (14) The wastewater treatment methods and strategies to assure proper treatment during wet weather operations.
- (15) A plan for wasting, treating and disposing of solids associated with wastewater treatment.
- (d) Plans required under other Department rules and regulations applicable to the operation of a drinking water or wastewater system may satisfy the requirement for a process control plan as determined by the Department.

~~[(e) The Department taking an action necessary to protect the environment and public health during designated emergency situations, to obtain compliance with permit requirements, and rules and regulations or to address permit requests and compliance issues is not considered a process control decision. Other actions not considered to be a process control decision include actions taken by:~~

~~(1) Local government to approve new residential, industrial or commercial land development creating additional treatment, collection or distribution demands upon a system or to comply with a pretreatment program.~~

~~Emergency personnel to protect property and lives.]~~

(e) THE DEPARTMENT WILL CONSIDER THE FOLLOWING CRITERIA WHEN DETERMINING WHETHER OR NOT TO REQUIRE A PROCESS CONTROL PLAN:

(1) THE SYSTEM HAS A SIGNIFICANT HISTORY OF NON-COMPLIANCE.

(2) THE SYSTEM IS HAVING DIFFICULTY WITH A NEW TREATMENT TECHNOLOGY.

(3) ANOTHER UNIQUE SITUATION WHERE THE DEVELOPMENT OF A PROCESS CONTROL PLAN IS WARRANTED.

**(f) THE DEPARTMENT WILL NOTIFY THE OWNER IN WRITING WHEN IT IS DETERMINED A PROCESS CONTROL PLAN IS NEEDED.**

**§ 302.1204. Standard operating procedures.**

(a) Standard operating procedures are written documents outlining the actions necessary to make process control decisions given established operational quantitative and qualitative parameters for the system or treatment units within the system.

(b) Standard operating procedures must:

(1) Include the name of the operator in responsible charge.

(2) Identify the operators that may utilize the standard operating procedures to make process control decisions.

(3) ~~[Include the]~~ **STATE WHICH** treatment processes **ARE** covered by the standard operating procedures. ~~[and the]~~ **FOR** treatment process that are not covered **BY THE STANDARD OPERATING PROCEDURES, [and require the operator to contact the operator in responsible charge for a decision on the appropriate process] THE OPERATOR MUST BE INSTRUCTED TO CONTACT THE OPERATOR IN RESPONSIBLE CHARGE TO MAKE ANY NECESSARY PROCESS CONTROL DECISIONS.**

(4) Identify the trigger parameters for the treatment processes and the appropriate actions to be taken for each treatment process.

(c) Standard operating procedures shall be approved in writing and dated by the operators in responsible charge, and available at the system for review.

(d) The use of standard operating procedures is an optional method, available to the operator in responsible charge, to allow operators under the operator in responsible charge's direct supervision to implement process control decisions. The decision to use standard operating procedures depends on the complexity and personnel of the system.

(e) An operator in responsible charge using standard operating procedures shall notify the system owner that these standard operating procedures are in use.

(f) The Department may request a copy of a system's standard operating procedures to determine the use of the procedures by the operators or the effectiveness of the procedures to insure compliance with ~~[appropriate permits, rules and regulations and laws]~~ **ANY FEDERAL OR STATE LAW OR RULES AND REGULATIONS PROMULGATED THERETO OR PERMIT CONDITIONS AND REQUIREMENTS APPLICABLE TO THE OPERATION OF WATER OR WASTEWATER SYSTEMS.**

(g) Standard operating procedures may be in an electronic form to facilitate searching for, and retrieval of, information by an operator. These standard operating procedures must be in an electronic form that cannot be changed without evidence of tampering. The standard operating procedures must also indicate where the original signed paper copy or copies are maintained and the name of the operator in responsible charge who signed them. The content of the electronic version of the standard operating procedures must be identical to the current signed paper standard operating procedures. If differences are found between the electronic form and the original signed paper copy of the standard operating procedures, the original signed paper copy will be considered the official version of the standard operating procedures.

**§ 302.1205. Number of required certified operators.**

A system shall have the number of available operators necessary to comply with Federal and State laws, and rules and regulations associated with water or wastewater systems to protect the environment and public health and safety.

**§ 302.1206. Operator in responsible charge.**

**(a) THE SYSTEM OWNER SHALL NOTIFY THE DEPARTMENT OF CHANGES IN THE OPERATOR IN RESPONSIBLE CHARGE WITHIN 10 DAYS OF THE CHANGE, INCLUDING THE NAME, CLIENT ID, AND CERTIFICATE NUMBER OF THE OPERATORS IN RESPONSIBLE CHARGE. SYSTEM OWNERS SHALL NOTIFY THE OPERATORS IN RESPONSIBLE CHARGE OF THIS DESIGNATION IN WRITING.**

**[(a)] (b) UPON REQUEST OF THE DEPARTMENT, A system owner shall provide [to the Department on an annual basis] the name, client ID, and certificate number of any operators in responsible charge. [The system owner shall notify the Department of changes in the operator in responsible charge within 10 days of the change. System owners shall notify the operators in responsible charge of this designation in writing.]**

(b) An operator in responsible charge shall hold a valid certificate with the classes and subclassifications as defined in § 302.1002 and § 302.1003 (relating to certification classes and subclassifications of water system operators; and certification classes and subclassifications of wastewater system operators) that correspond to the system's classification and subclassification as defined in § 302.901 and § 302.902 (relating to classification and subclassifications of water systems; and classification and subclassifications of wastewater systems).

(c) A grandparented operator can be designated as the operator in responsible charge.

**(d) The [duties] DUTY of the operator in responsible charge will [include:] BE TO APPROVE ANY STANDARD OPERATING PROCEDURES DEVELOPED FOR THE SYSTEM.**

**[(1) The approval of any standard operating procedures.**

**(2) The development of a process control plan when requested by the Department.**

(e) The operator in responsible charge **AS DESIGNATED IN PARAGRAPH (a), [who is the approving authority for the standard operating procedures for a system,** is accountable for any **[permit violations or violations of any applicable rules and regulations] VIOLATIONS OF FEDERAL OR STATE LAW OR RULES AND REGULATIONS PROMULGATED THERETO OR PERMIT CONDITIONS AND REQUIREMENTS APPLICABLE TO THE OPERATION OF WATER OR WASTEWATER SYSTEMS** which may occur when an operator follows these standard operating procedures, **PROVIDED THAT THE VIOLATION OCCURRED AS A DIRECT RESULT OF A PROVISION IN THE STANDARD OPERATING PROCEDURE APPROVED BY THE OPERATOR IN RESPONSIBLE CHARGE.**

**§ 302.1207. Operation of multiple treatment systems.**

(a) An available operator may make process control decisions at more than one system.

**(b) ANY AVAILABLE OPERATOR OPERATING MORE THAN ONE SYSTEM, INCLUDING A circuit rider, shall meet all the requirements of the act, this [part and other Department rules and regulations related to ]CHAPTER, AND ANY FEDERAL OR STATE LAW OR RULES AND REGULATIONS PROMULGATED THERETO APPLICABLE TO THE** operation of water or wastewater systems.

**[(b)] (c)** An owner may use the services of a circuit rider to meet the requirements of the act, this **[part and other Department rules and regulations related to ]CHAPTER, AND ANY FEDERAL OR STATE LAW OR RULES AND REGULATIONS PROMULGATED THERETO APPLICABLE TO THE** operation of water or wastewater systems.

**[(e)] (d)** A system owner shall notify the Department within 10 days when a circuit rider is employed to operate the system.

**[(d)] (e) UNLESS THE FOLLOWING INFORMATION IS SPECIFIED IN A CONTRACT BETWEEN THE CIRCUIT RIDER AND THE OWNER, [A-] THE** circuit rider shall develop and submit a general work plan to the owner of each system that includes:

- (1) The name and location of the circuit rider's primary business.
- (2) The name and location of each system to be included in the circuit rider program.
- (3) The classification and subclassification of each system included in the circuit rider program.
- (4) The number of **ESTIMATED** hours per week the circuit rider works at each system, with the method of documentation to be used for each visit.

**[(e) (f)]** A circuit rider shall develop and submit a system specific management plan to the owner of each system describing the information relevant to the owner's system. This management plan must include:

(1) The names and contact information of the available operators for that system, with a copy of the operators' certificate to be prominently displayed at the system.

(2) The standard operating procedures and a process control plan for the system.

(3) The name and method of contacting the circuit rider in case of an emergency.

(4) An estimate of the response time necessary to be physically present at the system.

**[(f) (g)]** An available operator may not make process control decisions at more than one system until the owner has **[approved] PROVIDED APPROVAL THROUGH SIGNATURE FOR** the specific management plan for the system.

**[(g) (h)]** The general work plan and the system specific management plans developed for a circuit rider program shall be made available to the Department upon request.

**[(h) (i)]** The circuit rider shall report any changes to the general work plan and provide appropriate documentation within 10 days to the owners of all the participating systems.

**[(i) (j)]** The circuit rider shall report changes to the system specific management plan and provide appropriate documentation within 10 days to the **[specific]** owner of the system identified in the management plan.

**[(j) (k)]** The Department may require the circuit rider to be present at a system for the purposes of Department inspection or investigation.

**[(k) (l)]** The Department may direct an owner or available operator to cease participation in a circuit rider program if one of the following applies:

(1) The system is in violation for failure to meet the requirements of the act, this **[part and other Department rules and regulations related to ]CHAPTER, AND ANY FEDERAL OR STATE LAW OR RULES AND REGULATIONS PROMULGATED THERETO APPLICABLE TO THE** operation of water or wastewater systems.

(2) There is a threat to public health, safety and the environment **DUE TO THE ACTIONS OF THE CIRCUIT RIDER.**

(3) Changes have occurred at the system that are not included in the system specific management plan.

**§ 302.1208. Programmable logic controls (PLCs) and supervisory control and data acquisition systems (SCADA).**

(a) An owner may use a PLC [and]OR SCADA system to monitor, maintain or make decisions regarding any process control activity within the water or wastewater system.

~~[(b) A system shall have an available operator to interface with the PLC or SCADA system. The available operator will approve the operational strategy for the PLC and SCADA.]~~

**(b) THE AVAILABLE OPERATOR SHALL MONITOR A PLC OR SCADA SYSTEM THAT IS USED FOR PROCESS CONTROL, AND HAVE THE ABILITY TO ADJUST, OR DIRECT THE ADJUSTMENT OF, THESE SYSTEMS WHEN NECESSARY IN ORDER TO MAINTAIN COMPLIANCE WITH FEDERAL OR STATE LAW OR RULES AND REGULATIONS PROMULGATED THERETO OR PERMIT CONDITIONS AND REQUIREMENTS APPLICABLE TO THE OPERATION OF WATER OR WASTEWATER SYSTEMS.**

(c) A system utilizing A PLC [and] OR SCADA system[s] shall have a backup emergency plan for making process control decisions when, or if, the PLC [and] OR SCADA system is inoperable.

(d) If an owner wants to have a PLC [and] OR SCADA system oversee more than one water or wastewater system simultaneously, the system specific management plan developed under § 302.1207 (relating to the operation of multiple treatment systems) must also identify and demonstrate how process control decisions not performed by the PLC [and] OR SCADA system will be made and demonstrate how continual staffing and monitoring of systems controlled by a PLC [and] OR SCADA system will be maintained.

**§ 302.1209. Satellite collection systems.**

~~A satellite collection system shall be required to retain the services of a Class E4 certified operator when:~~

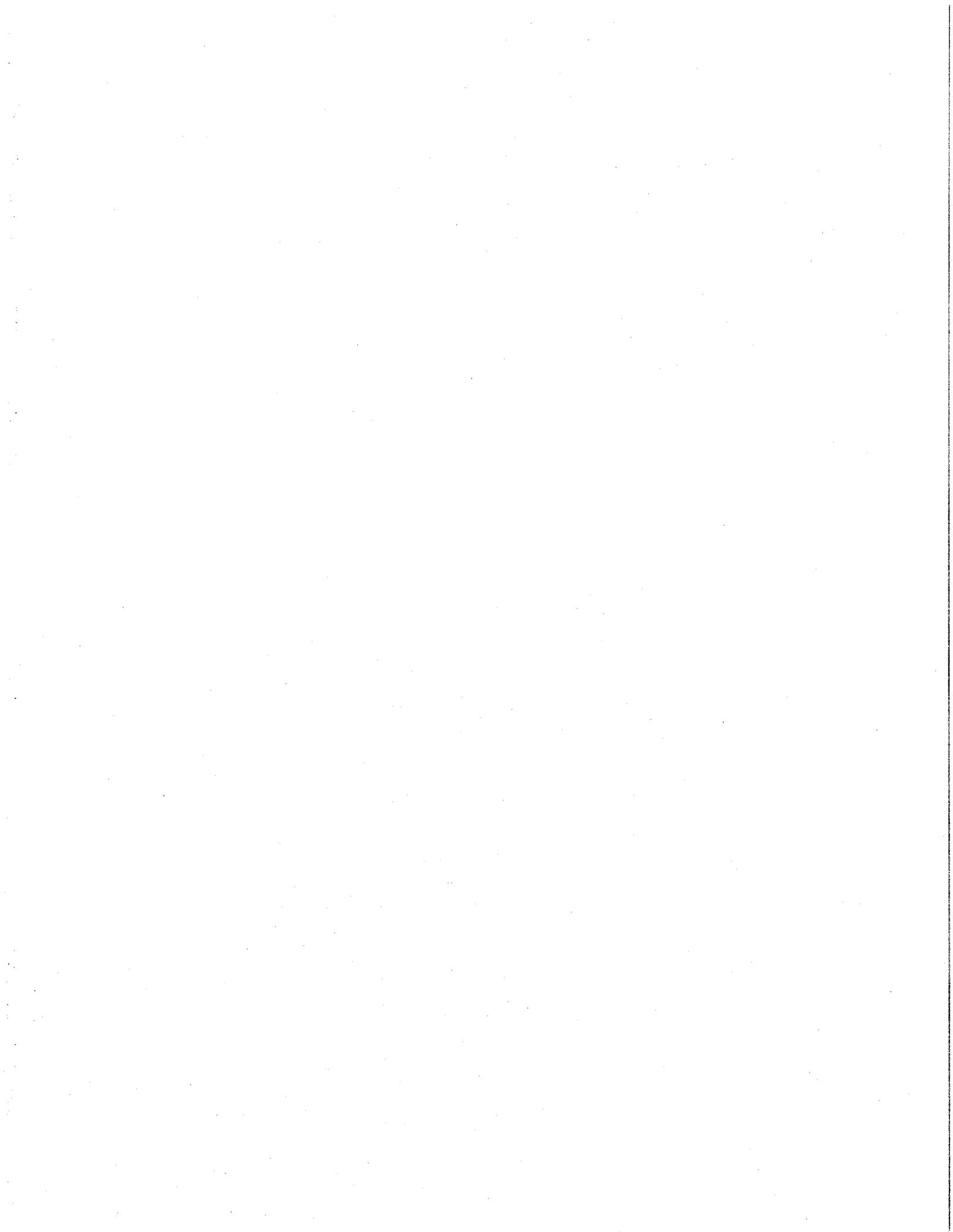
~~(1) The satellite collection system is publicly owned.~~

~~(2) It is determined by the Department that a privately owned satellite collection system has in the past, or is not currently properly operated and/or properly maintained, or both; or has in the past, or is currently, experiencing sanitary sewer overflows within any portion of the satellite collection system.~~

~~(3) The owner of a privately owned satellite collection system can petition the Department after demonstrating a period of compliance to have the requirement for a certified operator removed.~~

**§ 302.1209. ASSESSMENT OF FINES AND PENALTIES.**

**THE ASSESSMENT OF A CIVIL PENALTY FOR NONCOMPLIANCE WITH SECTION 5(d), 6(d) or 13 OF THE ACT WILL BE ASSESSED ONLY UPON THE PERSON'S FAILURE TO COMPLY WITH AN ORDER OF THE DEPARTMENT ISSUED UNDER SECTION 4(b)(1.1) OF THE ACT.**



**RULEMAKING  
ON  
ADMINISTRATION OF THE WATER AND WASTEWATER SYSTEMS OPERATOR  
CERTIFICATION PROGRAM**

**COMMENT/RESPONSE DOCUMENT**

**March 30, 2010**

March 30, 2010

This document presents comments submitted in regard to the Environmental Quality Board's (EQB) proposed rulemaking on Administration of the Water and Wastewater Systems Operator Certification Program and the Department of Environmental Protection (Department) responses to those comments. The EQB approved publication of the proposed amendments at its meeting on April 21, 2009. The proposed rulemaking was published in the *Pa. Bulletin* on July 11, 2009. See 39 Pa. Bull. 3591 (July 11, 2009). Public comments were accepted from July 11, 2009 to August 10, 2009 and the comment period officially closed on August 12, 2009. Due to an error in the *Pa. Bulletin* the public comment period was extended an extra 30 days until September 9, 2009.

## GENERAL COMMENTS

### **EPA GUIDELINES**

#### **1. Comment**

These changes were made partly to conform to Environmental Protection Agency (EPA) guidelines under the Federal Safe Drinking Water Act amendments of 1996. Unfortunately, the preamble includes no information on the specifics of these guidelines, thus making it impossible to understand which provisions of these regulations are derived from these federal guidelines.

(68)

#### **Response**

The reason for these changes to the regulations is to ensure compliance with the EPA guidelines or statutory requirements established by the Drinking Water and Wastewater Systems Operator's Certification Act. (Act) In one way or another, every section can be tied back to either of these two requirements. As stated in Section D of the preamble, there is only one area where these regulations are more stringent than the federal requirements. The EPA guidelines apply only to drinking water system operators where the statute applied the same requirements to wastewater system operators.

The EPA guidelines defined the following nine required elements for the Operator Certification Program that must be met in order to ensure compliance with the 1996 Amendments to the Federal Safe Drinking Water Act:

1. Legal authority to implement the program.
2. Classification of all systems, facilities and operators:
  - a. Based on indicators of potential health risk with standards for certification and certificate renewal for each classification.
  - b. Provisions for owners to place systems under the direct supervision of a certified operator(s) with a valid certificate equal to or greater than the classification of the system.
  - c. Provisions for insuring all process control decisions are made by a certified operator.
  - d. Designation of a certified operator to be available for each operating shift.
3. Operator Qualifications
  - a. Take and pass an examination. Exam questions must be validated.
  - b. Have a high school diploma or GED, or relevant training and experience.
  - c. On-the-job experience
  - d. Grandparenting
4. Enforcement
  - a. Appropriate enforcement capabilities such as orders, compliance agreements and penalties.
  - b. Revocation or suspension of a license for misconduct including "fraud, falsification of application or operating records, gross negligence in operation, incompetence, and/or failure to use reasonable care or judgment in the performance of duties.
5. Certification Renewal

- a. Training requirements for renewal
  - b. Fixed cycle for renewal not to exceed three years
  - c. Recertification if individual fails to renew within 2 years of certificate expiration
6. Resources Needed to Implement the Program
  7. Process for Recertification
  8. Stakeholder Involvement
  9. Program Review

Element 8 is addressed through the regulation development process and the interaction the Department of Environmental Protection (Department) has with the Certification Program Advisory Committee (CPAC), the Small Systems Technical Assistance Center Advisory Board (TAC) and the State Board for Certification of Drinking Water and Wastewater Systems Operators (Certification Board). In addition, the Department completed an extensive outreach effort as the program was developed and implemented. This effort is described below under "Stakeholder Involvement". EPA has determined that this process more than adequately satisfies this requirement. The Department and the Certification Board completed the first internal program review as part of the regulatory development process in 2004 and 2005. CPAC has just begun an extensive external program review that is required once every five years. This review should be completed within the next year and will include solicitation of public comment. Table 1 is a cross-reference between the remaining seven elements and how the sections in Chapter 302 help to ensure compliance with these nine elements.

**Table 1. EPA Guidelines vs Chapter 302 Regulations**

Chapter Reference	Legal Authority	Classifications	Qualifications	Enforcement	Renewal	Resources	Re-cert.
102	x	x	x				
103	x	x					
104			x				
201			x				
202						x	
301			x		x		x
302, 303, 304, 305			x				x
306, 307					x		
308, 309				x			
Subchapter D			x				
Subchapter E				x			
Subchapter F			x				
Subchapter G			x				
Subchapter H			x		x		
Subchapter I		x					
Subchapter J		x	x				
Subchapter K			x				
Subchapter L		x		x			

**LEVEL OF DETAIL NEEDED IN REGULATION**

**2. Comment**

We recognize the importance of including details to ensure the language in the regulation is as clear as possible. However, there needs to be a balance between providing necessary detail and micro-managing the regulated community in their normal course of business (i.e., Section 302.1201(b) – Duties of Operators includes 16 tasks that may be necessary for certified operators to control the operation/maintenance of water and wastewater systems; Section 302.1203(c) – Process Control Decisions may require a system to have a process control plan that includes 15 pieces of information.) (76)

### **Response**

The Department further examined the level of detail and the lists identified in this comment. Based on the experience gained from moving forward with program implementation, the Department believes these elements at this level of detail are essential for the purpose of clarity. The responsibilities of a certified operator to make process control decisions require the operator to be involved in all aspects of the operation and maintenance processes of the drinking water or wastewater system where they work.

### **3. Comment**

Several sections of the proposed regulation refer to "other" Department rules, regulations or guidelines and "applicable Federal and State laws" or similar language, including Sections 302.301(g), 302.304(a), 302.306(a), 302.306(b), 302.307(a), 302.1101(a), 302.1201(a) and 302.1202 (a)(l). To facilitate compliance and improve clarity, these phrases should be replaced with cross-references to the specific laws and regulations that apply. (76)

### **Response**

This language is consistent with the statutory language defining the duties of operators. It is also consistent with other regulations implemented by the Department. In order to effectively operate a water or wastewater system, any operator should have a very good understanding of the applicable rules and regulations governing that system. Listing them specifically in regulation adds a level of detail that is not necessary.

## **LIABILITY OF OPERATORS**

### **4. Comment**

Section 1014(c) of the Act states the following: ". . . the department may assess a civil penalty upon any person who violates any provision of section 13 [pertaining to duties of certified operators and owners] or any operator who violates section 5(d) or 6(d) [requiring Process Control Decisions to be made only by certified operators] and any order issued by the department under section 4(b)(2)." Since this is the clearly and repeatedly stated interpretation of the Department's most senior officials, we expected to see this stated in the draft regulations. It is not. The failure to confirm past unofficial statements is of great concern to the Association. The Department's interpretation of this ambiguous statutory provision is of great importance to thousands of certified operators and hundreds of owners. A clarification in the final regulations (adopting the previously stated position of DEP) is of utmost importance. (1,5,6,7,8,9,10,11,12,13,16,17,18,19,20,21,22,23,25,26,28,32,34,39,41,42,43,45,46,47,55,61)

### **Response**

A new Section 1209 (Assessment of Fines and Penalties) has replaced the previous Section 1209 (Satellite Collection Systems). Section 1209 was added to require the Department's assessment of a penalty under Section 4(b)(1.1) of the Act be based on a person's failure to comply with an order. This has always been the intention of the Department and the way the program has been implemented since 2002.

## **OPERATOR PROFESSION**

### **5. Comment**

Concern raised regarding states two-part examinations under 302.1002 (classes & subclasses of water system operators) and 302.1003 (classes & subclasses of wastewater system operators). This creates a certificate that is difficult to equate against other states programs. (33)

#### **Response**

The two part examination framework was developed to eliminate unnecessary and irrelevant testing. This approach was developed in response to input from those who took the old examinations and their complaints about the relevancy of the content of those examinations. It has been in place since 2004. The input from examinees since the change to the current examination format has all been positive. The examinations were developed using accepted industry standards for the development of examinations and were all validated for content based on the need to know criteria. One reason why the Certification Board was soliciting input on a proposal to change our reciprocity policy is the difficulty in equating this framework with examinations offered by other states. However, we have not heard of any operator certified in Pennsylvania having difficulty obtaining reciprocity from another state program.

### **6. Comment**

The new rules and regulations with increased liability and fees for an operator will result in operators leaving the profession and prevent many others from entering it.(33, 37, 44, 63, 76)

#### **Response**

The new rules and regulations are a formalization of the existing program. Therefore, there is no increase in the liability to operators since the federal requirements were first put in place in 2002. The availability of operators and the existing and projected shortfall of certified operators is a concern. This is why a priority has been placed on developing a number of workforce development elements for the Operator Certification Program. On a positive note, the number of examinees and the number of licenses issued has doubled in the past three years.

## **PUBLIC INTEREST**

### **7. Comment**

Section 5.2 of the Act (71 P.S. § 745.5b) directs the Independent Regulatory Review Commission (IRRC) to determine whether a regulation is in the public interest. The Preamble does not include an adequate description of the numerous sections of the rulemaking and the rationale behind the language. Without this information, IRRC is unable to determine if the regulation is in the public interest. (76)

#### **Response**

The main reason behind the development of these regulations is to ensure long-term compliance with EPA federal requirements to achieve the public health objectives defined in their guidelines. To this end EPA defined nine components that must be included in a state Operator Certification Program. These components are summarized above. Table 1 shows how each component is addressed within the draft regulations. In addition, there are a number of references in the supporting documents presented to the Environmental Quality Board (EQB) at the April 21, 2009 meeting that describe how these regulations are in the public interest. Specifically:

1. 302.102(a) – This section describes how these regulations are intended to protect public health and safety and the environment by ensuring that certified operators with the appropriate knowledge, skills and abilities make appropriate process control decisions during the operation of water and wastewater treatment systems, water distribution systems and wastewater collection systems.
2. Preamble, Section D – This section describes how the regulations ensure that Pennsylvania’s Operator Certification Program continues to meet the new federal requirements established in the 1996 Amendments to the Federal Safe Drinking Water Act (SDWA). It also identifies where the regulations are more stringent than federal requirements and the reasons why.
3. Preamble, Section F – Benefits of the program cited in this section include protection of the environment, public health and safety and the promotion of the long-term sustainability of the Commonwealth’s drinking water and wastewater treatment systems by ensuring that certified operators with the appropriate knowledge, skills and abilities are available to make the necessary process control decisions. The classification and subclassification framework more accurately reflects what the operator needs to understand to operate a system effectively and successfully. In addition, in some instances, once certified, many operators will receive an increase in pay. System owners may also benefit from cost savings realized through more effective and efficient operation of their water or wastewater system. Implementation of these regulations will ensure continued approval of Pennsylvania’s Operator Certification Program by EPA. This approval is reviewed on an annual basis. If the EPA chooses not to approve the program, the state stands to lose approximately \$5.8 million per year in federal funding for the State Revolving Loan Fund, administered by the Pennsylvania Infrastructure Investment Authority.
4. Regulatory Analysis Form, Paragraph 11 – This paragraph itemizes specific reasons why these regulations are in the public interest. The primary reason cited is the need to protect the significant investment that has been made for the state’s drinking water and wastewater treatment system infrastructure and the need to operate and maintain this infrastructure effectively and efficiently. The certified operator is key to achieving this goal. The certified operator’s process control decisions impact the environment, aquatic life and the public health and safety of Pennsylvania’s citizens. Other reasons cited in this paragraph include the fact that the proposed rulemaking will formalize the restructuring of the operator certification program, expand training opportunities through privatization and formalize the new technology-based certification classes and subclassifications to allow operators to train and test for the types of treatment technology they choose to operate. These changes have streamlined the entire training and examination process, resulting in operators that are more qualified in a shorter time.

In conclusion, the objectives, regulatory purpose, benefits and the required regulatory analysis included in the published regulatory package do make a clear connection to the public interest.

#### **8. Comment**

The Preamble to the final-form regulation should explain why this rulemaking will not have an adverse effect on the number of certified operators in the Commonwealth as well as explain what

actions will be taken to protect the public health if the rulemaking does create a shortage of operators. (76)

**Response**

These regulations codify the Operator Certification Program, in existence since 2002 for ensuring the competency of operators of drinking water and wastewater treatment systems. In the past three years the Department has seen the number of examinees and applicants for certification double. Therefore, at this point, there is no evidence that these regulations will have an adverse effect on the number of certified operators. The Department also recognizes the fact that a significant number of the existing certified operators will be retiring within the next five to ten years. In an effort to ensure there are a sufficient number of operators to take their place the Department has started a number of workforce development initiatives with the Department of Education and the Department of Labor and Industry, a number of community colleges, universities in the state and industry associations. The regulations also provide a number of options to ensure owners are able to comply with the requirements of the act and these regulations should a shortage of operators occur. These options include the use of circuit riders and standard operating procedures.

**REGULATION TRAINING**

**9. Comment**

Will there be a regulations training course to ensure full understanding of the new regulations? How will these regulation changes address the pass/fail results associated with the operator certification exams? (36, 68)

**Response**

Yes, the Department intends to conduct a number of training sessions and workshops on the regulations, much like what was done after the guidelines were finalized in 2002. The regulations will have no impact on the pass/fail results associated with the examinations. The pass/fail rates for the majority of the examinations improved significantly as a result of the conversion to a two-part examination framework in 2004. In addition, using industry standards for examination development, the Department recently completed a comprehensive review of all the examinations and made revisions, as needed, on the examination length, passing score and content. One of the factors used in this review is the pass/fail rate of the examinations.

**SHORT TIME FRAME FOR PUBLIC COMMENTS**

**10. Comment**

Concerns about the short time allotted for public comments for the proposed rulemaking and requests an extension in the comment period.

(1,5,6,7,8,9,10,11,12,13,14,16,17,18,19,20,21,22,23,25,26,28,31,32,34,38,39,41,42,43,45,46,47, 61,70, 76)

**Response**

The public comment period was extended an extra 30 days until September 9, 2009. As explained in the response to Comment 11 the regulated community has had many opportunities to review and comment on the proposed regulations. Therefore, a 60-day comment period was more than ample enough to enable the public to review and comment on these regulations.

## **STAKEHOLDER INVOLVEMENT**

### **11. Comment**

The draft regulations have not been subject to stakeholder input and should be withdrawn for regulatory negotiation.

(1,5,6,7,8,9,10,11,12,13,14,16,17,18,19,20,21,22,23,25,26,28,32,34,39,41,42,43,44,45,46,47,48, 49,55,61,75,76,77)

#### **Response**

The Department, in partnership with the Certification Board, started the outreach effort for this program when Congress first passed the 1996 Amendments to the Federal Safe Drinking Water Act. The US Environmental Protection Agency (EPA) thinks this effort more than adequately meets the federal requirements for stakeholder involvement in the program. This outreach effort can be summarized as follows:

#### Public Meetings:

- November 1997 – 4 public meetings held around the state to solicit input on the first draft of statutory language to amend the program to ensure compliance with the new federal requirements.
- December & January 1998 – 6 public meetings held in each of the Department Regional Offices to solicit additional input on draft statutory language and to highlight changes made based on the input received the previous year.

#### Concept Papers:

To build consensus for the passage of the statutory language, the Department developed a series of concept papers that were subsequently used to draft the existing guidelines and the draft regulations. The topics of these concept papers covered the major outstanding issues defined in the second round of public meetings and included training, testing, experience requirements, site specific certification, process control decisions, standard operating procedures, circuit riders, security training, application to professional engineers and system and operator certification classifications. These concept papers were drafted using input from a series of workshops held as part of the major industry association conferences in 1999. The papers were then circulated and revised at subsequent conferences and workshops in March 2000, July 2001, October 2002 and July 2003.

