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ENVIRONMENTAL QUALITY BOARD

August 10, 2009

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VIA EMAIL & MAIL

Environmental Quality Board
400 Market Street, 16th Floor
Harrisburg, PA 17105-8477

ENVIRONMENTAL QUALITY BOARD

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:

Thank you for this opportunity to comment on the proposed rulemaking on the Administration of the Water and Wastewater Systems Operators Certification Program. The Environmental Quality Board's ("Board") new proposed rulemaking for the Water and Wastewater Systems Operators Certification Program adds new obligations and requirements to the federal Drinking Water and Wastewater Systems Operator Certification Act, 2002 ("Act"). The City of Philadelphia Water Department finds some of the proposed provisions to be vague, overly broad and unreasonable. They are written in an overly broad and vague manner and impose unreasonable and unfair burden on the hard-working operators at our water and wastewater plants. We submit the following comments for your review and consideration:

Section 302.308(b)(3)

This section states that the Board may suspend or revoke an operator's certificate for "falsification of State, local or Federal document or records." This proposed language broadens the provision in the Act, which states that certificate may be revoked for

“falsification of operating records.” The proposed provision implies that reasons for suspension or revocation of certificate may include falsification of any and all state, local or federal document or records. This is overly broad, as it has the potential to include documents or records that may have nothing to do with the duties of an operator. Therefore, this provision needs to be narrowly written as to not produce any unreasonable or arbitrary results.

Section 302.308(b)(6) - (7)

This section adds new obligations not mentioned in the Act. Section 302.308(b)(6) allows the Board to suspend or revoke an operator’s certificate for “creating a clear or potential threat to public health, safety or the environment.” The term “potential threat” is vague and unreasonable. By definition, the operation of water and wastewater facilities always has the potential to affect the public health, safety or the environment. It is the duty of the operator to recognize and attempt to correct the potential problems. It is unreasonable to suspend or revoke an operator’s certificate for any and all potential threat created, regardless of the cause or reason for the threat.

Section 302.308(b)(7) states that the Board may suspend or revoke an operator’s certificate for “failure to comply with the duties assigned to a certified operator.” Again, this provision is vague and unreasonable. It does not clarify what specific duties and assigned by whom. This provision seems to imply that operators can lose their certificate for not complying with duties that may not even be directly related to the operations of the water and wastewater facility.

Section 302.1201(d)

This section imposes new liabilities on the operators. The proposed language states, “the available operators making process control decisions are responsible for those decisions and consequences, unless the owner fails to respond to a written report as required in subsection (c) or there is a deliberate action with malice or negligence on the part of an employee under the supervision of the available operator.” This provision is vague and overly broad. It would make the operator responsible for any and all “consequences” of the process control decisions, even those that could not have been reasonably anticipated or caused by factors that are beyond the control of the operator. In unusual events, emergency conditions, and multiple equipment failure scenarios, certified operators can make good process control decisions that comply with standard operating procedures. In these situations, it is possible for the process to be negatively impacted even though the certified operator did everything in his/her power and knowledge to prevent a process upset. Therefore, this type of regulation would create an unreasonable and unfair burden on the individual operators. Further, there should be language in the regulations which considers unusual or emergency conditions, as determined by PADEP review, which limits liability against certified operators.

Section 302.1206(e)

The proposed provision states, “the operator in responsible charge, who is the approving authority for the standard operating procedures for a system, is accountable for any permit violations or violations of any applicable rules and regulations which may occur when an operator follows these standard operating procedures.” Under this provision as written, the operator would be legally liable for any and all NPDES permit violations that may occur when a standard operating procedure is being followed. This makes the unreasonable assumption that whenever a permit violation occurs, it must be a result of using the standard operating procedure. Therefore, as long as the standard operating procedure is in use, the operator in charge would be responsible for any and all violations that would occur, regardless of the cause of the violation. This provision is overly broad and unreasonable and would discourage the use of standard operating procedures.

Section 302.1003 – Clarification and Details Requested

This section creates new subclassifications and new laboratory supervisor certification requirement for individuals responsible for supervision of testing or analysis of environmental samples and reporting of analytical data for water supply and wastewater systems in a Pennsylvania-accredited environmental laboratory. Pennsylvania-accredited Philadelphia Water Department laboratories are supervised by individuals who are not operations personnel and do not make process control decisions. We request that the Board provide clarification and details on this new laboratory certification requirement – whether this requirement would apply to a Class A water and wastewater operator; if so, when would this requirement go into effect; and detailed information on the laboratory supervisor certification examinations. We would like to be prepared if this provision would in fact apply to Philadelphia Water Department and goes into effect in the near future.

Interpretation of Liability under the Act

63 P.S. § 1014(c) of the Act states: “the department may assess a civil penalty upon any person who violates any provision of section 13 or any operator who violates section 5(d) or 6(d) and any order issued by the department under section 4(b)(2).” Certified operators are subject to section 13 and non-certified operators are subject to sections 5(d) and 6(d).

This provision is vague and unclear, as it can have more than one interpretation. It may be interpreted to mean 1) certified operators are liable for any violation under section 13 but that non-certified operators are liable only if they violate 5(d) or 6(d) and in addition also violate an order of the department; or 2) all operators are subject to liability only if they violate both the provision applicable to them and in addition violate an order of the department. We request that the Board provide a clear interpretation of this provision in its rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald Leatherman", with a long horizontal flourish extending to the right.

Gerald Leatherman

cc: Debra McCarty
John Muldowney
Leonard Gipson
Thomas Ferguson
Robert Lenzinski