

2774

**Tate, Michele**

---

**From:** PA Water Environment Association [pwea@earthlink.net]  
**Sent:** Wednesday, September 09, 2009 9:49 PM  
**To:** Hines, John; Kasi, Veronica; Tate, Michele  
**Cc:** 'Alison Shuler'; deamil@aol.com  
**Subject:** FW: PROPOSED CHAPTER 302 REGULATIONS - PWEA COMMENTS AND SUGGESTIONS

**Importance:** High



Letter to EQB  
Chapter 302 com...

RECEIVED  
2009 SEP 14 PM 3:12  
INDEPENDENT REGULATORY  
REVENUE COMMISSION

Good evening.

My attempt to transmit comments from the Pennsylvania Water Environment Association appears to have failed - please see message undeliverable notice immediately below. I am transmitting PWEA's comments (attached) to you in hopes that this will satisfy the September 9th deadline. Please let me know if I need to electronically resend PWEA's comments to someone else and if so, what email address other than regcomments@state.pa.us should I transmit the comments to.

Thank you.

**Susan Boynton**

Executive Director  
Pennsylvania Water Environment Association  
[pwea@pwea.org](mailto:pwea@pwea.org)  
POB 3367  
Gettysburg PA 17325  
717-642-9500 Admin Office  
717-642-9508 Admin Fax

---

**From:** System Administrator  
**Sent:** Wednesday, September 09, 2009 9:23 PM  
**To:** 'regcomments@state.pa.us.'  
**Subject:** Undeliverable: PROPOSED CHAPTER 302 REGULATIONS - PWEA COMMENTS AND SUGGESTIONS

Your message did not reach some or all of the intended recipients.

Subject: PROPOSED CHAPTER 302 REGULATIONS - PWEA COMMENTS AND SUGGESTIONS  
Sent: 9/9/2009 9:23 PM

The following recipient(s) could not be reached:

'regcomments@state.pa.us.' on 9/9/2009 9:23 PM  
501 <regcomments@state.pa.us.>: domain missing or malformed

---

**From:** PA Water Environment Association [<mailto:pwea@earthlink.net>]  
**Sent:** Wednesday, September 09, 2009 9:23 PM

**To:** 'regcomments@state.pa.us.'

**Subject:** PROPOSED CHAPTER 302 REGULATIONS - PWEA COMMENTS AND SUGGESTIONS

Hello.

Please find attached comments on Chapter 302 from the Pennsylvania Water Environment Association. The PWEA appreciates your consideration of its input.

Regards,

**Susan Boynton**

Executive Director

Pennsylvania Water Environment Association

[pwea@pwea.org](mailto:pwea@pwea.org)

POB 3367

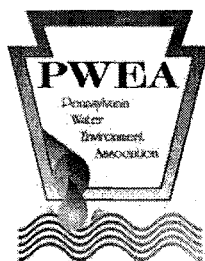
Gettysburg PA 17325

717-642-9500 Admin Office

717-642-9508 Admin Fax

**ADMINISTRATIVE OFFICE:**

PO Box 3367  
Gettysburg, PA 17325  
Phone: 717-642-9500  
Fax: 717-642-9508  
E-mail: [pwea@pwea.org](mailto:pwea@pwea.org)  
[www.pwea.org](http://www.pwea.org)



**MEMBER:**

Water Environment Federation

**OFFICIAL PUBLICATION**

*Keystone Water Quality Manager*

# Pennsylvania Water Environment Association

Via Email: [RegComment@dep.state.pa.us](mailto:RegComment@dep.state.pa.us)

September 8, 2009

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

**RE: Proposed Chapter 302 Regulations  
Request for Extension of Public Comment Period  
Request for Public Meetings**

Dear Board Member:

The Pennsylvania Water Environment Association (PWEA) recognizes the value of the considerable amount of effort being expended to bring about final regulations and the forthcoming guidance documents. The regulated community is anxious over the proposed Chapter 302 relating to operator certification. PWEA representatives met with the Department of Environmental Protection (Department) representatives on August 6, 2009 to discuss several of our concerns as described below. Due to time restraints, we were unable to resolve all of the issues with the language of the regulations and the various interpretations. On behalf of our members, we are submitting the following comments to the proposed Chapter 302 regulations. In addition to our comments, the Department asked if we could offer suggestions with our comments.

