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From: Pete Slack [slack@municipalauthorities.org]

Sent: Friday, September 04, 2009 12:17 PM

To: EP, RegComments

Subject: Comments on Proposed Operator Certification Regulations

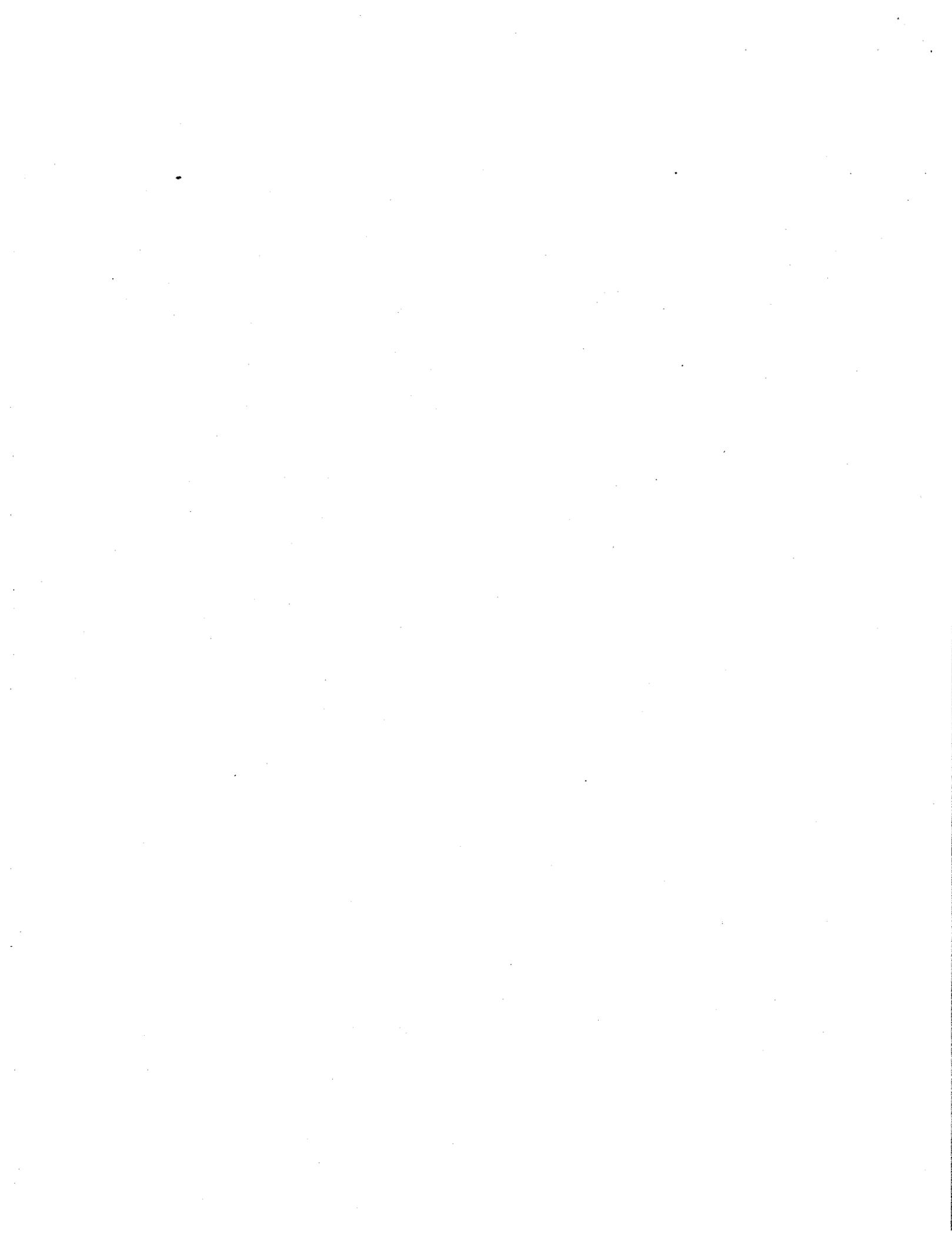
INDEPENDENT REGULATORY
REVIEW COMMISSION

Attached are PMAA's comments on the proposed rulemaking for the administration of Pennsylvania's water and wastewater operators' certification program that was published in the July 11, 2009 PA Bulletin.

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September 4, 2009

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

[Sent via electronic mail to regcomments@state.pa.us]

The comments below are submitted in regard to the proposed rulemaking for the administration of Pennsylvania's water and wastewater operators' certification program that was published in the July 11, 2009 PA Bulletin.

The Pennsylvania Municipal Authorities Association (PMAA) represents over 740 municipal authorities across the Commonwealth providing drinking water and sewage treatment management to more than six million Pennsylvania citizens.