The concept papers were also reviewed and revised in partnership with the Certification Board, the CPAC and the Small Systems Technical Assistance Center Advisory Board (TAC Board) before they began development of the program guidelines and draft regulations.

#### Presentations at Conferences, Seminars and Workshops:

Department program staff presented materials on the development of the program, the established federal requirements at various industry association conferences, seminars and workshops upon request. The following is a listing of organizations that asked for these presentations:

- AFSCME, Council 13
- Centre County Water Authority
- Citizens Advisory Council

- Department of Conservation and Natural Resources
- Eastern Pennsylvania Water Pollution Control Operators Association
- Penn Hills Municipal Authority
- Pennsylvania Association of School Business Officials
- Pennsylvania Municipal Authorities Association
- Pennsylvania Rural Water Association
- Pennsylvania Section of American Water Works Association.
- Pennsylvania Water Environment Association
- Philadelphia Water Authority
- Water Utility Council
- Water Works Operators Association of Pennsylvania
- Western Pennsylvania Water Pollution Control Operators Association

Workgroups:

- February through April, 1998 -- Operator Certification Issues Workgroup – this was a group of stakeholders convened to help the Department work through a number of issues that were identified in the public meetings and to address the required elements in EPA federal guidelines.
- January through June, 1999 -- Drinking Water and Wastewater Training Needs Assessment Workgroups – these two groups were convened to define the knowledge, skills and abilities operators need to have in order to operate a system. This information was used for the definition of the treatment technologies and subclassifications, the content of the examinations and the training, continuing education and experience requirements defined in the regulations.

Development of Program Guidelines:

Using the concept papers described above, the Department and the Certification Board began development of program guidelines in February, 2002. There were two separate guidance documents developed; “State Board for Certification of Water and Wastewater System Operators, Operator Certification Program Guidelines”, *Document Number 150-0200-002*, and “Pennsylvania’s Interim Program for Operator Certification”, *Document Number 383-2300-001*. The first document covers the roles and responsibilities of the Certification Board, the second document captures the program requirements needed by the state to obtain EPA approval of the program and avoid the loss of 20% of the Drinking Water State Revolving Loan Fund. The Department worked with the Certification Board, CPAC and TAC to finalize these two guidance documents. All meetings of these three committees were advertised and open to the public. These meetings involved a page-by-page discussion and editing of these guidance documents. The Department’s process for the development of technical guidance documents was followed. The timeline is as follows:

“Pennsylvania’s Interim Program for Operator Certification”, *Document Number 383-2300-001 Version 1*

- Publication in the *Pennsylvania Bulletin* – Notice of Availability for Public Comment – March 16, 2002. Public comment period ended April 30, 2002.
- Final meetings with the Certification Board, CPAC and TAC to finalize comments – April, 2002.

- Publication in the *Pennsylvania Bulletin* – Final Guidance Document – July 20, 2002
- Version 2*
- Publication in the *Pennsylvania Bulletin* – Notice of Availability for Public Comment – August 2, 2003. Public comment period ended September 1, 2003.
  - Final meetings with the Certification Board, CPAC and TAC to finalize comments – July, 2003
  - Publication in the *Pennsylvania Bulletin* – Final Guidance Document – February 21, 2004
- Final Version*
- Publication in the *Pennsylvania Bulletin* – Notice of Availability for Public Comment – March 5, 2005. Public comment period ended April 4, 2005.
  - Meetings with the Certification Board, CPAC and TAC to finalize comments – April 2005.
  - Publication in the *Pennsylvania Bulletin* – Final Guidance Document – June 25, 2005.

The revisions to this guidance document were made in response to discussions and meetings with various stakeholders as the program was being implemented and the draft regulations finalized. Language negotiated in this guidance document became the framework for the draft regulations.

State Board for Certification of Water and Wastewater System Operators, Operator Certification Program Guidelines”, *Document Number 150-0200-002*

*Version 1*

- Public meetings with the Certification Board to develop draft guidelines – October 2002 through February 2003.
- Publication in the *Pennsylvania Bulletin* – Notice of Availability for Public Comment – August 2, 2003. Public comment period ended September 1, 2003.
- Public meetings with CPAC and TAC – July 2003
- Publication in the *Pennsylvania Bulletin* – Final Guidance Document -- February 21, 2004.

*Version 2*

The Certification Board began drafting revisions to this guidance document in 2007. All meetings to discuss these revisions were advertised and open to the public. Instead of finalizing these revisions into a new guidance document, they were incorporated into the current draft version of Chapter 302 which was shared with the Certification Board, TAC and CPAC in April and June, 2008. The Certification Board adopted this draft version of the regulations in December 2008 to replace this guidance document.

### Training Workshops

As the new program requirements were put in place, the Department conducted a series of training workshops for the regulated community impacted by the program changes. In addition to describing the new requirements, program staff used these sessions as an opportunity to solicit input and opinions on aspects of the program from the attendees. This input was used to make adjustments to the program and to the draft regulatory language. These workshops included:

- Certified Operator Workshops – July and August 2002 – 14 locations across the state
- Facility Owner Workshops – October and November 2002 – 10 locations across the state
- Grandparented Operator Workshops – August and September 2002 – 8 locations across the state

## 12. Comment

Various associations did participate in a regulatory negotiation ("reg-neg") process in 2003 and 2004 but the process was abruptly terminated by DEP in 2004 without discussing, much less reaching consensus on, a number of important issues. No communication with regard to the proposed regulations has been allowed by DEP since that time.

(1,5,6,7,8,9,10,11,12,13, 14,16, 17,18,19,20,21,22,23,25,26,28,32,34,39,41,42,43, 44, 45,46,47, 48, 49,55,61,75, 76, 77)

### Response

The Department did not terminate discussions on the regulations in 2004. Once the program guidelines were in place and the training workshops completed as described above, the Department took the language from the program guidelines and used this as the framework for the first draft of the regulations. Since 2004 there have been three draft versions of the regulations that were shared with CPAC, TAC and the Certification Board, in accordance with the policies and procedures established for the development of regulations to ensure compliance with state and federal statutory requirements. All meetings with these three groups were advertised and open to the public. The review of draft versions of the regulations was done through a facilitation process where every page was reviewed, discussed and edited repeatedly as appropriate. The development of these three versions of the draft regulations can be summarized as follows:

#### *Version 1*

This version of the regulations maintained two separate chapters. One chapter captured the roles and responsibilities of the Certification Board and mimicked the language in the Certification Board guidelines that were finalized in February, 2004. The second chapter captured the Department's roles and responsibilities. It also includes the provisions required to meet the EPA guidelines including standards for certification, certificate renewal, grandparenting of operators, classification of systems based on size and complexity and the requirements for the operation of a system. This chapter used the Interim Program guidelines that were finalized in July 2002 and revised in February 2004 as the framework for this chapter. The timeline for the development of this first version was:

- Began meetings with TAC, CPAC and the Certification Board – Spring, 2003
- Final meeting with TAC and CPAC – February 12 and 19, 2004
- Final meeting with the Certification Board – February 20, 2004

The draft fee structure in this version of the regulations was based on input from the regulated community and a survey of fees charged in other states. Since program staff could not demonstrate that the proposed fees would cover program costs, they were asked to go back and complete this analysis before submittal to the EQB.

#### *Version 2*

The analysis of the fee structure resulted in program staff doing a very extensive analysis of the business processes of the Operator Certification Program. Their conclusion was that the existing administrative processes were cumbersome; and in some cases, duplicative. In partnership with various industry associations, TAC, CPAC and the Certification Board, program staff streamlined and revised the administrative aspects of the program. These changes were

incorporated into the second version of these regulations. In addition, the two chapters were merged into one Chapter. The timeline for the development of this version was:

- Began meetings with TAC, CPAC and the Certification Board – Spring, 2004
- Final meeting with TAC and CPAC – June 9 and 27, 2004.
- Final meeting with the Certification Board – July 2005.

This version of the regulations was not submitted to the EQB due to issues raised by the regulated community related to the administration's proposed language for automatic fee increases.

#### *Version 3*

This version of the regulations was only slightly modified to:

- (1) Address issues identified by the regulated community due to a drafting error in the statute,
  - (2) Include new language for the review of the fee structure every three years.
  - (3) Cover changes the Department wanted made related to the certification of collection system operators,
  - (4) Address the results of a study conducted by the Department to determine the need for a nutrient reduction wastewater subclassification,
  - (5) Cover changes the Certification Board made to its policies and procedures as a result of a detailed review of its program guidelines,
  - (6) Solicit input on the requirements for reciprocity.
- Meeting with CPAC – April 7, 2008
  - Meeting with the Certification Board – April 9 and June 5, 2008
  - TAC members were invited to attend the April and June meetings of CPAC and the Certification Board

When program staff was putting the final package together, it became evident that the fee structure first proposed in the first and second versions of these regulations would no longer cover the costs for the administration of the Operator Certification Program. Therefore, the Department put together an options paper to address the shortfall and shared it on December 1, 2008 with TAC, December 2, 2008 with CPAC and December 15, 2008 with the Certification Board. The current proposed fee structure is a result of the negotiations conducted with members of these three committees, the Water Utility Council and members of the regulated community.

This version of the regulations was submitted and approved as draft regulations at the April 21, 2009 EQB meeting.

### **13. Comment**

Continue to meet with the regulated community on this rulemaking and suggest that the EQB issue an Advanced Notice of Final Rulemaking. This would allow interested parties and the EQB the opportunity to resolve as many concerns as possible prior to the submittal of the final-form regulation. (76)

#### **Response**

The Department is going to issue an Advanced Notice of Final Rulemaking in early 2010. There will be a 30-day comment period associated with this notice. The Department intends to have the final rulemaking package to the EQB in summer 2010 for approval.

## **TYPOGRAPHICAL ERRORS**

### **14. Comment**

Under Sections 302.202 (f) and (g), the references to Section 302.202(b) are incorrect. The correct reference is Section 302.202(d). (30,76)

#### **Response**

The Department has corrected these references.

### **15. Comment**

At a number of places the draft regulations refer to "this act." Reference should be to "the act." (17, 18)

#### **Response**

The Department has corrected the wording to "the act".

## SPECIFIC REGULATORY LANGUAGE

### Subchapter A. General Provisions

#### **302.101 -DEFINITIONS**

**16. Comment**

*Administrative Code* – is defined but it does not appear to be used anywhere in the proposed regulation; recommend this term be deleted from this section in the final-form regulation.

(76)

**Response**

The Department has deleted this definition.

**17. Comment**

*Board-designated agent* – the definition refers to a "committee member," but never explains what committee is at issue. The final-form regulation should specify what particular committee is being referred to in this definition. (76)

**Response**

The Department revised this definition to include any Certification Program Advisory Committee member or Department staff person designated by the Board to complete a particular task on behalf of the Board.

**18. Comment**

*Board Secretary* - what is meant by the term "program?" and also, the Certification Act requires an election of the Board Secretary and the Chairman and the definition identifies a Department-recommended staff member. (76)

**Response**

The Department revised this definition to reflect the fact that the Board needs to elect a Secretary to administer the administrative aspects of the program. Additional language is also added to include the entire name for the Operator Certification Program.

**19. Comment**

*Certificate program* - definition is vague; does not provide enough information to explain how it is related to this Chapter or the subject matter contained therein as well as the definition refers to a "type" of "Department-approved training" which should be clarified as to what is Department approved training. (76)

**Response**

This definition was revised to reflect the definition in the Department's training approval process guidelines, Document Number 383-2300-002, "*Training Provider Manual for the Pennsylvania Water and Wastewater System Operator Training Program.*" Pursuant to section 1004(b)(6) of the Act, this comprehensive guidance document was developed in consultation with the Certification Board, TAC and CPAC to define what is considered "Department-approved" training.

**20. Comment**

*Contact hour* - what is considered a "Department-approved education experience?" Also, the definition does not establish specific amount of time that would constitute a "contact hour". (76)

**Response**

Pursuant to section 1004(b)(6) of the Act, a comprehensive guidance document was developed in consultation with the Certification Board, TAC and CPAC to define what is considered "Department-approved" training. The document also describes how a contact hour would be defined and assigned to different types of training and continuing education experiences. This document is "*Training Provider Manual for the Pennsylvania Water and Wastewater System Operator Training Program*", Document Number 383-2300-002

**21. Comment**

*Direct filtration* - Paragraph (ii) begins with the phrase "The term normally includes flocculation after coagulation..." The term "normally" is non-regulatory language which results in a vague definition. The definition should be amended to specify under what circumstances "flocculation after coagulation" is, and is not, considered "direct filtration." (76)

**Response**

The Department revised this definition to eliminate the term "normally".

**22. Comment**

*Fees* - definition indicates that fees are only charged to an "applicant" and the definition does not address operators who take training courses for continuing education. (76)

**Response**

The Department has deleted the phrase "an applicant assigned to".

**23. Comment**

*Operator* - The proposed regulations do not copy definition of "Operator" as it appears in the Act, and omit this exemption. Hence, reading the regulations without reference to the Act, the rules appear to require operators of industrial waste treatment facilities to be certified. This is contrary to the Act. The error can easily be corrected by including the exemption in the definition of Operator as it appears in the Act. (17, 18, 76)

**Response**

Including the exemption for industrial waste water treatment systems in the definition is placing a substantive requirement in the definition which is contrary to the Legislative Reference Bureau's style manual. The definition of operator is exactly as written in the statute but for the substantive exclusion. The substantive exclusion is in Section 302.103(c) (relating to Scope). Further wording in the regulatory definition of operator is not needed.

**24. Comment**

*Permitted Average Daily Discharge Flow* - The term "hydraulic design capacity" should be deleted and the term "Permitted Average Daily Discharge Flow" should be defined, for POTWs, as "the permitted annual average daily discharge flow, as stated in the WQM permit." (17, 18, 35, 76)

**Response**

The Department agrees with the comment and these changes have been made to the definition.

**25. Comment**

*Person* - Paragraph (i) includes "political subdivision" as an example of what would be considered a person. However, the term is not included as an example in the statutory definition (see Section 1002 of the Certification Act) and the term is not included as an example in paragraph (ii) of the proposed definition. (76)

**Response**

The Department deleted the phrase "political subdivision" from the definition.

**26. Comment**

The text in the definition of Recertification includes an inadvertent clause. The definition should say, "The process by which an individual, previously certified under the act, obtains a new certificate following expiration, suspension, or revocation of the previous certificate." (17, 18)

**Response**

The Department made this change.

**27. Comment**

*Satellite collection system* - definition would require regulation of conveyance systems that are not regulated by the Certification Act, and that it would also waive regulation of privately-owned collection systems that are required to be regulated by the Certification Act. According to the commentator, the main reason for this result is that unlike the Certification Act, the regulation omits the term "collection facilities" and uses the term "wastewater system." Through this change, the commentator contends that the end result would be that anyone making process control decisions at facilities like hotels, restaurants or schools would be required to maintain a Class E operator's certificate, (see Section 302.109.) What is the EQB's intent and statutory authority for making this change? (76)

**Response**

The wording in the definition has been modified accordingly. Consistent with the act, any industrial, commercial or other wastewater collection system that generates more than 2000 gallons per day, regardless of whether or not the system is publicly or privately owned, must have a certified operator. Section 1209 (Satellite Collection Systems) has been deleted and replaced with new Section 1209 (Assessment of Fines and Penalties).

**28. Comment**

302.301 & 302.902(a)(5) - Erroneous definition of "Satellite Collection System" results in regulation of industrial, commercial, and other conveyance systems not intended to be regulated by the statute. The draft regulations change the definition of Class E systems so as to include a number of facilities not intended to be regulated by the Act. The problem is that the definition differs from the statute by omitting the term "collection facilities" used in the Act and substituting for it the term "wastewater system." (17, 18)

**Response**

See the response for Comment 27. The Department has modified this definition to coincide with the definition in the statute.

**29. Comment**

*Upgrade* - The term is not clear and does not appear to be correct. The concept is that a certification is "upgraded" to reflect an increase in the classification, or an addition of a new

subclassification of an operator's certificate. This does not "increase" the operator's authority "of a system of a specific flow," but changes his authority to include operation of a system that has been modified so that it is now of a different classification or subclassification.(17, 18)

**Response**

The Department revised this definition to more accurately reflect what an "upgrade" in an operator certificate means.

**302.103 - SCOPE**

**30. Comment**

Designation of Available Operator - Although included in the "scope" section of the regulations, and therefore unlikely to be carefully reviewed for substantive requirements, this provision implies that owners must formally designate "available operators" in order for them to be allowed to make process control decisions. While we do not object to the principle that certified operators be designated as available operators in order to be authorized to make Process Control Decisions at a particular facility, there is ambiguity in this provision regarding how such designation must be made. We suggest that the rule be clarified by stating that designation of available operators be "by any means determined to be appropriate by the owner." (17, 18)

**Response**

As identified by these commentators, one of the duties of the owner is to designate which certified operators are authorized to make process control decisions for his or her system and to identify those operators to the Department. There must be one method of reporting these identifications to the Department if confusion and misinformation is to be avoided. This mechanism is identified in Section 302.1202 (b) and (c). The Department added a cross-reference to this section in 302.104(a) for clarity.

**31. Comment**

This section contains substantive provisions that are inappropriate for a "scope" section. For example, it lists what an applicant must do to become an operator. If this language is needed, we recommend that it be moved to more appropriate subchapters and sections. (76)

**Response**

The Department revised section 103 to focus on the types of facilities covered and not covered by the act and these regulations. The language defining the requirements for operator certification has now been put into a new Section 302.104.

**32. Comment**

302.103(c) - The regulations regulate owners and operators, not systems. Therefore, the introductory sentence in this section should say "Owners and operators of the following systems are exempt from the requirements of this chapter." (17, 18)

**Response**

The Department revised this sentence as suggested.

**33. Comment**

302.103(c)(5) - The proposed rule would exempt ONLY a "water treatment device that serves a single private residence." However, water systems that serve as many as fourteen connections or

serve 24 people are not public water supplies and not required to be operated by certified operators. By misstating the exemption, the rule appears to require certified operators for these unregulated systems. (17, 18)

**Response**

There is the possibility that some people may be confused as to which facilities are covered and which are exempted. To clarify the issue identified here, The Department re-wrote this section to clearly delineate all the types of water and wastewater systems subject to these regulations and which types are exempted.

**Subchapter B. General Requirements for Applications for Certification Actions**

**302.201 – FORM OF APPLICATION**

**34. Comment**

302.201(b)(1) - Obtaining a Criminal History Record may be difficult for some operators, especially those in rural areas. (Suggests Department provide that it will obtain applicant's records, for an appropriate fee). (17, 18)

**Response**

The Department can not make this request on behalf of the operator. The Pennsylvania State Police have made this as simple as possible by providing a number of different ways to obtain this report. The report can be obtained from any of their local barracks or electronically through their website. It can be completed electronically on the website or by mailing a hardcopy to them.

**35. Comment**

302.201 (b)(c)(d)(e) - Notaries do not "affirm" signatures. Signatures are "acknowledged" by notaries, not affirmed. It would be impossible to comply with the requirements as drafted.(17, 18)

**Response**

The Department changed the language to "notarized signature."

**36. Comment**

Should include information as to where/how a Department-approved form can be obtained.(76)

**Response**

The Department added this information to 302.201(a).

**37. Comment**

Subsections (b)(2)(ii) and (e)(3)(ii) refer to written verifications of direct knowledge of an operator's work experience before February 21, 2002. How would a supervisor "verify" this information? (76)

**Response**

The application contains an area signed by the supervisor attesting to the fact that the operator was working at a system prior to February 21, 2002. There are a number of ways the operator can prove this if he or she was not working for the same supervisor prior to February 21, 2002 including a letter from the previous system, copies of personnel records or oral confirmation

from the operator's co-workers. The Department feels the method of verification should be left to the discretion of the operator and the direct supervisor and not mandated by regulation. If the operator can not prove this to the satisfaction of the supervisor, then the supervisor shouldn't sign off on this verification. In that case, the operator is going to have to demonstrate that he or she has a high school diploma or GED in order to get certified.

**38. Comment**

Subsection (e) pertains to applications for certification action for reciprocity which requires an applicant to provide a copy of their PSP criminal history. If an applicant is from outside the Commonwealth, would the PSP criminal history provide the necessary information? Should the criminal history from the applicant's state of residence be required in addition? (76)

**Response**

The Certification Board discussed this at length. The Pennsylvania State Police report may, or may not, have this information. Because the statute specifically asks for a criminal history report from the Pennsylvania State Police we can not request a criminal history from the applicant's state of residence.

**302.202 – OPERATOR CERTIFICATION PROGRAM FEES**

**39. Comment**

302.202(a) - requirement for Client IDs for new applications; the requirement to print the Client ID is acceptable for certified operators. However, those initially applying for certification will not have a Client ID to use. This section should say "if one has been assigned." (17, 18)

**Response**

Client IDs are assigned the first time an applicant registers for an examination. Therefore, they will have a Client ID when they are submitting the paperwork for initial certification.

**40. Comment**

The "fees" presented in this section are substantially in conflict with the requirements of the Act and many of them have no legal basis whatsoever. In fact, with some exceptions, the proposed fee schedule appears to be an unlawful attempt to tax the regulated community. The Association objects to most, but not all, the proposed "fee schedule" for three reasons:

- A. Some of the proposed charges are taxes, not a fee
  - B. The proposal assesses fees on persons not subject to fees
  - C. The proposal assesses fees that are not related to the services provided
- (17, 18, 31, 34, 53, 62, 63, 64, 67, 68, 76, 77)

**Response**

The Department disagrees with this comment. The fees set forth in section 302.202 are authorized under Sections 1004(b)(6) and 1004(b)(3) of the Act. Section 1004(b)(6) authorizes the Department to "...establish and collect such fees for attendance at department-sponsored training or continuing education...and for approval of training and continuing education conducted by others as may be reasonable and appropriate to recover the cost of providing such services." Section 1004(c)(3) of the Act provides that the Environmental Quality Board has the power and duty to "establish fees for examinations and applications for certification, recertification and renewal of certification as may be appropriate to recover the cost of providing such services." The proposed fees are equitable and relate to training and certification activities

regulated under the Act. The fees were developed with input from CPAC, TAC, the Certification Board, the Water Utility Council and other members of the regulated community through a series of public meetings held in December 2008. The services provided under the Act are for the benefit of owners, training providers and examination providers as well as for operators. Accordingly, it is only fair that all beneficiaries of the services provided under the Act share equitably in recovering the costs of the administration of the Act.

#### 41. Comment

The fee structure is aimed at covering the Department's entire annual cost of administering the operator certification program. Is the annual revenues and annual costs information available? Do these fees exceed the legislative intent of "reasonable and necessary" as defined in the operator certification law? EPA's guidelines recommend establishing a dedicated fund for this purpose, this does not necessarily mean that the entire annual cost of administering this program must be sustained by fees alone, and not partly by state general fund revenues. Many of these new fees appear to be simply for paperwork review for the department, yet they add extensively to the costs for operators and owners. The proposal to charge system owners an "annual service fee" is neither reflected by the governing statute nor has the Department identified any service to be rendered for charging such a fee. Also, higher fees based strictly on size of plant and not on DEP workload are not fair or uniform. (38, 68, 70)

#### Response

The fee analysis completed by the Department was part of the package submitted to the EQB and was available to the public. These fees are designed to recover the 69% of the program costs covered with general funds. The Department receives funding from the EPA State Revolving Loan Fund Program set-asides for the remaining 31%. As stated above, the statute gives the Department the ability to establish and collect fees for examinations, applications for certification, recertification, certificate renewal and training. The current fee proposal to split the costs of the program between operators, owners, training providers and examination providers was designed with input from TAC, CPAC and the Certification Board, the Water Utility Council and other members of the regulated community through a series of public meetings held in December 2008. They felt that every one of these entities receives a "service" from the administration of this program and should, therefore, share in the costs for providing that service. The annual service fee for system owners is based on discussions with TAC, CPAC, the Certification Board and others that the larger systems may need more certified operators than the smaller systems. They, therefore, generate a larger percentage of the workload to the Department.

#### 42. Comment

EPA's concern is the creation of fees for training sponsors. EPA would not be able to pay such fees and would therefore be unable to offer contact hours to operators. EPA cannot charge fees for hosting events therefore this is not a viable option. EPA believes that the fees are not appropriate to be charged to EPA, given the range of activities funded under various federal grant programs offered by EPA and PA. These grants far exceed EPA's share of this program's administrative costs as an approved training provider. It is recommended that DEP create exemption categories whereby certain providers such as EPA will be exempt from all fees. (60, 76)

**Response**

The Department added language to this section exempting federal or state agencies that provide funding to the Department for the administration of the Operator Certification Program from these fees.

**43. Comment**

Course approval fees will discourage the creation of new courses and adding courses similar to those approved. The result will be training menus will not grow. Operator educational opportunities will be reduced and new technology and approaches will not reach them quickly. Costs increases will lead to a reduction in the number of operators trained. I suggest a phased 5 year approach to course approval fee increases and in the interim continue to seek grants to cover the shortfall. Increasing exam fees will further increase the shortage of operators. Increasing the exam provider fees will reduce the numbers of operators taking exams and reduce the number of exam providers. Other solutions (1) Increase the cost per exam paid by the operator when they apply for their certificate. (2) A phased 5 year approach to exam provider fee increases. Fully implement electronic testing as these can spread the cost increase over a larger base than the individual provider. (2)

**Response**

The Department already gets grant assistance from the US Environmental Protection Agency to help with the administration of this program. There are no other funding sources available that the Department can apply for in order to supplement this program. A phased five year approach as suggested would require additional administrative staff to implement, thus increasing the cost of the program. The existing framework was negotiated in partnership with CPAC, TAC, the Certification Board, the Water Utility Council and other members of the regulated community through a series of public meetings held in December 2008. The Department feels this approach is the most fair and equitable approach to the assessment of fees to cover the costs of the program. In addition, the Department is looking into options to convert to an electronic testing format. This service should be available once the regulations are in place and the Department is able to collect the necessary fees to cover the costs for examination administration.

**44. Comment**

In the fee calculations consider a reasonable approach to contact time comparison with course content. Suggest a flat fee per course credit hour, in that, this would be easier to control in the long run (Should include electronic credit card transactions). Per-unit assessment fee should be utilized like \$1.00 per course entry per student as this would minimize fee assessment charges and calculations as many course rosters include multiple course credits for the same operator. An incentive idea for course credit-database reporting is to make the Training Provider adhere to policy for reporting within 30 days with extension of 10 days or they are fined a fee for late reporting. (54)

**Response**

An approach as suggested would require additional administrative staff to implement, thus increasing the cost of the program. The Department believes it would also promote the development of shorter, less comprehensive courses that may not meet the needs of the operators. The existing framework was negotiated in partnership with CPAC, TAC, the Certification Board, the Water Utility Council and other members of the regulated community through a series of public meetings held in December, 2008. The Department feels this approach

is the most fair and equitable approach to the assessment of fees to cover the costs of the program.

**45. Comment**

The effect of increasing fees will be to drive out small specialized training providers leaving the field to the larger ones. Specialty training (incinerators, co-generators, screw presses etc) will not be addressed in mass market courses. The new fees discourage smaller more specific training and mandates generalized broad based training. The maximum fee a training provider or owner will be charged is \$10,000 per year. Why the cap? You are transferring the costs for large training providers and municipalities onto the smaller ones. This makes it harder for small towns to run their plants, raises barriers for new providers and drives out the small training providers. I suggest that total costs should be divided by the number of students and that should be what the training provider pays. This is zero sum. At the end of the day all costs are born by the wastewater treatment plants. (3)

**Response**

The proposed fee structure was designed in partnership with TAC, CPAC, the Certification Board the Water Utility Council and other members of the regulated community through a series of public meetings held in December, 2008. A number of smaller training providers were also in the audience at these meetings. The concerns of this commentator were raised and the proposed fees adjusted to ensure this does not happen. This fee structure was developed to distribute the costs equitably based on the amount of time needed by program staff to provide the services. This way, the training provider, large or small, will only pay for the services he is asking be provided. Our second goal was to make the fees equitable. At some point, these fees become unaffordable for the large training provider as well, thus the need for a cap. There is no perfect solution, but we feel this fee structure is as fair and equitable as possible. The fees are no different for specialty training or generalized training, so it is unclear how these fees would result in more generalized broad based training.

**46. Comment**

\$1.00 fee is not worth the labor. This fee should be deleted. (24)

**Response**

The largest cost to the Department for the administration of the training program is the processing of the course rosters to ensure operators get credit for the continuing education they take. Rosters with more names on them take longer to process. By assessing the costs based on the number of names, the small training providers that train a limited number of people can still do that training without incurring the same large fee that a larger training provider would pay for the same service.

**47. Comment**

The proposed fee structure for Examination Providers is unfair to small companies who would be charged exorbitantly more dollars per registrant than some of the larger Associations simply because we won't be providing as many exam sessions. (66)

**Response**

The proposed fees for Examination Providers are a one-time, annual fee that would be paid at the beginning of each year. Assessing a fee based on the number of registrants, while possibly more equitable, would require the collection of a fee from the examination provider before each

examination session. Collecting the fees upfront, once a year will minimize program staff time in processing and collecting these fees, thus minimizing administrative costs.

**48. Comment**

Pennsylvania operators will refrain from seeking new subclassification certifications if the proposed \$150.00 fee for new certifications is written into law. That is a heavy financial burden to place on operators, considering that there are 14 water subclassifications and 4 wastewater subclassifications. Suggest that utilities share a larger portion of the certification programs as they are the entities who are empowered to adjust their rates to better reflect the true cost of producing safe and clean water. (66)

**Response**

The \$150 initial certification fee is just that, a fee for the operator to get certified. There is no additional fee for subsequent upgrades as the operator adds subclassifications or increases the class of certification of his or her license. All certified operators, effective the date the final regulations, are also exempt from having to pay this fee in the future. The only fee they will incur in the future is the \$60 fee for renewal every three years.

**49. Comment**

Clarify that the proposed fees for "Approved Examination Providers" are one-time fees on an annual basis. Specifically, the language should clearly indicate that the fee for a conference covers the entire conference, not individual sessions within the conference. Moreover, the course approval fee should specify that it is a one-time approval for that particular course, and not an annual approval for the course. In addition, further clarification is needed regarding the proposed fees for "Owners" to specify that the Annual Service Fee for Class A through E Systems is based on Public Water System ID (PWSID) for water systems or National Pollutant Discharge Elimination System (NPDES) permit numbers for wastewater systems, with the maximum fee a trainer or owner will be charged is \$10,000 per year. (65, 69, 74, 77)

**Response**

The Department made these revisions.

**50. Comment**

(Costs of Renewal \$ 60 and Initial Certificate \$ 150) - The added cost to the licensee and the system owners are being ignored. The amount of younger persons applying for and attaining certification is dwindling. Thus the state should be actively recruiting additional operators, not seeking to put added strain on the current license pool. By not enlisting new blood into the operator pool the health of the Commonwealth's citizens will be in jeopardy. Extensive review and control over the quality and content of the approved education courses has prohibitively increased the administrative costs resulting in increased fees. Do we need this extensive control? (33, 59)

**Response**

The Department recognizes the importance of generating workforce development initiatives to encourage younger people into the industry. This was also identified as a priority by the Governor's Sustainable Water Infrastructure Task Force. As a result we have worked with the Department of Labor and Industry to get this profession identified as a high priority. This designation allows community colleges and universities to apply to the Department of Education for funding to reimburse them for costs incurred developing and delivering a training program

for operators. We are also working with a number of community colleges to develop a training certificate program. Completion of this training program allows applicants to cut the required years of experience for certification in half. The Department also recognizes that with the assessment of fees comes a responsibility to ensure those funds are used effectively and efficiently. The existing training program has successfully approved over 2000 different water and wastewater courses and developed over 32 web-based courses. Planned enhancements include the release of a web-based training approval process where course rosters and new courses can be submitted electronically. Finally, one of the EPA federal requirements is to complete a comprehensive external review of the program every five years. CPAC has chosen the training program as a key component for their first external review. Preliminary results of their analysis should be available within the next year. If suggested recommendations from this review and the implementation of the new online training approval process result in a streamlined training approval process that costs less to implement, the fees will be reduced. The regulations require the EQB to review and adjust these fees every three years based on costs incurred.

