JOINT MUNICIPAL AUTHORITY OF WYOMISSING VALLEY, BERKS COUNTY

701 OLD WYOMISSING ROAD
READING, PENNSYLVANIA 19611
TEL   610-376-1756
FAX   610-376-1490

July 23, 2009

Independent Regulatory Review Commission
14th Floor, Harristown 2
333 Market Street
Harrisburg, PA 17101

Environmental Quality Board
Post Office Box 8477
Harrisburg, PA 17105-8477

Re: Environmental Quality Board
       Proposed Rulemaking, July 11, 2009
       Chapter 302, Administration of the Water and Wastewater Systems Operators
       Certification Program
       Regulation I.D. #7-433

Dear Commissioners and Board Members:

I am writing to express my concerns regarding the reference rulemaking. I am a professional certified wastewater operator and have been employed as such for 26 years. I have many concerns about the reference rulemaking and I endorse the comments being prepared by the Eastern Pennsylvania Water Pollution Control Operators' Association.

In particular, I am concerned about the following:

1. Creation of new sources of liability not in the Certification Act.

Suspension/revocation of certification for "failure to comply with duties assigned to a certified operator." Section 1004 of the Act provides that certification may be revoked for a number of specific violations. However, sections 302.308 (b) (6) and (7) of the draft regulations would add a number of violations that are not included in the Act.

I have the same concerns about Paragraph 308 (b) (6) which again creates a new form of liability that is not mentioned in the act. The paragraph section states "creating a potentional threat to public health, safety, or the environment. By definition the operation of a wastewater treatment plant always has the "potential" to affect public health and the environment. Hence, the proposed rule would allow the Board to revoke my certificate for almost anything that goes wrong at the treatment plant because it is a "potential threat". I object to this provision because it is vague and not authorized in the statute.

2. Reporting Requirements.

Section 1013 (e) of the Act requires certified operators to "report to the system owner" such things as violations, problematic system conditions, and actions necessary to prevent or eliminate a violation. The Act does not specify the contents of the reports or the manner in which they are to be made. I understand and have compiled with this requirement since the law was passed in 2003.

However, Section 1201 (c) of the regulations imposes significant and irrational requirements on the method of reporting and on the contents of the reports. The current practice of having the operations and maintenance staff report to me is more than sufficient to handle most, if not at all, of the issues that arise from day to day, and is all that is required by the Act.

3. Liability for Process Control Decisions.

Section 1014 (c) of the Act provides the certified operators are liable for failure to undertake their duties as set forth in Section 1013. This is the only civil penalty liability provided for in the Act. Section 302.1201 (d) of the proposed Regulation creates an entirely new class of civil liability that is not mentioned in or authorized to be created by the Act. Specifically, this section imposes liability for "consequences" of process control decisions. Process control decisions do not always result in the defined results, for a variety of reasons. Making individual personnel liable for anything that happens at a treatment plant is a guaranteed way to create mass resignation of certifications. The Section 13 is too vague and contrary to the law and should be removed.

4. Liability for Permit Violations

Another attempt to create liability where none exist in the Act is in Section 1206 (3). This is an attempt to make an Operator in Responsible Charge legally liable for any all NPDES violations that may occur when a Standard Operating Procedure (SOP) is being followed. This is not authorized by the statute. SOP's are to be used to provide direction to employees for process control and decisions. SOP's cannot possibly be written to account for everything that could malfunction in a system. If I am to be held legally liable for possible NPDES violations because of an SOP, then I will not provide SOP's or any direction to the operations staff.

5. Process Control Decisions by untrained DEP employees.

The term "Process Control Decision: is defined in the Act. It is basically any decision that affects the quantity or quality of water or wastewater in a substantial way. Sections 1005 (d), 1006 (d) and 1013 (e) (5) mandate that Process Control Decisions may only be made by properly certified operators. There is no exemption for uncertified, untrained, or unqualified people to make these decisions in any situation.

Section 1203 (e) of the draft regulation attempts to create an exception to the statutory definition. When untrained and unqualified DEP employees make a Process Control Decision it is magically not a process control decision.

Obviously, no such exception is in the Act.

If DEP staff want to make process control decisions, then require them to get the training and certification that is needed to make process control decisions. To do any less it to risk significant environmental problems.

In summary, I strongly object to the proposed regulations because they clearly conflict with and in some cases contradict the law, because they impose requirements that **no** operator could reasonably comply with, and because some of the provisions are so vague that I have no idea what I could be held liable for. If the regulations are adopted, I and many of my fellow operators may have no choice but to resign our certifications rather than to try to work under the arbitrary and bizarre requirements included in these rules.

Sincerely,

David E. Wisser
Authority Manager

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