Most of the provisions of these regulations pertain directly to the manner in which system operators obtain and maintain state certification, and carry out their day-to-day responsibilities; however, there are certain provisions that we wish to comment on from a system owner perspective. We also wish to comment on some aspects of the process by which these changes have been developed and presented for public review and comment.

1. As a general observation, as noted in the preamble to the proposed rulemaking, these changes were made partly to conform to EPA guidelines under the Federal Safe Drinking Water Act amendments of 1996. Unfortunately, the preamble includes no information on the specifics of these guidelines, thus making it impossible to understand which provisions of these regulations are derived from these federal guidelines.
2. The proposed fee structure of Section 302.202 is apparently aimed at covering the Department's entire annual cost of administering the operator certification program. We have several concerns:
 - a. The preamble contains no fiscal analysis as to the Department's annual cost, nor does it provide a comparison between anticipated annual revenues and such annual costs. Is this information available? Do these fees exceed the legislative intent of "reasonable and necessary" as defined in the operator certification law?
 - b. While EPA's guidelines recommend establishing a dedicated fund for this purpose, this does not necessarily mean that the entire annual cost of administering this program must be sustained by fees alone, and not partly by state general fund revenues. After all, the general taxpaying public is the ultimate beneficiary of well-operated water and wastewater systems and should be helping to finance this program. Also, since it seems that there will be no separate, dedicated fund established for receipt of such fees, what guarantee exists that these funds will not be redirected to other uses?

- c. Many of these new fees appear to be simply for paperwork review for the department, yet they add extensively to the costs for operators and owners. An example is the \$250 for post-presentation credit application fee for the simple task of Department review time to certify a course.
 - d. The proposal to charge system owners an “annual service fee” is neither reflected by the governing statute nor has the Department identified any service to be rendered for charging such a fee. Also, higher fees based strictly on size of plant and not on DEP workload are not fair or uniform.
3. With regard to Section 302.804, will NIMS courses already taken meet the security training course requirement?
4. The proposal in Section 302.1006 to establish a Laboratory Supervisor subclass of operator is unclear and confusing and there is no explanation for this in the Preamble, resulting in several questions and concerns.
- a. We have received questions from members asking if laboratory supervisors will now be required to obtain operator certification. If that is the case, then we believe this would make no sense at all, since a program already exists under the laboratory accreditation program regulations for certifying laboratory supervisors and people in those positions normally do not function as water or wastewater system operators.
 - b. Will existing lab supervisors be grandfathered, and automatically become certified operators? Do they need to take operator certification tests to keep their lab certification? If so, this seems to be a detrimental requirement to lab supervisors who have no responsibility for running the operations of a plant and could seriously jeopardize the existing role of lab supervisors.
 - c. PMAA feels existing lab supervisors, qualified under the lab certification program should not be impacted by the operator certification program.
5. The provisions of Section 302.1201(c) on operators notifying owners of violations or potential violations could be handled differently than the process outlined in this section. For instance, wouldn't a simple daily log, highlighting such issues and concerns, signed by an operator and given to management suffice as a means to draw attention to potential problems?
6. The provisions of Section 302.1201(d) also seem to add new potential for liability for operators on top of all the environmental laws and regulations that already apply to them and under which they can be prosecuted. We would urge the Board to either remove these provisions or to more specifically clarify and narrow the scope of liability in question. For instance, would the operator be held legally liable for a malfunctioning SCADA or PLC system?
7. The provisions of Section 302.1203(c) to require owners to create process control plans do not appear to have a basis in the governing statute. Under what circumstances will such plans be required? What will the Department do with such plans? We believe that preparation of such plans should include people familiar with the plant operations such as managers and engineers, with input from the operator in responsible charge. The system owner should have the ability to decide on the individuals that should be consulted in developing these plans.

8. Section 302.1203(e) appears to broadly exempt DEP staff from essentially making “process control decisions” while performing various emergency and routine regulatory activities. We understand the intent, but are still concerned over the potential for inexperienced, unqualified staff to interfere with proper operation of systems.
9. Regarding the provisions of Section 302.1204(f) would place the Department in the position of having to review and approve “standard operating procedures”. Who within the Department would be assigned such responsibilities and what qualifications would be required for those persons? Under what circumstances would the Department find it necessary to request a copy of such procedures?
9. Do the provisions of Section 302.1206 prevent a person in a management position (not an operator) from issuing a boil water notice?
10. How will these regulation changes address the pass/fail results associated with the operator certification exams? For the past several years the testing scores have been low and it is not clear if this is due to the testing methodology, lack of knowledge or inadequate training programs. The preamble does discuss a compliance assistance program but few clarifying details are provided.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink that reads "Peter T. Slack". The signature is written in a cursive, slightly slanted style.

Peter T. Slack
Government Relations Associate