**51. Comment**

Post-Presentation Credit (PPC) Fees - Estimated costs to the operator appears to inadequately address the potential cost for an operator to acquire contact hours by the Post Presentation Credit (PPC) process. Some operators may be restricted in acquiring sufficient contact hours through the normal process due to employment restrictions and therefore, must resort to a PPC process. If a fee for the application is charged at \$250, the operator is incurring more than two (2) days of work to pay for the fee imposed by PADEP. (58)

**Response**

There are over 2000 different courses now approved that an operator can take to complete the continuing education requirement. More are being reviewed and approved on a continuing basis. As a result, the Department has seen a significant drop in the number of post presentation applications submitted as operators become more comfortable finding the continuing education opportunities that meet their needs. The review and approval of these post-presentation applications is very staff intensive. The intent behind this fee is to recover the costs for the processing of these applications and to discourage the use of this alternative. The other option that was considered was the elimination of PPC process.

**52. Comment**

(Operator and Owner Fees) - The fee structure in the Act is to be based on services provided to the operators. If the Department's budget is insufficient, its remedy lies with the Legislature, not in the assessment of fees for certification. Our recommendation:

In this time of financial difficulty and the governmental goal for systems to use reliable, full-cost service rates, we feel that the Department needs to move in this direction and reassess their fees as well. A more in-depth analysis of the cost to provide services as detailed in the Act should be done. Cost based on technical support to administrative staff and compliance assistance should not be included in the analysis. In addition, service providers should be held to a standard to reduce Department staff time such as all service providers should submit roster information electronically, thereby reducing staff time to manually input such. Several sections of this proposed regulation and new fee structure are a departure from the current program. Given the new certification process for wastewater operators, we have seen a rapid decline in the number of

operators being certified. We are alarmed with the wholesale loss of trained professionals through a rising retirement rate and low recruitment numbers, which is compounded by economic constraints and enactment of increased regulations. The regulatory process needs to be sensitive to this very important industry thereby, not including provisions that should alternatively be contained in technical assistance, guidance and training. (72)

**Response**

The fee analysis done by the Department was submitted as part of the regulatory package to the EQB. This analysis included a workload analysis to ensure the available resources and program costs were accurately captured. The technical support to the administrative staff is essential to ensure elements of the applications for certification and certificate renewal are captured accurately. Without this review, the potential exists for operators to be given either too much or not enough credit for completion of the requirements to obtain and maintain their operator's certificate. The compliance assistance elements of the program are designed to expand our workforce development efforts to address the shortfall of operators mentioned by this comment. In addition, without this element of the program the only alternative to the Department is enforcement, either through the assessment of fines and penalties or petitioning the Certification Board to suspend or revoke an operator's license. Finally, an initial drop in the number of certified operators was seen when the first renewal cycles ended for a number of operators. This was the first time continuing education was required for certificate renewal. Since this initial drop, and with the implementation of a number of process changes in how the application is submitted and processed, the number of new operators tested and certified each year has doubled. Instead of the rapid decline of operators cited by this comment, we are actually seeing the opposite.

**53. Comment**

302.202(a)&(c) - These subsections state that IDs or permit numbers "should" be included on the check or money order. Use of the word "should" indicates provision is optional. Recommend that "should" be amended to "shall." Also, how would new applicant know their "client ID" number? (76)

**Response**

Adding this information helps the Department process an application for certification action. However, it does not prevent the application from being processed. In discussing the wording for this section with CPAC and the Certification Board, it was deliberately left as "should". If this language was revised as suggested, the amount of staff time required to send the application back as incomplete is more than the time required to look up the information in the data management system used for the administration of the program. Members of CPAC and the Certification Board were also concerned about the delay this would cause the operator in obtaining certification. Under 302.202(c), the form completed by the owner also includes the PWSID or NPDES permit number. Having this information on the check helps staff process the payment more efficiently, but does not prevent this processing. Sending the paperwork back as incomplete just adds more time to the process. An applicant is assigned a client ID number the first time he or she registers for an examination. This number is given to him at the examination session and is included in all future correspondence the Department or the Certification Board has with that operator.

**54. Comment**

302.202(e)&(h) - we question EQB's statutory authority for imposing \$10,000 limit. Commentators believe the proposed limit transfers costs from larger training providers and municipalities to smaller ones (we ask the EQB to explain why this approach is reasonable and to consider the effects it could have on small businesses). Also, given the language of Subsection (h), what is the need for Subsection (e)? (76)

**Response**

The \$10,000 limit was established in response to negotiations with the regulated community and CPAC, TAC and the Certification Board in December 2008. It was established in an effort at fairness to ensure no one entity had to cover an unfair percentage of the total program costs. The other provisions for fees also protect the smaller providers and municipalities by establishing a smaller fee based on the amount of work generated and the level of service provided. Subsection (e) is duplicative of (h) and is deleted.

**55. Comment**

302.202(f) - operators holding a valid certification when this rulemaking becomes effective will be exempt from paying "certification fees." Should this exemption be narrowed to "initial certification fees"? (76)

**Response**

The Department made this revision.

**Subchapter C. Board Procedures and Actions**

**302.301 – BOARD PROCEDURES FOR CERTIFICATION ACTION**

**56. Comment**

302.301(i) - Although the Secretary is given 60 days to notify an applicant of a denial, and the proposed rule states that the notice will include a description of the right to appeal, it would be helpful if the regulation acknowledged that the right of appeal lasts for 30 days, commencing on the date that the notice is received by the applicant. Including this in the regulation will provide guidance to the Secretary in drafting the notice properly. (17, 18, 76)

**Response**

This is unnecessary. There is standard language identifying a 30 day appeal period that goes into all Department notice of appeal documents.

**57. Comment**

Provide more specific times for review and action. Recommend clarifying:

302.301(a) - provides that applications for certification action will be reviewed by the Department "under the supervision of the Board Secretary." What is the EQB's statutory authority for permitting this type of supervision? (76)

**Response**

The Department deleted the phrase "under the supervision of the Board Secretary."

**58. Comment**

302.301(b) - the phrase "...notified, in a timely manner from receipt of the application" is vague. (30, 76)

**Response**

The Department clarified this section to require this notification within 14 days.

**59. Comment**

302.301(d) - requires that action occur on a completed application "within two scheduled Board meetings;" lacks clarity, since it is unclear when these meetings would actually occur. Also, what does the EQB consider to be "sufficient information" for the Board to make a decision? The final-form regulation should clarify this issue. (30, 76)

**Response**

This language was replaced to require action "within 120 days". The following language was also added: "If the board determines additional information from the operator is necessary to complete the review of the board secretary's recommendation, final action on the application will be delayed until such time as this information is provided. Within 120 days of receipt of the requested information, the board will take final action on the application for certification."

**60. Comment**

302.301(e) - the Board Secretary *will* issue operator's certificate within 60 days of Board action. However, subsection (i) states that the Board will not notify an applicant of a denial of a certificate until 60 days after the Board's decision. In both subsection (e) and (i), what is the reason for such a long delay in issuing a certificate or a denial? (76)

**Response**

Due to staffing and budgetary constraints, the 60 days is needed for existing staff to process the necessary paperwork and deal with any data management issues that arise.

**61. Comment**

302.301(h) - authorizes Board Secretary to deny an application for certification without Board approval under certain circumstances. Explain the EQB's statutory authority to delegate authorization to the Board Secretary in these specific situations contained in the subsection. (76)

**Response**

The criteria listed in this subsection are basic eligibility criteria as defined by the act and the EQB. These criteria are all part of the administrative review, and do not comprise action on a complete application. As such, they can be done on the administrative purview of the Board Secretary.

**302.304 – RECIPROCALITY**

**62. Comment**

I feel that not recognizing someone's achievements just because they crossed state lines would be an insult of our abilities, accomplishments and borderline discriminatory. I do not feel they should be made to test if the other states program requirements are comparable to PA's. Include language that requires that equal or greater qualifications are required by the other state certifications before allowing credit toward a PA Operator Certification. (33, 52, 62, 65, 74)

**Response**

No responses were received in favor of limiting reciprocity to only the passage of the General Examination. The current framework will be kept in place. This framework requires the operator to demonstrate the same level of experience and education as an operator in Pennsylvania. In addition, unlike operators who gain their experience in Pennsylvania, the class of certification is based solely on the largest system where the operator met the minimum experience requirements. Credit for working at systems in a lower class is not given to these operators.

**63. Comment**

Explain how these requirements are consistent with those contained in Section 9 of the Certification Act. (76)

**Response**

Section 9 of the Act allows the Certification Board to authorize the issuance of an operator certificate without examination provided the operator has a valid certificate from another state or board-approved registry and has successfully completed an examination that is equivalent to the examination given in Pennsylvania. The statutory language gives the Certification Board the discretion to authorize this issuance or not. This section identifies the provisions under which the Certification Board will complete this task. The key point is that under section 9 the out of state examination must be equivalent to the Department's examination. This is also the standard under section 302.304.

**302.306 - CERTIFICATE RENEWAL****64. Comment**

302.306(d) - Excess credits should be carried forward. Operators should be encouraged to obtain training that is applicable and useful for their employment, not just randomly chosen classes to generate "credits". Because courses are offered at different times, it has been the experience of many operators under the current system that they forego needed training because they already have sufficient credits, and take pointless training (for them) because they need to obtain credits by a date certain. Allowing excess credits to carry forward into subsequent training cycles will allow operators to be more judicious in their choice of training, taking courses that they need, when they are offered, without reference to an arbitrary schedule. The administration of a carry-forward program would be simple, since the process is already computerized.

(1,5,6,7,8,9,10,11,12,13,16,17,18,19,20,21,22,23,25,26,28,31,32,34,38,39,41,42,43,45,46,47,55, 61,70,76)

**Response**

The EPA guidelines establish two requirements: (1) Continuing education must be a requirement for certificate renewal and (2) the renewal cycle can not exceed three years. Based on conversations with EPA early in the development of this program, our initial interpretation of these two requirements was that allowing excess credits to carry forward into subsequent cycles would jeopardize EPA approval of the program. This would result in the loss of 20% of the grant funds the state receives from the Drinking Water State Revolving Loan Fund program, or between \$6 and \$10 million per year. At the request of TAC, CPAC and the Certification Board, Department staff has approached EPA again concerning this issue, only to find that some EPA

Regions have allowed states to do this. Currently, the program does not have the administrative capability to allow for this. A comprehensive analysis of the data management changes and additional administrative support needs, complete with a timeframe for completion, is needed. This analysis and timeframe for completion will be part of the package to go to the EQB as part of the final rulemaking package this summer.

**65. Comment**

302.306(g) - Unreasonable delay in certification renewal after expiration. There is no rational reason for this imposed delay. Once a certificate is approved it should become effective, not two or three months later. The "effective issuance date" should be the date that the Board takes action, not some arbitrary later date.

(1,5,6,7,8,9,10,11,12,13,16,17,18,19,20,21,22,23,24,25,26,28,32,34,38,39,41,42,43,45,46,47,55,61,70,76)

**Response**

The Department modified this language as suggested.

**66. Comment**

302.306(l) - Unreasonably short time to provide documentation of additional completed continuing education. The proposed rule would give an operator only 14 days to provide missing continuing education documentation. In light of the probable need to contact the training provider to obtain that information, this is unreasonable. There is no need for extreme haste in deciding to deny renewal of certification and operators should be given a reasonable time to find needed documentation. We recommend at least 30 days. (17, 18, 76)

**Response**

Through the Earthwise Academy the operator can check his transcript at any time and track the amount of continuing education that we have on record. If a record of any training the operator takes does not show up within a reasonable period of time after completing the course, the operator can contact the training provider or the Department. In addition, the operator is sent a renewal application 60 days before his license is due to expire with a copy of his or her transcript. The operator can complete the necessary forms provided with the renewal application if he or she feels there is a discrepancy between what the Department has on record and his or her records. The operator submits these forms with copies of any completion certificates with his renewal application. Program staff then works with that operator to resolve any outstanding issues. It is only after a complete review of these additional records that a recommendation is made to the Certification Board to deny an operator's application for certificate renewal. The operator also has an additional 90 days after his license has expired to submit any applications for post-presentation credit for courses taken that were not pre-approved by the Department. In most cases, the Certification Board does not take final action to deny an operator's application for certificate renewal until 60 to 90 days after the operator's license has expired. His license is deemed valid until such time as the Certification Board takes final action to deny the application for certificate renewal. The operator then has another 14 days to contest the decision of the Certification Board to deny the application for certificate renewal before the operator's license is deemed invalid. The Department feels the operator has had plenty of time and opportunity to resolve any issues with his or her continuing education records. Extending the 14 day response time to 30 days is not necessary at this point in the process.

**67. Comment**

302.306(k) - Second sentence of this subsection begins with the phrase "if possible." This phrase is nonregulatory language and should be deleted from the regulation. If there are instances in which the Secretary will not send a copy of the letter to the parties identified in Subsection (k), then those instances should be identified. (76)

**Response**

The Department deleted this wording and re-wrote the sentence to identify who needs to receive this letter.

**302.307 EXTENSIONS**

**68. Comment**

302.307(a)(3) states that any Board extension is consistent with "only those specific powers and duties granted to the Board." The final-form regulation should specify the relevant powers and duties, and include a cross-reference to those sections of the Certification Act that list them. (76)

**Response**

The statute clearly lists the powers and duties of the Certification Board. There is no need to re-list them in the regulations. It is also unnecessary to require only extension requests be consistent with those powers and duties. Therefore, this sentence has been deleted.

**69. Comment**

302.307(b) - within what timeframe will the Board Secretary provide an explanation of the Board's decision and any requirements for compliance? (76)

**Response**

Language has been added to require the Board Secretary to provide this explanation within 14 days of the Certification Board's action.

**302.308 - SUSPENSIONS, REVOCATION OR MODIFICATION OF OPERATORS CERTIFICATE**

**70. Comment**

302.308(d) - Will a certified operator have opportunity to challenge a Board action under this section? What is the process? (76)

**Response**

Any action of the Board modifying, suspending or revoking a certificate is an action of the Department appealable to the Environmental Hearing Board. This right of appeal exists whether or not it is restated in this subsection. However, the Department did add language to this section to clarify this.

**71. Comment**

302.308(b)(1) - clarify negligence in operating a system.

302.308(b)(2) - the definition of fraud should be provided or referenced.

302.308(b)(4) - reasonable care and professional judgment are two things that should be referenced as to what constitutes each - we all think we know what they mean - perhaps this will fall under the appeals process.

302.308(b)(5) - exceedence of an NPDES limit regardless of the impact could result in loss of certification.

(38, 70, 71, 76)

**Response**

Language in these sections was modified to more accurately reflect the wording in the statute and narrow the scope of the conditions that justify the suspension, revocation or modification of an operator's license by the Certification Board. It is understood that the standard definitions in any Webster's dictionary for "fraud" and "negligence" will be used. The standards of the industry for "reasonable care" and "professional judgment" would be determined as part of the administrative hearing process the Certification Board will follow. Defining these terms to anticipate every situation that might come up in regulation is not possible.

**72. Comment**

302.308(b)(6)&(7) - Suspension/revocation of certification for 'failure to comply with the duties assigned to a certified operator and threats to public health.' The striking ambiguity of this proposed rule is of considerable concern to operators. Believe that this clause is invalid and should be deleted from the final form rulemaking both as too vague to comply with and as contrary to law. This is so vague as to be capable of many different interpretations. By definition, the operation of water and wastewater facilities always has the "potential" to affect public health if anything goes wrong. Minor malfunctions, or at least the need for operational adjustments, happen frequently, and the vast majority are addressed without incident. However, the proposed rule would allow the Board to revoke a certificate for almost anything that goes wrong at a treatment plant.

(1,5,6,7,8,9,10,11,12,13,16,17,18,19,20,21,22,23,25,26, 27,28,31,32,34,38,39,41,42,43,45,46,47, 50,53,55,61,70,71,76,77)

**Response**

The Department is deleting 302.308(b)(6) because it is unnecessary and, based on the number of comments, confusing. This statement is more of a description of why misconduct is grounds for suspension, revocation or modification of an operator's license. Subsection 302.308(b)(7) is duplicative of 302.308(b)(4) and is also deleted.

**73. Comment**

302.308(b)(3) - Expansion of the falsification of records provision. The Act provides that certification may be denied or revoked if, among other things, an operator is guilty of "falsification of operating records." The proposed regulation, however, would allow this result for "falsification of State, local or Federal documents or records." Clearly, this is much broader than the cause contemplated by the Act and is in conflict with the narrow scope of liability created by the Act.

(1,5,6,7,8,9,10,11,12,13,16, 17, 18,19,20,21,22,23,25,26, 27,28,32,34,38,39,41,42,43,45,46,47, 50, 55,61,70, 75)

**Response**

This subsection has been edited to narrow the scope of these records related to the operation of a water or wastewater system.

## **302.309 – BOARD REVIEW OF DEPARTMENT TRAINING DECISIONS**

### **74. Comment**

Appeal of Certification Board Actions - An earlier discussion draft of the proposed rulemaking provided a subparagraph (d) in section 309 that stated that actions of the Certification Board are appealable to the Environmental Hearing Board. That provision reflected the statutory mandate at §1004(a)(1) of the Act. The provision was deleted from the Proposed Rule. While we understand that removing it from the regulations does not negate the provision of the Act, we believe that it would be helpful to the regulated community to include this notice in the regulations as originally drafted; there was no need to delete it and we request that the notice be restored in the final version of the regulations. (17, 18)

#### **Response**

The Department has inserted this language into the draft regulations as requested.

### **75. Comment**

302.309(b)(1) - Board review of DEP training decisions. The request for Board review should include "the reasons given by the Department for its decision." The proposed rule, as written, cannot be complied with because it would require speculation by the applicant as to why DEP denied the application. (17, 18)

#### **Response**

The Department, in denying any request, is obligated to provide a reason for its decision. There is no speculation on the part of the applicant.

## **Subchapter D. Criminal History Records**

### **302.402 - CHR INVESTIGATIONS**

### **76. Comment**

Given the language of Subsection (a)(2), we question the need for Subsection (a)(3), which requires further investigation for a misdemeanor that "appears to pose a threat to public health, safety or the environment." Also, the language in Subsection (a)(3) is vague. We recommend that this provision be deleted. (76)

#### **Response**

The Department deleted subsection (a)(3) as suggested.

### **302.403 - REVIEW OF CHR BY THE BOARD**

### **77. Comment**

302.403(c) - why is the written report from the Department submitted to the Board or a Board-designated agent, and not the preliminary review committee? (76)

#### **Response**

The reason the Department submits the written report to the Certification Board is strictly one of expediency. The purpose of the preliminary review committee is to make an initial screening as

to whether the convictions of the operator warrant further investigation. The purpose of the written report is to provide the Certification Board with any additional information found in the investigation that helps the Certification Board make a determination as to whether the application for certification should be granted or denied.

**78. Comment**

302.403(d) - requires a Department employee on the preliminary review committee to solicit further information from the appropriate regional office as it relates to the circumstances that resulted in a *conviction* and the applicant's record as an operator. We question the reasonableness of soliciting information pertaining to any conviction and wonder why a regional office would have any information about a felony or misdemeanor conviction of an applicant, especially if the conviction was not related to the operation of a water or wastewater facility? (76)

**Response**

The revisions to the process and the provisions in this subsection were added in response to findings of the Environmental Hearing Board when an operator appealed the Certification Board's decision to deny the renewal of an operator's license based on his criminal history record. As provided in this subsection the only time the regional office is asked for information is if the preliminary review committee suspects the conviction is connected to the operation of a water or wastewater treatment system. In many cases regional office staff was involved in the original conviction or have a working knowledge of the circumstances leading to the conviction. The Certification Board has also found it helpful to factor in the record of the operator since the conviction and the compliance history of the system where the operator is employed before making a final decision.

**79. Comment**

302.403(e) - When will the preliminary review committee provide reasons and documentation for their recommendation? (76)

**Response**

When their recommendation is presented to the Certification Board and before the Certification Board takes final action on the application for certification.

**80. Comment**

302.403(i) - requires the Department to complete its investigation "in a timely manner." This phrase is vague and should be defined further. (76)

**Response**

These investigations can be very simple, or extremely complicated. The amount of time needed to complete these investigations is dependent on the level of detail of the records of the case, the ease in accessing these local records and when the conviction occurred. Therefore, the Department revised this section to require the Department to complete these investigations within 120 days, unless the preliminary review committee grants an extension based on issues that the Department's investigator finds during the completion of the investigation.

## **302.404 - BOARD ACTION AS RESULT OF CHR**

### **81. Comment**

302.404(a) - states that: "The Board will act on all CHR submitted with an application for certification action." 302.404(b) states that no further Board action is necessary when an applicant's CHR shows no convictions. Why must the Board act on all applications, even applications with no convictions? (76)

#### **Response**

An operator submits an application for certification action when he or she feels the conditions for initial certification or certificate upgrade have been met. The only entity that can make the decision to issue or deny this application is the Certification Board. Therefore, they must act on all applications of this nature.

### **82. Comment**

302.404(e) - when will the Board Secretary notify an applicant of the Board's decision to deny an application? This should be included in regulation. (76)

#### **Response**

This will be done within 14 days of the Certification Board's action. Language has been added to this effect.

### **83. Comment**

302.404(f) - If Board denies certification based on its review of a CHR, the reasons should be presented in writing, so that the applicant has a record for an appeal. This section should say that "the Board will provide a written report setting forth the reasons for the denial." (17,18,76)

#### **Response**

This subsection was deleted. Subsection (e) was modified to require the written notification sent to the operator to also include the Certification Board's reasons for denial.

### **84. Comment**

Section 404(g) - provides a misleading standard for filing an appeal. Appeals to the Environmental Hearing Board are initiated through a Notice of Appeal, not a "petition" as the proposed rule states. See 25 Pa. Code § 1021.51. (17, 18, 76)

#### **Response**

This subsection was revised to be consistent with similar statements in other sections of the regulations.

## **Subchapter E. Administrative Hearings of the Board**

### **302.501 - General Requirements**

### **85. Comment**

The definition of Administrative Hearing and the discussion in § 302.501 (d) refer to the rules governing administrative hearings as 2 Pa. C.S.A. Chapter 5, Subchapter A (which is correct). However, these sections also refer to Chapter 7, Subchapter A, which refers to judicial review of the administrative hearing, not the conduct of the administrative hearing. While the Board is

subject to judicial review (see § 1101 of the Act), this statutory provision does not govern the conduct of administrative hearings as the proposed regulations state. The citation to Chapter 7 should be removed as irrelevant to the subject matter of the regulation. (17,18)

**Response**

The Department deleted the reference to Chapter 7.

**Subchapter F. Preparation and Administration of Certification Examinations**

**302.601 – General Provisions**

**86. Comment**

302.601(i) - Disclosure of examination scores. Obviously, an operator should be able to disclose her examination score to others at her discretion. It also may be a violation of the Right to Know Law to prohibit the disclosure of examination scores. Certainly, there is nothing in the Act that requires such confidentiality. Assuming that the proposed provision is not in violation of the Right to Know Law, the Association suggests that this section should say that the scores will not be disclosed "by the Department." Otherwise, an operator who discloses her score to others, including her employer, could be considered to be in violation of the regulations and subject to penalties. (17,18)

**Response**

The Certification Board is the entity responsible for the administration of the examinations. When processing scores, Department program staff act as staff to the Certification Board. Therefore, this subsection was modified as suggested and references the Certification Board and not the Board Secretary or the Department.

**87. Comment**

302.601(a) - Who determines whether a certification examination is "valid"? (76)

**Response**

The Department is responsible for the preparation of the examinations. The Department uses defined psychometric principles and industry standards in the development, preparation and revision of the examinations. Finally, the Department completed a content validation analysis of the process used to develop the examinations in accordance with existing industry standards and relevant case law to ensure the examinations and the process used to develop the examinations is "valid".

**302.602 – APPROVED EXAMINATION PROVIDER**

**88. Comment**

302.602(c); this subsection states that examination providers "will not at any time be in possession of any Department-developed examination materials or examination content." This appears to reflect the procedure, in which examination providers merely schedule the exam and provide the physical facilities, but Department personnel actually administer the exam. Since an examination provider's role is limited to booking a room, the proposal to assess hundreds of dollars of taxes on such providers (comment 13B under Conflicts with the Act, above) has no

rational basis. In fact, it would appear that the Department should be paying the examination providers for the service that they provide to the Department by doing all the work of setting up examinations. (17, 18, 76)

**Response**

The reason the approved examination provider can not have possession of the examination material and content is to ensure the confidentiality and validity of the examination. Most approved examination providers are also training providers that provide training to examinees prior to taking the examination. If these trainers also knew the content of the examination, the entire validity of the examination process could be brought into question. Administering the examination after these training sessions is a service the Department provides to these examination providers. It is recognized that without these Approved Examination Providers the Certification Board would still be administering one examination at six sites across the state on a quarterly basis. It is only through the assistance of these providers that the number of examination sessions has increased so significantly in the past few years. However, with this success has come an additional workload for program staff that must prepare the examination packets and process the examination results. The decision to charge a fee for this service was made in negotiation with members of CPAC, TAC, the Certification Board, the Water Utility Council and other members of the regulated community through a series of public meetings held in December, 2008.

**89. Comment**

302.602(b) - Allows examination providers to charge fees to cover certain costs of administering the examination; is this fee in addition to the fees found in Section 302.202, related to operator certification program fees? Also, this subsection discusses "examination providers," Section 302.601 (g) references "third-party examination proctors." Regulation should clarify whether "examination providers" and "third-party examination proctors" are the same thing. Has the EQB determined whether a proctor can, like an examination provider, charge a fee? If so, such a fee should be included in the final-form regulation. (76)

**Response**

Yes, the fee charged by the Approved Examination Provider is an additional fee not covered in the fee schedule for the administration of the program in Section 302.202. The fees in Section 302.202 are to cover the Department and Certification Board's costs for the implementation of the Operator Certification Program, not the costs incurred by the Approved Examination Provider. Third party examination proctors can not be examination providers. In accordance with the Board guidelines for the administration of the examinations this is a direct conflict of interest. Third party examination proctors are paid an hourly rate by the Certification Board for their time proctoring the examination. The costs for these proctors are included in the costs for the program under Section 302.202.

**302.603 – EXAMINATION ELIGIBILITY**

**90. Comment**

302.603(d) - this section is unclear. As best we can understand it based on information provided by DEP staff, the intent is to charge nothing for the examination session until the operator applies for certification, at which time the operator would pay both the certification fee and the

examination fee. Section 603(d) is intended to recover costs of the exam from operators who do not pass and therefore do not apply for certification—after multiple attempts. First, this system is not reflected in the proposed regulations. More importantly, this seems to be an unnecessarily complicated system that results in un-recovered costs and additional administrative costs to DEP. The Association believes that charging the exam fee each time the exam is taken is reasonable, since the Department expends effort in grading the exam and notifying the applicant of her score. If the exams are offered for free until the operator applies for certification, there is no incentive to make the test "count," and operators might take the tests over and over as a means of self education, which apparently has already become a costly problem. We suggest that the exam fee be charged every time the exam is taken and this section be deleted as an unnecessary complication. (17,18)

**Response**

The paperwork to process an examination fee every time an operator registers for an examination will increase the administrative staff workload by a factor of five, because the same amount of work has to be done to process the fee for one examination session or five. It will also result in more time needed to prepare the materials needed for the examination session and diminish the flexibility now available to Approved Examination Providers to register examinees. The Certification Board has already established the policy to charge this fee after five examinations. This fee, in addition to the fee charged by the Approved Examination Provider, should provide the necessary incentive to make the test "count".

**91. Comment**

302.603(a) - Why must an applicant for an examination pay a fee to have their request to take the exam processed? Is this processing fee in addition to the fees required by Section 302.202? Why is the fee set by the exam provider and not the Department or the EQB? What is the potential fiscal impact of this fee? Will applicants be charged for taking the exam? (76)

**Response**

Under Section 302.602(b), the Approved Examination Provider is allowed to charge a fee to only recover their costs for the scheduling of the examination and the processing of the registration forms. The processing of these registration forms is not done by program staff. Therefore it is not covered in the fee schedule required under Section 302.202. The examination session fee paid by the applicant in Section 302.202 covers the staff costs for preparing the examination packets and the processing of the examination results. This fee is traditionally between \$25 and \$100 per examination session, depending on who the Approved Examination Provider is and the additional services provided by the Approved Examination Provider. This framework has been in place for three years now and has proven very successful. With this framework the Certification Board has been able to increase the number of examination sessions by a factor of ten. In addition, applicants are able to take the examination in convenient locations across the state, with an average driving time of an hour or less. Before this framework was established, some examinees were traveling several hours or staying overnight in order to be at the examination site on time.

## **302.604 -- EXAMINATION ADMINISTRATION**

### **92. Comment**

When will Board notify an applicant that they have agreed to their request for exceptions to the scheduled date and location of the examination? (76)

#### **Response**

This section has been modified to indicate the Board Secretary will notify the applicant within 14 days of the Board's action on the request.

## **Subchapter G. Education, Examination and Experience Requirements**

## **302.702 -- EXAMINATION REQUIREMENTS**

### **93. Comment**

302.702(c) - Who sets the "minimum numerical score"? Should be included in regulation. (76)

#### **Response**

The Department establishes the minimum numerical score for passing the examination as part of the examination preparation process. In accordance with Section 302.601(a) these scores are established in accordance with industry recognized psychometric principles and standards.

## **302.703 - EXPERIENCE REQUIREMENTS**

### **94. Comment**

302.703(d)(2) - What process will the Department use to approve associate degrees in water or wastewater operation? How will the regulated community know if a particular degree program has been approved? (76)

#### **Response**

The entire training approval process is established in the Department guidelines, "*Training Provider Manual for the Water and Wastewater System Operator Training Program, 383-2300-002*". All courses, including associate degree programs, approved by the Department are listed in the Department's Earthwise Academy. The applicant can also contact the Department for a listing of these approved programs. Language has been added to this section to clarify this approval process and when the approval process will be applied.

## **302.704 - DETERMINING QUALIFYING EXPERIENCE**

### **95. Comment**

Source water program experience should qualify as acceptable experience toward operator certification. (40)

#### **Response**

Further definition of what is meant for source water program experience and how that experience relates to the operation of a drinking water system is needed. A source water protection program

can be implemented by an individual without ever setting foot in a treatment system. If the operator feels this experience is relevant, he or she can provide a detailed description of what tasks are done on the application for certification action. The Certification Board will take this description into account when the review is completed and the amount of experience completed is quantified.

