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Chambers, Laura M.

From: John Schmidt [JSchmidt@cnbsa.org]
Sent: Tuesday, August 11, 2009 10:44 AM
To: EP, RegComments
Subject: FW: COMMENTS- WATER & WASTEWATER CERTIFICATION

2009 AUG 12 PM 2:48

INDEPENDENT REGULATORY
COMMISSION

Re-sending to revised email address.
Original message was sent to you Friday 8/7/09. Came back to me "Undeliverable" on Sunday. Re-trying.

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

Please see two attached documents:
- The requested SUMMARY for your use at the Board meeting.
- Comment letter that was mailed to IRRC and EQB.

John E. Schmidt
Executive Director
Chalfont-New Britain Township Joint Sewage Authority
1645 Upper State Road
Doylestown PA 18901

P: 215.345.1225
F: 215.345.8212
E: jschmidt@cnbsa.org

From: John Schmidt
Sent: Tuesday, August 11, 2009 8:51 AM
To: 'RegComments@dep.state.pa.us'
Subject: FW: COMMENTS- WATER & WASTEWATER CERTIFICATION

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Executive Director
Chalfont-New Britain Township Joint Sewage Authority
1645 Upper State Road
Doylestown PA 18901

P: 215.345.1225
F: 215.345.8212
E: jschmidt@cnbsa.org

From: John Schmidt
Sent: Friday, August 07, 2009 10:06 AM
To: 'RegComments@dep.state.pa.us'

Cc: John Schmidt

Subject: COMMENTS- WATER & WASTEWATER CERTIFICATION

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

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Doylestown PA 18901

P: 215.345.1225

F: 215.345.8212

E: jschmidt@cnbsa.org

Chalfont-New Britain Township Joint Sewage Authority

JOSEPH T. BONNER, Chairman
WILLIAM H. RISSINGER, Vice Chairman
WILLIAM T. EVANS, Secretary

GUSTAVE R. HAUN, Treasurer
PRESTON CAMPBELL, Assistant Secretary
DONALD T. CAMERON, Assistant Treasurer

JOHN E. SCHMIDT, Executive Director

John E. Schmidt
Chalfont-New Britain Township Joint Sewage Authority
1645 Upper State Road
Doylestown, PA 18901

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

VIA: Registered Mail and Email

Dear Commissioners and Board Members:

I am writing to express my concerns regarding the referenced rulemaking. I am a professional certified wastewater operator and have been employed as such for 30 years. Also, as the manager of a medium-sized treatment facility, I supervise numerous other operators who have been certified by the State Board of Certification, and also represent their interests by writing this comment letter.

After reading the proposed Regulations, I have many concerns, and I fully endorse the comments prepared by the Eastern PA Water Pollution Control Operators Association and the Pennsylvania Water Environment Association. To save your reading time, I will not repeat in their entirety all of the comments of the Associations; as I am sure you will receive them from many other sources. Instead I will only focus on a couple of particular concerns.

First, the reporting requirements of certified operators, as required in Section 302.1201(c) of the regulations, are quite simply ludicrous. What kind of business is required by law to have its employees submit in writing via registered mail, and written receipt, directly to the owner, any "system conditions that may *potentially* cause violations of permit requirements". In a typical day, I receive many reports of system conditions from my operators. These range from minor maintenance issues to operational problems or needs of every kind. The vast majority of these reports concern minor matters, but many of them could result in changes to effluent quality if left uncorrected, and so I understand that making the reports is part of my operators' obligations under the *Certification Act*. Section 1013(e) of the *Certification Act* requires certified operators

1645 UPPER STATE ROAD DOYLESTOWN, PENNSYLVANIA 18901-2624

TELEPHONE: 215/345-1225

FACSIMILE: 215/345/8212

to "report to the system owner" such things as violations, problematic system conditions, and actions necessary to prevent or eliminate a violation.

It would be ridiculous, however, to require our operators to leave their job and go to the post office several times a day to mail a certified letter to the Sewer Authority Board about each of these things, as the regulation demands. The current practice of having my operators report to me in person is more than sufficient to handle most, if not all, of the issues that arise from day to day, and certainly the most efficient way to run a business. I really do not believe that the Act, as written, contemplated the language as currently proposed in the Regulations.

If you have not done so, please read again, 302.1201(c), the six requirements each report must include, in particular #'s (4), (5), and (6). Every piece of equipment- pumps, motors, electrical controls; and biological processes- the "bugs" and their toxic enemies, represent a *potential cause of violations*, every day, since they may fail at any time. With the written level of detail required in the 6 items, our certified operators will be faced with spending much of their daily time writing and sending reports, or possibly face a significant fine for *personal liability* for not doing so. Keep in mind that while the Pennsylvania's finest certified operators may know how to maintain and operate a treatment plant, many of them are not so adept at writing detailed reports. Is an operator that spends most of his day writing reports a "better" or more reliable operator than the one who cannot write well and refrains from writing these reports? When I hire new employees to become operators, do I now need to request excellent writing skills as a top-priority skill? As the manager, I say no, please give me the person with the good common sense, intelligence, and mechanical skills, and can make and carry out good decisions; I will take care of the reports.

