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INDEPENDENT REGULATORY  
COMMISSION

ENVIRONMENTAL QUALITY BOARD

Independent Regulatory Review Commission  
14<sup>th</sup> 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

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 a Plant Superintendent for 18 years. I have been quite concerned with the original ACT 11 of 2003 as it pertains to strict liability in that no other profession in our state are held liable for "potential" problems that may occur and failures out of their control to be held accountable, fined and even imprisoned. I vehemently object to any additional liabilities being placed on certified operators that can be open to interpretation and that are as ambiguous as the proposed rulemaking in Chapter 32. I'm concerned that the limited recourses that operators have to work with will be diverted even more if the Board moves ahead with Chapter 32. In our current economic climate any money that is available should be put towards treating our influent flow and not writing reports every half hour for any and all "potential" issues that arise during a typical day in a wastewater treatment plant. The proposed rule changes are of special concern to me not only because they directly conflict with the Act (the Water and Wastewater Systems Operators Certification Act) but because they impose arbitrary and unreasonable requirements, including the creation of new forms of personal liability.

Another area of concern for me is the lack of authority given to certified operators all the while putting more responsibilities on us to maintain and properly operate our facilities. In other words, owners of the facilities that actually control and budget the money we need to operate our systems have no liability in the proposed Chapter 32 rulemaking. I strongly recommend that Owners be held accountable for not properly budgeting for the operation of their facilities. During the budgeting process operators must justify every cent that we ask for but Owners cut out our requests based on revenue. Chapter 32 must force Owners to adequately fund their facilities and even go as far as requiring that the plant operator sign off on the budget stating that it is adequate to fund wastewater operations for the budget year. The proposed rulemaking forces operators into potential liability due to the lack of foresight from elected officials and administrators.

It is apparent that Chapter 32 will be used to put unreasonable burden on all operators due to the actions of a few "bad apples". Again the Owners of those facilities should be held accountable to evaluate their operators and remove their employees that are either unable to perform their job functions or are incapable of completing essential duties. Upwards of ninety percent of operators

in our state work for municipalities and/or boroughs, we are not making a whole lot of money and I'm sure most work because we feel we're serving the greater good of the Commonwealth. At a time when local governments are cutting benefits and looking to reduce staff, the Board comes out with even more regulations driving up costs that do not impact the quality or quantity of effluent being discharged to our waters. The Board has the chance to work with the operators of our great state and help them keep our waters safe and accessible, please show us that your looking at the big picture and place an equal amount of this burden on the Owners of the plants and the elected officials that control the money and in a round about way the quality of the effluent.

These new rules are so radically different from the current program, I must state my deep concerns about the short time allotted for public comment and with DEP's refusal to meet with representatives from the professional operators' associations during the course of drafting the regulations. I urge the Board and the Commission to recommend strongly to DEP that it return to the drawing board and work with the regulated community to develop reasonable and practical regulations.

I'm asking the Board to re-consider the following items:

#### **Creation of new sources of liability not in the Certification Act**

Suspension/revocation of certification for "failure to comply with the duties assigned to a certified operator." Section 1004 of the Act provides that certification may be revoked for violation of a number of specific things. However, sections 302.308(b)(6) and (7) of the draft regulations would subject me to loss of my certification for things that are not even mentioned in the Act. These sections refer to the duties imposed by the Act in addition to the items mentioned in the Act, which appear in (b)(1) through (5).

I have no idea what "failure to comply with the duties assigned to a certified operator" means. Can I lose my certification because I didn't evaluate my staff, which is one of my "duties"? It makes it quite difficult to operate my treatment system if I do not know what I am liable for and is not stated clearly. Paragraph (7) is not only in conflict with the law; it is too vague to understand. I should not lose my certification for reasons that are so vague.

I don't believe operators should be held liable for anything that goes wrong or is a "potential" threat to public health. Hence, the proposed rule would allow the Board to revoke my certificate for almost anything that goes wrong at a treatment plant. Some things are an "Act of God" and cannot be stopped no matter how well operators are trained or how many people are working at the facility. This rule will drive up the costs of treatment because every backup will now need a backup. I object to this provision because it is not cost effective, irrational and vague in its interpretation.

Section 1013(e) if the Act 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. Where in the proposed regulations does it state that the Owner must respond? The Owner could do nothing, thereby making the operator's job that much more difficult to accomplish and could lead to the operator baring the burden through enforcement and criminal actions. I can't stress enough how unfair and unjust your proposed rulemaking is. I routinely report to my superiors and receive reports from my operators on any malfunction, maintenance requirements, and other matters that, if left uncorrected, could compromise my system. The vast majority of these reports are made orally and receive prompt attention. This method of reporting is not only effective, it is efficient. Section 1201(c) of the regulations, however imposes

significant and irrational requirements on the method of reporting and on the contents of the reports. I understand that making the reports is part of my obligations under the Certification Act. It is not cost effective however, to require me to leave my job and go to the post office several times a day to mail a certified letter to our elected officials when they have no obligation to act.. The current practice of reporting to my supervisor in person is more than sufficient to handle most, if not all, of the issues that arise from day to day, and is all that is required by the Act.

Process Control Decisions by Untrained DEP workers. The term "Process Control Decision" is defined in the Act. It is basically any decision that affects the quantity or quality of water or wastewater in a substantial way. Sections 1005(d), 1006(d) and 1013(e)(5) mandate that Process Control Decisions may only be made by properly certified operators. There is no exemption for uncertified, untrained, or unqualified people to make these decisions in any situation.

Section 1203(e) of the draft regulation attempts to create an exception to the statutory definition. When untrained and unqualified DEP employees make a Process Control Decision it is not a process control decision. Obviously, this should be removed as it goes against the entire Act and the proposed rulemaking of Chapter 32.

Excess Credits should be carried forward. The program that has been administered for six years under the informal Guidelines has shown a need to be able to carry training credits forward into the subsequent three year training cycle. Operators should be encouraged to obtain training that is applicable and useful for their employment, not just randomly chosen classes to generate "credits." Because courses are offered at different times, it has been my experience under the current system that I have not taken needed training because I already had sufficient credits, and I have taken pointless training because I needed to obtain credits before the end of my renewal cycle. The current system does not allow operators to take the training they need, it only creates pointless "credit counting." This irrational scheme is repeated in the draft regulations at sections 306(d) and 802(d). Changing this rule to allow excess credits to carry forward into subsequent training cycles will allow operators to be more judicious in their choice of training, taking courses that we need, when they are offered. Since the credit reporting system is computerized, making this important improvement would be a simple matter. There is no prohibition on carrying forward credits in the statute or in the EPA Guidelines for these programs.

In summary, I strongly object to the proposed regulations because they clearly conflict with and in some cases contradict the law, because they impose ambiguous requirements that NO operator could reasonably comply with, no burden is placed on Owners or elected officials and because some of the provisions are so vague that I have no idea what I could be held liable for. Please disregard the proposed regulations and follow Act 11 as written. I believe the additional rules you are proposing will seriously limit the amount of new operators that enter our field, restrict creative thinking and problem solving, and greatly increase costs.

Very Truly Yours



Robert S. McKernan