### **302.705 - ACCELERATED CERTIFICATION REQUIREMENTS FOR SYSTEM MODIFICATIONS**

#### **96. Comment**

302.705; as drafted, the regulation appears to require a certification upgrade for any increase in system capacity. In fact, this is only necessary when the change in capacity results in a change in the classification of the system. The second sentence in subparagraph (a) should be revised to say, "When the capacity of a system is increased so as to change the classification of the system, the existing available operators will qualify for . . . Same for the subclassification provision. We see no need for such a permit provision and request that it be deleted. The permitting staff should not be charged with making Certification Act decisions. In the case that DEP decides not to delete this provision from the final rule, it at least needs to be made clear that when applying for the permit amendment, the owner should also request that the new permit include approval of the certificate upgrade program as described in this regulation. Finally, the provision at subparagraph (b)(3) should be revised to make it clear that an operator can be upgraded if he has already passed the appropriate Part II Technology Specific examination.. (17, 18, 76)

#### **Response**

The Department made the suggested changes.

#### **97. Comment**

302.705(b) should also waive the one year additional experience requirement when there is a change in treatment processes and the operator has completed the manufacturer's training course and the Part II Treatment Technology Specific Examination. Otherwise, the operator would have to take the Part II Treatment Technology Specific Examination and wait one year. (65, 69, 74)

#### **Response**

The Department revised this section to waive the one year experience requirement.

## **Subchapter H. CONTINUING EDUCATION AND TRAINING**

### **302.802 - CONTINUING EDUCATION REQUIREMENTS FOR CERTIFICATE RENEWAL**

#### **98. Comment**

302.802(d) - Excess credits should be carried forward. Operators should be encouraged to obtain training that is applicable and useful for their employment, not just randomly chosen classes to generate "credits". Because courses are offered at different times, it has been the experience of many operators under the current system that they forego needed training because they already have sufficient credits, and take pointless training (for them) because they need to obtain credits

by a date certain. Allowing excess credits to carry forward into subsequent training cycles will allow operators to be more judicious in their choice of training, taking courses that they need, when they are offered, without reference to an arbitrary schedule. The administration of a carry-forward program would be simple, since the process is already computerized.

(1,5,6,7,8,9,10,11,12,13,16,17,18,19,20,21,22,23,25,26,28,31,32,34,38,39,41,42,43,45,46,47,55, 61,70, 76)

**Response**

The EPA guidelines establish two requirements: (1) Continuing education must be a requirement for certificate renewal and (2) the renewal cycle can not exceed three years. Based on conversations with EPA early in the development of this program, our initial interpretation of these two requirements was that allowing excess credits to carry forward into subsequent cycles would jeopardize EPA approval of the program. This would result in the loss of 20% of the grant funds the state receives from the Drinking Water State Revolving Loan Fund program, or between \$6 and \$10 million per year. At the request of TAC, CPAC and the Certification Board, Department staff has approached EPA again concerning this issue, only to find that some EPA Regions have allowed states to do this. Currently, the program does not have the administrative capability to allow for this. A comprehensive analysis of the data management changes and additional administrative support needs, complete with a timeframe for completion, is needed. This analysis and timeframe for completion will be part of the package to go to the EQB as part of the final rulemaking package this summer.

**99. Comment**

302.802(g) - Documentation of training. The draft regulation states that credit is given "in the 3 year renewal cycle in which the training provider documents successful completion of the training." It is more accurate to say that credit will be given "in the 3 year renewal cycle in which the training was provided, as documented by the training provider." Otherwise, if a training provider delayed reporting until the next cycle; credit would not appear in proper renewal cycle. (17, 18)

**Response**

The Department revised this section as suggested. However, to clear up some confusion the Department is having with correspondence courses, the word "provided" was changed to "completed".

**302.804 - SYSTEM SECURITY TRAINING REQUIREMENTS**

**100. Comment**

302.804(a) – System security training requirement

Specify what type of security training is acceptable to DEP. Will NIMS courses already taken meet the security training course requirement? (40, 68, 76)

**Response**

The Department has developed the necessary training to meet this requirement. Consistent with 302.804(b) other security-related training already taken by the operator will not satisfy this requirement.

### 101. Comment

302.804(b) - The time provisions for security training require clarification. The proposed rule requires all operators to complete security training "before the conclusion of the operator's first subsequent 3 year renewal period following [publication of the Final Rule]." We interpret this to mean that, following final publication of the rule, no such training will be required until after the current 3-year training cycle is completed, and then the training will be required sometime during the next ("subsequent") 3 year cycle. Depending on when their current cycle ends, operators will have anywhere from a minimum of three to a maximum of six years to complete this training. If this is not the intent, then the provision needs to be clarified in the final rule. (17, 18)

#### Response

This is exactly the intent. However, to make this clearer, the language has been modified to read, "...the system security training requirement in the certified operator's first renewal period commencing on or after \_\_\_\_\_."

### 102. Comment

Is there a fee associated with the security training course? If so, is it in addition to the fees found in Section 302.202? The final-form regulation should explain the fiscal impact of these training requirements. (76)

#### Response

The operator will pay the fees identified in Section 302.202 if he or she takes the course as delivered by the Department. However, other approved training providers may also be delivering the course, or something similar if approved by the Department. In that case, the fee charged will be determined by the training provider. The operator can then choose which provider to take the course from and in what format.

### 103. Comment

302.804 - how many contact hours will the course be? Is this course required every three years? What types of courses are acceptable to the Department? In addition, what constitutes successful completion of the course? The same concern applies to Subsections (f) and (g). The final-form regulation should clarify these issues. (76)

#### Response

The Department has developed a five hour classroom and web-based course for this purpose. The operator can either take the course from the Department or another training provider approved by the Department to deliver the same, or a similar course. These courses have been created in accordance with the Department's training approval guidance document, "*Training Provider Manual for the Water and Wastewater System Operator Training Program*, Document number 383-2300-002.

### 104. Comment

302.804(c) - What criteria will be used to determine if a person has successfully demonstrated the knowledge, skills and abilities contained in the course? The final-form regulation should clarify this issue. (76)

#### Response

The operator will demonstrate that he or she has the necessary knowledge, skills and abilities through successful completion of the course. The assessment methods used in the course were

created in accordance with the Department's training approval guidance document, "Training Provider Manual for the Water and Wastewater System Operator Training Program, Document number 383-2300-002.

**105. Comment**

302.804(g) - the Department "may" require certified operators to attend and successfully complete additional system security courses. Under what circumstances would the Department require this? (76)

**Response**

The Department added the following criteria to this section:

1. A certified operator failed the existing Department-approved security course in subsection (a).
2. There is a history of security issues at a water or wastewater system where the certified operators work.
3. There is a history of security issues with the certified operator.
4. New or updated security courses become available.
5. The department determines a situation or threat (federal, state, local) exists that requires additional specific security courses.

**Subchapter I. System Classification and Subclassifications**

**302.901 - CLASSIFICATIONS AND SUBCLASSIFICATIONS OF WATER SYSTEMS**

**106. Comment**

302.901(d) - Final-form regulation should clarify what "changes in the conditions or circumstances at the system" would warrant a change in the system's classification or subclassification. (76)

**Response**

The Department added the following examples to this section:

- (1) An increase in capacity that changes the class of the system.
- (2) The addition or loss of a treatment technology.
- (3) Other federal or state regulatory changes in the definition of a treatment technology used at the system.
- (4) The issuance of a permit changing the class or subclassification of a system.

## **302.902 CLASSIFICATIONS AND SUBCLASSIFICATIONS OF WASTEWATER SYSTEMS**

### **107. Comment**

Class E/4 should be separated into collections systems with major and minor pump stations. A BNR subclass makes more sense than adding a Lab Supervisor subclass. Lab skills are already covered under the General exam. (24)

#### **Response**

The knowledge, skills and abilities to operate a collection system are the same, regardless of the size of the system and the need for one or more pump stations. As a result there is only one set of requirements for certification and certificate renewal. Separating this into two separate classifications would require separate requirements. None of the examination, including the General examination have any content relative to the knowledge, skills and abilities needed to serve as a laboratory supervisor as defined by the Laboratory Accreditation Act and Chapter 252, the associated regulations.

### **108. Comment**

302.902(c) - Arbitrary changes in classification and subclassification. It is the intent of the regulations to establish a uniform method of subclassification. Therefore, changes in either classification or subclassification must be based on specific changes, such as an increase in the design flow or a change in the treatment process. Any such change would be reflected in a permit. As drafted, the regulation may result in misunderstanding by Department staff as to the manner in which a change in classification and subclassification is made under the Act. Suggests that this provision state:

“Upon issuance of a permit changing the classification or subclassification of a system, the Department will provide notice to the Owner and all Certified Operators of record for the system of the change”. (17, 18, 760

#### **Response**

The Department added the suggested language.

### **109. Comment**

In Section 302.901(b), the Department may reclassify a water system "upon written request by the owner." Why is a comparable provision not included for wastewater systems in Section 302.902? (76)

#### **Response**

This situation is only available for small drinking water systems wanting to change their classification to Dc, thus reducing the certification and certificate renewal requirements for the available operator(s) of the system. The classification framework for wastewater systems does not include this provision.

## Subchapter J. Operator Classes and Subclassifications

### 302.1004 – OPERATOR IN TRAINING STATUS

#### 110. Comment

An OIT should be able to make process control changes under the supervision of certified operator. During an emergency an OIT should be able to make process control decisions. (40)

#### Response

An OIT can make process control decisions as long as he or she is following standard operating procedures approved by the system's operator in responsible charge. Allowing an OIT to make process control decisions during an emergency is in direct conflict with federal guidelines and the Drinking Water and Wastewater Systems Operator Certification Act.

### 302.1006 – LABORATORY SUPERVISOR CERTIFICATION

#### 111. Comment

Section 1006 of the draft regulations purports to create a "subclassification" which is not related to any classification. The regulations claim that this is a "stand-alone" subclass. The creation of subclassifications is governed by § 1004(c)(4) of the Act. Subclassifications are established "within classifications" and are based on "the size and complexity of the . . . systems and the quality of source water." Accordingly, the law does not authorize the creation of a "subclassification" when there is no classification, nor does it authorize subclassifications for facilities and operations not related to the size or complexity of the system. The proposed subclass of "Laboratory Supervisor" is therefore not authorized by the Act and is *ultra vires*. We would also note that the proposed definition of Subclassification in the definitions section of the regulation conflicts with the definition in the Statute and should be corrected. (17, 18, 34, 73)

#### Response

The definition of subclassification is consistent with the Act as it is tied to each treatment technology definition. The two definitions need to be tied together. There is no claim that the laboratory supervisor subclassification is a "stand alone" subclassification. An operator wanting to also serve as the laboratory supervisor for a water or wastewater system who does not meet any of the other criteria for laboratory supervisor as defined in Chapter 252, the laboratory accreditation regulations, must be certified with the appropriate class and subclassifications for the system where he or she is working before obtaining the laboratory supervisor subclassification. Section 1004 (c)(1) authorizes the creation of standards for certification. The knowledge, skills and abilities needed to serve as a laboratory supervisor can not be covered under the other subclassifications. By creating a separate subclassification the standards can be appropriately defined and addressed within the classification and subclassification framework that was established.

#### 112. Comment

We request that the Board provide clarification and details on this new laboratory certification requirement - whether this requirement would apply to a Class A water and wastewater operator;

if so, when would this requirement go into effect; and detailed information on the laboratory supervisor certification examinations. (50)

**Response**

The laboratory supervisor subclassification was created in partnership with the Laboratory Accreditation Advisory Committee when the Chapter 252, Laboratory Accreditation regulations were first drafted. This subclassification was created at the request of representatives of the drinking water and wastewater treatment system owners and operators who were on this committee. The purpose of the subclassification is to provide another alternative to small drinking water and wastewater treatment system owners who could not afford to hire additional staff to serve in the capacity of laboratory supervisor. Provisions in Chapter 252.302(h) allow existing certified operators to serve in this capacity until such time as this subclassification is offered. Once the Certification Board is able to offer this subclassification certified operators who want to continue to serve in the capacity of laboratory supervisor, and do not meet any of the other criteria for laboratory supervisor as defined in Chapter 252, will have twelve months to meet the standards for certification in this subclassification. Language has been added to this section to clarify this requirement and to ensure consistency between the two regulations.

**113. Comment**

Should include an accelerated PADEP approved course for master operator to take so DEP is assured that they are familiar with lab procedures rather than add a new Lab Supervisor subclass. Lab skills are already covered under the GEN exam. (24)

**Response**

As described above, the laboratory supervisor subclassification was created in partnership with the Laboratory Accreditation Advisory Committee when the Chapter 252, Laboratory Accreditation regulations were first drafted. This subclassification was created at the request of representatives of the drinking water and wastewater treatment system owners and operators who were on this committee. The purpose of the subclassification is to provide another alternative to small drinking water and wastewater treatment system owners who could not afford to hire additional staff to serve in the capacity of laboratory supervisor. The knowledge, skills and abilities to serve as a laboratory supervisor as defined in Chapter 252 are not covered on any of the existing examinations.

**114. Comment**

To be consistent with the Environmental Laboratory Accreditation regulations at 25 Pa. Code § 252.302(h), the requirements of § 302.1006 should clearly indicate that they will not take effect until 12 months after a certificate for laboratory supervisor in the appropriate water or wastewater subclassification becomes available from the DEP. (65, 69, 74, 76)

**Response**

The Department added references to the Environmental Laboratory Accreditation regulations to ensure that operators have the requisite 12 months to meet these requirements.

**115. Comment**

Section seems to ignore the current EXISTING laboratory supervisors, in that there are no provisions to keep them on as supervisors unless they obtain a passing score on the Part II Laboratory Supervisor for Water and or Wastewater examination. Here again this does not utilize

the current workforce and again places the burden of cost upon the operator. The current laboratory workforce needs to be GRAND FATHERED. (59)

**Response**

The existing laboratory supervisors will have twelve months to pass the examination and meet the standards for certification in this subclassification. They will only need to meet these standards if they do not already meet the other qualifications for laboratory supervisor as defined in Chapter 252.302, qualifications of the laboratory supervisor. This includes provisions for the grandfathering of existing laboratory supervisors. Language to this effect has been added to this section of the regulations.

**116. Comment**

Will laboratory supervisors now be required to obtain operator certification? Will existing lab supervisors be grandfathered, and automatically become certified operators? Do they need to take operator certification tests to keep their lab certification? Feel existing lab supervisors, qualified under the lab certification program should not be impacted by the operator certification program.(36, 68, 76)

**Response**

Only laboratory supervisors who do not meet any of the other qualifications for laboratory supervisor as identified in Chapter 252.302 or do not meet the grandfathering provisions in Chapter 252.303 will need to take the examinations for operator certification and the laboratory supervisor subclassification in order to continue serving as the laboratory supervisor for a drinking water or wastewater system. Those laboratory supervisors deemed qualified under the laboratory certification program solely based on the fact that they are also a certified operator will have twelve months to pass the examination and meet the standards for certification in the laboratory supervisor subclassification.

**117. Comment**

This requires laboratory supervisor sub-classification for all facilities. Some small systems chose to contract laboratory analysis rather than pursue laboratory accreditation, however this rulemaking requires the certified operator completing DMRs to obtain this sub-classification as they are responsible for the testing and reporting. (71)

**Response**

This subclassification was provided as another alternative for small systems that want to continue using their own laboratory but do not have the resources to hire additional staff to serve as the laboratory supervisor. If the system has a contract in place with a certified laboratory for all their analyses, this subclassification is not needed. This subclassification does not apply to the systems, it is only another subclassification available to certified operators who also want to serve in this capacity and do not meet any of the other qualifications for laboratory supervisor as defined by Chapter 252, the Laboratory Accreditation regulations. The certified operator completing DMRs is covered under the existing certification framework.

## Subchapter K. Professional Engineers

### 302.1102 – INITIAL CERTIFICATION FOR PROFESSIONAL ENGINEERS

#### 118. Comment

What does the EQB consider to be appropriate “written proof of a valid professional engineer’s license? The regulation should clarify this issue. (76)

#### Response

This section has been revised to require a copy of the professional engineer’s license or other similar written proof of licensure.

## Subchapter L. System Operation

### 302.1201 – DUTIES OF OPERATORS

#### 119. Comment

302.1201(a) – certified operators are required to comply with “applicable federal and state laws.” We believe the regulated community would benefit from knowing what those laws are and recommend they be specified in the final-form regulation. Also, subsection describes the Department’s role in determining compliance as follows: “The Department will *recognize* the ability of the certified operator to meet these requirements ....” Given the potential liability associated with being a certified operator, the term “recognize” does not provide adequate protection, is vague, and does not adequately describe how this section will be administered if an owner has not provided the proper support to a certified operator (suggest the regulation be revised to state that the “Department *will* consider owner-provided resources when deciding if a certified operator is in compliance.” (38, 70, 76)

#### Response

The Department revised this section to clarify what factors the Department would consider and to narrow the scope of laws and regulations to only those related to the operation of a water or wastewater treatment system.

#### 120. Comment

302.1201(b) – A commentator believes that the requirement of "self-monitoring" of samples under Subsection (b)(14) is problematic because operator certification training does not adequately prepare a system technician to evaluate and interpret self-monitoring data against the requirements. How will this provision be administered and enforced by the Department? (76)

#### Response

The listed operator tasks are simply examples of tasks an operator MAY perform. This was never intended to be an all inclusive list. Because of the many variations of water or wastewater systems and management of those systems an operator may be assigned a few to all of these tasks. In fact, many systems have operators perform compliance-monitoring for their system. The language was changed from self-monitoring to compliance-monitoring to better reflect the language in the Safe Drinking Water Act and the Clean Streams Law.

### 121. Comment

Merck is concerned, however, that several subsections exceed that skill set as established through the operator certification program, conflict with established company environmental compliance management systems, or conflict with existing DEP/EPA regulations. Specifically,

- 302.1201(b)(14) - Merck requests the words, "and self-monitoring" be deleted from this subsection. This subsection indicates the duty of an operator as "overseeing or performing the collection, analysis, and interpretation of all process control and self monitoring samples. Merck agrees that oversight of process control samples and data is an integral part of the operator's responsibility to operate the regulated water system. But inclusion of the words "self-monitoring samples" raises concern. Self monitoring sampling and analysis refers to sample results that are reported to the applicable regulatory agency as part of water supply or wastewater discharge permit requirements
- 302.1201(b)(15) - Merck requests this subsection be changed to state: "Collect, prepare, and submit applicable samples or data to the applicable persons or organization for report preparation and submission to the appropriate agencies." Language in the proposed rule states that a duty of a certified operator is "preparing and submitting applicable reports to the appropriate persons or agencies." For water systems, this language conflicts with 25 PA Code 109.810(a). 109.810(a) places the responsibility and authority on environmental laboratories accredited under 25 PA Code 252 for preparation and submission of required laboratory reports to DEP. (30)

#### Response

There are many variations of how water or wastewater systems are managed. An operator may be assigned a few to all of the tasks listed in this section. In fact, many systems have operators perform compliance-monitoring for their system. The language was changed from self-monitoring to compliance-monitoring to better reflect the language in the Safe Drinking Water Act and the Clean Streams Law.

### 122. Comment

Why this section since owners have the final accountability. (36)

#### Response

The certified operator, not the owner, is the one responsible for making process control decisions for the system. Only in some cases, such as when the owner has not provided the necessary resources to the operator to adequately complete the duties of an operator, will the owner have the final accountability.

### 123. Comment

302.1201(b)(11) - (source water protection); source water protection is far too vague and way beyond the immediate control of the operator to provide - this should be removed entirely. DEP has a separate program dealing with this and it requires many more participants than just operators. (38, 70)

#### Response

Some operators can have a significant impact in the implementation of a system's source water protection plan. This is why this is listed.

#### **124. Comment**

302.1201(c) - requirement to provide notice by specific means. We believe that the proposed rule is so contrary to common sense and sound operational practices that it constitutes a conflict with the Act. The first option (registered mail or overnight delivery service) is expensive, time consuming, burdensome, and slow. The proposed regulation does not reflect the nature of treatment plant operations. We acknowledge that when a certified operator makes a required report under the terms of the Act, that documentation in the form of a receipt is desirable, especially in circumstances where past reports have been ignored or the situation is potentially serious. As operators, we believe that if the proposed rule were adopted, large numbers of certified operators would drop their certifications rather than be subject to the extreme and arbitrary liability that this section imposes.

(1,5,6,7,8,9,10,11,12,13,16,17,18,19,20,21,22,23,25,26,27,28,31,32,34,35,38,39,41,42,43,45,46,47,53,55,57,61,62,63,64,67,70, 71, 73, 75, 77)

#### **Response**

This requirement was put into the Act at the request of the regulated community. The sole reason for this report, and the only time the report should be written or submitted to the owner, is when the operator feels the current policy or a decision of the owner is, or may be, causing a violation. It is a tool for the operator to protect himself should the Department take an enforcement action as a result of a violation. Language in this section has been revised to parallel the original statutory language.

#### **125. Comment**

302.1201(c) - This subsection requires that certified operators notify system owners (typically their employer) in writing of conditions that are causing or may cause a violation; we are concerned that the prescriptive nature of this subsection may in fact contribute to or exasperate violations. We requests this subsection be changed to read: "Certified operators shall notify system owners of any known violations or system conditions that may potentially cause or are causing violations of any Department regulation or permit conditions or requirement using any appropriate means based on the severity of the situation and/or violation. If notification is by verbal means, the certified operator should provide a follow up written report to the system owner. Requests the receipt requirement is deleted from this subsection. (30)

#### **Response**

This requirement was put into the statute at the request of the regulated community. The sole purpose for this report, and the only time the report should be written or submitted to the owner, is when the operator feels the current policy or a decision of the owner is causing, or may be causing, a violation of applicable federal or state laws or regulations. It is a tool for the operator to protect himself should the Department take an enforcement action as a result of a violation. As such, language defining the format and delivery mechanism for this report has been deleted from the regulatory language and will be put in guidance as one of many formats the operator can use to meet this requirement, depending on the situation in the system.

#### **126. Comment**

The proposed regulation is not very clear in what may be a possible potential for violation and needs to be clarified, as well as eliminate the requirement for registered mail notification. Once clarification is made in the regulation, we recommend that the DEP prepare a guidance document to outline and describe the type of scenarios that should be reported to the system owner and

establish a menu of notification options, such as e-mail or documenting concerns in logs. Wouldn't a simple daily log, highlighting such issues and concerns, signed by an operator and given to management suffice as a means to draw attention to potential problems? ( 62, 65, 68, 69, 74)

**Response**

The purpose of the report is to document situations that the operator feels may be, or are, causing a violation. It is a tool for the operator to protect himself should the Department take an enforcement action as a result of a violation. The language defining the format and delivery mechanism for this report has been deleted from the regulatory language and will be put in guidance, as suggested.

**127. Comment**

The regulation proposes to dictate the contents of each and every report submitted by an operator to an owner regarding potential noncompliance. As for the method of making the notice, no such provisions appear in the Act and the provisions as drafted are unreasonable, unnecessary, and create potential liability for operators where none was intended by the Act. In many, probably most, cases an operator will be unable to provide all of this information, thereby violating the regulations and becoming subject to civil penalties. The provisions are unreasonable in that they would require all of the indicated information in each and every report, no matter how minor the problem or how difficult the information would be to obtain. With regard to reports, we recommend that the regulations for reporting only require what the Act does. We and PA DEP agreed to include in the regulation a non-binding suggestion to provide written reports. We request that the final regulations return to that provision.

(1,5,6,7,8,9,10,11,12,13,16,17,18,19,20,21,22,23,25,26,27,28,31,32,34,35,38,39,41,42,43,45,46, 47,51,55, 57,61,62, 63,64,65,67,70,71,73,75,76,77)

**Response**

This requirement was put into the statute at the request of the regulated community. The sole reason for this report, and the only time the report should be written or submitted to the owner, is when the operator feels the current policy or a decision of the owner is, or may be, causing a violation. It is a tool for the operator to protect himself should the Department take an enforcement action as a result of a violation. Language in this section has been revised to more accurately parallel the statutory language creating this requirement.

**128. Comment**

302.1201(d) - This provision creates significant new liability to operators which is not authorized by the Act. Specifically, this section imposes liability for "consequences" of process control decisions. While the language is extremely vague, it appears to impose liability for any result of a process control decision, whether or not it was reasonably anticipated. If an operator makes an unreasonable or imprudent decision which has adverse consequences, she may be liable under the Clean Streams Law or some other statute if that consequence is a permit violation. There is no need to create additional liability in these regulations that is not contemplated by the Act. Since the proposed provision is so ambiguously worded as to be unenforceable ("void for vagueness"), and because it clearly intends to create liability not provided for by the Act, as well as liability for things totally beyond the control of the operator, it cannot be included in the final regulation.

(1,5,6,7,8,9,10,11,12,13,14,16,17,18,19,20,21,22,23,25,26,27,28,29,32,33,34,35,39,41,42,43,44, 45,46,47, 50, 55,61, 62, 64, 67, 68,72,76)

### **Response**

The 1996 Amendments to the Federal Safe Drinking Water Act and the EPA guidelines developed in response to these amendments require all process control decisions be made by a certified operator with the appropriate knowledge, skills and abilities to do so. This is why a certification program exists. These provisions are needed to ensure continued compliance with the EPA guidelines to avoid the loss of federal funds for the Drinking Water State Revolving Loan Fund.

This section and the Drinking Water and Wastewater Systems Operator's Certification Act provides additional protection for those certified operators who exercise care and their best professional judgment in carrying out this responsibility by:

- (1) Recognizing the certified operator can not be held responsible for consequences beyond his control due to a lack of resources provided by the owner of the system.
- (2) Recognizing the certified operator can not be held responsible for the consequences of actions done by a negligent employee or with malice.
- (3) Requiring the Department to petition the Certification Board to suspend, modify or revoke an operator's license. The Certification Board must conduct a complete administrative hearing before taking action on the petition. In other words, the operator gets his "day in court" before losing his or her license.
- (4) Giving the certified operator a chance to remedy a situation through compliance with a Department order. The Department can only assess fines and penalties after the certified operator fails to comply with the Department order. This is a level of protection that does not exist in any other statute or regulation implemented by the Department.

The changes to the program that were made to ensure compliance with the federal requirements have been in place since 2002. These regulations are a formalization of these requirements. Since 2006, the Department has submitted 7 petitions to the Certification Board. All of these petitions have been settled through negotiations with the operator before the Certification Board held an Administrative Hearing. In addition, not one operator or owner has been assessed a fine or penalty based solely on a violation of the Drinking Water and Wastewater Systems Operator's Certification Act or the existing program guidelines. The Department feels the process is working as designed.

### **302.1202 - DUTIES OF OWNERS**

#### **129. Comment**

302.1202(a)(5) includes the phrase "in a timely manner." This phrase is vague. We recommend that the final-form regulation include a more precise timeframe for responding to problems identified in written reports from certified operators. Also, 302.1202(a)(6) requires owners to provide copies of permits to "all available operators." However, Section 1013(f)(3) of the Certification Act only requires copies of permits be provided to "operators in responsible charge." What is the need for expanding the scope of the Certification Act to include all available operators instead of operators in responsible charge? (76)

**Response**

Every situation is different. Some situations may be relatively simple to resolve, others may require significant changes to the treatment system requiring design and construction. For this reason a more precise time frame can not be specified. In many cases, the available operator and the operator in responsible charge are the same person. The current regulatory language only requires the designation of an operator in responsible charge if a system wants to use standard operating procedures. Therefore, there may be a large number of systems that do not have, nor do they need, an "operator in responsible charge." All systems are required to have at least one available operator to make process control decisions. In many cases, they need a working knowledge of the permit conditions to make those decisions.

**130. Comment**

302.1202(a)(6) & 302.1202(d) - The Act provides that owners will provide copies of permits to the operator(s) in responsible charge. (Act § 1013(f)(3).) The proposed Regulation changes this statutory provision by requiring owners to provide permits to all "available operators," which by definition may be a different, and certainly a larger, group of personnel. Hence, this provision is clearly contrary to the Act. Again, the proper way to address this issue is for the Department to make a recommendation to owners in non-binding guidance. (17, 18)

**Response**

In many cases, the available operator and the operator in responsible charge are the same person. The current regulatory language only requires the designation of an operator in responsible charge if a system wants to use standard operating procedures. Therefore, there may be a large number of systems that do not have, nor do they need, an "operator in responsible charge." All systems are required to have at least one available operator to make process control decisions. In many cases, they need a working knowledge of the permit conditions to make those decisions.

**131. Comment**

302.1202(b) - Annual Report from Owner. The requirement to submit an annual report listing the available operators and their personal information serves no purpose. The Department has on file the reports submitted under the Interim Guidelines, and the requirement to report any change in the operators (§ 1202(c)) will serve to keep that information up to date. The annual report is mere busywork, a waste of paper and postage, and appears to be primarily motivated by a need to create a pretext to charge the proposed "fees" to the owners. (4,17, 18, 38,70,72)

**Response**

This report is the mechanism the Department uses to comply with the statutory requirement that all system owners designate the available operators for their systems. However, it does not have to be submitted on an annual basis. Therefore this section has been revised to require submittal of the report upon written request of the Department. The link between the report and the annual service fee has been eliminated.

**132. Comment**

Include this information in the Chapter 94 Annual Wasteload Management Report or DMR. (15)

**Response**

This may be a possible option, provided the data management system can handle this. The Department will look into this as a possible alternative to the submittal of a separate report.

### **133. Comment**

302.1202(b) - Six pieces of information are required to be reported to the Department on an annual basis under this subsection. We believe that the Department is already in possession of this information so why report the information again? Also, the regulation is silent on when and where the report is to be submitted. If the EQB retains this provision, we recommend that the final-form regulation specify when and where the report should be submitted. (76)

#### **Response**

This report is the mechanism the Department uses to comply with the statutory requirement that all system owners designate the available operators for their systems. This information can change over time and should be updated on a regular basis. We have revised the regulatory language to change the timeframe for the submittal of this report to be only upon written request from the Department. Since the mailing address or location of where the report is to be submitted may change, this information needs to be left out of the regulatory language. This information will be included in the written request from the Department.

### **134. Comment**

302.1202(c) - Owners notifying Dept. in writing within 10-calendar days of addition, loss, change or replacement of available operator is not necessary. (38, 70)

#### **Response**

Over 80% of the systems in the state are small systems with only one reported operator. To continue to ensure compliance and protect public health, the Department needs to know if this operator leaves the system. In addition, keeping this data current helps with the long-term implementation, compliance and enforcement of the program.

## **302.1203 - PROCESS CONTROL DECISIONS**

### **135. Comment**

Situation where an uncertified supervisor (or owner's representative) makes process changes contrary to what the certified operator would make? The Revisions should contain some sort of whistleblower provision and shield without having to go to other Acts. (38, 70)

#### **Response**

Section 15.1 of the Drinking Water and Wastewater Systems Operator's Certification Act provides this protection. There is no need for additional provisions.

### **136. Comment**

302.1203(c) - No such power is created by the Act. There is nothing about developing special operating plans. Additionally, the powers of the Department are set forth in §1004(b) of the Act, which does not give the Department the power to impose extensive planning requirements on wastewater systems. Neither is the Board empowered. The provisions of this subsection may or may not be reasonable for any particular system. Certain of the requirements are not even practicable for some processes *{e.g., a list of "trigger parameters for each unit that requires a process control decision"}*. Under what circumstances will such plans be required? What will the Department do with such plans? (17, 18, 34,68, 72, 76)

## **Response**

Section 1004(b)(1) allows the Department to establish and implement procedures as necessary to carry out and support the Act. The intent of a Process Control Plan is to assist systems establish and implement procedures that facilitate the operation of the system and help the operator develop standard operating procedures. The Department will use this option only for systems that have demonstrated histories of non-compliance, are having difficulties adjusting to new treatment requirements or have other unique circumstances where the development of such a plan is warranted. Subsection 302.1203(d) limits the development of these plans to situations where an operation and maintenance plan, emergency response plan or other similar documentation does not already exist and is designed to establish uniform standards for all drinking water and wastewater treatment system operation.