I do understand that in certain circumstances, it would be in everyone's best interests to have a written record. This is often done in the form of keeping a daily log, and occasionally a more detailed report may be necessary for something more important (often written by a supervisor or manager). But requiring operators to submit a multi-page written report every time a pump seal leaks (or might leak), at the risk of being personally fined by DEP if they don't, is ridiculous.

Another important concern we have is regarding the size classifications of treatment facilities, and the related level of certification that is required for that plant.

Section 302.902(a) of the proposed regulations utilizes the term "permitted average daily discharge flow" as the basis for determining Classifications for certification. It seems simple enough on the surface, this is the average flow for which the plant is designed; everybody knows what their "plant size" is. However, when you follow the thread of definitions, there is something wrong. In 302.101. Definitions, the "Permitted average daily flow discharge flow" is defined as "The hydraulic design capacity of a wastewater treatment system". In addition, the "Hydraulic design capacity" is defined as the "maximum monthly design flow ...".

At one time, each plant only had one flow rating, and this was the plant size rating which set the certification requirement. However, during the 1990's, issuance by DEP of two-tiered permits became commonplace, where a plant has, in its permit, both the normal average annual flow for which the plant is designed, and also higher "monthly max" to account for wet weather months, which is also utilized for Chapter 94 reporting requirements. As an example, the new regulation language is of special concern for our facility, which is a 4.0 mgd plant that was constructed in 1988, and remains as is today. However, in the late 1990's, a monthly-max second tier of 6.0

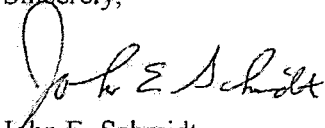
mgd was added to the permit. As you can see by looking at section 302.902, a 4.0 mgd rating requires a "B" certification, while a 6.0 mgd plant requires an "A" certification. Our operators, since back in the 1980's, have always been certified, by DEP, on the basis of the lower design flow rating (the *real* plant size), not the peak flow. However, due to an error in proposed definition language, it appears that might not be the case.

This issue may not be problematic for most facilities, since most will not cross over to a higher level if the monthly max is utilized, but it will have a significant effect on those that do, such as us. As I re-read the original *Certification Act*, these definitions in question do not appear there; they have been added. Although the Act did change the plant size requirements for the purpose of certification (ie a "B" certification went from a maximum of 7.0 mgd down to 5.0), I really do not believe it was the intent of the Act to also change the size designation of the treatment plants themselves. I believe someone has mistakenly created this problem; please make the necessary corrections.