## **1. Liability of Operators**

The Act provides that operators are liable as related to meeting requirements for certification, reporting to owner a known violation or conditions that may create a violation, providing O&M to comply with permit conditions, and making and implementing appropriate process control decisions. In an attempt to clarify these liabilities, the regulations imposed additional liabilities. With respect to the additional requirements, we consider them to be well beyond the scope of the Act. The following bullet items are those sections related to increasing operator liability:

### **a. Operational problems (302.1201(d))**

This provision creates significant liability to operators which is not authorized by the Act. The draft regulations reflect a lack of basic understanding of the complexity of treatment plant processes. Process control decisions, for a variety of reasons, do not always result in the desired outcome. If an operator makes an unreasonable or imprudent decision which has adverse consequences, he/she may be liable under the Clean Streams Law or some other statute if that consequence is a permit violation. There is no need to create additional liability in these regulations that is not contemplated by the Act.

**Recommendation:**

The proposed provisions are vaguely worded and as such, create an entirely new class of civil (and potentially criminal) liability and is contrary to the Act and should therefore be reworded or omitted from the final rule.

**b. Duties of operator in responsible charge (302.1206(e))**

The attempt to make certified operators liable for all “consequences” of their Process Control Decisions creates new responsibilities and liabilities not provided for in the Act. The proposed regulation would create liability for violations that are not the result of errors in developing the SOP, but which result from unanticipated atypical weather conditions, equipment malfunction, or other circumstances for which the provisions of the Act would not impose liability. The regulations should not create liability where none exists under the statute.

**Recommendation:**

It may be true that action or inaction by an operator could result in a permit violation, in which case liability would fall under the Pennsylvania Clean Streams Law, therefore this section and similar sections should be omitted from the final rule.

**2. Process Control Decision**

The definition in the Act of a process control decision is a decision which maintains or changes the water quality or quantity of a water or wastewater system in a manner that may affect the public health or environment. The Act requires that process control decisions be made only by a properly certified operator. The regulations attempt, partially through a "process control decision plan," to allow uncertified employees, such as PA DEP employees, to make a process control decision. This is in conflict with the Act. The following bullet items are specific Sections related to process control decision:

**a. Revised definition (302.1203(e))**

The term “Process Control Decision” is defined in the Act. It is (to paraphrase): *any decision that affects the quantity or quality of water or wastewater (including keeping it constant) such that it might affect public health or the environment.* The Act provides no exceptions for process control decisions based on who makes them. To the contrary, it mandates that Process Control Decisions may only be made by properly certified operators (Act §§ 1005(d), 1006(d). Proposed subsection 1203(e) states that when DEP employees make a Process Control Decision “to obtain compliance with permit requirements and rules and regulations, or to address permit requests and compliance issues,” it is suddenly not a Process Control Decision – not because it does not “maintain or change the water quality or quantity . . . in a manner that may affect the public health or environment,” but because (and ONLY because) the decision is being made by someone not qualified to make it; whose only qualification is that he/she is employed by the Commonwealth. The conflict between the proposed rule and the statute is apparent.

As for emergency actions, there is no need to contradict the statute by saying that a Process Control Decision is not a Process Control Decision in an emergency. It would be more in keeping with the statute if the exception for emergencies would say that the Department will exercise enforcement discretion and consider the circumstances in the case that a Process

Control Decision is made by someone not certified under the Act in an emergency situation. As drafted, the proposed regulation would directly contradict the Act.

**Recommendation:**

It may be true that action or inaction by an operator could result in a permit violation, in which case liability would fall under the Pennsylvania Clean Streams Law. Also, the Act does not give power to the Department to require the development of a process control plant. PWEA recognizes the need for and use of standard operating procedures but believes this would be more appropriately handled as guidance not within this regulation.