## **137. Comment**

302.1203(c) Process Control Plans & 302.1204 Standard Operating Procedures - Costs of complying with the operational portions of the regulation have been totally ignored in the Preamble Section F. A system owner may have most of the items described in 302.1203(c) but not in the compiled narrative form required by the regulations. The same may be true of the required format of standard operating procedures detailed in §302.1204. (73)

## **Response**

A process control plan will only be required in cases of non-compliance or other unique situations where a similar operations and maintenance or emergency response plan is not in place. The development of standard operating procedures is one tool the owner can use to ensure all process control decisions are made by a certified operator. The decision to utilize these procedures is up to the owner and a certified operator designated by the owner as the operator in responsible charge. These procedures must be approved by this operator in responsible charge, not the Department. The costs for the development of these documents should be minimal and are considered part of the everyday costs for the operation and maintenance of the system.

## **138. Comment**

302.1203(e) - The Act provides no exceptions for process control decisions based on who makes them; to the contrary, it mandates that Process Control Decisions may only be made by properly certified operators. (Act §§ 1005(d), 1006(d), 1013(e)(5).) The Proposed Regulation, however, attempts to create an exception to the definition based on *who is making the decision*. (Vagueness of the proposed rule). PaDEP has the power to issue Orders regarding treatment plant operations under both the Certification Act and the Clean Streams Law; there is no need to circumvent the protective provisions of the Act by changing a statutory definition. It would be more in keeping with the statute if the exception for emergencies would say that the Department will exercise enforcement discretion and consider the circumstances in the case that a Process Control Decision is made by someone not certified under the Act in an emergency situation. The Association notes that we do not object to the provisions that local government actions to approve land development are not Process Control Decisions because this is merely a clarification of a common sense idea. Similarly, for the purposes of clarification, it would also be worthwhile to include a notation that the administration and operation of a Municipal Industrial Pretreatment Program is not a Process Control Decision for the same reason.  
(1,5,6,7,8,9,10,11,12,13,16,17,18,19,20,21,22,23,25,26,28,29,32,34,38,39,41,42,43,45,46,47,55, 61,64,67,68, 69,70,72,74,76)

**Response**

The reason for this subsection was to add clarification. As stated by the commentators the situations listed are more of a common sense idea and have no additional value. Therefore, this section was deleted.

**139. Comment**

Would these provisions prevent a person in a management position (not an operator) from issuing a boil water notice? (68)

**Response**

No. However the decisions made to resolve the problem resulting in a boil water notice must be made by a certified operator

**302.1204 – STANDARD OPERATING PROCEDURES****140. Comment**

302.1204(b)(3) - Compliance with Standard Operating Procedures; the sentence as drafted is confusing. We believe that this subparagraph should say, "State which treatment processes are covered by the standard operating procedures; for processes that are not covered by the standard operating procedure, the operator should be instructed to contact an available operator to make any necessary process control decisions." (17, 18)

**Response**

The Department agrees with this concept. However, the sole responsibility for an operator in responsible charge is the development and approval of standard operating procedures, if the system decides to use them. Therefore, the suggested language was modified slightly to have the operator contact this individual, not another available operator.

**141. Comment**

302.1204 - What good is the rule if it is not enforced? Plants should always be run by a certified operator. SOP's should not be used to get around the law, there should be a certified operator at the plants whenever they are operating. (56)

**Response**

Standard operating procedures are not intended as a substitution for a certified operator. Section 13(b) of the Drinking Water and Wastewater Systems Operator's Certification Act allows the use of these procedures. These procedures must be developed and approved by an operator in responsible charge designated by the system owner.

**142. Comment**

302.1204 - Standard Operating Procedures should be part of the design of the facility and developed by certified professional engineers, not by a facility operator or DEP operative who have not been trained, evaluated and certified to have the knowledge to understand the full implications of the system design parameters. These SOPs should be part of the Operating Permit for the facility and reviewed by other certified professionals as part of the design and permitting process, NOT developed by DEP, the plant operators or owners independently after permitting. In no way should the operator be "liable" for damages incurred during operation of the facility in full compliance with approved design, operating, and permit instructions. (62)

**Response**

Standard operating procedures are to cover process control decisions needed in the daily operation and maintenance of the system. These decisions need to be made by a certified operator, not a professional engineer or a Department employee. They need to be developed and approved by the certified operator designated by the system owner as the operator in responsible charge. Therefore, he or she needs to be held responsible for the content and implementation of these procedures. In no way do the development or use of these procedures hold the operator "liable" for damages incurred during operation of the facility in full compliance with approved design, operating, and permit instructions unless the standard operating procedures developed by the certified operator contradict these operating and permit instructions and implementation of the procedures results in a violation of applicable state and federal rules and regulations.

**143. Comment**

302.1204(f) - Who within the Department would be assigned such responsibilities and what qualifications would be required for those persons? Under what circumstances would the Department find it necessary to request a copy of such procedures? (68)

**Response**

Department staff asking for this information would be regional office staff involved in permitting and facility compliance with Department rules and regulations.

**302.1205 - NUMBER OF REQUIRED CERTIFIED OPERATORS****144. Comment**

Could a system hire a professional as the operator in responsible-charge and not need a certified operator to complete daily activities? (36)

**Response**

No. The individual(s) making process control decisions at a drinking water or wastewater treatment system must be a certified operator.

**302.1206 - OPERATOR IN RESPONSIBLE CHARGE****145. Comment**

302.1206(a) - Are the reporting requirements found in this subsection in addition to the reporting requirements found in Section 302.1202(b)? If so, what is the need for this provision? (76)

**Response**

The only time an owner will designate an operator in responsible charge is if the decision has been made to utilize standard operating procedures. The reporting requirements to designate this individual are the same for the convenience of the owner and the Department.

**146. Comment**

302.1206(d)(1) - With respect to approval of SOPs, since the Act defines the term to be the operator "designated by the owner to ... make the process control decisions, such a requirement is not in conflict with the Act, and appears to be reasonable. We do not object to the requirement that the Operator-In- Responsible-Charge approve all SOPs. We note that the proposed

regulations do not require that SOPs be developed exclusively by the Operator-In-Responsible-Charge, a concept with which we also agree. (17, 18)

**Response:**

Thank you for the comment and support for the proposed rulemaking.

**147. Comment**

302.1206(d)(2) - The proposed regulation would usurp the powers and responsibilities of the owner by mandating certain work assignments to a particular operator, regardless of job description, training, or the wishes of the owner. If an owner desires or is required to develop a process control plan, it should be able to choose who will do so. For the Board to legally deny the owner the use of all of these professionals and mandate that only the Operator in Responsible Charge may develop such plans is to go far beyond the Board's legal authority, as well as simple common sense. (68,76)

**Response**

The Department deleted this subsection.

**148. Comment**

302.1206(e) - The attempt to create new responsibilities and liabilities not provided for in the Act and is not within the powers of the Environmental Quality Board. It may be true that action or inaction by an operator could result in a permit violation, in which case liability might lie under the Pennsylvania Clean Streams Law. The Act clearly establishes the liabilities of operators in section 1014 as those with regard to the duties enumerated in section 1013. Additionally, since one of the duties of a certified operator is to operate the water or wastewater system "utilizing available resources in conformance with applicable regulations and permits (Act § 1013(e)(3)), violation of a permit may result in liability of the operator under certain circumstances. Specifically, such liability would only lie if the violation occurred because the operator did not provide for "suitable operation . . . utilizing available resources." Hence, the liability established by the statute is defined and delineated to a stated standard. The proposed regulation however goes beyond these statutory provisions by imposing liability for actions which may even not be a result of the operator's decisions.

(1,5,6,7,8,9,10,11,12,13,16, 17,18,19,20,21,22,23,25,26,27,28,32,34,38,39,41,42,43,45,46,47,50, 55,61, 63,70, 72, 76)

**Response**

The 1996 Amendments to the Federal Safe Drinking Water Act and the EPA guidelines developed in response to these amendments require all process control decisions be made by a certified operator with the appropriate knowledge, skills and abilities to do so. This is why a certification program exists. These provisions are needed to ensure continued compliance with the EPA guidelines to avoid the loss of federal funds for the Drinking Water State Revolving Loan Fund.

This section and the Drinking Water and Wastewater Systems Operator's Certification Act provides additional protection for those certified operators who exercise care and their best professional judgment in carrying out this responsibility by:

1. Recognizing the certified operator can not be held responsible for consequences beyond his control due to a lack of resources provided by the owner of the system.

2. Recognizing the certified operator can not be held responsible for the consequences of actions done by a negligent employee or with malice.
3. Requiring the Department to petition the Certification Board to suspend, modify or revoke an operator's license. The Certification Board must conduct a complete administrative hearing before taking action on the petition. In other words, the operator gets his "day in court" before losing his or her license.
4. Giving the certified operator a chance to remedy a situation through compliance with a Department order. The Department can only assess fines and penalties after the certified operator fails to comply with the Department order. This is a level of protection that does not exist in any other statute or regulation implemented by the Department.

The changes to the program that were made to ensure compliance with the federal requirements have been in place since 2002. These regulations are a formalization of these requirements. Since 2006, the Department has submitted 7 petitions to the Certification Board. All of these petitions have been settled through negotiations with the operator before the Certification Board held an Administrative Hearing. In addition, not one operator or owner has been assessed a fine or penalty based solely on a violation of the Drinking Water and Wastewater Systems Operator's Certification Act or the existing program guidelines. The Department feels the process is working as designed.

### **302.1207 - OPERATION OF MULTIPLE TREATMENT SYSTEMS**

#### **149. Comment**

302.1207(f) - Circuit Rider Process Control Decisions; This rule as written makes no sense and is impossible to understand. It appears to be the purpose of the proposed rule to require each owner to "sign off on the management plan for his system before the circuit rider is allowed to commence operating that system. This is what the rule should say. (17, 18)

#### **Response**

The Department revised this language as suggested.

#### **150. Comment**

302.1207(f) - The Act does not address the number of facilities an operator may be in charge of and as approved, requires a management plan. The proposed section does not take into account site specific plant design, etc. It appears to be the purpose of the proposed rule to require each owner to "sign off on the management plan for his/her system before the circuit rider is allowed to commence operating that system. We recognize that owners need to understand their responsibilities and circuit riders need to provide services that will protect the waters of the Commonwealth. Recommend section be reworded or more appropriately handled as guidance. (72)

#### **Response**

The reason for the general work plan and the system specific management plan is to require the circuit rider to demonstrate how he or she is going to operate multiple systems with different treatment technologies and capacities. The Department created this framework specifically to allow for diversity in plant design, treatment technology, size and location. The general work plan provides a blueprint for how the circuit rider plans to operate multiple systems. If ongoing compliance issues arise at the systems operated by a circuit rider, the Department will step in and

require the owner of one or more of these systems to hire another available operator or circuit rider. Requiring the system owner to sign off on the system specific management plan ensures the owner is at least familiar with how the circuit rider plans to operate his or her system and acknowledges the fact that he or she is sharing the certified operator with at least one more system. In response to this comment, the Department changed the wording from "approved" to "sign off". The Department intends to provide further guidance on the development of the circuit rider program in guidance.

**151. Comment**

302.1207(k)(2) - The Department may direct an owner or available operator to cease participation in a circuit rider program if there is a threat to public health, safety and the environment. Is this due to the action of the circuit rider? If so it should say that. Many emergencies happen when no one is present. Operator should be given time to work on problem. (51)

**Response**

The Department added language as suggested.

**152. Comment**

302.1207(k)(3) - The Department may direct an owner or available operator to cease participation in a circuit rider program if; changes have occurred at the system that are not included in the system specific management plan. Why not ask the circuit rider to update the system specific management plan before having the owner cease participation in the circuit rider program? Sometimes changes are made to improved treatment. Until changes are proven the new SOP is not committed to paper. (51)

**Response**

The Department will take a number of factors into consideration before making the determination to direct an owner to cease participation in a circuit rider program based on a change in treatment. In most cases, a revision to the management plan will suffice. However, this language is here to give the Department the option, if needed, to not allow for these revisions and to require the owner to hire another available operator.

**153. Comment**

Recommend the term "circuit rider" be defined in either this section or Section 302.101 (Definitions). We also recommend that the term be deleted from the title of this section. (76)

**Response**

This term is defined in Section 302.101 (Definitions). The term has been removed from the title.

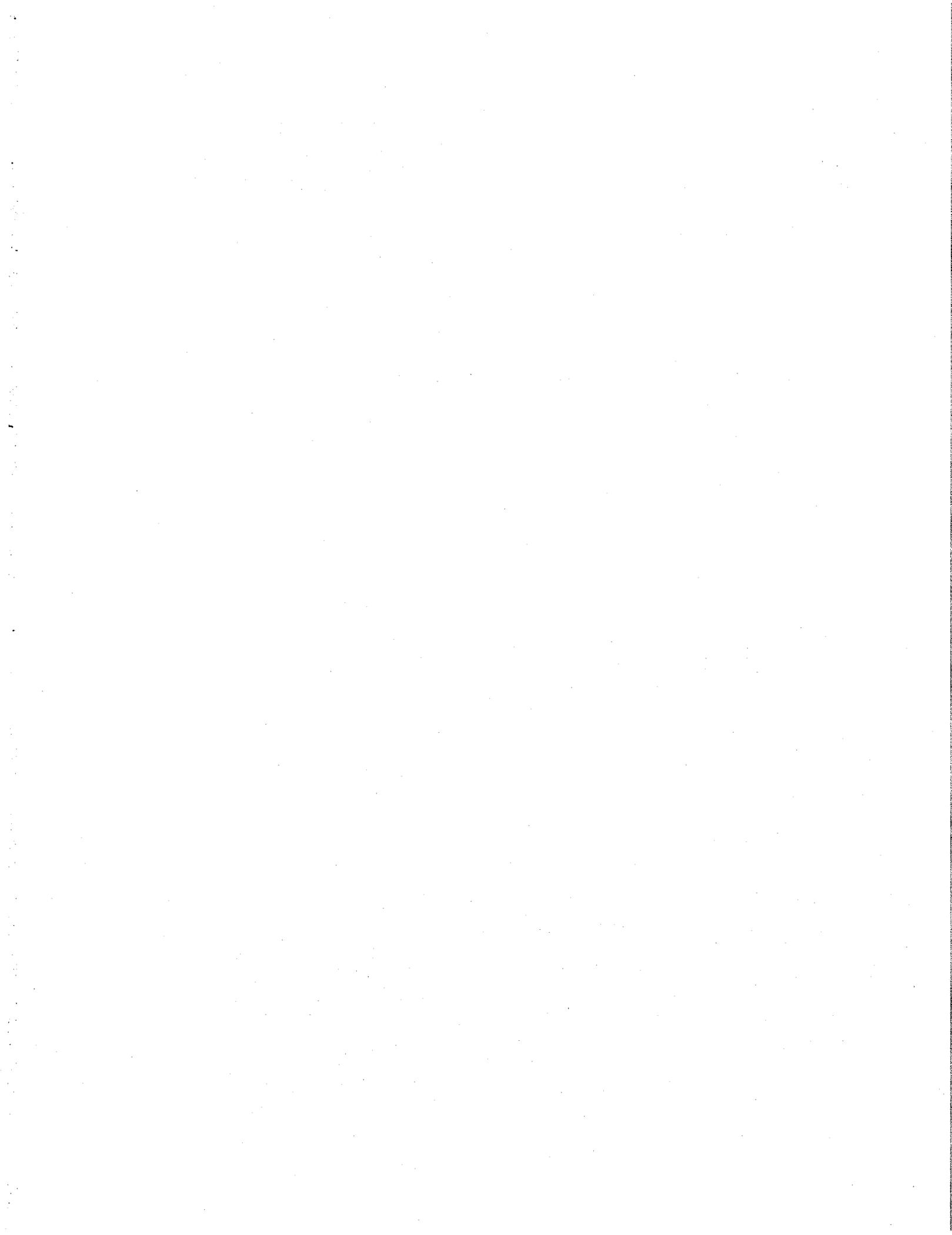
**302.1208 PROGRAMMABLE LOGIC CONTROLS (PLC'S) AND SUPERVISORY CONTROL AND DATA ACQUISITION SYSTEMS (SCADA)**

**154. Comment**

Both of the terms are also used in Section 302.1203(a). We recommend that the terms be defined in Section 302.101, relating to definitions. (76)

**Response**

The Department added definitions for these terms in Section 302.101.



**ADVANCED NOTICE OF FINAL RULEMAKING (ANFR)**

**CHAPTER 302  
ADMINISTRATION OF THE WATER AND WASTEWATER SYSTEMS  
OPERATORS' CERTIFICATION PROGRAM**

**COMMENT/RESPONSE DOCUMENT**

**April 27, 2010**

This document presents comments submitted in regard to the Advanced Notice of Final Rulemaking (ANFR) on Chapter 302, The Administration of the Water and Wastewater Systems Operators' Certification Program and the Department of Environmental Protection (Department) responses to those comments. The proposed draft-final rulemaking was published in the *Pa. Bulletin* on January 23, 2010. See 40 Pa.B. 560. Comments were accepted until February 26, 2010.

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## GENERAL COMMENTS

### 1. Comment

We strongly support the adoption of the final regulations as drafted. We also appreciate and acknowledge the Department of Environmental Protection (DEP) for their outreach efforts and collaboration with advisory committees and the statewide water and wastewater related associations on the drafting of this regulation and fee schedule. (3, 11, 13)

#### Response

Thank you. The Department appreciates the support and acknowledgement of our efforts. The Department strongly feels the regulatory language is much better as a result of the time spent with industry associations and representatives of the regulated community.

### 2. Comment

We would like to express concern with the temporary suspension of some services as a result of the DEP budget cuts and furloughs. The sooner these regulations are approved as final and DEP can start charging fees; the sooner DEP can resume these suspended services. (3, 11, 13)

#### Response

The Department is making every effort to expedite the finalization of these regulations so that key components of the program can resume.

### 3. Comment

I want to commend DEP for what has been a very long process to get where you are today. I was able to thoroughly review the comments and responses you sent and quickly go over the draft and it appears that DEP has really listened and tried to do the best possible within the constraints of the EPA funding and reasonableness. A general thing that is of a concern to all operators and owners is the recent cessation of supporting certificate upgrades, tests and wastewater training. It seems all you are trying to do with these regulation upgrades is being crippled by the current administration's reduction of funding to DEP. Hopefully that will change soon, and not after all this goes into effect and the fees generate more funding – that will take many months if not years. I passed an upgrade test but can't apply for the certificate and I have three operators on hold wishing to take upgrade tests. (4)

#### Response

Thank you. The Department is doing everything that can be done to expedite the resumption of services for this program.

### 4. Comment

We still believe a more detailed description of each section of the regulation and why the language is needed would be beneficial. The references to supporting documentation presented to the Environmental Quality Board might not always be available to the public. However, this regulatory package will be available via its publication in the *Pennsylvania Bulletin*. (9)

#### Response

As stated previously in the response to Comment # 1 of the Comment Response Document circulated as part of the ANFR, these regulations are designed to ensure ongoing compliance with federal requirements established in the 1996 Amendments to the Federal Safe Drinking Water Act and provisions established in the Drinking Water and Wastewater Systems Operators Certification Act (Act). Specifically, these regulations address seven of the nine required

elements EPA established in their guidelines that must be included in the Operator Certification Program:

1. Legal authority to implement the program.
2. Classification of all systems, facilities and operators:
  - a. Based on indicators of potential health risk with standards for certification and certificate renewal for each classification.
  - b. Provisions for owners to place systems under the direct supervision of a certified operator(s) with a valid certificate equal to or greater than the classification of the system.
  - c. Provisions for insuring all process control decisions are made by a certified operator.
  - d. Designation of a certified operator to be available for each operating shift.
3. Operator Qualifications
  - a. Take and pass an examination. Exam questions must be validated.
  - b. Have a high school diploma or GED, or relevant training and experience.
  - c. On-the-job experience
  - d. Grandparenting
4. Enforcement
  - a. Appropriate enforcement capabilities such as orders, compliance agreements and penalties.
  - b. Revocation or suspension of a license for misconduct including "fraud, falsification of application or operating records, gross negligence in operation, incompetence, and/or failure to use reasonable care or judgment in the performance of duties.
5. Certification Renewal
  - a. Training requirements for renewal
  - b. Fixed cycle for renewal not to exceed three years
  - c. Recertification if individual fails to renew within 2 years of certificate expiration
6. Resources Needed to Implement the Program
7. Process for Recertification

They also address the additional requirements established by the state legislature to:

1. Apply all the federal requirements to wastewater systems.
2. Require the submittal and review of a Criminal History Record as part of the certification process.
3. Require every certified operator to complete security training.

Both Acts also expanded the universe of operators who needed to get certified to include the operators of non-transient non-community drinking water systems and satellite wastewater collection systems with pump stations. Table 1 from the Comment Response Document is a summary of the requirements and a link to the respective chapter where each requirement is addressed.

**Table 1. Requirements vs Chapter 302 Regulations**

Chapter Reference	Legal Authority	Classifications	Qualifications	Enforcement	Renewal	Resources	Re-cert.	State Req.
102	x	x	x					
103	x	x						
104			x					x
201			x					
202						x		
301			x		x		x	
302, 303, 304, 305			x				x	
306, 307					x			
308, 309				x				
Subchapter D			x					x
Subchapter E				x				
Subchapter F			x					
Subchapter G			x					
Subchapter H			x		x			x
Subchapter I		x						
Subchapter J		x	x					
Subchapter K			x					
Subchapter L		x		x				

The following is a summary of each subchapter and the changes made in response to comments received.

Subchapter A – This subchapter defines the universe of the regulated community impacted by these regulations, establishes definitions and clarifies the standards that must be met for certification. This subchapter was re-structured to split the universe of the regulated community between drinking water and wastewater systems and to highlight the standards of certification. A number of definitions were added or edited for the following terms:

*Activated Sludge*  
*Administrative Hearing*  
*Board Guidelines*  
*Certificate Program*  
*Conventional Filtration*  
*Direct Filtration*  
*Environmental Quality Board*  
*Groundwater*  
*Permitted Average Daily Discharge Flow*  
*Political Subdivision*  
*Programmable Logic Controls (PLC)*  
*Satellite Collection System*  
*Site Specific*  
*Ultraviolet Disinfection*

*Board Designated Agent*  
*Board Secretary*  
*Contact Hour*  
*Department*  
*Environmental Hearing Board*  
*Fee*  
*Membrane Filtration*  
*Person*  
*Post-presentation Credits*  
*Recertification*  
*Single Entity Collection System*  
*SCADA System*  
*Upgrade*

Subchapter B – This subchapter prescribes what a complete application should include for certification, recertification, upgrade, renewal and reciprocity along with how to obtain the appropriate Department approved application forms. In addition, this subchapter discusses Operator Certification Program Fees. Revisions to this subchapter were made to clarify how to obtain appropriate Department approved application forms from the Board Secretary or through the Department’s web site and to refine how the fees will be applied.

Subchapter C – This subchapter covers the procedures the State Board for Certification of Water and Wastewater Systems Operators (Certification Board) will follow in implementing its powers and duties as defined in the Act. These include the issuance of certificates for certification or recertification, upgrade, reciprocity, renewal, and extensions. Also, this subchapter prescribes the actions the Board can take to suspend, revoke, modify or reinstate an operator’s certificate upon petition by the Department or review Department training decisions. Revisions to this subchapter were made to provide more definitive time frames for these procedures.

Subchapter D – This subchapter identifies and explains the requirements for submission of a Criminal History Record (CHR), the investigation and review procedures the Board must adhere to, the prescribed actions the Board can take as a result of a CHR, and the time frame for action by the Certification Board. Changes in this section further clarified the requirements and responsibilities of the applicant, the Department and the Certification Board.

Subchapter E – This subchapter prescribes the general requirements for Administrative Hearings. These hearings will be conducted by the Certification Board in accordance with these procedures whenever the Department petitions the Certification Board to suspend, modify or revoke an operator’s license. There were no substantive changes to this Subchapter.

Subchapter F – This subchapter discusses the examination requirements. This includes general provisions for developing and administering valid certification examinations (using psychometric principles and recognized industry standards) to measure an applicant’s knowledge, skills and abilities to make process control decisions. Additionally, this subsection discusses the roles and responsibilities for the Department, the Certification Board and approved

examination providers in the preparation and administration of these examinations. Eligibility requirements that an applicant must comply with in order to take an examination are also defined. Revisions to this subchapter were made to limit the situations where an operator must re-take an examination.

Subchapter G – This subchapter discusses the minimum education, examination, and experience requirements; defines the methodology for determining qualifying experience and creates an accelerated certification option for systems having to upgrade the system for various reasons that will require the available operators to also upgrade their license. Provisions for accelerated certification were modified in response to comments to clarify that operators who meet the requirements for accelerated certification do not have to meet additional experience requirements.

Subchapter H – This subchapter establishes standards for the training approval program, establishes the continuing education requirements for certificate renewal and defines the system security training requirements. Significant revisions were made to Section 302.804 in response to comments to add criteria to define when the Department would require additional training. The Department would also be required to notify the operators needing to take this additional training in writing.

Subchapter I – This subchapter deals with the classification and subclassification of water and wastewater systems. Revisions to Sections 302.901 and 302.902 identified what conditions or circumstances the Department would consider when defining a change in classification and/or subclassification of a water or wastewater system. These include an increase in capacity that changes the class of the system, the addition or loss of a treatment technology, other federal or state regulatory changes in the definition of a treatment technology used at a system and the issuance of a permit changing the class or subclassification of a system.

Subchapter J – This subchapter outlines the certification classes and subclassifications for water and wastewater operators. Also, operator-in-training status, grandparented operators and laboratory supervisor certification are discussed. Section 302.1006 was revised to ensure consistency with Chapter 252, Laboratory Accreditation regulations.

Subchapter K – This subchapter applies to a professional engineer registered under the Engineer, Land Surveyor and Geologist Registration Law (63 P. S. §§ 148 – 158.2) who has been successfully examined in civil, environmental or sanitary engineering and is a certified operator, or an applicant for operator certification. Also, provisions for issuance of initial certification and experience requirements for professional engineers are discussed.

Subchapter L – This subchapter defines the duties owners and operators may perform, identifies who can make process control decisions, lists the components of a process control plan, defines Standard Operating Procedures and its contents, characterizes the number of operators required at a system and defines the role of the operator in responsible charge. In addition, this subchapter defines the conditions under which an owner can choose to use a circuit rider or a Programmable Logic Controls (PLCs) and supervisory control and data acquisition system (SCADA) to ensure process control decisions are made properly by a certified operator.

Significant changes were made to this Subchapter to refine the duties of operators and owners to address concerns of commentators about the level of operator liability, define criteria under which the Department would require a process control plan, to further refine who can make process control decisions at a system and to eliminate the need for an operator to submit written reports to the owner when the operator suspects conditions exist that are, or may, result in a violation. The operator would still be required to report such conditions to the owner, orally or otherwise. Required compliance was clarified to only include those federal or state law or rules and regulations promulgated thereto or permit conditions and requirements applicable to the operation of water or wastewater systems. The final section in this Subchapter was added to provide that fines and penalties for violations of certain sections of the Act will only be assessed after an order of the Department has been violated.

**5. Comment**

We still believe that inclusion of more specific cross-references would benefit the regulated community in complying with this rulemaking. Several sections of the proposed regulation refer to "other" Department rules, regulations or guidelines and "applicable Federal and State laws" or similar language, including Sections 302.301(g), 302.304(a), 302.306(a), 302.306(b), 302.307(a), 302.1101(a), 302.1201(a) and 302.1202 (a)(I). To facilitate compliance and improve clarity, these phrases should be replaced with cross-references to the specific laws and regulations that apply. (9)

**Response**

The Department responded to this concern before in Comment # 3 of the Comment Response Document circulated as part of the ANFR. The revised language further refines these sections to require compliance with only those state and federal laws and the associated rules and regulations promulgated in response to these laws that are related to the operation of a drinking water or wastewater treatment system. In order to effectively operate a water or wastewater system, any operator should have a very good understanding of the applicable rules and regulations governing that system.

## SPECIFIC REGULATORY LANGUAGE

### Subchapter A. General Provisions

#### 302.101 -DEFINITIONS

**6. Comment**

*Client ID* – We believe the term “client ID” should be defined. (9)

**Response**

Definition added.

**7. Comment**

*Contact Hour* - The EQB did not explain what amount of time constitutes a “contact hour.” (9)

**Response**

As stated previously in the response to Comment # 20 of the Comment Response Document circulated as part of the ANFR a contact hour is defined in “*Training Provider Manual for the*

*Pennsylvania Water and Wastewater System Operator Training Program*”, Document Number 383-2300-002.” This can not be defined in regulation because the length of a “contact hour” is dependent upon the type of training or continuing education experience. For example, one contact hour is equal to one hour of training for an approved course; however, a half day at an industry approved conference is also equal to one “contact hour”. All these specifics can not be detailed in the regulation and are better described in guidance.

**8. Comment**

*Fees* - This definition is deleted from the Annex, but the Comment Response Document does not reflect this fact. (9)

**Response**

The intention was to eliminate the limitation on who would be charged a fee. This has been corrected.

**9. Comment**

*Upgrade* – This definition was not corrected on the first draft of the regulation. An upgrade is only required when the increased flow or new technology results in a requirement that the certification class or subclass be changed. Suggested definition: “The certification process an existing certified operator follows to change his classification to a higher one or to add a new subclassification to allow him to make process control decisions in a facility in which the classification has increased or the subclassification has changed, or for an operator in training to become certified, as set forth in section 302.303.” (5, 6, 8, 12)

**Response**

An operator is allowed to “upgrade” his or her license regardless of whether or not the system where he or she is working also requires an “upgrade” in classification. Tying the upgrade of a license to changes in treatment or capacity of a system would prevent operators from upgrading their license on their own initiative.

**10. Comment**

*Single Entity Collection System* – The definition seems paradoxical or at least difficult to understand. The word “only” in the definition seems to preclude the system also including a treatment system. (7)

**Response**

This is correct. This terminology is used in reference to the class and subclassification of collection systems and the corresponding level of certification needed to operate only the collection aspects of wastewater treatment and handling. The exclusion of the treatment system in the definition is intentional.

**302.103 - SCOPE**

**11. Comment**

The “exemption” provisions of subsection (c) are incomplete; leaving a class of systems that is not mentioned in this section at all. Specifically: water systems that are not public water systems are not required to have certified operators. The exemption, however, refers only to “a water treatment device that serves a single private residence.” In fact, however, water treatment devices

that serve several private residences are exempt because they are not public water systems. Commentator #5 also suggested a revision to separate water & wastewater and take out devices. (5, 6, 12)

**Response**

This section has been revised to more clearly identify the types of systems that must comply with the requirements of this regulation.

**12. Comment**

Suggest changing "...the available operator..." to "...an available operator..." in Section 302.104(a). (7)

**Response**

This wording has been changed as suggested.

