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BOROUGH OF PALMYRA
LEBANON COUNTY, PENNSYLVANIA

RECEIVED

August 4, 2009

AUG 10 2009

ENVIRONMENTAL QUALITY BOARD

Environmental Quality Board
16th Floor, RCSOB
P.O. Box 8477
Harrisburg, PA 17105-8477

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ENVIRONMENTAL QUALITY BOARD

Dear Environmental Quality Board Members:

I have been a certified Waste Water Treatment Plant Operator in Pennsylvania for 30 years. I have taken the responsibility of operating and maintaining several different plants very seriously, with my main objective of producing quality effluent as cost effectively as possible. I am proud that I have achieved 99% permit compliance.

I am writing in opposition of the New Operator Certification Regulations proposed by the Environmental Quality Board. I believe there are many imperfections in waste water treatment as a result of equipment provided, engineering, the Department of Environmental Protection, owner and operators. All should share in the responsibility of maintaining permit compliance.

We are expected to operate and maintain older equipment that is often not of the highest quality due to bidding requirements. We are expected to overcome engineer design flaws in our facilities that DEP has approved. We are expected to deal with owners who are trying to minimize costs to users and often are unwilling to fund recommendations for improvements. We are expected to overcome acts of nature as well as influent that is constantly changing and may occasionally have a negative effect on our biological treatment process.

Most operators that I know accept these challenges and try to do the best they can with what they have to work with. I have a great deal of difficulty accepting DEP's new position of holding operators strictly liable for areas in which they have no direct control. Throughout most of my career I felt that DEP understood the problems that operators deal with and tried to help. Over the past several years I believe DEP has taken an adversarial attitude towards operators which has made our job even more difficult.

Environmental Quality Board

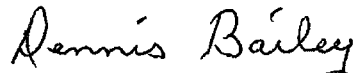
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For example, the operator certification exam has become more difficult that very few have passed the exam after several attempts. It is my understanding that very few DEP Inspectors were able to pass the operator certification exam, yet these new regulations would allow them to make process control decisions even though the legal liability would remain with the certified operator in charge of the Waste Water Treatment Plant.

How can the Environmental Quality Board expect to attract and keep good qualified operators with most of these new proposed regulations? I have seven years until retirement, but I am not willing to be held personally liable for DEP violations or fines that are most often beyond my control.

If you have any questions about the information I have presented, please feel free to contact me at (717) 838-3121.

Sincerely,



Dennis Bailey
Chief Operator
Palmyra WWTP

cc: The Honorable Mike Folmer, 48th Senatorial District

The Honorable Mauree Gingrich, 101st District
Pennsylvania House of Representatives

PROPOSED NEW OPERATOR CERTIFICATION REGULATIONS ADD MANY PROVISIONS

OWNER AND OPERATOR REVIEW AND COMMENT IS URGENTLY NEEDED

On July 11 proposed new regulations governing certified operators and system owners were published in the *Pennsylvania Bulletin*. The "Official" version can be found at pabulletin.com. Search for the July 11 issue, and then under Environmental Quality Board (not DEP).

No notice of the proposed rules has been posted on the Operators' page on the DEP website, but the draft regulations can be accessed at the Environmental Quality Board page at the following URL (the April 21, 2009 agenda):

<http://www.depweb.state.pa.us/pubpartcenter/cwp/view.asp?a=3&q=544036#04212009>

The regulations are found under the April 21 agenda and are shown as "Annex" under **Proposed Rulemaking: Administration of the Water and Wastewater Systems Operator Certification Program**. (This version may be a little easier to print than the Bulletin notice.)

DEP HAS SET A VERY SHORT COMMENT PERIOD: COMMENTS MUST BE SUBMITTED BY AUGUST 11.

The provisions regarding continuing education ("training credits") and qualifications to obtain certification remain essentially as in the current Guidelines. Operators and owners should be aware, however, that the proposal would add a significant number of new requirements not currently in effect under the Department's Guidelines. These provisions, found mostly in Subchapter L (pages 59 – 69 of the EQB version) include:

- Make certified operators legally responsible for the "consequences" of any process control decisions they make;
- Make the Operator In Responsible Charge legally liable for any permit violations that occur when a Standard Operating Procedure that she approved is in use;
- Require ALL reports of conditions that might lead to permit violations (no matter how minor) to be made in writing, by registered mail or hand delivered with a receipt required; these written reports MUST contain, among other things, the "cause" of the system condition; the "degree of severity or threat to public health, safety or the environment" of the system condition; and the "process control necessary to prevent a violation of applicable laws";
- Operators would be subject to loss of certification for "failure to comply with the duties assigned to a certified operator" (this is *in addition to* the duties assigned by the statute, such as reporting problems to the owner and making process control decisions);
- Uncertified DEP personnel would be empowered to make process control decisions, but legal liability for the results would remain with the plant operator;
- Treatment plants could be required to develop a detailed "process control plan" for DEP approval, the plan would have to be created by the Operator In Responsible Charge (not by an engineer or other qualified professionals);

- POTWs would be assessed an annual tax, based on the size of the plant: \$500 for class "A" facilities, \$150 for class "B," etc. (this tax is called a "fee," but no services are provided to justify it) (the "fee" provisions are on page 17 of the proposed rules);
- Examination providers would pay a tax for the "privilege" of providing this service to DEP, this tax would be based on the number of exams given per year.

All of the items itemized above (and may others not listed) are NOT included in the statute, nor are they part of the current program. Because of the drastic changes to the program and questions about legality of some of these things, DEP was asked to meet with us and discuss our concerns before taking these new rules to the EQB for approval, but DEP officials denied our request.

One important element in the current program that is missing from the proposed rules is the "interpretation" of the liability provisions of the Certification Act, in which DEP has interpreted the provision to allow operators to be fined only if they both violate their duties under the statute AND violate an Order from DEP issued under the statute. Given the ambiguity of the statutory language and the repeated assurances from senior DEP staff that this is the "correct" interpretation, it is ominous that it does not appear in the draft regulations.

Pat Mandes, Randy Hurst, Joe DiMatteo, and other EPWPCOA members have been reviewing the rules and preparing comments in anticipation of their publication. We will be submitting extensive comments. However, comments from those who will be directly affected are very valuable and individual Operators and Owners are encouraged to review the draft regulations and provide comments. You can forward your comments to Marykay to be included in our submission, but it would be very helpful to send your comments directly to the EQB and IRRC. The EPWPCOA will be posting more information, including the suggested form of a letter and the addresses to send it to, on our website at EPAOPS.org. For more information on the proposed rules, contact Randy Hurst at rghurst@mette.com. (717) 231-5215 or Pat Mandes at patmandesl@lehighcountyauthority.org.