**b. Circuit rider process control decisions (1207(f))**

The Act does not address the number of facilities an operator may be in charge of and as approved, requires a management plan. The proposed section does not take into account site specific plant design, etc. It appears to be the purpose of the proposed rule to require each owner to “sign off” on the management plan for his/her system before the circuit rider is allowed to commence operating that system.

**Recommendation:**

PWEA recognizes that owners need to understand their responsibilities and circuit riders need to provide services that will protect the waters of the Commonwealth. This section should be reworded or more appropriately handled with as guidance.

**c. Imposition of planning requirements on systems (302.1203(c))**

The duties of the Department, owner and operators are set forth by the Act in (Owners - § 1013(f) & in Department -§ 1013(f) . There are no requirements for wastewater system owners to develop and implement a “process control plan.” No such powers are created by the Act. Neither does the Act empower the Department to create new requirements outside the certification/recertification of operators.

In addition and on a practical note, we must mention that the provisions of this subsection may or may not be reasonable for any particular system. Certain of the requirements are not even practicable for some processes (*e.g.*, a list of “trigger parameters for each unit that requires a process control decision”). Even if this provision were authorized by the Act, it should require that the Department provide a justification for making any particular requirement of any particular system.

**Recommendation:**

PWEA recognizes that owners and operators may develop an operational plan. However, this Act does not authorize the Department to mandate planning requirements. We believe this may more appropriately be handled as guidance and training.

**3. Technical Deficiencies**

There are numerous technical items that we believe as written, cause great concern to the regulated community. The following bullet items are just a few of the major issues we reviewed with the Department, most of which were resolved at the August 6<sup>th</sup> meeting. One item that was not resolved is:

**a. Annual report from owner (302.1202(b))**

The annual report is mere busywork, a waste of paper and postage, and appears to be primarily motivated by a need to create a pretext to charge the proposed "fees" to the owners. As suggested at the meeting, the major reporting is for the owner to inform the Department who the operator in responsible charge is.

**Recommendation:**

This proposed provision can be handled through current reporting (i.e., Discharge Monitoring Reports or Chapter 94 report) therefore, should omitted from the final rule.

**4. Proposed Operator and Owner Fees (302.100) (302.202(e))**

The Act provides for accessing reasonable and appropriate fees to recover the cost of providing such services for certification, training for maintaining certification and examination for certification. While we understand that the program is complex, the fee structure in the Act is to be based on services provided to the operators. If the Department's budget is insufficient, its remedy lies with the Legislature, not in the assessment of fees for certification.

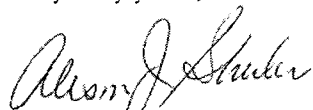
**Recommendation:**

In this time of financial difficulty and the governmental goal for systems to use reliable, full-cost service rates, we feel that the Department needs to move in this direction and reassess their fees as well. A more in-depth analysis of the cost to provide services as detailed in the Act should be done. Cost based on technical support to administrative staff and compliance assistance should not be included in the analysis. In addition, service providers should be held to a standard to reduce Department staff time such as all service providers should submit roster information electronically, thereby reducing staff time to manually input such data.

Several sections of this proposed regulation and new fee structure are a departure from the current program. Given the new certification process for wastewater operators, we have seen a rapid decline in the number of operators being certified. We are alarmed with the wholesale loss of trained professionals through a rising retirement rate and low recruitment numbers, which is compounded by economic constraints and enactment of increased regulations. The regulatory process needs to be sensitive to this very important industry thereby, not including provisions that should alternatively be contained in technical assistance, guidance and training.

Thank you for considering of our comments. We welcome the opportunity to continue working on this regulation and/or subsequent guidance documents to bring about a positive change and movement toward the direction we all wish to obtain, which is safe water and clean environment.

Very truly yours,



Alison J. Shuler  
PWEA President