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INDEPENDENT REGULATORY REVIEW COMMISSION

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

Environmental Quality Board
PO 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 about the current form of the proposed rules regarding operator certification. I also support the comments being prepared by professional operators organizations such as the Eastern Pennsylvania Water Pollution Control Operators Association and the Pennsylvania Water Environment Association. I am a professional certified wastewater (and former water) operator and have worked in the field since 1980. Over the past nearly thirty years I have seen many changes in the industry, notably increased professionalism among operators. With few exceptions, operators strive to protect the water environment at all times. The new regulations appear to impose additional arbitrary and unreasonable requirements, including the creation of new forms of personal liability. At a time when we should be attracting and training new operators, I am concerned that these regulations will discourage anyone from entering the field and may actually lead to existing operators allowing their certification to lapse. I am also concerned about the short time frame allowed for public comment and with DEP's refusal to meet with representatives from the professional operators associations during the course of drafting the regulations.

Specifically, I am concerned about the following issues:

Increased liability appears to be created at several places in the regulations. Paragraph 308(b)6 makes me liable for "creating a potential threat to public health, safety, or the environment". By definition, the operation of a wastewater treatment plant always has the potential to affect the public health. That is the very reason for the existence of wastewater treatment plants and the need for qualified operators. Our job is to find problems and correct them, but there is always the potential threat. This provision is extremely vague, is not authorized by the statute and should be removed. Section 302.1201 (d) of the proposed regulation also creates an entirely new class of civil liability by imposing liability for "consequences" of process control decisions. Again, the language is so vague the it is difficult to understand but appears to impose liability for any adverse result of a process control decision, whether or not it was reasonably anticipated. This provision ignores the complexity of wastewater treatment. There are often factors beyond the control of the operator who is doing the best they can to control the situation. This provision could result in the loss of many qualified operators who fear the increased liability. Similarly, the liability for all NPDES permit violations that may occur when a Standard Operating Procedure is in use created in Section 1206(e) is unreasonable and not supported by the Act. While SOPs are very useful, they cannot foresee every possible situation. Again, the operator cannot be held liable for factors beyond their control

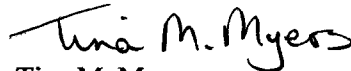
such as unanticipated equipment failure, power outages, etc. This provision may actually decrease the use of SOPs and best practices at a wastewater treatment plant for fear of liability. The regulations also need to clarify the interpretation of Section 1014(c) of the act so operators will clearly know when they become liable under the Act.

The regulations appear to add several cases in which suspension or revocation of my operators certification may be applied. Sections 302.308(b)(6) and (7) of the draft regulations allow for my certification to be suspended or revoked for "failure to comply with the duties assigned to a certified operator", but never clearly states what those duties are and who assigns them. I believe the operator in the treatment plant knows best what needs to be done and the "duties" of an operator cannot be assigned by someone who is not familiar with the process. This provision is vague and unreasonable and should be removed. In Section 308(b)(3), the proposed regulations allow my certification to be revoked for falsification of any governmental "documents or records", not just those relating to my positions as an operator. So if I make a mistake on my son's college financial aid paperwork I can lose my operators certification? That doesn't make any sense. The regulations should stick to the subject and follow the Act as it was passed.

Additional questionable reporting requirements are also imposed by the regulations. While the Act rightly 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, it does not specify the content of the reports or the manner in which they are to be made. I routinely receive reports from the other operators and report to my manager any issues that arise. These reports are often oral and are promptly dealt with. This system works well and allows problems to be corrected on a timely basis. Although I have always prepared a written monthly report for my manager, the requirement to prepare a written report in every situation is absurd. I understand that in situations when owners are uncooperative it may be in the best interests of everyone, including the operator, to file written reports and require proof of receipt. But to require it in every situation is unrealistic and unnecessarily cumbersome to operators. Please allow us to do our job protecting the receiving waters, not filing reports all day.

The regulations should also make changes to improve the continuing education requirement. A simple change would allow excess credits to be carried forward into the next renewal period. Operators should be encouraged to obtain meaningful training, not just put in the hours. Operators may miss a useful class simply because they have already obtained the required hours for the renewal cycle. The regulations should also strive to make as much training available as possible and should refrain from complicating the process for trainers by adding additional requirements or increasing costs.

Sincerely,



Tina M. Myers

Certificate #S7474