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Tate, Michele**From:** • Graham Orton [gorton@buckinghampa.org]

2009 SEP 14 PM 3:12

Sent: Wednesday, September 09, 2009 2:16 PM**To:** Tate, MicheleINDEPENDENT REGULATORY
REVIEW COMMISSION**Cc:** EP; RegComments**Subject:** RE: Proposed rulemaking Chapter 302 Regulation I.D. # 7-433

Michele,

Here it is deadline day #2 and I have had scant time to review the regulations. However, I note the following:

- 1) The preamble references the Small Systems TAC and the Certification Program Advisory committee as stakeholders. If the operators associations are correct and DEP did not meet with the operators themselves other than to discuss the fees, the biggest stakeholder was left out of the process
- 2) The proposed revenue stream, using simple math and the department's statistics indicate a revenue stream of several million dollars. Has a justification study been performed for the proposed fees that are in addition to the Federal funding? Is the current DEP program losing money?
- 3) The EPA would withhold funding from states with deficient operator certification programs – it operates under guidelines and does not simply choose to withhold funding. Has the EPA contacted the PA DEP stating that the current program is deficient and threatened to stop the \$5.8M/year funding?
- 4) Since the primary beneficiary of the certified operator program is (sic) the general public, fees should be subsidized from taxes collected from the general public. Particularly, the projected continuing education cost should be reduced through general fund support, not increased.
- 5) The \$10,000 fee cap is clearly to benefit the PUC-regulated for-profit companies operating many systems. As such, the actuality is that publically-owned systems, for the most part, will be subsidizing the large for-profit companies. If the fees are related to operating systems and the number of operators, there seems to me to be no point at which the regulatory workload diminishes significantly with additional systems.
- 6) Regulators should not be the educators. The function should be, if not the current system where DEP approves courses offered by educational bodies or trade associations, then similar to the SEO program where training is conducted through a third party (PSATS) funded and approved by the DEP.
- 7) Is the DEP prepared to commit the human resources needed to implement an expanded program?
- 8) 302.306(g) – I assume there is a full time employee taking care of business so why would an operator who had a late renewal have to wait up to three months to get re-instated? Seems to me the letter could go out the next day and be effective then.
- 9) 302.308(b)(1) the word negligence is subjective and needs to be defined
- 10) 302.308(b)(2) the definition of fraud should be provided or referenced
- 11) 302.308(b)(3) – seems to me that this should be narrowed to documents relevant to the subject at hand. I would include "willful" since a mistake is not a falsification but could be interpreted to be so by some regulators.
- 12) 302.308(b)(4) reasonable care and professional judgment are two things that should be referenced as to what constitutes each – we all think we know what they mean – perhaps this will fall under the appeals process
- 13) 302.308(b)(6) – "potential" is a very bad choice of words – virtually everything can be lumped under that word
- 14) 302.308(b)(7) – unless the "duties" of a certified operator are defined, this should be removed entirely. If nothing else refer to section 302.1201 and then see my comments on that section below.
- 15) 302.802(d) – due to the way courses become available and the busy operator's schedule, the

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- requirement that there can be no carry forward of credits is not reasonable. If the goal is to assure at least some fresh training in each cycle, allow 15 CE's (when 30 are required) to be carried forward.
- 16) 302.1201(a) – “recognize” is not a strong enough word the Department’s consideration of failure by the owner to provide appropriate resources. I believe the department must be required to take owner-provided resources needed to attain compliance into all deliberations about operator liability. As written, a conscientious operator would be forced to either provide materials and resources the owner should be providing or resigning certification. Surely the Department wants to encourage a healthy population of certified operators, not discourage one.
 - 17) 302.1201(b)(11) source water protection is far too vague and way beyond the immediate control of the operator to provide – this should be removed entirely. DEP has a separate program dealing with this and it requires many more participants than just operators.
 - 18) 302.1201(c) simply put – this entire requirement is unworkable. There are numerous daily things that need attention and these problems are mostly minor and require nothing more than a verbal discussion and simple remedial action. Operators and supervisors know when the situation rises to the level of a written request with appropriate documentation and regulators second-guessing in advance decisions made by operators doing their job are sure to complicate things to the point of failure and breakdown. As written, this section will create an adversarial relationship between employers (owners) and employees (certified or other operators) that will be guaranteed to make matters worse under any scenario. 99.99% of certified operators are daily performing their duties and protecting their customers and the environment in a cooperative atmosphere and working environment with the owners. Please do not penalize them because of the .01% of owners and operators who are either grossly incompetent or dishonest – that’s why we have regulators – to ferret out the bad actors and focus attention on them, through orders, fines, whatever, until performance improves. This section alone proves to me that the largest stakeholder, the operator, was ignored.
 - 19) 302.1202(b) and (c) – Given the general stability of operator forces (assuming that these proposed regulations are reconsidered and changed in light of my and many other operators’ concerns), annual reporting is not necessary. If the department needs annual certification, a simple “nothing has changed” letter would save time, energy and paper all around.
 - 20) 302.1203 – Has anyone considered the situation where an uncertified supervisor (or owners representative) makes process changes contrary to what the certified operator would make? This is possibly the biggest threat to the environment and welfare of the general public. The Revisions should contain some sort of whistleblower provision and shield without having to go to other Acts.
 - 21) 302.1203(e) – if DEP takes actions that involve operations, they are, indeed, making process control decisions and in the dark since they are not familiar with the systems like the responsible operator is. How many times have the regulators taken control and the situation gets worse? A lot! In the rare instances when a regulatory intervention action is perceived to be or actually is needed by the regulators, seems to me that the courts should become involved. At a bare minimum, the Department people taking action should have a valid (not PE-grandfathered) certificate.
 - 22) 302.1206(e) - So, if an operator in responsible charge writes a wet weather SOP and there is 6 inches of rain which overwhelms the facility (WWTP) no matter what the wet weather SOP could possibly be, the operator, not the owner (or no-one at all), is accountable? What if there is a power outage, communication failure, broken chemical fee line, etc. etc. This is a regulation DEP would have say is impossible to uniformly enforce. Some things are just unavoidable which this Act revision does not acknowledge on more than one occasion.

