

RULEMAKING
ON
ADMINISTRATION OF THE WATER AND WASTEWATER SYSTEMS OPERATOR
CERTIFICATION PROGRAM

COMMENT/RESPONSE DOCUMENT

January 21, 2010

This document presents comments submitted in regard to the Environmental Quality Board's (EQB) proposed rulemaking on Administration of the Water and Wastewater Systems Operator Certification Program and the Department of Environmental Protection (Department) responses to those comments. The EQB approved publication of the proposed amendments at its meeting on April 21, 2009. The proposed rulemaking was published in the *Pa. Bulletin* on July 11, 2009. See 39 Pa. Bull. 3591 (July 11, 2009). Public comments were accepted from July 11, 2009 to August 10, 2009 and the comment period officially closed on August 12, 2009. Due to an error in the *Pa. Bulletin* the public comment period was extended an extra 30 days until September 9, 2009.

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GENERAL COMMENTS

EPA GUIDELINES

1. Comment

These changes were made partly to conform to Environmental Protection Agency (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.

(68)

Response

The reason for these changes to the regulations is to ensure compliance with the EPA guidelines or statutory requirements established by the Drinking Water and Wastewater Systems Operator's Certification Act. In one way or another, every section can be tied back to either of these two requirements. As stated in Section D of the preamble, there is only one area where these regulations are more stringent than the federal requirements. The EPA guidelines apply only to drinking water system operators where the statute applied the same requirements to wastewater system operators.

The EPA guidelines defined the following nine required elements for the Operator Certification Program that must be met in order to ensure compliance with the 1996 Amendments to the Federal Safe Drinking Water Act:

1. Legal authority to implement the program.
2. Classification of all systems, facilities and operators:
 - a. Based on indicators of potential health risk with standards for certification and certificate renewal for each classification.
 - b. Provisions for owners to place systems under the direct supervision of a certified operator(s) with a valid certificate equal to or greater than the classification of the system.
 - c. Provisions for insuring all process control decisions are made by a certified operator.
 - d. Designation of a certified operator to be available for each operating shift.
3. Operator Qualifications
 - a. Take and pass an examination. Exam questions must be validated.
 - b. Have a high school diploma or GED, or relevant training and experience.
 - c. On-the-job experience
 - d. Grandparenting
4. Enforcement
 - a. Appropriate enforcement capabilities such as orders, compliance agreements and penalties.
 - b. Revocation or suspension of a license for misconduct including "fraud, falsification of application or operating records, gross negligence in operation, incompetence, and/or failure to use reasonable care or judgment in the performance of duties.
5. Certification Renewal

- a. Training requirements for renewal
 - b. Fixed cycle for renewal not to exceed three years
 - c. Recertification if individual fails to renew within 2 years of certificate expiration
6. Resources Needed to Implement the Program
 7. Process for Recertification
 8. Stakeholder Involvement
 9. Program Review

Element 8 is addressed through the regulation development process and the interaction the Department of Environmental Protection (Department) has with the Certification Program Advisory Committee (CPAC), the Small Systems Technical Assistance Center Advisory Board (TAC) and the State Board for Certification of Drinking Water and Wastewater Systems Operators (Op Cert Board). In addition, the Department completed an extensive outreach effort as the program was developed and implemented. This effort is described below under “Stakeholder Involvement”. EPA has determined that this process more than adequately satisfies this requirement. The Department and the Op Cert Board completed the first internal program review as part of the regulatory development process in 2004 and 2005. CPAC has just begun an extensive external program review that is required once every five years. This review should be completed within the next year and will include solicitation of public comment. Table 1 is a cross-reference between the remaining seven elements and how the sections in Chapter 302 help to ensure compliance with these nine elements.

Table 1. EPA Guidelines vs Chapter 302 Regulations

Chapter Reference	Legal Authority	Classifications	Qualifications	Enforcement	Renewal	Resources	Re-cert.
102	x	x	x				
103	x	x					
104			x				
201			x				
202						x	
301			x		x		x
302, 303, 304, 305			x				x
306, 307					x		
308, 309				x			
Subchapter D			x				
Subchapter E				x			
Subchapter F			x				
Subchapter G			x				
Subchapter H			x		x		
Subchapter I		x					
Subchapter J		x	x				
Subchapter K			x				
Subchapter L		x		x			

LEVEL OF DETAIL NEEDED IN REGULATION

2. Comment

We recognize the importance of including details to ensure the language in the regulation is as clear as possible. However, there needs to be a balance between providing necessary detail and micro-managing the regulated community in their normal course of business (i.e., Section 302.1201(b) – Duties of Operators includes 16 tasks that may be necessary for certified operators to control the operation/maintenance of water and wastewater systems; Section 302.1203(c) – Process Control Decisions may require a system to have a process control plan that includes 15 pieces of information.) (76)

Response

The Department further examined the level of detail and the lists identified in this comment. Based on the experience gained from moving forward with program implementation, the Department believes these elements at this level of detail are essential for the purpose of clarity. The responsibilities of a certified operator to make process control decisions require the operator to be involved in all aspects of the operation and maintenance processes of the drinking water or wastewater system where they work.

