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**RUBRIGHT, DOMALAKES, TROY & McDONALD
-ATTORNEYS AT LAW**

Joseph P. Troy
Lora J. McDonald
Harry A. Rubright
Paul G. Domalakes

Karen L. Domalakes

14 West Frack Street
PO Box 9
Frackville, PA 17931
Telephone (570) 874-1109
Fax (570) 874-4567

Sch. Haven Office
29 E. Main Street
PO Box 706
Sch. Haven, PA 17972
(570) 385-4511
Fax (570) 385-4572

ENVIRONMENTAL QUALITY BOARD

September 8, 2009

By US Mail and Email RegComments@dep.state.pa.us

Environmental Quality Board
PO Box 8477
Harrisburg, PA 17105-8477

**Re: 25 Pa Code CHS 301302 303 305
Administration of Water and Wastewater Systems Operator Certification Program
Proposed New Rules**

Dear Board:

I represent the Cressona Borough Authority, a small sewer authority located in Schuylkill County, that discharges treated sewage into the Schuylkill River. The Board directed me to prepare and file comments protesting the proposed rule change setting penalties on certified operators of the treatment plants, which include criminal and civil penalties as well as loss of certification and licenses for a variety of vague and even confusing circumstances. Certain of the regulations impose penalties upon the operator for circumstances completely beyond the operators control, as for example, where the operator is responsible for a process control decision imposed by a non-certified, less qualified DEP employee.

A review of some of these regulations convince us that they are unnecessarily burdensome upon the regular duties of an operator, create tremendous liability for such an operator, and ultimately act as a distraction from the duty of the Authority Board and the operator to provide quality, environmentally responsible, and cost efficient wastewater treatment.

One of the proposed regulations imposes a duty to report in writing, by certified mail, or hand delivery, any event, no matter how minor, that has the "potential" to "affect public health" even if it does not result in some sort of violation of a discharge permit. At the very least, the regulation as written is vague and uncertain and the potential liabilities so draconian, that the only "safe" course of action would be for an operator to flood the mails with certified letters describing everything he did that day. Anything at a wastewater treatment plant has the "potential" to affect public health, but some events are minor some important and only a few events have serious impact. The regulation makes no distinction, is vague, uncertain, unworkable and extremely burdensome.

A similar problem arises with the expansion of the Falsification of Records Provisions. The regulation does not even specify that the documents or records must pertain to the operation of the treatment plant for which the operator is responsible. This is an example of sloppy rule making. Again, there is no distinction made between a material, intentional falsification, or a typographic error or even an honest mistake.

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Other rules presented as mentioned above require certified operators to "report to the system owner" such things as violations, problematic system conditions, and actions necessary to prevent or eliminate a violation. It is not clear to whom these matters must be reported or how. In our small system, the operator reports directly to the board and it is part of his or her job in keeping the plant running safely and efficiently, to do these things. This regulation, coupled as it is with the potential for civil and criminal penalties as well as loss of certification, would necessarily require the operator to fill his days with paperwork to report things no matter how minor to prove that he in fact reported something. Other regulations impose similar reporting requirements that do nothing but expand the paperwork.

The new civil penalty liability imposed upon certified operators for their "failure to undertake their duties regarding any consequences of process control decisions" is also problematic. The language is extremely vague and could very easily be construed to impose liability for any adverse result of a process control decision. This is an imposition of strict liability for anything that happens at a treatment plant, whether or not the problem could be anticipated or not. Lightening strikes, machines break, wires fail, pumps overflow, and floods happen. The regulation, as written, could easily be interpreted to make the operator responsible for any failure in the plant auditable or not.

It is important that the operator understand the complexity of the plant, have process control decisions in place to deal with emergencies that can be reasonably anticipated accurately, fill out the many voluminous reports that are now required and try to see that the plant runs environmentally and economically properly, but these proposed regulations do not impose tough standards, they impose uncertain, even impossible standards and impose liabilities and penalties that will discourage people from entering this profession at a time when we need more, not less, competent, certified operators.

Recently the Cressona Borough Authority advertised for a second operator. Out of one hundred applications that were received, one was a certified operator. This demonstrates the increasing difficulty in finding competent people to run sewer plants. These proposed rules will simply exacerbate the problem.

In summary, these proposed rules will have the unintended consequences of promoting inefficiency and inaccuracy, and will inhibit the proper operation of treatment facilities because of the increasing difficulty in finding qualified personnel, and discourage plant improvement and the implementation of new technology. The supporting Act does not authorize such widespread imposition of vague and uncertain duties and drastic penalties. My Board's practice is to review new regulation and simply comply with them and not protest. The Board does not see how our new operator can comply with these new rules in a realistic fashion. The Board was most distressed to find that the Eastern PA Water Pollution Control Operators Association was refused a meeting to discuss these and other concerns in detail. Such long and widespread, significant changes should not be imposed at all and certainly not without significant input from the people who have to live with these regulations.

Respectfully submitted,

Paul Domalakes, Solicitor

Cressona Borough Authority

PGD/pjm

cc: Cressona Borough Authority