Although the intent and intention of the revised Act is clearly a good one, i.e. protection of the public and environment by creating a framework where responsible or better decisions can be made and irresponsible actions can result in penalties, the proposed Act falls short. As written, it will foster adversarial relationships between the owners, operators and regulators and will penalize the vast majority of law-abiding, well intentioned owners, operators and regulators.

Finally (and a pet peeve of mine) I have known at least two exceptional operators who could not pass a written exam but could easily pass an oral exam. I have always felt all iterations of the certification regulations have ignored these people. It seems to me that during the revisions process would be a perfect time to include alternative testing to those who would have difficulty passing a written exam. By copy I am also submitting to the general reg comment site – which is probably you anyway. And I do want to thanks everyone involved with extending the comment period.

Thanks for your time.

Regards,

Graham Orton
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Cherryville, PA 18035
W 9639, S5293

From: Tate, Michele [mailto:mtate@state.pa.us]
Sent: Wednesday, August 12, 2009 9:16 AM
To: Graham Orton
Subject: RE: Proposed rulemaking Chapter 302 Regulation I.D. # 7-433

Mr. Orton:

Thank you for the comments you submitted to the Environmental Quality Board (EQB) concerning the proposed Administration of the Water and Wastewater Systems Operators' Certification Program regulations. Your comments are valuable to the EQB and will be included in the official record of public comments. At the conclusion of the public comment period for this proposal, the Department of Environmental Protection will prepare a comment/response document responding to all the comments received during the comment period. The comment/response document will be submitted to the EQB for consideration as part of the final rulemaking. You will receive notice when the final rulemaking is sent to the EQB, and a copy of the rulemaking package will be sent to you upon request. In addition, if you would like to receive a copy of the final rulemaking following the EQB's action, please contact me. The Department will provide the final rulemaking package to you when it is submitted to the Independent Regulatory Review Commission and the House and Senate Environmental Resources and Energy Committees.

The Department is committed to encouraging public participation in the development of new regulations. The Department's eNews Report is available free of charge and provides subscribers with daily e-mails on the most up-to-date information from the Department. To subscribe, please visit <http://www.dep.state.pa.us/Listrak/listraksubscriberform.htm> In addition, you may want to subscribe to receive electronic notices from the Department through it's eNOTICE system. By signing up for eNOTICE at the following website (<http://www.ahs2.dep.state.pa.us/eNOTICEWeb/>), subscribers receive e-mail notices (or eNOTICES) from the Department concerning a number of Departmental actions, including notices from the time a regulation is initially developed until it is published as a final rulemaking.

Please contact me if you have any questions concerning the status of this rulemaking or any other regulatory initiative.

Thank you.

Michele L. Tate | Regulatory Coordinator
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-----Original Message-----

From: Graham Orton [mailto:gorton@buckinghampa.org]
Sent: Monday, August 10, 2009 1:28 PM
To: EP, RegComments
Subject: Proposed rulemaking Chapter 302 Regulation I.D. # 7-433

August 11, 2009

Independent Regulatory Review Commission
14th Floor, Harrisstown 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. First, may I inform you that the comment period for sweeping changes was way too brief. Please consider extending it. I would like more time to review the regulation changes and their potential impacts.

I am a certified water and wastewater operator and have been employed as such for 38 years. I believe, through discussion with others having more time to review the changes, that the proposed regulations would significantly negatively impact my ability to do my job as a professional. I endorse the comments being prepared by the Eastern PA Water Pollution Control Operators Association and the Pennsylvania AWWA. I believe the proposed changes impose arbitrary and unreasonable requirements, including the creation of new forms of personal liability and that the enabling language is too vague to be realistically or fairly interpreted.

I am concerned about 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.

You will be receiving many detailed letters about this. I am willing to serve on a committee that would proactively work with DEP produce a regulation that would serve the environment as well as the need to have water and wastewater facilities properly operated to reduce the risk of health effects and environmental damage. You have a dedicated DEP regional director, Jenifer Fields, trying to advance a program to provide a new generation of operators to maintain the systems into the future and, at the same time, are proposing to promulgate regulations that will serve to make certified operators scarcer that they already are. Isn't there something you can do?

Sincerely,

Graham Orton
PO Box 822
Cherryville, PA 18035