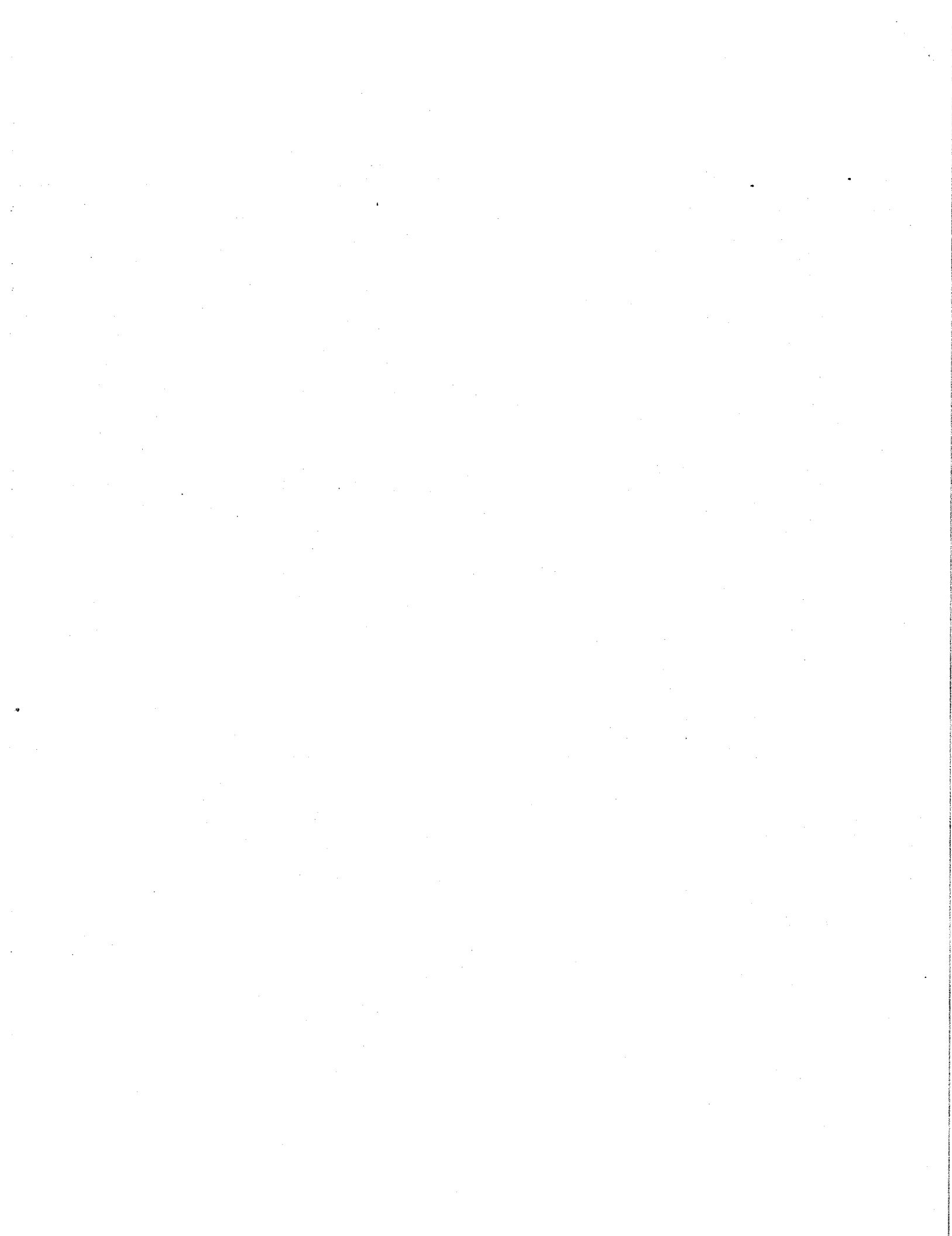
We are also seriously concerned with some of the civil penalty liabilities that may be imposed on certified operators for Permit Violations and Process Control Decisions. It appears that these liabilities were not in the original Act, but have been created in the form of the Regulation. Is this even legal to do this outside of legislation? Please see the comments by our Associations for the details of this complaint; but in summary, making individual operators personally liable for anything that happens at a treatment plant is a guaranteed way to create mass resignations of certification. Therefore, in addition to being contrary to the law and too vague to understand, the provision will likely result in many of our colleagues dropping our certification in order to keep their jobs. Seems like a huge contradiction from the real needs of our industry and workforce.

In summary, I believe the regulations, as proposed, will have a significant negative impact on the ability of our operators to do our jobs as professionals. I strongly object to the proposed regulations because they clearly conflict with and in some cases contradict the law, because they impose absurd 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. Please request that the regulation's writers go back to the drawing board and work closely with the regulated community to properly comply with the Act.

Sincerely,



John E. Schmidt
Certified Operator No. S7293



SUMMARY OF COMMENTS

August 7, 2009

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

1. All comments that may be submitted by other representatives of Certified Operators, including the EPWPCOA, PWEA, and the PMAA, are fully endorsed by me and included here by reference.
2. The written reporting requirements of certified operators, as required in the regulations are absurd. Please pay particular attention to #'s (4), (5), and (6) of 302.1201(c). Keep in mind that the level of written reporting required is not for existing problems, but also for **potential** problems (*everything* could be a potential problem). Certified operators will be faced with spending much of their daily time writing and sending reports, or possibly face a significant fine for *personal liability* for not doing so. This level of reporting is certainly necessary for certain circumstances, but not routine daily operations.
3. Regarding the size classifications of treatment facilities, and the related level of certification that is required for that plant, there is an error somewhere in the definitions. Section 302.902(a) of the proposed regulations utilizes the term "permitted average daily discharge flow" as the basis for determining classifications for certification. However, tracing back through various definitions, it appears that plant classifications for certification purposes is erroneously tied to the Chapter 94 monthly maximum flow rating, rather than the appropriate average daily design flow. This is a serious concern for plants (and its operators) that would be placed into a higher level of certification as a result of this. The average daily design flow has always historically been the basis for operator certification; it should not change now.
4. The civil penalty liabilities that may be imposed on certified operators for Permit Violations and Process Control Decisions are unfair. Making individual operators personally liable for *anything* that happens at a treatment plant, at any time, whether it is under their control or not, is unreasonable and is likely to create a situation where new operators do not desire to get certified (and thus do not bother to go through the education and training process) and existing operators possibly dropping their certification. This would seem to be a huge contradiction from the real needs of our industry, workforce, and the environment. Are we in need of more trained operators, or less trained ? You decide.
5. Please ensure that all comment letters from the public are presented to the Board and Commission in full for their review; not just the one-page summaries. There is entirely too much background information, explanations, and details that cannot fit in to a one page summary. This is too important; everything should be read and considered.

John E. Schmidt
Chalfont-New Britain Township Joint Sewage Authority
1645 Upper State Road
Doylestown, PA 18901
Certified Operator No. S7293

