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INDEPENDENT REGULATORY
REVIEW COMMISSION

ENVIRONMENTAL QUALITY BOARD



MERCK

Manufacturing Division

August 6, 2009

Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

Subject: Comments on Proposed Rulemaking, Administration of the Water and Wastewater Systems Operators' Certification Program

Ref: 39 PA Bulletin 3591, July 11, 2009

Dear Environmental Quality Board:

The West Point, PA site of Merck & Co., Inc. (Merck) appreciates the opportunity to submit comments on the Water and Wastewater Operators' Certification proposed rulemaking as published in the July 11, 2009 PA Bulletin.

The Merck – West Point, PA site operates a nontransient noncommunity public water supply, PWS ID No. 1461065, which maintains continued compliance with all state and federal drinking water standards and regulations. Merck has in its employ water system operators certified in the appropriate water system and subsystem classifications to properly operate the facility's potable water system.

Comments:

1. Section 202(f) and (g), Operator certification program fees – Merck requests DEP review both of these subsections for a potential editorial correction. Both subsections refer to "certification fees in subsection (b)." The various certification fees are listed in subsection (d). Subsection (b) simply indicates that nonrefundable checks must accompany applications to become an approved trainer.
2. Section 302.301, Board procedures for certification action – Merck requests that the regulatory language be changed to provide a defined and tighter time schedule for review and action on operator certification applications. The timing and schedule of Board actions on certification applications is too open-ended and undefined to support the rigorous, competitive, and regulated requirements of Pennsylvania industrial and community water and wastewater systems. For example:
 - a. 302.301(b) – Applicants will be notified "in a timely manner" of an incomplete application. Merck requests that DEP provide a defined time period (number of days) for administrative review and notification of an application's completeness. This request is consistent with other DEP application review programs.
 - b. 302.301(d) – Board will take action on a complete application "within two scheduled Board meetings." What is the frequency of Board meetings? How is the review schedule on a complete application impacted if Board meetings are cancelled? Merck requests that the regulation be changed to provide a specific time limit for action on an administratively complete application.

Merck agrees with and fully supports the requirement for certified operators for water and wastewater systems in Pennsylvania. The use of trained and licensed personnel ensures the



necessary consistency of knowledge and skills to maintain protection of the environmental and public health. In as much, and since this is a regulatory requirement, DEP should provide in the regulation a defined and tighter schedule for review and action of certification applications.

3. Section 302.1201, Duties of operators – Merck agrees that the authority and accountability for control and operation of the regulated water supply system infrastructure must be in the hands of the skilled and certified operators. Merck is concerned, however, that several subsections exceed that skill set as established through the operator certification program, conflict with established company environmental compliance management systems, or conflict with existing DEP or EPA regulations. Specifically:

- a. 302.1201(b)(14) – Merck requests the words, "and self-monitoring" be deleted from this subsection. This subsection indicates the duty of an operator as "overseeing or performing the collection, analysis, and interpretation of all process control and self-monitoring samples." Merck agrees that oversight of process control samples and data is an integral part of the operator's responsibility to operate the regulated water system. But inclusion of the words "self-monitoring samples" raises concern. Self-monitoring sampling and analysis refers to sample results that are reported to the applicable regulatory agency as part of water supply or wastewater discharge permit requirements. Oversight and evaluation of self-monitoring results is under the authority of the required reporting signatory authority, which is already prescribed in existing DEP and EPA regulations. In addition, existing regulations prescribe the requirements for a duly authorized representative of the required signatory authority. In as much, the required signatory authority will establish compliance management systems and support to ensure reports submitted under their authority, including applicable monitoring data, are adequately reviewed and evaluated prior to signature and submission. The compliance management system that evaluates self-monitoring data that is included on report submissions typically consists of environmental regulatory or legal staff. Considering the voluminous environmental statutory and regulatory requirements and the knowledge required to understand and apply environmental laws and regulations, operator certification training does not adequately prepare a system technician to evaluate and interpret self-monitoring data against these requirements. Environmental regulatory and legal staffs possess the appropriate skills and training to oversee the analysis and interpretation of self-monitoring data.
- b. 302.1201(b)(15) – Merck requests this subsection be changed to state:

"(15) Collect, prepare, and submit applicable samples or data to the applicable persons or organization for report preparation and submission to the appropriate agencies."

