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August 5, 2009

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

Environmental Quality Board
P.O. 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 deep concerns regarding the above referenced rulemaking. I am a professional certified operator, the Executive Director of a well respected wastewater treatment facility, and have been employed as such for 28 years. I spent 8 years as a hands-on operator, 5 years as the Plant Manager, and the past 15 years as Executive Director. In my opinion, these proposed rules are unnecessary and burdensome, and will negatively impact my ability to do my job as a professional. My employees are equally concerned and scared, as these rule unnecessarily propose vague, arbitrary, and possibly unfettered legal punishment by DEP upon hard working individuals throughout the wastewater industry just trying to do the best job possible. In some cases the legal risk associated with becoming or remaining a professional in this field is causing many individuals to have second thoughts about their employment. It has already become increasingly difficult to find professionals first willing to overlook the stigma of working in wastewater, but now concerned whether every minor decision or mistake they make can subject them to being criminalized and punished in a court of law. And once again it appears that DEP has refused to adequately work with the regulated community to address our concerns before hastily submitting these rules for approval.

Some of my specific concerns are as follows:

1. Suspension/revocation of certification for "failure to comply with the duties assigned to a certified operator." This would subject myself and my employees to the loss of certification for things not even mentioned in the Act. And exactly what can be defined by this statement, and ultimately who has the power to determine what

constitutes any such failure. Is it DEP employees who can simply enter into a plant to which they are only partially familiar and dictate what they believe is “failure to comply with a duty”, and to what extent is “failure to comply” to be interpreted? If my employees have a duty assigned by management to mop the floors, will they then be subject to DEP action for not mopping the floor?

2. It appears that a new form of liability not included in the Act will now be “creating a potential threat to public health, safety, or the environment”, yet how or who interprets what this actually means? Each and every day, things happen in a wastewater plant that could potentially cause an environmental problem. Professional operators are on staff to find and correct problems while they are still minor problems. They don’t need to face the threat of criminal punishment simply because they are a certified operator in charge of that facility.
3. It appears that the falsification of records provision is now being changed from language in the Act to include falsification of any governmental “documents or records”. Does this mean any governmental document or record not even associated with the wastewater industry?
4. To make an operator report any and all “conditions” that might lead to a permit violation in writing is ridiculous. This is cumbersome and unnecessary, and orally reporting any problems to a supervisor, or fixing the problem as a certified operator works just fine. And to require operators to prepare written reports and then obtain a receipt for these reports is absurd, as during any given day many minor things that fit into the category that requires such reports happen, and to subject an operator to the liability of not preparing a written report is ridiculous.
5. Language referring to liability for the “consequences of Process Control Decisions” puts our professionals at risk for best available decisions that may go wrong for any number of unforeseen reasons, such as equipment failure or other day to day complexities of the wastewater treatment process. If an operator does his best to prevent a problem, should he be criminally liable if an unexpected problem arises?
6. The language increases the liability to the Operator in Responsible Charge if a permit violation occurs when a Standard Operating Procedure is being followed. What happens when the procedure is being followed, but equipment malfunctions, or there is a power failure that contributes to the violation? Why should the Operator in Responsible Charge be subject to criminal liability for this?

Other rules being changed are also unfounded and irrational. However the above list summarizes what I believe to be of greatest concern to wastewater professionals, that being this idea that our industry must be subject to ever increasing legal liability for unintentional mistakes in a business where so many minor problems can occur on a daily basis, yet are addressed as effectively as possible by hard working professionals with a very wide range of intelligence and skill. It is very easy to simply say that if any particular employee can’t figure out how to immediately solve every minor problem that arises he should possibly not be working in this field, but as I stated in my opening paragraph, the wastewater field does not always attract the best and brightest of our society. This is not a knock on our hard working, intelligent employees, but is rather more of an indication of the lack of willingness for college graduates, for example, to endeavor in this field of work, to rake bar screens or to clean up sludge or to work constantly

with the odor of sewage or in the vicinity of whatever bacteria or virus can be flushed into the sewer system.

I am completely in favor of environmental protection, but I see a back-lash coming in the future when we can't find quality employees willing to work in this field because they are afraid, or when we do find willing employees they are punished for trying their best, but someone sitting behind a desk at a regulatory agency decided that their best wasn't good enough.

In summary I strongly object to the proposed rules, not only because they conflict with existing law, but because they impose unnecessary and absurd requirements that no operator can reasonably comply with 100% of the time, and because this industry needs to know that the regulatory agencies are working with the operators, not against the operators.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Dorney". The signature is fluid and cursive, with a large loop at the end.

Peter Dorney
Executive Director
Hatfield Township Municipal Authority

PRD/pd