**Subchapter B. General Requirements for Applications for Certification Actions**

**302.201 – FORM OF APPLICATION**

**13. Comment**

The Comment Response Document provides a good description of how work experience can be verified. We believe the description should be included in the regulation under Section 302.201(b)(2)(ii) and Section 302.201(e)(3)(ii). (9)

**Response**

As stated previously in the response to Comment # 37 of the Comment Response Document circulated as part of the ANFR, the Department feels the method of verification should be left to the discretion of the operator and the direct supervisor and not mandated by regulation. If the operator can not prove this to the satisfaction of the supervisor, then the supervisor shouldn't sign off on this verification. In that case, the operator is going to have to demonstrate that he or she has a high school diploma or GED in order to get certified.

**302.202 – OPERATOR CERTIFICATION PROGRAM FEES**

**14. Comment**

The Comment Response Document does not provide a specific statutory citation to the Certification Act for each of the fees. In addition, our second concern has not been addressed. The second concern was; what is the EQB's statutory authority for a fee structure that is intended to cover the cost of the water and wastewater program not covered by federal funding? (9)

**Response**

The Department disagrees with this comment. As stated previously in the response to Comment # 40 of the Comment Response Document circulated as part of the ANFR, the fees set forth in section 302.202 are authorized under Sections 1004(b)(6) and 1004(b)(3) of the Act. Section 1004(b)(6) authorizes the Department to "...establish and collect such fees for attendance at department-sponsored training or continuing education...and for approval of training and continuing education conducted by others as may be reasonable and appropriate to recover the cost of providing such services." Section 1004(c)(3) of the Act provides that the Environmental

Quality Board has the power and duty to “establish fees for examinations and applications for certification, recertification and renewal of certification as may be appropriate to recover the cost of providing such services.” The proposed fees are equitable and relate to training and certification activities regulated under the Act. The fees were developed with input from the Certification Program Advisory Committee (CPAC), The Small Systems Technical Assistance Center Advisory Board (TAC), the Certification Board, the Water Utility Council and other members of the regulated community through a series of public meetings held in December 2008. The services provided under the Act are for the benefit of owners, training providers and examination providers as well as for operators. Accordingly, consensus was that everyone who provided services under the Act should share equitably in recovering the costs for providing those services.

**15. Comment**

We understand the rationale for the use of the word “should”, but it is still non-regulatory language that cannot be enforced. (9)

**Response**

This information helps the Department process an application for certification action. However, it does not prevent the application from being processed. In discussing the wording for this section with CPAC and the Certification Board, it was deliberately left as “should”. If this language was revised as suggested, the amount of staff time required to send the application back as incomplete is more than the time required to look up the information in the data management system used for the administration of the program. Members of CPAC and the Certification Board were also concerned about the delay this would cause the operator in obtaining certification. Under 302.202(c), the form completed by the owner also includes the PWSID or NPDES permit number. Having this information on the check helps staff process the payment more efficiently, but does not prevent this processing. Sending the paperwork back as incomplete just adds more time to the process.

**16. Comment**

The Comment Response Document explains the derivation of the \$10,000 limit, but does not specifically address whether the EQB has any explicit statutory authority for that limit. (9)

**Response**

Under section 4(c) of the Act, the Environmental Quality Board has the duty and the power to adopt such rules and regulations of the Department as it deems necessary. As provided in Section 4(c)(2), among the powers included is the power and duty to “establish fees for examinations and applications for certification, recertification and renewal of certification as may be reasonable and appropriate to recover the cost of providing such services.” The Act does not establish an upper limit, but so long as it is reasonable, it is legally defensible. In the Department’s view, the \$10,000 limit is reasonable.

**17. Comment**

The references to Section 302.202(b) are incorrect. The correct reference is Section 302.202(d). (9)

**Response**

These references were corrected in the version of the draft regulations circulated as part of the ANFR.

**18. Comment**

Explain post-presentation credit application. (1)

**Response**

The operator can submit an application for “post-presentation credit” to get credit for pre-certification or continuing education training the operator successfully completed that was not previously pre-approved by the Department. In the early stages of the program, there were a limited number of approved courses available for operators. This process provided operators with another alternative to meet the requirements for certification and certificate renewal. There are now over 2000 different approved courses. As a result, the Department has seen a significant drop in the number of post-presentation credit applications. The review and approval of these post-presentation applications is very staff intensive. The intent behind this fee is to recover the costs for the processing of these applications and to discourage the use of this alternative.

**19. Comment**

Why are online courses more expensive? (1)

**Response**

The purpose of these fees is to recover Department staff time devoted to the development of these courses. The staff time to create a web based training (WBT) course is much higher than the time needed to create a classroom based course due to the nature of the medium. With WBT, the course author has to be considerate of the fact that they are not present in a classroom setting to answer questions. Therefore, a WBT course must cover a multitude of possible situations and questions for the participant. The authoring process also involves writing descriptions of desired graphics and animations, and writing scripts for audio narration and possible video. Once a WBT script is authored the course must be developed in the proper software. In addition, graphics, animations, and audio must be created. Once the electronic version is created, the course must be reviewed and tested by subject matter experts to ensure the course is accurate and displays as intended. Once a web-based course is created, the cost of course delivery is minimal. As a result, WBT is a very cost-effective solution for delivery of training content that does not change. On the other hand, the classroom format is also an essential tool for Department staff to deliver content that must be either delivered quickly, changes with time or serves a “one-time” need for information exchange where it is more cost-effective to devote staff time to course delivery.

**20. Comment**

What services are provided for the annual service fee for systems? (1)

**Response**

These fees support the implementation and administration of the Operator Certification Program; including the processing of applications for certification, certificate upgrade and renewal, the development and administration of the certification examinations, the approval of training courses for pre-certification and continuing education and compliance assistance. The goal behind the delivery of these services is to protect the environment and the public’s health and safety by ensuring that certified operators with the appropriate knowledge, skills and abilities make appropriate process control decisions during the operation of water and wastewater treatment systems, water distribution systems and wastewater collection systems. The fees were developed with input from CPAC, TAC, the Certification Board, the Water Utility Council and

other members of the regulated community through a series of public meetings held in December 2008. The services provided under the Act are for the benefit of owners, training providers and examination providers as well as for operators. Accordingly, consensus was that everyone provided services under the Act should share equitably in recovering the costs for providing those services.

## **Subchapter C. Board Procedures and Actions**

### **302.301 – BOARD PROCEDURES FOR CERTIFICATION ACTION**

#### **21. Comment**

We believe that including or referencing appeals rights in the regulation would benefit the regulatory community. We note that such references have been included in other parts of the rulemaking. (See §302.308(d)) (9)

#### **Response**

The Department addressed this issue in the response to Comment # 56 of the Comment Response Document circulated as part of the ANFR. In addition, this section outlines the process for the review of applications for certification. Section 302.308(f) provides for the appeal of a final action of the Certification Board regarding the suspension, revocation or modification of a certificate to the Environmental Hearing Board.

### **302.306 - CERTIFICATE RENEWAL**

#### **22. Comment**

We are unable to find a response to our concern pertaining to a possible conflict with §302.306 (d) and (h). Subsection (d) states that: "A certified operator who fails to complete the continuing education requirements within the 3 year cycle shall apply for recertification." However, Subsection (h) allows a certified operator whose certification has expired not to apply for recertification but to renew their certificate within 24 months following the expiration date of the certificate, provided that the operator completed the continuing education requirements. The EQB needs to rectify the inconsistency between these two subsections. Similar language is also found in Subsection (i). (9)

#### **Response**

There is no conflict between the three subsections. Subsection (d) establishes the requirement that all continuing education must be completed within the operator's three year cycle. Subsection (h) allows the operator up to two years after expiration to renew a certificate, provided the continuing education requirements were met within the three year renewal cycle. If either condition is not met, the operator can not renew and must apply for re-certification. Subsection (i) requires the Board Secretary to provide a list of those operators who have applied for certificate renewal that have not met the continuing education requirements.

#### **23. Comment**

The concept for the carry-forward of continuing education credits is simple: operators should be encouraged to take continuing education that benefits them and adds to their practical

knowledge. Taking training merely for the purpose of “counting beans” makes no sense. In addition, employers will generally not pay to take courses that are in excess of the minimum required training hours. Therefore, the schedule of useful training will not always meet the three year cycle established by the regulations and operators will sometimes forego taking useful training, especially when it occurs near the end of the cycle (sufficient credits having already been obtained for that cycle). This has already been demonstrated to be the case during the implementation of the Department’s Guidelines. *My comments are intended to increase professionalism by allowing operators to take useful training whenever it is offered.*

Accordingly, the Department should provide a rule that encourages constructive and useful training, which will improve the professionalism of operators. It can do this by allowing operators to take ADDITIONAL training and “roll over” or carry forward the excess credits into the next training cycle. Obviously, as also discussed in my prior comments, there should be some reasonable limit on the number of credits that can be rolled over. In my prior comments I suggested a maximum of ten hours to be carried forward into the next cycle so that some continuing education would be required during any of the three year cycles. I repeat that suggestion here, modified slightly to allow for the different number of required credits for different operators.

In response to prior comments on this matter, DEP admitted that there is no restriction on credit carry-forward by EPA and that this is an acceptable practice, in use in other states (*Comment Response Document Comment #64*). However, the Department noted that it does not CURRENTLY have the technical capabilities to implement such a program, apparently due to lack of qualified computer programmers. This current technical incapacity does not mean that the program should be permanently prohibited from ever implementing a carry-forward program. Provision should be made for the time when DEP can develop a more professionally administered program. Accordingly, Section 306(d) should say, “Continuing education must be successfully completed during the certified operator’s three year certification period. Carry-forward credits from a prior certification period may be applied as provided in section 802(d). Section 802(d) should say, “If the Department’s continuing education tracking program is capable of allowing carry-forward of training credits, then operators will be allowed to carry forward a maximum of one-third of the required contact hours (in excess of the number required by section 302.803 into the next renewal cycle. For instance, if the required number of hours is 30, the operator may obtain 40 hours of training during one cycle and carry 10 hours forward into the next training cycle.” (5, 6, 8, 12)

#### **Response**

At CPAC, TAC and the Certification Board’s request, Department staff went back to the US Environmental Protection Agency (EPA) to confirm the Department’s interpretation of the federal guidelines. The Department has learned that the guidelines have been interpreted differently across EPA regions. Some regions allowed states to include “banking” of continuing education credits as an option, while other regions did not. The current position of EPA Region 3 is to allow states to include “banking”. However, the majority of the states across the nation do not allow for “banking”, including all of the states in EPA Region 3 (Maryland, Virginia, Delaware and West Virginia).

Since “banking” is now a possible option, the Department has done a preliminary review on what it would take to administer this component of the program. To complete the necessary revisions to the data management system it will take a minimum of 22 weeks of dedicated staff time to do the necessary programming at an estimated cost of \$82,500. Additionally, there would be ongoing maintenance and programming update costs to maintain the system. Depending on progress made, these fees could then be reduced with the next review of the fee structure by the Environmental Quality Board. As with many projects, these costs may likely be higher due to unanticipated problems that come up as the programming is completed.. However, considering the number of high-priority projects currently in the queue for the Bureau of Information Technology and the current budget climate, implementing this project is unlikely within the next several years. To implement a banking structure now would require the tracking of these hours to be done by hand. Accordingly, additional staff resources would be needed. To cover these additional staff costs and the costs for the preliminary revisions to the data management system, the renewal fees would need to be increased from \$60 to \$75 for at least one three year renewal cycle.

There are a number of additional issues and questions that would have to be answered before this service could be provided as follows:

1. Is there consensus among the regulated community to allow “banking”? The Department has heard differing opinions as to whether this is a good idea or not. Before devoting the necessary additional resources to making this change in the program, the Department needs to be reassured that the regulated community is willing to pay for the increase in program costs needed to provide this service. As stated above, the Department estimates the renewal fee for operators would have to increase from \$60 to \$75 to pay the costs of creating the capability to provide this service.
2. Is there enough of a demand for “banking”?
3. CPAC, TAC and the Certification Board recommend limiting the number of hours that could be “banked”. The commentator recommends one-third of the total number of hours. Is this an acceptable definition of “limited”, or should the number of hours be more or less?
4. Should the number of hours “banked” also be limited to certain types of training, or should all Department-approved training be eligible?
5. Should the time frame of when the training is taken for “banking” be limited? For example, should this be limited to training taken in only the last year of an operator’s cycle?
6. Should the “banking” option be limited based on the type of certification? For example, should grandparented operators be allowed to “bank” credits; and, if so, how much? What about bi-operable operators? Should they be allowed to “bank” training for either of their licenses, or both licenses?

As a result of this analysis, the Department proposes to move forward with the regulations without this option. Over the next several months, the Department will work with CPAC, the Certification Board and other representatives of the regulated community including approved training providers and certified operators to resolve the issues identified above. The Department will then come back to the Environmental Quality Board with the results and proposed revisions to the regulations, should the conclusion be to include “banking” as an option. This will be done

as soon as possible, but no later than three years from now when the Department is required to submit the first review of the proposed fee structure.

**24. Comment**

Course credit carry-forward already exists. PSATS has a program that they would probably be happy to share with DEP – in fact they are administrating the SEO program for DEP. (4)

**Response**

The program referenced here is actually administered by the Department, not PSATS. There are two reasons why this model will not work for the Operator Certification Program. First, it is a very limited Access Database that the Department is in the process of completely re-designing because it no longer meets the needs of the SEO Program. In contrast, the database system used to track the continuing education credits for the Operator Certification Program is part of the Department-wide database management system used to track all permitting and licensing transactions called eFACTS. This program is designed to meet all Department permitting needs, not just the licensing needs of the Operator Certification Program. As a result it is much more complex and extremely difficult to develop or modify, once programmed. Second, the SEO program tracks the requirements for 982 active sewage enforcement officers. One staff person devotes half of their time to administer this program; due, in large part to the limitations of the data management system and the need to track these carry-forward credits. There are approximately 10,400 certified operators in the state. Providing the same level of staff oversight provided in the SEO program for this many individuals is simply not feasible.

**Subchapter D. CRIMINAL HISTORY RECORDS**

**302.403 - REVIEW OF CHR BY THE BOARD**

**25. Comment**

**Section 302.403(e) (Review of CHR's by the Board)** - The Comment Response Document explains the timing involved with the preliminary review. We recommend that it be included in the regulation.

(9)

**Response**

This language was added to the regulation.

**Subchapter F. PREPARATION AND ADMINISTRATION OF CERTIFICATION EXAMINATIONS**

**302.603 - EXAMINATION ELIGIBILITY**

**26. Comment**

The current examination process has been shown not to work, creates additional work for DEP, and does not compensate the Department for the associated labor, raising the costs for the rest of us. Specifically, the current system allows operators to take the exam without charge any number of times, and only charges once they pass it and apply for certification. As a result, I have been

told that some applicants take the exam merely as a free training aid. Operators and owners are being asked to fund the cost of examinations for people who are not capable of passing it or who are using the exam as free education. Proposed Section 603 perpetuates this costly and absurd system. Since the Department has told us how desperate for money it is and even proposes charging substantial fees for doing nothing at all, it seems only reasonable to charge fees for exams, which require DEP staff time. I suggest deleting paragraph (d) and providing in paragraph (a) that the applicant pay the examination fee for every exam he sits for. (6, 8, 12)

### **Response**

The Department disagrees with this comment for three reasons. First, the modifications the Certification Board and the Department made to the examination process in 2004 have proven to be extremely successful. For the same amount of Department staff time, the number of examination sessions delivered per year has more than doubled. In addition, this process has allowed operators to register for an examination up to a few days before the examination session is scheduled when necessary. The previous process established a registration deadline of 75 days before an examination session, no exceptions. If the change in policy advocated by this commentator is implemented, this flexibility will be lost. Second, Section 603(d) requires operators who have attended five examination sessions without applying for certification to pay for those sessions before attending a sixth examination session. Statistics for examinations delivered before July 2009 show that for all but four of the technology examinations less than 2% of the examinees have passed the examination in less than four tries. Finally, it takes the same amount of time to process a check for one examination session as it does a check for five examination sessions. The amount of the check is irrelevant. Therefore, to implement the policy suggested by this commentator, the amount of staff time collecting the examination session fee will increase by a factor of five, resulting in the need to hire additional staff. This additional cost would have to be passed on to the operator, thus making costs for the operator to get certified that much higher. The Department recognizes there may be a few examinees that may never pay the examination fee because they quit trying to pass the examination after five tries. Based on this analysis, the increased cost to charge the examination fee for every session to recover these fees will exceed the amount of money that would be collected.

### **27. Comment**

a. Paragraph 603(e)(2) requires an operator to re-take the certification exam if she obtains 29 hours of training (instead of 30) during the compliance period. This is excessive, pointless and punitive. It would result in trained, experienced operators losing certification for months while waiting for the next exam, as well as the added expense (assuming that they don't just decide to not renew their certification, thus losing even more certified operators). I understand that DEP may already have been implementing this practice under the informal "guidelines," but there is no need to codify it. Furthermore, and most importantly, such a draconian requirement is NOT required by the EPA guidelines. DEP staff has admitted that they cannot point to any federal requirement to this effect.

Obviously, if an operator obtains no or very little training, their certification should lapse. But some reasonable accommodation should be made for operators who are close to having the necessary training credits. Instead of rescission, suspension of certification until the credits are obtained can be added as a provision under §§ 306 and 308. A time limit to do so would also be appropriate (and this would automatically limit the number of hours that the operator could be

deficient). This would “punish” the operator sufficiently without causing the loss of even more trained, certified operators.

Suggested language is provided below: that the regulations provide that if credits are not obtained, certification will be suspended and the operator will have 90 days to obtain the necessary credits (which, of course, would not count toward the next compliance period’s requirements). If the credits are not obtained, then the certification will be rescinded and the operator would have to apply for recertification, including re-taking the exam. Since this rule would not allow operators who had not obtained necessary training to continue to be certified, it does not conflict with the EPA guidelines.

b. Secondly, paragraph (e)(2) does not provide for the extensions discussed in §307. If an extension is granted for extraordinary circumstances, then the requirement to re-take the exam should also be waived. Otherwise, §307 would be pointless.

c. Paragraph (e)(3) requires re-taking the examination after “suspension or modification” of certification. Again, the only apparent reason for this is to inconvenience and punish operators, not to further the purposes of professional certification. Certainly, there is nothing in the Act or in the EPA program requirements that require this. (Again, I note that DEP staff has admitted that this is NOT an EPA requirement.) While re-taking the certification exam may be appropriate in certain instances, a blanket requirement applicable to ALL suspensions has no rational purpose.

Even worse, certificates can be **modified** for a variety of reasons. Since modification would never be used for malfeasance, there does not seem to be any reason to require re-testing as a result of certification modification. For instance, an Upgrade is a modification. The regulation as written requires an operator to take the certification exam again simply because the Board agreed that he was eligible for an Upgrade. This is clearly not a reasonable requirement.

d. Recommend the following:

(1) Paragraph 603(e)(2) should be deleted.

(2) Insert a new paragraph “(c)” under Section 308: “Certification will be suspended by the Board if an operator does not attain the continuing education credits as set forth in Section 803 and has not received an extension as provided by Section 307. A suspension under this paragraph will be referred by the Board Secretary to the Board for revocation if the necessary continuing education credits are not obtained within ninety days of the expiration of the certification. If the necessary training credits are obtained and all other requirements for renewal are met, the Certificate will then be renewed by action of the Board. The 3 year renewal period will commence from the date of the expiration of the original certification. Training credits obtained to meet this section do not count toward the required training for the new compliance period. An operator subject to revocation under this paragraph may apply for recertification.

(3) As discussed in comment (c) above, paragraph 603(e)(3) should address valid issues of operator competence. It should say, “The Board takes action to suspend certification pursuant to

§ 302.308(b)(1) or (4) (related to suspension for negligence, incompetence or failure to use reasonable care and professional judgment in performing the duties of a certified operator). A certified operator whose license is revoked by action of the Board under this paragraph may not apply for recertification.”(5, 6, 8, 12)

**Response**

(a) A number of business processes were put in place by the Board and the Department to help operators meet the continuing education requirements within the three year time frame. Program staff does everything possible to ensure an operator does not lose their certification due to a small shortage in the amount of continuing education completed. Since the continuing education requirements were put in place, the 10,400 operators have completed over 14,500 three year renewal cycles. Of that, 1885 had no continuing education credits and 638, or 4%, had a few credits. In essence, these revisions would create a component to the program that would require Department staff resources to serve less than 4% of the certified operators in the state, assuming all 4% want to remain working as a certified operator. In addition, since 2005, when the first three year renewal cycles where continuing education credit became a requirement; the Board has denied only 176 applications for renewal based on a lack of continuing education. Of that, 69 operators had completed some of the needed training where another 90 days might have made a difference.

(b) The whole purpose for an extension is to avoid the loss of an operator’s license, thus requiring the operator to re-take the examination. In approving a request for an extension, the Board is also waiving the requirement to re-take the examination; provided the operator complies with the requirements established in Section 307. Section 603(e)(3) has been deleted.

(c) The Board has the responsibility to determine when a license should be modified, suspended or revoked. In making this determination, it also has the responsibility for defining the conditions for re-instatement should it decide to modify or suspend a license. Licenses that are revoked can not be re-instated. Upon further review, the Department determined Section 603(e)(3) takes the discretionary ability away from the Board to define these conditions. Therefore, this provision is deleted.

(d) The recommended changes to Section 308 diminish the discretionary ability of the Board to grant, or not grant, an extension depending on a given situation. Based on the numbers cited above, the Department feels that the additional program costs to implement this provision do not justify adding this additional level of bureaucracy to the program. A more effective use of staff time is to implement the current more proactive approach to help operators avoid this situation in the first place. As stated above, Section 603(e)(3) is deleted.

## Subchapter G. Education, Examination and Experience Requirements

### 302.702 -- EXAMINATION REQUIREMENTS

#### 28. Comment

The Comment Response Document relative to this section explains how scores are set. This should be included in the regulation. (9)

#### Response

Sections 302.601(a) and 302.702(c) was modified as suggested.

### 302.703 - EXPERIENCE REQUIREMENTS

#### 29. Comment

College course credits for certification are too narrowly defined. Section 702(c) provides that college credits only apply for "water or wastewater" courses. Many useful classes are not titled that way and people taking them would not even submit them for review since the regulation is so specific. Many colleges have classes in related areas such as chemistry and math, and in vo-tech classes such as pump maintenance and electrical systems, that are not specifically "water" or "wastewater" classes, but which help prepare operators for their professional duties. It would be more appropriate to give credit for "classes related to operations or useful knowledge and duties of an operator." This would give applicants the incentive to submit them for approval and in doing so, to discuss how each class was appropriate for issuing credit. Commentator #5 further suggested revision to 702(c), last sentence "...completion of one college credit in water or wastewater related classes from an accredited college or university." (5, 6, 8, 12)

#### Response

Section 703(c) was modified as suggested by Commentator #5.

#### 30. Comment

The regulation has been amended to reference the fact that courses will be approved in accordance with its guidelines. We recommend a more specific reference to the guidelines that need to be followed. (9)

#### Response

The entire training approval process is outlined in the Department guidelines, "*Training Provider Manual for the Water and Wastewater System Operator Training Program*", 383-2300-002. All training approved by the Department is listed in the Department's Earthwise Academy. The applicant can also contact the Department for the same list.

## Subchapter H. CONTINUING EDUCATION AND TRAINING

### 302.804 - SYSTEM SECURITY TRAINING REQUIREMENTS

#### 31. Comment

If other providers of security training can charge a fee, what is the cost of that fee and what is the overall fiscal impact to the regulated community? (9)

#### Response

The operator will pay the fees identified in Section 302.202 if he or she takes the Department's course. However, other approved training providers may also be delivering the course, or something similar if approved by the Department. In that case, the fee charged will be determined by the training provider. The operator can then choose which provider to take the course from and in what format.

#### 32. Comment

In response to the questions posed in our comments, the EQB has responded that requirements have been developed. However, the regulation has not been amended. What are those requirements? What guidelines should be followed? We ask the EQB to respond to all of the questions raised in our comments and to consider placing the requirements in regulation. (9)

#### Response

As stated previously in the response to Comment # 103 of the Comment Response Document circulated as part of the ANFR, the Department has developed a five hour classroom and web-based course for this purpose. The Department chose not to put this level of detail in regulation because it prevents a training provider from developing either a shorter or longer course that covers the same material. Instead, these courses must meet criteria defined in the Department's training approval guidance document, "*Training Provider Manual for the Water and Wastewater System Operator Training Program*, Document number 383-2300-002. The operator can either take the course from the Department or another training provider approved by the Department to deliver the same, or a similar course

#### 33. Comment

Similar to our concern above, no language was added to the regulation. What guidance documents should be followed? (9)

#### Response

As stated previously in the response to Comment # 104 of the Comment Response Document circulated as part of the ANFR; the operator will demonstrate that he or she has the necessary knowledge, skills and abilities through successful completion of the course. The assessment methods used in the Department's course were created in accordance with the Department's training approval guidance document, "*Training Provider Manual for the Water and Wastewater System Operator Training Program*, Document number 383-2300-002. Courses developed by another training provider must also follow these criteria in order to be approved.

#### 34. Comment

Are all operators who are certified prior to this new regulation exempt? (1)

**Response**

Every certified operator must successfully complete a Department-approved system security training course. There are no exemptions. All certified operators must meet the system security training requirement in their first complete renewal period following the adoption of the new regulations, thus giving everyone three years to complete this requirement.

**35. Comment**

Section 302.804(g), newly added to the second draft, is vague with regard to when DEP can require additional security training. Specifically, with regard to (2) and (3): what are “security issues”? The liability needs to be defined in some way, so that operators know what is expected of them and DEP knows when requiring the additional training is appropriate.

Secondly, if there are “security issues” at a system, what criteria will DEP use to determine that particular operators are in need of training? That is, if the SCADA system is hacked, would the solids handling operator need to be re-trained? There must be some criteria in the regulation that DEP and the operators can turn to.

Additional issues of ambiguity include: How will the Department notify the operator? How long will the operator have to respond to the notice? Will the operator be afforded the right to challenge the basis of DEP’s decision? If the operator disagrees that there are “security issues” or that additional training is necessary, who will hear the case?

These issues of substantive and procedural due process can be addressed by the use of orders. Suggest the following revisions to § 804(g): “(g) The Department may issue an order under section 1004(b)(1.1) of the Act to one or more certified operators requiring them to attend and successfully complete an additional Department-approved system security course(s) when one or more of the following occur:

(1) *(As drafted.)*

(2) The Department identifies deficiencies in security measures or practices at a system, identifies the operators responsible for implementing these measures or practices, and identifies the additional security training necessary for these operators to address these deficiencies.

(3) The Department identifies security breaches or deficiencies caused by one or more operators for which additional training would be beneficial.

(4) A new or updated security course becomes available and is determined by the Department to be beneficial for certified operators. (5, 6, 8, 12)

**Response**

In most cases where the Department might exercise this option, it will be to establish additional security training requirements for a number of operators or for all operators. Section 804(g) requires the Department to provide written notification. Requiring this written notification to be in the form of an order is excessive. However, to address the concerns of the commentator, additional language as to the content of the written notification was included. In addition, as

provided in Section 4 (a) (10) of the Act, decisions of the Department relative to training can be reviewed by the Board upon request. Language to this affect was added to Section 801.

## **Subchapter J. Operator Classes and Subclassifications**

### **302.1003. CERTIFICATION CLASSES AND SUBCLASSIFICATIONS OF WASTEWATER SYSTEM OPERATORS**

#### **36. Comment**

The classification of an E-4 license is confusing in terms of the satellite collection system and single entity collection system. The suggested change is to provide clarity by adding "including satellite collection systems and single entity systems" to Section 302.1003(c). (5, 12)

#### **Response**

The Act and language in Section 302.902(a) defines Class E as applying to "satellite collection systems". In order to allow operators of collection systems where the treatment plant and the collection system are owned by the same entity, subclassification 4, "single entity collection system" was added by regulation at the request of the regulated community. This subclassification is defined as such in Section 302.902(b)(4). Section 302.1003(c) combines the two into one stand alone license applying to all collection systems, regardless of ownership. Further clarification is not needed.

### **302.1005. GRANDPARENTED OPERATORS.**

#### **37. Comment**

Section 1005(d)(3) refers to "violations attributed to the operator that threaten the public health, the environment, and public safety." DEP agreed to remove this sort of vague language from many other provisions of the regulations, and should do the same here. Suggest deletion of Section 1005(d)(3). (5, 6, 8, 12)

#### **Response**

The only way a certificate becomes invalid for this reason is if the Board takes an action to modify, suspend or revoke the certificate after an administrative hearing in response to a petition of the Department. This section was modified accordingly.

#### **38. Comment**

It is unclear to the commenter what will happen under the proposed regulations when a grandparented certificate expires when the certificate is held by an operator whose sole duties relate to a Single Entity Wastewater Collection System. Upon renewal, following adoption of the proposed regulations, will the operator continue to be issued a special grandparented certificate or will they be issued an E4 certificate pursuant to Section 302.1003? The present wording of Section 302.1003(c) appears to require that such an operator must go through the initial certification process as described in Section 302.104. If on the other hand the Department intends to issue an E4 certificate to such operators, language should be added to the beginning of Section 302.1003(c) to carve out an exception, such as: "Except as provided in Section 302.1005 (relating to grandparented operators), the Class E wastewater classification..." (7)

**Response**

Section 302.1005(c) requires a grandparented operator to go through the renewal process, not the initial certification process described in Section 302.104. As long as none of the conditions in Section 1005(d) apply, a grandparented operator will be issued a new grandparented certificate for the system where the operator is working, provided the operator completed all the requirements for certificate renewal including the completion of continuing education credits. The only time a grandparented operator will be issued an E4 certificate pursuant to Section 302.1003 is if the operator meets the standards described in 302.104 and applies for re-certification. This can happen in one of two ways; either the grandparented operator chooses to get certified with an E4 license on a voluntary basis or one of the conditions in Section 1005(d) apply and his grandparented certificate is no longer valid.

**302.1006. LABORATORY SUPERVISOR CERTIFICATION****39. Comment**

We ask the EQB to provide more detailed responses to the concerns raised relative to Section 302.1006. We raise two issues. First, several commentators have noted that certifications for laboratory supervisors are already addressed in 25 Pa. Code Chapter 252. What is the need for including this section in the proposed regulation? In addition, because there are two different provisions concerning this issue, commentators are concerned that the provisions contained in the proposed rulemaking are unclear. For example, will laboratory supervisors now have to become certified operators? If so, will existing laboratory supervisors be grandparented as certified? The EQB needs to justify the need for the existence of these provisions in two entirely different Chapters.