Language in the proposed rule states that a duty of a certified operator is "preparing and submitting applicable reports to the appropriate persons or agencies." For water systems, this language conflicts with 25 PA Code 109.810(a). 109.810(a) places the responsibility and authority on environmental laboratories accredited under 25 PA Code 252 for preparation and submission of required laboratory reports to DEP. A certified operator, employed by the water system owner, is not a member of or affiliated with the accredited laboratory performing the water system analyses, and is therefore not authorized to prepare and submit these reports. The certified operator, however, by nature of their certification, is skilled at the collection, preparation, and submission of the test samples to the accredited laboratory.

For wastewater systems, 40 CFR 122.22 and 25 PA Code 92.23 prescribe the authority for NPDES report submission as a senior, high-level responsible officer or official within that organization. Certified operators are skilled craft persons who have achieved the experience, training, and testing to become certified in the operation and control of applicable systems and subsystems. In many cases they are

part of a collective bargaining unit. They are usually in the employ of the system owner, but do not possess the required authority credentials required by 40 CFR 122 or 25 PA Code 92, and are therefore not authorized to submit reports to applicable agencies required under those regulations. The certified operator is skilled at collecting, evaluating, and submitting the applicable data to the appropriate and authorized signatory authority of the organization, so the signatory authority can prepare, sign, and submit the required reports.

- c. 302.1201(c) – This subsection requires that certified operators notify system owners (typically their employer) in writing of conditions that are causing or may cause a violation. Merck is concerned that the prescriptive nature of this subsection may in fact contribute to or exasperate violations. For example, water suppliers may experience situations that result in acute, time-sensitive public health situations which require prompt response and notification. The process, and subsequent time delays, of developing and delivering a written report regarding a violation may aggravate or worsen a situation, or result in a regulatory notification time criteria being exceeded. To ensure public health and environmental protection, and timely public and external notification, Merck requests this subsection be changed to read:

"(c) Certified operators shall notify system owners of any known violations or system conditions that may potentially cause or are causing violations of any Department regulation or permit conditions or requirement using any appropriate means based on the severity of the situation and/or violation. If notification is by verbal means, the certified operator should provide a follow up written report to the system owner. The report must include the following:"

(1) *as currently proposed.....*

The proposed language in this subsection also contains language requiring a written receipt documenting delivery of the written report. Since certified operators are typically employed by the system owner, and are working at the same location as their employer (the owner), this requirement does not make sense. What is the basis of this requirement? The U.S. Postal Service, UPS, and Federal Express do not deliver mail internally within a site or facility. And the language requiring a signed receipt of a hand-delivered report communicates nothing more than liability protection for the operator, and not environmental or public health protection. Organizations, whether private industry or municipal government, have internal management systems and procedures for managing their communication. Certified operators have a duty to manage regulated systems under their control and keep their employers (system owners) informed on the systems. System owners have the responsibility to receive those notifications and act on them. It is an affront to every applicable regulated entity in the Commonwealth to mandate that an operator needs a written receipt back from the people they work and interface with on a daily basis every time they do their job. Merck requests the receipt requirements be deleted from this subsection.

Merck appreciates the opportunity to comment on this proposed regulation. If you have any questions, please do not hesitate to contact me at (215) 652-7973, or robert_cavett@merck.com.

Sincerely,



Robert Cavett
Senior Environmental Engineer

cc: Alice L. Lenthe, P.E., Director, WP Safety and Environment
Mr. John Hines, PA DEP, Deputy Secretary for Water Management