Second, if the EQB can justify the need for provisions in both Chapters, then there appears to be contradictory language between them, which the EQB should explain. For example, Subsection 252.302(h)(3) states: Until 12 months after a certificate under the Water and Wastewater Systems Operators' Certification Act for laboratory supervisor in the appropriate water or wastewater subclassification becomes available from the Department, 2 years of experience performing testing or analysis of environmental samples using the methods and procedures currently in use by the environmental laboratory may be substituted for a laboratory supervisory certificate. However, proposed Subsection 302.1006(e) simply requires applicants to have the above-mentioned two-year experience. Why are these two subsections different? In addition, Subsection 302.1006(f) requires that: An applicant for laboratory supervisor's certification for drinking water or wastewater systems shall hold a valid operator's certificate and demonstrate the knowledge, skills and abilities needed to be a laboratory supervisor by obtaining a passing score on either the Part II Laboratory Supervisor for Water Systems or Part II Laboratory Supervisor for Wastewater Systems examination. However, Chapter 252 does not appear to require such a test. What is the need for this addition? (9)

**Response**

Chapter 252 defines the qualifications needed to become a laboratory supervisor. One of many options identified in Chapter 252 to meet the requirements for a laboratory supervisor for a drinking water or wastewater treatment system with its own laboratory is to have a certified operator for the system also serve as a laboratory supervisor. An operator wanting to serve as the laboratory supervisor for a water or wastewater system who does not meet any of the other

criteria for laboratory supervisor as defined in Chapter 252, must be certified with the appropriate class and subclassifications for the system where the operator is working before obtaining the laboratory supervisor subclassification. Section 302.1006 describes the standards for obtaining this subclassification and includes the successful completion of an examination and two years experience in the testing and analysis of environmental samples for water or wastewater treatment. Chapter 252 also defines the conditions for grandparenting. By referencing the qualifications to become a laboratory supervisor and these conditions for grandparenting, the Chapter 302 regulations can focus solely on the requirements for operator certification as a laboratory supervisor.

The Chapter 302 regulations need to be finalized and the appropriate examinations developed before the Certification Board has the ability to offer the laboratory supervisor subclassification. Chapter 252 allows current certified operators to serve as a laboratory supervisor until these two conditions are met. As soon as the Chapter 302 regulations are published in the *Pennsylvania Bulletin* as final and the examinations are developed, the Certification Board will offer this subclassification. At that point Chapter 252 requires existing certified operators, who have been serving as the laboratory supervisor for a water or wastewater system and do not meet the other qualifications identified in Chapter 252, to meet the standards for laboratory supervisor certification defined in 302.1006 if they wish to continue serving as a laboratory supervisor for a water or wastewater system. They will have 12 months to pass the examination and become certified in this subclassification. The two years of experience in the testing and analysis of environmental samples for water or wastewater treatment the operator already completed will suffice to meet the experience requirements defined in Section 302.1006. If the certified operator is unsuccessful in obtaining this subclassification within the 12 month period, the water or wastewater system must find another laboratory supervisor until such time the certified operator is successful. The additional examination is required because the examinations the operator already took to get certified do not cover the necessary knowledge, skills and abilities (KSAs) needed to serve as a laboratory supervisor. The operator must demonstrate he or she has these KSAs through the passing of the laboratory supervisor examination to continue as the laboratory supervisor for a laboratory connected to a water or wastewater treatment system.

## **Subchapter L. System Operation**

### **302.1201 – DUTIES OF OPERATORS**

#### **40. Comment**

The *Comment Response Document* prepared in response to comments submitted regarding section 1201(b) (responses #120 & #121) states that the “duties” of operators stated in §1201(b) are merely examples of tasks that operators MAY perform and are not intended to actually impose any duties on operators. (In which case, there clearly is no need to include the list in regulations at all.) However, §308(b)(4) of the regulations has now been revised to refer specifically to the “duties” section as a cause of action to revoke or suspend certification. Thus, it appears that the second draft of the regulations changes the import of §1201(b) and now intends to impose the itemized “duties” in §1201(b) as affirmative legal obligations of all operators. This is unacceptable for several reasons. For one thing, duties of operators are assigned by the owner

and it is very rare for all of the listed duties to be assigned to any one operator. Moreover, as discussed below, certain of the listed duties are not normally duties of certified operators at all.

a. In addition to the concerns above, the attempt to micromanage system operation by trying to list all of the operators' duties is misguided. At least one of the "duties" is more properly that of an owner (e.g., "providing for" source water protection) than the operator. Another (controlling the discharge flow from a wastewater treatment plant) is not even possible for most plants; discharge flows are rarely under the direct control of the operators since they result from collection system flows. The Department's guesses as to what duties certified operators might have are clearly erroneous; section 1201(b) should be deleted as both erroneous and irrelevant.

b. In the alternative, assuming that the list will be retained (and in such a case I request that the need for it be explained in the response to comments), it needs to be made clear *in the regulations* that the list is NOT mandatory, but merely illustrative. Accordingly, the introductory sentence to §1201(b) should say, "Examples of available operator tasks which may be assigned by the owner include the following; none of the following tasks shall be considered a duty of an available operator unless assigned by the owner in writing."

c. In addition, the newly added reference in §308(b)(4) to §1201(b) must be deleted so that it cannot be interpreted as mandating the "examples." I suggest that it say, "Incompetence or failure to use reasonable care and professional judgment in performing the owner-assigned duties of a certified operator."

(5, 6, 8, 12)

#### **Response**

The list of duties in 1201(b) was developed in concert with a number of certified operators and members of CPAC and the Certification Board and has been in place since the program guidelines were finalized in 2002. Using the word "MAY" in 1201(b) is the appropriate regulatory language to mean the list is intended as illustrative, not all inclusive. By referencing this section in 308(b)(4), the same context is carried over and the added detail requested by commentators in the original public comment period provided.

The owner's responsibility is to designate an available operator(s) and ensure all process control decisions regarding the operation of the system are made by that available operator(s). How this is accomplished is up to the available operator, not the system owner. For this reason, adding the wording suggested by the commentator to reflect these duties are assigned by an owner is not appropriate, unless that owner is also certified and has designated themselves as an available operator for the system. In addition, it was agreed early on that these regulations should not attempt to define the owner/employee relationship. Adding similar language as suggested by these commentators was discussed with a number of representatives of the regulated community including representatives of the organizations making this comment early in the regulatory process and discarded. The operator is the one responsible for operating the system. The operator is the one responsible for performing the necessary duties to ensure the system is in compliance with appropriate rules, regulations and permit conditions.

#### 41. Comment

Section 1201(c) requires further editing to make it reasonable and acceptable under the Act. Specifically, the list of required contents of the report seems unnecessary since 99% of reports will be oral (and in that regard, item (1) should say “the name of the operator making the report,” not “filing” it).

Thus, subparagraphs (1) through (6) should be deleted as unnecessary. However, if the list is to remain, items (4) and (5) (“cause” and “threat to public health” are not required by the statute and (as noted in detail in my comments on the first draft of the regulation, to which no response was provided) the requested information is not available to operators in many cases. It is not reasonable to invent a new requirement that operators must make extensive investigations of “causes” and of “the severity of the threat to public health and the environment” for every required report of system conditions. (5, 6, 8, 12)

#### Response

As stated previously in the response to Comment # 124 through 127 of the Comment Response Document circulated as part of the ANFR, the sole reason this requirement was established in statute was to provide the operator with some level of protection should a violation occur where the Department intends to implement some form of enforcement action. Therefore, in order for the operator to make the decision as to whether the situation warrants making a report or not, the operator should have some reasonable understanding of the potential or actual cause of the violation and an estimate of the severity of the threat. These reports were never intended for every “required report of system conditions” as stated by the commentator. Section 1201(c)(1) was revised as suggested to change “filing” to “making”.

#### 42. Comment

Section 302.1201(d) remains of great concern for the reasons stated in my (and others’) comments on the first draft, which did not receive a response from the Department. These concerns deserve a response and I repeat them here. Given the vague language and the inequitable provisions, substantive due process violations are of great concern. In particular:

a. What is meant by “consequences” of a process control decision? This could be used to extend liability to more remote violations, such as fish kills, equipment malfunction, and other things not directly related to the process control decision itself. The word “consequences” has a legal meaning and DEP should have reviewed this language with counsel before adopting it.

b. Why is the exception to liability only applied when the intervening act is by someone under the operator’s “direct supervision”? This can only mean that the operator will be held personally liable for civil penalties when people NOT under her supervision are negligent! What is the basis for holding someone responsible for the actions of people not under their control? This provision is so draconian and unreasonable that it may be of Constitutional concern.

c. Why is the exception limited to “negligence” and “deliberate action with malice” of the third party? Again, these are “legal” words and should have been reviewed by counsel before being used. Who is responsible for determining if the intervening act was negligent? How does one establish “malice”? For instance, if the other operator deliberately did not follow instructions because he believed the available operator to be wrong, this would not be “malice” or

“negligence,” and the available operator would be personally liable for a deliberate, but mistaken, action taken in direct defiance of his decision. If substantial personal liability is to be imposed, especially in light of the strict liability provisions of the Act, it must be clearly defined. Again, this is a substantive due process issue that cannot continue to be ignored.

d. There is an internal reference error. The paragraph refers to the duty of the owner to “respond to a report as required in subsection (c).” However, the owner’s duty to respond to the report is found in § 1202(a)(4). More importantly, however, is the ambiguity of this exception. What is an appropriate “response” by an owner? If the owner responds inappropriately, or assigns another operator to respond, who then makes errors, is the operator who made the process control decision still liable? What criteria will DEP use in deciding these questions of liability and exception of liability?

e. The prior subsections of Section 1201 codify the various duties of operators as set forth in Section 1013(e) of the Act—meeting legal requirements and making reports to the owners. The only purpose of § 1201(d) is to codify the provision that only certified operators may make process control decisions. This does not require that additional responsibilities be added. The provisions at section 308(b) provide appropriate penalties for operators who are incompetent, negligent, or fail to use reasonable care and professional judgment in undertaking their duties. Adding the new vague provisions at section 1201(d) does nothing but muddy the waters as explained above.

f. Finally, I note that this section does not acknowledge the underlying responsibility of owners as established by the Act. In particular, owners’ duties include “requiring, supervising and directing certified operators to take such action so that the water and wastewater system is in compliance with all applicable laws, rules, regulations and permits.” (§ 1013(f)(2).) This statutory provision contradicts the claims in response number 122 in the *Comment Response Document*. That response, attempting to explain the proposed requirements in Section 1201(d), states that “only in some cases, such as when the owner has not provided the necessary resources to the operator to adequately complete the duties of an operator, will the owner have the final accountability.” That statement is fundamentally and legally wrong and of the greatest concern to me and other operators. Owners establish ALL OF the duties of their employees and set policies for operation and maintenance of the facilities. Owners hold the permits and are legally responsible for compliance. Owners not only control resources, but information, working hours, the number of certified operators on staff, the areas of the system where employees are authorized to work, and many other aspects of facility operation. Accordingly, owners have always been the entities that are “finally accountable” for compliance. As noted, this fundamental concept is reflected in the Act, which acknowledges that the owners are ultimately responsible for “supervising” and “directing” their employee certified operators. The mere fact that operators make process control decisions does not create universal liability for compliance with all of the regulations and permits that Response #122 states. *Respondeat superior* has been the legal framework for environmental compliance for over forty years. To try to change long-standing legal principles through rulemaking is not only unacceptable, it is legally problematic. The Department should not be making new law through these regulations. The purpose of the regulations is to codify the requirements of the statute. The Act provides that certified operators will make all process control decisions and that owners are responsible for directing the activities

of the operators. Nowhere in the Act does it state that owners are relieved of their liability under the statutes and permits and that that all compliance liability will henceforth fall on the operators. As “explained” by Comment 122, the proposed regulation reflects an intent to impose unlimited and unforeseeable strict liability on certified operators that previously was placed almost exclusively on permittees and owners. Once the regulated community understands the scope and extent of this radically new source of liability, there is likely to be statewide loss of hundreds of certified operators. In addition to clarifying and correcting the language in this section, DEP must provide an on-the-record statement that repudiates the intent to radically change existing interpretations of law as set forth in response # 122 in the first *Comment Response Document*.

g. Suggest the following text for section 1201(d): “Available operators are responsible for making process control decisions as directed by the owner. Available operators are responsible for the results of process control decisions that are erroneous or which directly result in noncompliance with applicable rules and regulations or permit conditions. In determining if an available operator was negligent in making a process control decision, the Department will consider other relevant factors, including, but not limited to: available resources; whether the owner responded appropriately to reports by available operators; the presence of intervening factors including decisions by other operators; and professional standards applicable to the process control decision that was made.”(5, 6, 8, 12)

#### **Response**

The Department responded to this issue in Comment # 128 of the Comment Response Document circulated as part of the ANFR. This is re-iterated as follows in response to the commentators specific paragraphs:

(a) The Department disagrees with the commentators’ assertion that the available operator being responsible for process control decisions is responsible for those decisions and the “consequences” of that decision could be used to extend liability to more remote violations. That is not the intent of the language. Rather, the word “consequence” is to be used in a common sense manner to indicate that the available operator is responsible for process control decisions that are in violation of the act. It should be noted that any term used in a regulation has a legal meaning and is to be applied in the context of applicable law.

In any event, there are certain procedures which must be followed in any action affecting an operator’s certification. A number of protections have been established for both the operators and the owners of water and wastewater systems, including provisions requiring the Department to petition the Certification Board before the operator’s license can be modified, suspended or revoked. The Certification Board must follow the administrative procedure process applicable to all Commonwealth agencies in response to a petition of the Department. Moreover, the Department must issue an order and that order must have been violated before the Department can assess any fines or penalties. Accordingly, there is adequate due process protection for the available operator in cases where the Department investigates the “consequences” of a process control decision.

(b, c and e) The comments are incorrect. The available operator is only responsible for the process control decisions he or she makes and the consequences of those decisions. They are also responsible for the actions of only those uncertified or inappropriately certified operators under their direct supervision. This section adds further protection for the available operator by

not holding the operator responsible for actions of these individuals when those actions are negligent or done with malice.

(d) The reference is correct. The reference is designed to differentiate these reports from any number of reports filed by an operator in any given day. This is another reason why the content of the report as defined in paragraph (c) is needed. In order for the owner to have the information needed to make a reasonable decision as to how to respond, some level of detail as defined in paragraph (c) is needed. The questions posed by the commentators are hypothetical and must necessarily be addressed on a case-by-case basis.

(i) See response for Comment 40. The owner's responsibility is to designate an available operator(s) and ensure all process control decisions regarding the operation of the system are made by that available operator(s). How these decisions are made and implemented is up to the available operator, not the system owner. For this reason, adding the wording suggested by the commentator to reflect these duties are assigned by an owner is not possible, unless that owner is also certified and has been designated as an available operator for the system. In addition, it was agreed early on that these regulations should not attempt to define the owner/employee relationship. Adding similar language as suggested by these commentators was discussed with a number of representatives of the regulated community including representatives of the organizations making this comment early in the regulatory process and discarded.

(g) The substance of this comment was already provided for in Section 1201(a) in response to similar comments submitted during the public comment period that ended in September 2009. Further revisions as suggested are not necessary.

### **302.1202 - DUTIES OF OWNERS**

#### **43. Comment**

Subpart (b) empowers DEP to request specific reports on the same information (duplication) which is already on the Department computers. Subpart (c) trumps (b) and makes it unnecessary because (c) requires system to report any changes in operator status. Requiring (b) is another requirement that just adds more senseless "busy work" on an already overstressed operation... (2, 10)

#### **Response**

One of the duties of the owner is to designate which certified operator(s) are authorized to make process control decisions for his or her system and to identify those operators to the Department. In addition, the statute requires the Department to maintain a list of these certified operators. The mechanism the Department has chosen to ensure compliance with these two requirements is the "Available Operators Report" as described in paragraph (b). Paragraph (c) recognizes this information can change over time and should be updated on a regular basis. The Department revised the regulatory language in this subsection to state that the information be provided only upon written request from the Department to minimize the amount of work and possible duplication of effort. This report serves as a means for insuring the Department's records are correct and that reports submitted under paragraph (c) have been received and properly documented. This report is the only mechanism the Department has to check the quality of the data on file and ensure these records are correct.

### **302.1203 - PROCESS CONTROL DECISIONS**

#### **44. Comment**

We raised four questions about Section 302.1203(c). The EQB provided an answer to the first question, but not the remaining three questions. This subsection states that the Department may require a water or wastewater system to have a process control plan that includes 15 pieces of information. Under what circumstances would a process control plan be required? How would the system be notified of this requirement? Would the plan require approval by the Department? These questions should be addressed in the final-form regulation. (9)

#### **Response**

As stated previously in the response to Comment # 136 of the Comment Response Document circulated as part of the ANFR, the circumstances under which a process control plan may be required are outlined in Section 302.1203(d) and (e). Subsection (f) was added to ensure the owner is notified in writing when a process control plan is required. The regulation does not require the Department to approve the plan.

### **302.1204 - STANDARD OPERATING PROCEDURES**

#### **45. Comment**

What is the EQB's response to the second concern raised in our comments? (Second concern was under Section 302.1204(d), the use of standard operating procedures (SOPs) is optional. However, this subsection makes operators in responsible charge accountable for violations when SOPs are followed. Why would an operator in responsible charge develop formal SOPs, as this would lead to additional liability?) (9)

#### **Response**

Development of formal SOPs does not necessarily create any additional liability. SOPs are to cover the proper procedures to be followed when making and implementing the process control decisions needed in the daily operation and maintenance of the system. The operator in responsible charge is responsible for the development and approval of standard operating procedures, if the operator and system owner agree to use them. Standard operating procedures are not intended as a substitute for a certified operator. The operator in responsible charge would be held "liable" for violations incurred during operation of the system if the standard operating procedures developed by the operator in responsible charge or decisions made by that person contradict, or result in the violation of, any federal or state law, rules and regulations or permit conditions related to the operation of the system.

### **302.1205 - NUMBER OF REQUIRED CERTIFIED OPERATORS**

#### **46. Comment**

Is there a reference where we can determine the required number of certified operators? (1)

#### **Response**

The owner is responsible for insuring all process control decisions are made by an available operator. Since each system is different, it is not possible to prescribe a specific number of certified operators to be required for each system. Instead, four ways an owner can comply with this requirement have been defined: (1) Hire one or more certified operators to cover all shifts of system operation; (2) Designate an operator in responsible charge who develops SOPs for use by non-certified or other certified operators working at the system; (3) Hire a circuit rider for the system; (4) Install a PLC or SCADA system to be used in combination with an available operator. The Act also gives the Department the authority to order the system owner to hire additional operators if necessary to ensure all process control decisions are made by a certified operator.

### **302.1206 – OPERATOR IN RESPONSIBLE CHARGE**

#### **47. Comment**

Placing liability for ALL violations that occur when an SOP is in use will simply make it impossible for POTWs to develop SOPs, since there is no limit to the violations for which the Operator in Responsible Charge could be liable (power failure, toxic influent, etc.). If there is to be liability at all, it should be limited to violations that occur because the SOP itself was deficient in some way. Recommend adding the following to the end of the proposed sentence in (e), “provided that the violation occurred as a direct result of an error in the SOP as drafted.”

In addition, there is no provision regarding what happens when an Operator in Responsible Charge (ORC) is no longer in that position. The ORC’s liability for SOPs should end when his status as an ORC ends; either through leaving employment or having the owner rescind the appointment (whether or not someone else is appointed as the ORC in his place). The provision in §1206(a) that the employer will notify DEP when the ORC changes should also state that when that notice occurs, that person’s liability for use of SOPs developed by her will then end. (5, 6, 8, 12)

#### **Response**

Paragraph (e) has been revised to clarify that the current operator in responsible charge is the one held accountable for the SOPs.

#### **48. Comment**

Section 302.1206(e) doesn’t seem to make sense; shouldn’t you add “violations of” between the existing and new language. (4)

#### **Response**

Yes, this is correct. The wording has been added as suggested.

### **302.1207 – OPERATION OF MULTIPLE TREATMENT SYSTEMS**

#### **49. Comment**

**Section 302.1207 (Operation of Multiple Treatment Systems)** – The purpose of this section appears to be the regulation of the operation of multiple systems which have differing owners as opposed to one or more systems owned by the same municipality or authority. If that is true, it is

suggested that the first sentence of Section 302.1207(a) be amended to make that clearer, such as by saying "...an available operator may make process control decisions at multiple systems which have differing owners." (7)

**Response**

The two sentences in subsection (a) have now been separated to address this concern. This allows certified operators to be designated as the available operator for more than one system, regardless of ownership. The rest of the Section then goes on to further clarify those requirements specific to circuit riders as defined.

**50. Comment**

**Section 302.1207(a) (Operation of Multiple Treatment Systems)** - The introduction to this section refers to more than one "system." However, the concept of circuit riders properly applies to more than one "owner" (as noted in the Definition of Circuit Rider). That is, one authority may own two treatment plants and the operators work at both. Although there are two "systems," this is not a circuit rider situation. The discussion in § 1207 should be consistent with the definition of Circuit Rider. Suggested revision should clarify item 1 so that it reads more than one system of different owners. (5, 6)

**Response**

The two sentences in (a) have now been separated to address this concern. This allows certified operators to be designated as the available operator for more than one system, regardless of ownership. The rest of the Section then goes on to further clarify those requirements specific to circuit riders as defined.

**51. Comment**

The "work plan" to be developed for each system, that a circuit rider services, has merit. However, the time required to conduct operational activities at any system may vary from day to day, depending on conditions and operational necessities. Therefore, the requirement to state the number of hours to be spent at each system per week is simply not possible for many, if not most, systems. Because the work plan is to be provided to DEP, and because it must be revised in writing ((g) and (h)), it appears that the Department would require the circuit rider to meet the hourly requirements as stated in the work plan and then revise the plan every time those requirements changed, which could be every week. The requirement is not only unnecessary, it may be impossible in many cases. Paragraph 1207(d)(4) should be deleted from the final rule. As an alternative, the provisions should be made more flexible by allowing for reporting of the "estimated" number of hours. Suggested revision to clarify (d)(4): The number of estimated hours per week the circuit rider works at each system, with the method(s) of documentation to be used for each visit. (5, 6)

**Response**

The language in Section 1207(d)(4) was revised as suggested.

**52. Comment**

Many circuit riders and owners have a contract that defines the services and hours. Thereby, the requirement is unnecessary. *The suggested revision to clarify item (d) is:*  
"A circuit rider shall develop and submit a general work plan (unless specified in a contract) to the owner of each system that includes:"

## Response

A Revision to 1207(d) was made to allow for an existing contract with the same information to suffice for a workplan. If the contract covers the same content, there is no need to also develop a general workplan.

## 302.1208 PROGRAMMABLE LOGIC CONTROLS (PLC'S) AND SUPERVISORY CONTROL AND DATA ACQUISITION SYSTEMS (SCADA)

### 53. Comment

The provisions of this section are far from clear, create a host of compliance questions, and as drafted are simply absurd. Commentator #5 further noted that most of these systems are designed by professional engineers, programmed by computer specialists, and control parameters of operation established through the DEP permitting process. System operators are not consulted by manufacturers about how to program the controls of the equipment that they manufacture. It is impossible to require that individual operators will be responsible for the design of treatment equipment and for the equipment operational parameters. There are a large number of practical questions surrounding this provision as drafted, and the literal impossibility of meeting the requirements as drafted. Operators by definition are not SCADA designers or experts nor should they be required to have liability for such systems.

a. What is meant by "have an available operator to interface with the PLC or SCADA system"? The term "interface" is ambiguous. Different systems have different kinds of "interfaces." Some allow operator input and control; others merely show system conditions as measured by the equipment. Must the available operator be able to reprogram the system? Or does "interface" merely mean observe and understand the displays or printouts?

b. Is the rule intended to mean that an available operator be on site or able to remotely view (and adjust) the system status at all times? If so, the usefulness of these automated systems would be greatly diminished. Many such systems are used in small satellite treatment plants or pumping stations that are not manned at all, or are visited only briefly from time to time, using remote readouts to ensure proper operation. Would it not be acceptable for these systems to be operated by non-certified operators under the supervision of an available operator or in response to system instructions (e.g., the system itself, in response to various inputs and its programmed logic, could trigger a message directing an operator to refill a chemical feed tank or energize a backup pump), or using SOPs developed by the manufacturer?

c. Moreover, I do not understand what is meant by "approve the operational strategy." Use of the term "strategy" could imply generalized operational goals and methods, rather than specific system operational responses. What is the difference between an "operational strategy" and a "process control decision"? Must the "operational strategy" be documented in some way so that compliance with this regulatory provision can be demonstrated? If so, the definition of this undefined term becomes very important for compliance purposes. It will also implicate the terms and conditions of future construction contracts if contractors and manufacturers have to allow local operators to participate in programming their treatment systems.

d. This also raises the question of WHEN and HOW the available operator would make this approval. It is a fact that system operators are never consulted by manufacturers (who are usually in different states or different countries) about how to program the controls of the equipment that they manufacture. It is absurd to attempt to require that individual operators will be responsible for the design of treatment equipment and the operational parameters established by manufacturers and process design engineers. Even if the operators were given the opportunity to review and approve manufacturers' designs, would the available operator who "signed off" on the strategy then be held legally responsible for all "consequences" of the system operation under § 1201(d) forever? The requirement is not only ridiculous, it is literally impossible for anyone to comply with it.

e. Since the "available operator" is not just any certified operator, but is assigned by the owner (§ 1202(a)(3)), does this rule mean that the manufacturer and consulting engineer may not approve the operational strategy using certified operators in their employ?

f. If the available operator, who originally approved the operational strategy, leaves that employment, must the owner have another available operator review the strategy and approve it? What would happen if the new operator disagreed with the operational strategy and refused to approve it? Would the system then be forced to turn off the PLC or SCADA system?

g. Essentially, the proposed rule would mean that the sale and use of SCADA and PLC systems would be prohibited in Pennsylvania. Because of the large number of practical questions surrounding this provision as drafted, and the literal impossibility of meeting the requirements as drafted, I suggest that the following language be used at paragraph 1208(b): "The system owner shall provide for routine observation or reading (which may include remote reading) of a SCADA or PLC system by an available operator." (5, 6, 8, 12)

**Response**

Due to the number of concerns raised by these commentators, the suggested language in Section 1208(b) was shared with a number of certified operators who had been involved in the drafting of these regulations. They did not agree with the wording, "the system owner shall provide for routine observation or reading (which may include remote reading) of a SCADA or PLC system by an available operator" as suggested by the commentator, but did agree the existing language could be confusing and cause concern. As a result, Section 1208(b) was rewritten as follows to more accurately reflect what should happen when a SCADA system or PLC is put in use: "The available operator shall monitor SCADA systems and PLC's that are used for process control, and have the ability to adjust, or to direct the adjustment of, these systems when necessary in order to maintain compliance with federal or state law or rules and regulations promulgated thereto or permit conditions and requirements applicable to the operation of water or wastewater systems."

## **302.1209. ASSESSMENT OF FINES AND PENALTIES.**

### **54. Comment**

The new liability provision in §1209 does not track the statute as interpreted by DEP. There are several problems that require correction:

- a. Civil Penalties are assessed under Section 14(c) of the statute, Section 4(b)(1.1), which is referenced in the draft regulation, is the section pertaining to issuing orders, not penalties.
- b. As interpreted by DEP over the past 3 years (and as reflected in Response #128, item (4) in the *Comment Response Document* regarding the first draft), the proper interpretation of section 14(c) of the statute (with which I agree) is that civil liability will arise only when (1) the person has violated the applicable section of the statute (section 13 for owners and operators, section 5(d) or 6(d) for non-certified operators), AND (2) the person has also violated an order issued by the Department under section 4(b)(1.1) of the statute. Violation of other sorts of orders, or violations of orders without a separate violation of the provisions of the Act, is not a basis for civil penalties.
- c. Accordingly, §1209 should read, "A civil penalty assessed under Section 14(c) of the Act will be assessed only when (1) the person has violated a provision of the applicable section of the Act (section 13 for owners and operators, section 5(d) or 6(d) for non-certified operators), and (2) the person has also violated an order issued by the Department under section 4(b)(1.1) of the Act."  
(5, 6, 8, 12)

### **Response**

The language has been changed to reflect this suggested language. The section now provides that "A civil penalty for noncompliance with section 5(d), 6(d) or 13 of the Act will be assessed only upon a person's failure to comply with an order of the Department issued under Section 4(b)(1.1) of the Act.

## FEE REPORT FORM

Department of Environmental Protection

Agency

March 26, 2010

Date

Veronica Kasi

Contact Person

(717) 772-4053

Phone Number

**Program:** Chapter 302. Administration of the Water and Wastewater Systems Operators' Certification Program

### Budget Year<sup>1</sup>

	Prior Year FY 2007	Prior Year FY 2008	Current Year FY 2009	Projected FY 2010	Projected FY 2011
Administrative	\$454,413	\$471,605	\$443,382	\$240,053 <sup>2</sup>	\$247,255
Examination Delivery	\$ 40,000	\$ 45,000	\$ 50,000	\$ 55,000	\$ 56,650
Technical <sup>3</sup>	\$369,570	\$369,570	\$369,570	\$369,570	\$369,570
Training	\$ 83,357	\$ 85,935	\$ 88,513	\$ 91,168	\$ 93,903
DEP Courses	\$166,714	\$171,870	\$177,026	\$182,337	\$187,806
<b>TOTAL:</b>	<b>\$1,114,054</b>	<b>\$1,143,980</b>	<b>\$1,128,491<sup>4</sup></b>	<b>\$938,128</b>	<b>\$955,184</b>

<sup>1</sup> Does not include funding from the US Environmental Protection Agency for technical support and training program development and implementation.

<sup>2</sup> Assumes the elimination of a costly contract for the scoring and preparation of examinations and reduced support for modifications to eFACTS.

<sup>3</sup> General Fund appropriation for program development and technical support.

<sup>4</sup> The costs for the current year, FY09 are estimates of what actual costs for the program would be if all elements of the program were being implemented. Due to budget cuts to the General Fund and the resultant furloughs, all services related to the administrative costs for examination preparation and delivery, the issuance of new operator licenses and license upgrades, technical and compliance assistance and training were curtailed indefinitely.

### FEE COLLECTIONS:

2008 <sup>5</sup>	\$ 68,915 (Certification Fees)
	\$ 7,000 (Training)

<sup>5</sup> The fees collected in 2008 are a more accurate reflection of the total fees that were being collected as a result of the current fee structure. Due to the cessation of a number of services in 2009 because of budget cuts and furloughs, the amount of fees collected in 2009 is reduced substantially.

Proposed      \$ 328,700 (Operators)  
                   \$ 81,770 (Training Providers and Approved Examination Providers)  
                   \$ 282,785 (Drinking Water System Owners)  
                   \$240,365 (Wastewater Treatment System Owners)  
                   \$ 27,750 (DEP Course Fees)

**\$961,370**      (the difference in fees collected and program costs is to account for the approximate loss in funds resulting from the proposed ceiling of \$10,000 to be paid by any one person)

**FEE TITLE AND RATE:**

Current      Certification Renewal Fee                    **\$ 15 / 3 years**  
                   Examination Fee                                    **\$ 20 per session**  
                   Training Offered by DEP                         (dependent on format)

Proposed    See Table 1.

**Table 1. Summary of Proposed Fees**

<b>Fee</b>	<b>Entity Paying Fee</b>	<b>Amount</b>
Training Provider Approval	Training Provider	\$90
Full Course Approval	Training Provider	\$300
Brief Course Approval	Training Provider	\$115
Conference Approval	Training Provider	\$70
Course Rosters (fee per name)	Training Provider	\$1
10 or more examination sessions per year	Approved Examination Provider	\$800
5 to 10 examination sessions per year	Approved Examination Provider	\$700
2 to 5 examination sessions per year	Approved Examination Provider	\$600
1 examination session per year	Approved Examination Provider	\$400

**Table 1. Summary of Proposed Fees, cont.**

<b>Fee</b>	<b>Entity Paying Fee</b>	<b>Amount</b>
New License (3 yr)	Operator	\$150
License Renewals (3 yr)	Operator	\$60
Exam Session (per 4 hrs)	Operator	\$35
Post-Presentation Credit Application Fee	Operator	\$250
Annual Service Fee **	Class A Systems (> 5 mgd)	\$500
	Class B Systems (1 to 5 mgd)	\$150
	Class C Systems (100,000 gpd to 1 mgd)	\$100
	Class D Systems (<100,000 gpd)	\$ 65
	Class E Systems	\$ 65
Department Classroom Courses	Course attendees	\$10 per hour
Department Web-based Courses	Course attendees	\$30 per hour
Department On-site Training	Systems asking for the training	\$1600 per course

**FUND FEE IS DEPOSITED INTO: Safe Drinking Water Fund**

**FEE OBJECTIVE:** The fee schedule established in this regulation is designed to cover the costs for administrative aspects of the program services and the costs for Department training course development and delivery not covered by federal funding. It is also designed to replace the general funds dedicated to this program on an annual basis between 2003 and 2009 for technical support and compliance assistance. The proposed fees are equitable and relate to training and certification activities regulated under the Act. The fees were developed with input from the Certification Program Advisory Committee, the Small Systems Technical Assistance Center Advisory Board, the State Board for Certification of Water and Wastewater Systems Operators (Certification Board), the Water Utility Council and other members of the regulated community through a series of public meetings held in December 2008. The services provided under the Act are for the benefit of operators, owners, training providers and examination providers.. Accordingly, it is only fair that all beneficiaries of the services provided under the Act share equitably in recovering the costs of the administration of the Act.

## **FEE RELATED ACTIVITIES AND COSTS:**

### **1. Initial certification, certification upgrade, reciprocity, certificate renewal**

Activities: Department staff process applications for operator certification determining whether education, experience, Criminal History Record and examination score meet minimum requirements for certification. Where appropriate, a field investigation is carried out to assist in evaluating criminal activities as related to system operation and security. Fees are received, processed and appropriate eFACTS data input is provided. An operator certificate is mailed to the applicant after the Certification Board takes action to approve the application for certification. Department staff determines if applicant qualifies for certification renewal based on meeting the continuing education requirement. Applicant is mailed an application for renewal, listing the continuing education hours the Department has on record. The applicant completes the application, defining any additional training that was taken that the Department does not have a record and sends the application to the Department, with the appropriate fee for processing. If the continuing education requirement is met and the operator has paid the certificate renewal fees, the operator is sent a new certificate; if not, the applicant and appropriate employer are notified of the applicant's loss of operator certification status after the Certification Board takes action to deny the application for certificate renewal.

Level of effort: 580 applications for certification  
3200 applications for certificate renewal  
8 Certification Board Meetings annually  
10 Criminal investigations annually

Cost: \$247,255 (FY2011)

### **2. Examination Delivery**

Activities: Department staff, in accordance with Certification Board protocols and procedures, coordinates with approved examination providers (AEPs) to deliver certification examinations to approximately 1420 applicants annually. Department staff manage the examination question bank along with the review and validation of examinations, process applications for examination, coordinates selection of examination sites, prints examinations, delivers and proctors examinations, score the examinations, and sends final results to all applicants.

Level of effort: Process 40 applications for examination sessions  
Collate examination packets for 1420 applicants  
Deliver and proctor examinations  
Score examinations and send results to examinees

Cost: \$ 56,650 (FY2011)

### **3. Technical Support**

Activities: Department staff provides technical support to the administrative staff and compliance assistance to the regulated community. Central office Department staff direct and coordinate program implementation with the Department regional office staff to assure compliance with the legislation and regulations and provide the necessary training and testing opportunities in areas of the state where there is an identified need.

Level of effort: Provide technical assistance to aid administrative staff in the processing and qualification of 1000 applicants each year.  
Prioritize certification compliance for each county in the state and coordinate program implementation with regional offices.  
Coordinate and direct 40 training and testing efforts each year.  
Provide one-on-one outreach assistance to 60 systems to insure compliance.  
Develop training courses to facilitate effective system operation and regulatory compliance.  
Process 5662 available operator forms

Cost: \$369,570

### **4. Training and Continuing Education**

Activities: Department staff reviews and approves applications to become an approved training provider, applications for course approvals from approved training providers, applications from operators for post-presentation credit, processes roster reports from training providers and resolves discrepancies between the operators' and the approved training provider's records.

Level of Effort: Process 15 applications for training provider approval  
Process 50 applications for full course approval  
Process 250 applications for brief course approval  
Process 131 applications for conference approval  
Conduct 3 Training Program Audits  
Process 160 discrepancy reports

Cost: \$93,903 (FY2011)

### **5. Course Development and Delivery**

Activities: While most of the training and continuing education need is fulfilled through training providers, the need for training oriented around existing and new regulatory requirements is still done by the Department. Depending on the scope of training needed, the format for this training could be either classroom or web-based.

Level of Effort: Develop and Deliver 5 classroom courses per year

Develop and deliver 6 web-based courses per year  
Maintain Earthwise Academy

Cost: \$187,806 (FY2011)

**ANALYSIS:** The proposed fee structure was developed with a significant amount of discussion with the Certification Board, CPAC and TAC. The average cost to the operator to obtain an operator certificate is going to increase from \$20 to approximately \$325. When these fees were first evaluated in 2004, projections indicated that this significant increase would be sufficient to cover program costs. However, the original costs for developing and implementing the training and continuing education components of this program were significantly underestimated. This includes the costs for staff time to approve different entities as a provider of training courses, review the different courses and conferences the providers want to deliver, the processing of the rosters to ensure the operators get credit for completion of a course and the resolution of discrepancies between Department training records and the operator's. It also includes costs to the Department for providing compliance assistance to operators and owners and the development of additional training courses. To facilitate the resolution of this issue, the Department met with TAC, CPAC and the Certification Board on December 1, 2 and 15, 2008 respectively. A letter was also sent to all the approved Training Providers inviting them to these meetings to provide input. At all three meetings there was some level of consensus that everyone should pay their fair share of the fees to support the program, based on the costs incurred by the Department to administer each component of the program. The final proposed fee structure summarized in Table 1 was developed based on the input received.

**RECOMMENDATION AND COMMENT:**

As the result of the Department's efforts to make the program self-sufficient, a "value added analysis" was conducted on all program activities in 2004. This analysis resulted in cutting costs of program administration by 39%. Significant reductions in program costs are also planned through the finalization of revisions to the data management systems used to administer the program and the elimination of a contract with the Association of Boards of Certification for the management of the examination question bank and the scoring of examinee score sheets.

In order to also cut down on staff time processing post-presentation credit applications and to encourage operators to make sure the training they complete is approved by the Department ahead of time, a fee for the processing of the application for post-presentation credit is also proposed. Since the goal behind this fee is to decrease the number of these applications, the income generated from the collection of this fee was not included in this fee analysis.

It is recommended that this fee proposal move forward as summarized in Table 1.

**COMMENTATOR LIST**

<b>ID</b>	<b>Name/Address</b>
1.	Michael D. Sassaman 622 Kathryn Street Reading, PA 19601
2.	Mike Nelson Mike Nelson Consulting Services L.L.C. 105 Nelson Drive Churchville, PA 18966
3.	Peter L. LaMontagne PE Centrifugal Engineers 190 North Tamenend Avenue New Britain, PA 18901-5166
4.	Michael A. Sienkiewicz Sienkiewicz Holdings P.O. Box 124 Carlisle, PA 17013
5.	David E. Wisser Authority Manager Joint Municipal Authoirty of Wyomissing Valley, Berks County 701 Old Wyomissing Road Reading, PA 19611
6.	James Bingaman 430 Rugby Road Birdsboro, PA 19508
7.	Aaron T. Franckowiak 10 Fairmount Drive Reading, PA 19606
8.	J. Paul Kolbmann 1333 South Street Pottstown, PA 19464
9.	Charles E. Lyon Amity Township Manater Amity Township Board of Supervisors 2004 Weavertown Road Douglassville, PA 19518-8971 (submitted by Senator John C. Rafferty, Jr.)
10.	Paul A. Herb 44 Clay Slate Road Oley, PA 19547
11.	H. David Miller 186 Ray Road Sinking Spring, PA 19608-1152

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14.	Nicholas Gerard Stark 25 Terrace Hill Road Pine Grove, PA 17963
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18.	Central Pennsylvania Water Quality Association William R. Weaver, President P.O. Box 505 Mechanicsburg, PA 17055
19.	Eastern Pennsylvania Water Pollution Control Operators Association Brian Henry 505 Colebrookdale Rd. Boyertown, PA 19512
20.	Eastern Pennsylvania Water Pollution Control Operators Association Gregory Rapp 155 Middle Creek Rd. Gilbertsville, PA 19525
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22.	Eastern Pennsylvania Water Pollution Control Operators Association Russell W. Bergeman 41 Hemlock Drive Gilbertsville, PA 19525

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32.	J. Nelson Weaver 1030 Horseshoe Circle Lebanon, PA 17042
33.	John S. Poklembo 4309 Bunny Lane York, PA 17406

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75.	Paul Domalakes, pammy1982@yahoo.com
76.	Independent Regulatory Review Commission 333 Market Street, 14 <sup>th</sup> Floor Harrisburg, PA 17101
77.	Representative Matt Gabler Pennsylvania House of Representatives 150 B East Wing P.O. Box 202075 Harrisburg, PA 17120-2075



# pennsylvania

DEPARTMENT OF ENVIRONMENTAL PROTECTION

POLICY OFFICE

June 30, 2010

Mr. Kim Kaufman, Executive Director  
Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17120

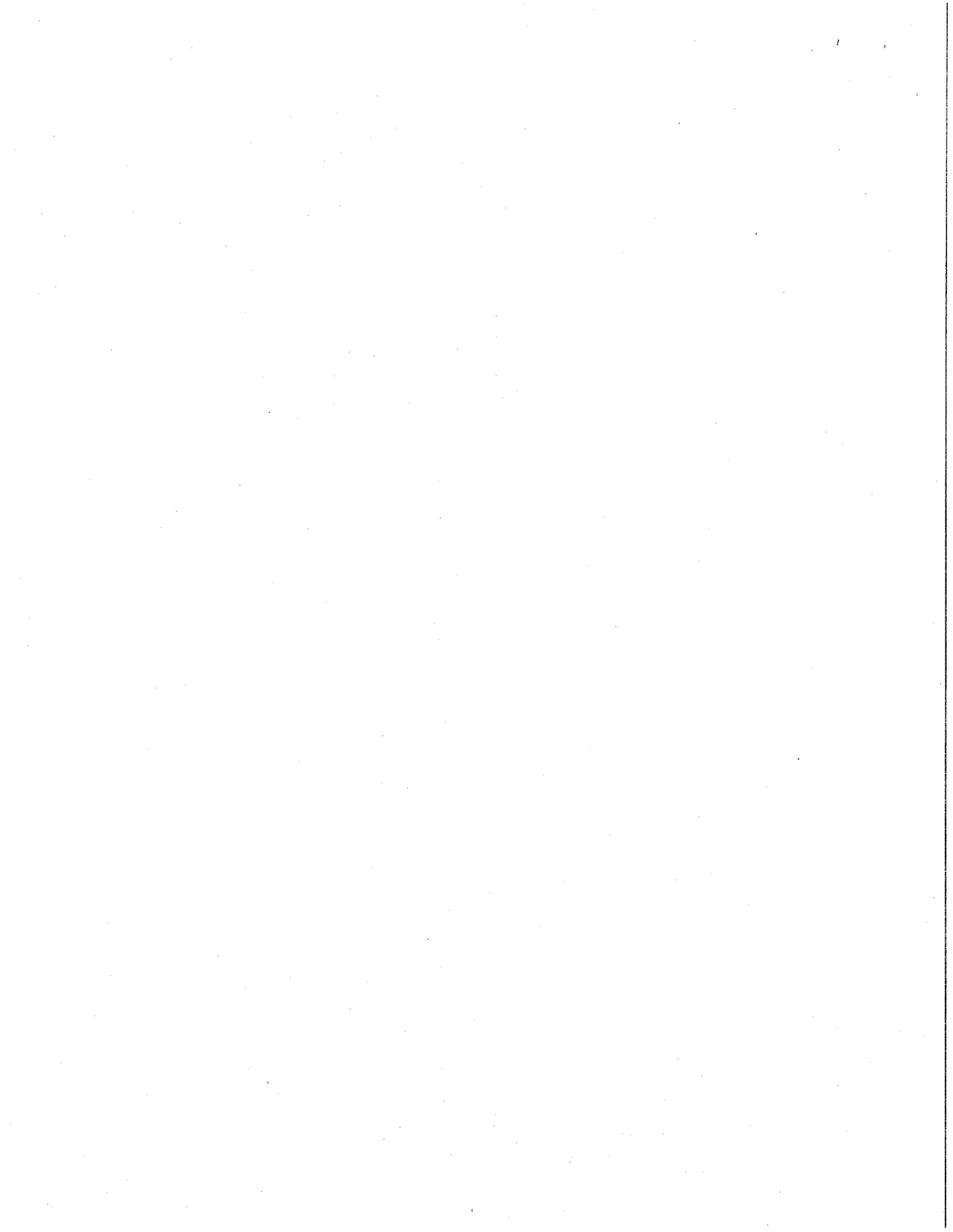
Re: Final-Form Rulemaking – Administration of the Water and Wastewater Systems Operators' Certification Program (#7-433)  
Final-Form Rulemaking – Proposed Exclusion for the Identification and Listing of Hazardous Waste (#7-445)  
Final-Form Rulemaking – Control of VOC Emissions from Large Appliance and Metal Furniture Surface Coating Operations (#7-449)

Dear Mr. Kaufman:

Pursuant to Section 5.1(a) of the Regulatory Review Act, please find enclosed copies of three final-form rulemakings for review and comment by the Independent Regulatory Review Commission (IRRC). The Environmental Quality Board (EQB) approved these final-form rulemakings at its June 15, 2010, meeting.

The final-form rulemaking pertaining to the **Administration of the Water and Wastewater Systems Operators' Certification Program** deletes and reserves 25 *Pa Code*, Chapters 301, 303 and 305 and establishes a new Chapter 302 to implement provisions of the Water and Wastewater Systems Operators' Certification Act (Act 11), which was passed by the state legislature on February 21, 2002. The Act restructured Pennsylvania's Operator Certification Program to meet federal requirements and gave the Department the authority to implement provisions of the Operator Certification Program through the development of technical guidance, which was initially finalized in July 2002, and subsequently revised in June 2005. The final-form regulations comply with federal and state requirements and will, once promulgated, replace the technical guidance that was previously developed to operate the program.

The rulemaking establishes provisions to ensure that certified water and wastewater systems operators have the appropriate knowledge and skills to make process control decisions. The rulemaking establishes the minimum education, experience and examination requirements that must be met by all operators in the Commonwealth, as well as the requirements and conditions that must be met by operators to maintain certification. The rulemaking also establishes administrative requirements for operator certification examinations and for the processing of operator certification, renewal and recertification applications. The rulemaking includes a fee structure that equitably divides program costs by certified operators, water and wastewater systems and training and examination providers.

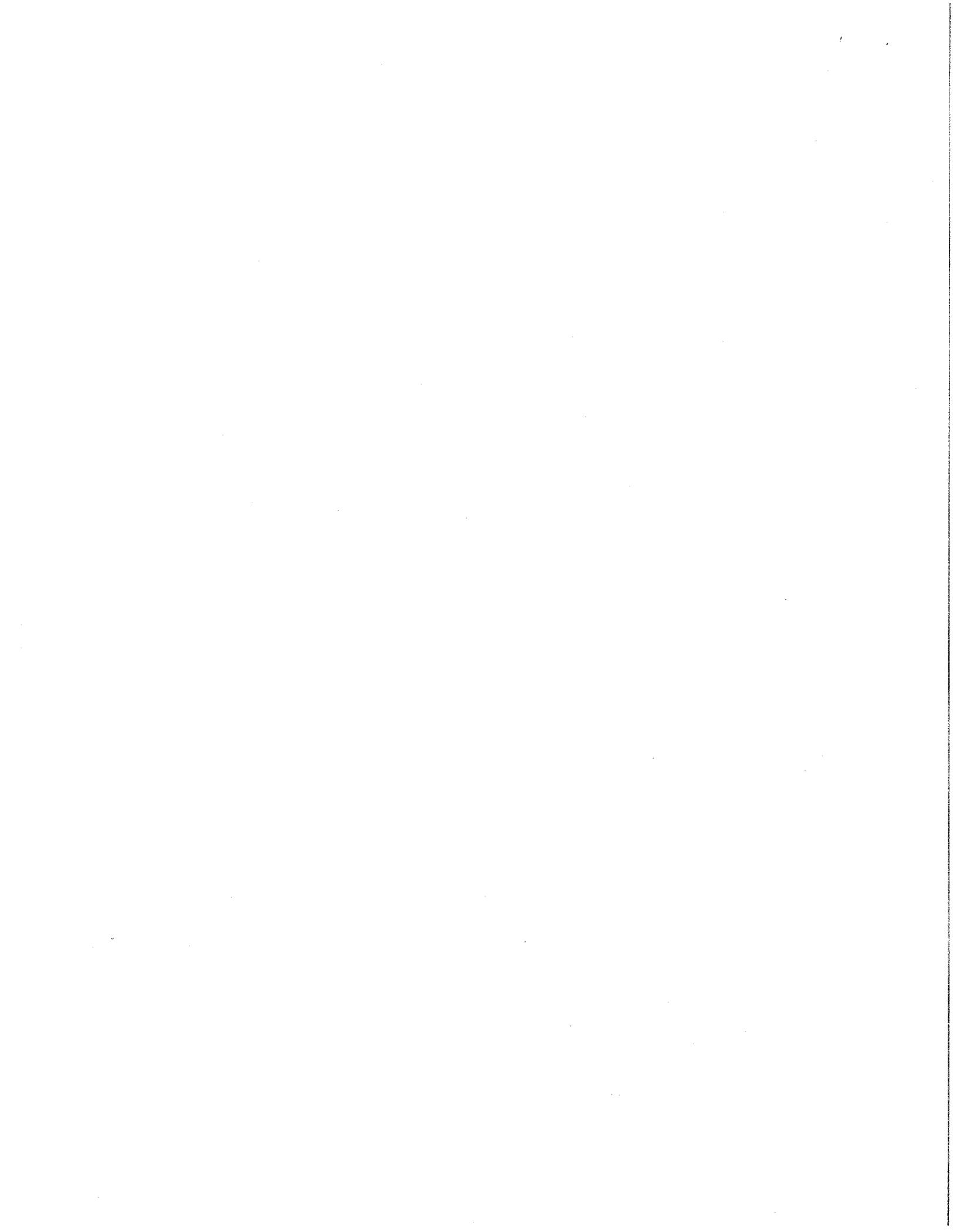


The Board approved the proposed rulemaking on April 21, 2009, and the proposal was published in the *Pennsylvania Bulletin* on July 11, 2009 (39 *Pa.B.* 3591). The Board received comments from 77 commentators during the public comment period, which closed on September 9, 2009. To solicit additional comment on the rulemaking, the Department published an Advanced Notice of Final Rulemaking (ANFR), which was published in the *Pennsylvania Bulletin* on January 23, 2010, at 40 *Pa.B.* 560. The Department received comments on the ANFR from 13 commentators. The public comment period for the ANFR concluded on February 26, 2010.

Based on comments received during the official comment period, the Department made several amendments to the final rulemaking, including revisions to definitions, changes to the scope to more accurately capture the standards that must be met to ensure compliance, clarification of the fee structure, revisions to the definitions for single entity and satellite collection systems to parallel statutory language, clarification of the requirements for the laboratory supervisor subclassification, resolution of an issue regarding the assessment of fines and penalties caused by a statutory compilation error, revisions to the list of the duties of operators, elimination of language pertaining to Department staff making process control decisions, clarification of when process control plans would be required and the addition of further criteria to identify when and how the Department could require additional security training beyond the initial training. Additional changes were also made to the rulemaking, based upon comments the Department received in response to the ANFR. These amendments included revisions to the scope to more accurately capture who is impacted by the regulations and revisions to the sections regarding the use of PLC or SCADA systems and circuit riders.

Throughout the development of this regulatory package, the Department undertook an extensive outreach effort to build consensus on the rulemaking. The Department worked closely with the State Board for Certification of Water and Wastewater Systems Operators, the Certification Program Advisory Committee, and the Small Systems Technical Assistance Center Advisory Board. Their comments are included with the final-form rulemaking package. As required by Section 4 of Act 11, the Water and Wastewater Systems Operator's Certification Act, the rulemaking package specifically includes comments and recommendations by the State Board for Certification of Water and Wastewater Systems Operators.

The second final-form rulemaking enclosed concerns the **Proposed Exclusion for the Identification and Listing of Hazardous Waste**, which was initiated in response to a rulemaking petition submitted to the EQB on December 18, 2008, by Waste Management Disposal Services of Pennsylvania (WMDSPA). The petition requests the EQB amend Chapter 261a of Pennsylvania's Hazardous Waste Regulations in order to increase the annual volume of filter cake that the petitioner may dispose of in a Subtitle D landfill. Currently, the petitioner's existing exclusion, contained in Appendix IX of 40 C.F.R. Part 261, allows up to an annual volume of 2000 cubic yards of filter cake to be disposed of in a Subtitle D landfill. The wastewater treatment sludge filter cake in question results from the treatment of landfill leachate from old landfill cells – including both non-hazardous and hazardous waste landfills – and currently operating non-hazardous waste landfills. The petitioner requests that an amendment to increase the annual volume limit in its existing exclusion be amended from 2000 cubic yards to 4000 cubic yards.

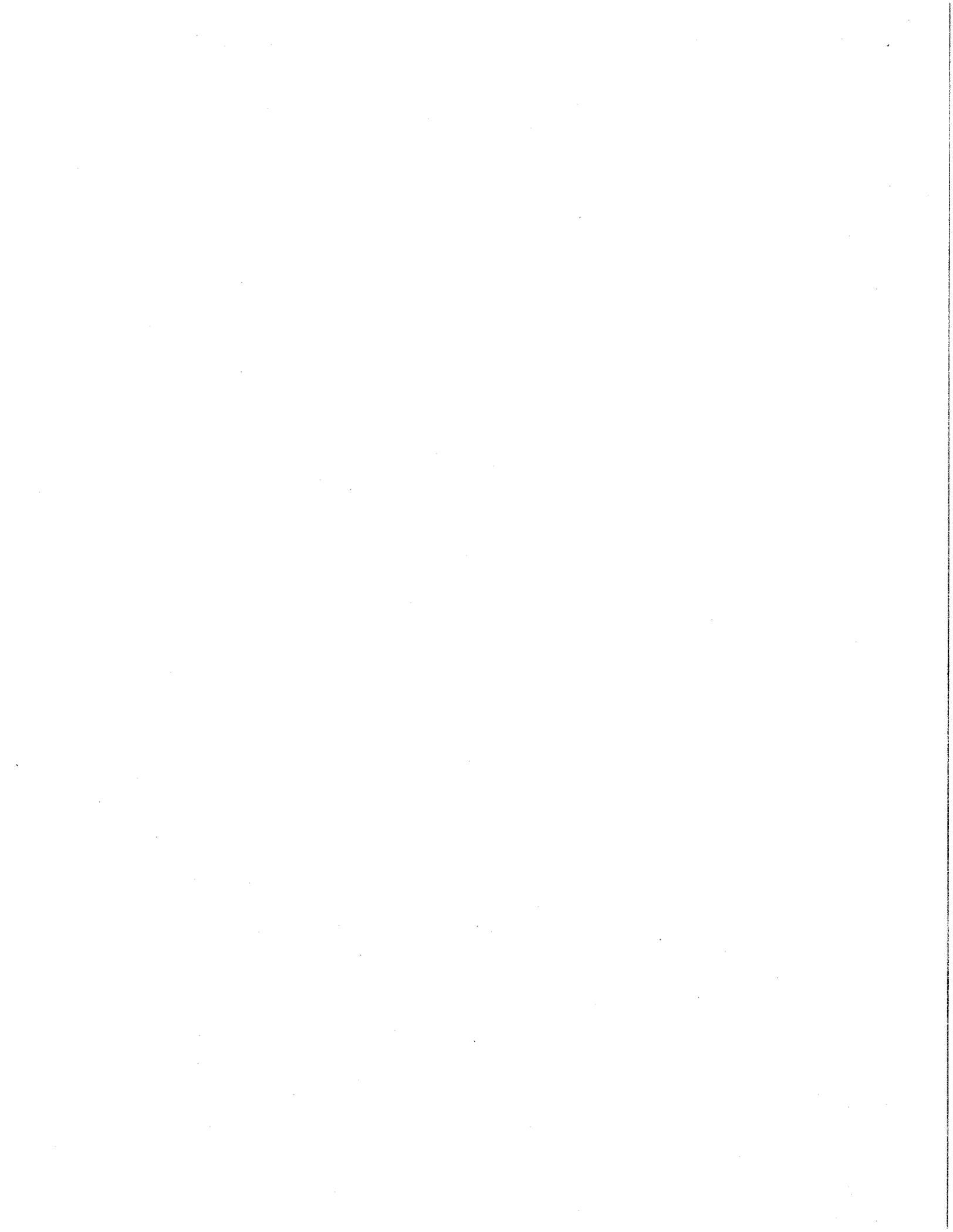


In response to EQB approval of the petition on April 21, 2009, the Department initiated a technical review of the petition, as well as additional information submitted by WMDSPA. The information demonstrates that the disposal of increased volumes of filter cake sludge wastes at the WMDSPA facility is acceptable under the substantive delisting criteria set forth in 40 CFR 260.22. The Department presented its report to the EQB at its June 16, 2009, meeting where the Board directed the Department to develop a proposed rulemaking amending Chapter 261a. The proposed rulemaking was adopted by the EQB on August 18, 2009, and published in the *Pennsylvania Bulletin* on November 7, 2009 (39 Pa.B. 6453), where a 30-day public comment period was advertised. The EQB did not receive any public comments on the rulemaking, nor did the Independent Regulatory Review Commission (IRRC) submit comments to the Board on the rulemaking.

No substantive changes are included in the final-form rulemaking. In order to retain consistency with the federal hazardous waste regulations, the final-form rulemaking makes one minor technical correction. At proposed rulemaking, the Department placed the proposed WMDSPA delisting in Table 2a of Appendix IXa of Chapter 261a; however, the federal Appendix IX in Part 261 contains two tables, one for wastes excluded from non-specific sources (Table 1) and one for wastes excluded from specific sources (Table 2). EPA placed the original GROWS delisting that is amended by this final-form rulemaking in Table 1, not Table 2. In order to be consistent with the federal hazardous waste regulations, the final rulemaking creates a new "Table 1a, Wastes Excluded from Non-Specific Sources" in Chapter 261a and places the WMDSPA delisting in Table 1a. The Department presented the final-form rulemaking to the Solid Waste Advisory Committee on May 27, 2010, where the committee reviewed and endorsed the final regulations.

The third final-form rulemaking enclosed pertains to the **Control of VOC Emissions from Large Appliance and Metal Furniture Surface Coating Operations**, which amends 25 Pa Code, Chapter 129 to limit emissions of volatile organic compounds (VOCs) from the use and application of coatings and cleaning materials in large appliance and metal furniture surface coating processes. Adoption of the VOC emission requirements in the rulemaking is part of the Commonwealth's strategy, in concert with other Ozone Transport Region (OTR) jurisdictions, to further reduce the transport of VOC ozone precursors and ground-level ozone throughout the Ozone Transport Region and to attain and maintain the 8-hour ozone national ambient air quality standard.

Federal statutory or regulatory limits do not exist for VOC emissions from large appliance and metal furniture coating processes; however the Clean Air Act and its implementing regulations require that State Implementation Plans (SIPs) for nonattainment areas must include "reasonably available control measures", including "reasonable available control technology" (RACT) for sources of emissions. The Clean Air Act further requires that for moderate ozone nonattainment areas, states must revise their SIP to include RACT for sources of VOC emissions covered by a Control Techniques Guideline (CTG) document issued by the EPA prior to the area's date of attainment. The Department has reviewed the recommendations included in the EPA's 2007 Control Techniques Guidelines for large appliance and metal furniture coatings and has determined that the measures are appropriate to be implemented in the Commonwealth as RACT in this final-form rulemaking in order to reduce VOC emissions from the use and application of



coatings and cleaning materials in large appliance and metal furniture surface coating processes. The regulation, when adopted by the Board as final, will be submitted to the EPA as a revision to the SIP.

There are four large appliance surface coating facilities and 16 metal furniture surface coating facilities in the Commonwealth that collectively emitted 68.5 tons of VOC in 2008 and may be subject to the limitations included in the rulemaking. It is estimated that implementation of the recommended control options in this rulemaking will reduce VOC emissions in Pennsylvania by 23 tons per year.

The EQB approved the proposed rulemaking on November 17, 2009. The proposal was published in the *Pennsylvania Bulletin* on January 16, 2010, where a 66-day public comment period and three public hearings in Pittsburgh, Harrisburg, and Norristown were advertised. The Board did not receive any public comments on the proposal during the public comment period; however, IRRC submitted comments regarding proposed subsections 129.52a(d) and 129.52a(e). With regard to subsection 129.52a(d), IRRC felt the provision, which requires the owners and operators of the regulated surface coating processes to maintain certain records, is unclear and requested that Board clarify the format in which these records must be maintained. Concerning 129.52a(e), which requires that records required under subsection 129.52a(d) be submitted to the Department "upon request", IRRC also felt the provision was unclear and questioned whether such records had to be submitted orally or in writing to the Department. The Department has addressed IRRC's comments in a Comment and Response document, which accompanies the final-form rulemaking.

The final-form rulemaking was discussed with the Air Quality Technical Advisory Committee (AQTAC, Committee) on April 29, 2010. The Committee voted 13-0-1 to concur with the Department's recommendation to move the final-form rulemaking forward to the Board. On April 28, 2010, the Department consulted with the Small Business Compliance Advisory Committee, which did not express any concerns and the Citizens Advisory Council on May 6, 2010.

The Department will provide assistance as necessary to facilitate the Commission's review of these final-form rulemakings under Section 5.1(e) of the Regulatory Review Act. Please contact me at the number above if you have any questions or need additional information.

Please contact me at 717.783.8727 if you have any questions or need additional information.

Sincerely,



Michele L. Tate  
Regulatory Coordinator

Enclosures





**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO  
THE REGULATORY REVIEW ACT**

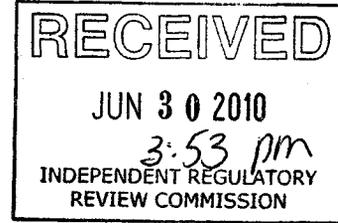
I.D. NUMBER: 7-433

SUBJECT: Administration of the Water and Wastewater System Operators' Certification Program

AGENCY: DEPARTMENT OF ENVIRONMENTAL PROTECTION

**TYPE OF REGULATION**

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a.  With Revisions
  - b.  Without Revisions



**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
6/30	<i>[Signature]</i>	Majority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <i>Rep. Camille George</i>
6/30	<i>[Signature]</i>	Minority Chair, HOUSE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
6/30	<i>[Signature]</i>	Majority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY <i>Senator Mary Jo White</i>
6-30	<i>[Signature]</i>	Minority Chair, SENATE COMMITTEE ON ENVIRONMENTAL RESOURCES & ENERGY
6/30/10	<i>[Signature]</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
_____	_____	ATTORNEY GENERAL (for Final Omitted only)
_____	_____	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