3. Comment

Several sections of the proposed regulation refer to "other" Department rules, regulations or guidelines and "applicable Federal and State laws" or similar language, including Sections 302.301(g), 302.304(a), 302.306(a), 302.306(b), 302.307(a), 302.1101(a), 302.1201(a) and 302.1202 (a)(1). To facilitate compliance and improve clarity, these phrases should be replaced with cross-references to the specific laws and regulations that apply. (76)

Response

This language is consistent with the statutory language defining the duties of operators. It is also consistent with other regulations implemented by the Department. In order to effectively operate a water or wastewater system, any operator should have a very good understanding of the applicable rules and regulations governing that system. Listing them specifically in regulation adds a level of detail that is not necessary.

LIABILITY OF OPERATORS

4. Comment

Section 1014(c) of the Act states the following: ". . . the department may assess a civil penalty upon any person who violates any provision of section 13 [pertaining to duties of certified operators and owners] or any operator who violates section 5(d) or 6(d) [requiring Process Control Decisions to be made only by certified operators] and any order issued by the department under section 4(b)(2)." Since this is the clearly and repeatedly stated interpretation of the Department's most senior officials, we expected to see this stated in the draft regulations. It is not. The failure to confirm past unofficial statements is of great concern to the Association. The Department's interpretation of this ambiguous statutory provision is of great importance to thousands of certified operators and hundreds of owners. A clarification in the final regulations (adopting the previously stated position of DEP) is of utmost importance.

(1,5,6,7,8,9,10,11,12,13,16,17,18,19,20,21,22,23,25,26,28,32,34,39,41,42,43,45,46,47,55,61)

Response

A new Section 1209 (Assessment of Fines and Penalties) has replaced the previous Section 1209 (Satellite Collection Systems). Section 1209 was added to require the Department's assessment of a penalty under Section 4(b)(1.1) of the Act be based on a person's failure to comply with an order. This has always been the intention of the Department and the way the program has been implemented since 2002.

OPERATOR PROFESSION

5. Comment

Concern raised regarding states two-part examinations under 302.1002 (classes & subclasses of water system operators) and 302.1003 (classes & subclasses of wastewater system operators). This creates a certificate that is difficult to equate against other states programs. (33)

Response

The two part examination framework was developed to eliminate unnecessary and irrelevant testing. This approach was developed in response to input from those who took the old examinations and their complaints about the relevancy of the content of those examinations. It has been in place since 2004. The input from examinees since the change to the current examination format has all been positive. The examinations were developed using accepted industry standards for the development of examinations and were all validated for content based on the need to know criteria. One reason why the Op Cert Board was soliciting input on a proposal to change our reciprocity policy is the difficulty in equating this framework with examinations offered by other states. However, we have not heard of any operator certified in Pennsylvania having difficulty obtaining reciprocity from another state program.

6. Comment

The new rules and regulations with increased liability and fees for an operator will result in operators leaving the profession and prevent many others from entering it.(33, 37, 44, 63, 76)

Response

The new rules and regulations are a formalization of the existing program. Therefore, there is no increase in the liability to operators since the federal requirements were first put in place in 2002. The availability of operators and the existing and projected shortfall of certified operators is a concern. This is why a priority has been placed on developing a number of workforce development elements for the Operator Certification Program. On a positive note, the number of examinees and the number of licenses issued has doubled in the past three years.

PUBLIC INTEREST

7. Comment

Section 5.2 of the Act (71 P.S. § 745.5b) directs the Independent Regulatory Review Commission (IRRC) to determine whether a regulation is in the public interest. The Preamble does not include an adequate description of the numerous sections of the rulemaking and the rationale behind the language. Without this information, IRRC is unable to determine if the regulation is in the public interest. (76)

Response

The main reason behind the development of these regulations is to ensure long-term compliance with EPA federal requirements to achieve the public health objectives defined in their guidelines. To this end EPA defined nine components that must be included in a state Operator Certification Program. These components are summarized above. Table 1 shows how each component is addressed within the draft regulations. In addition, there are a number of references in the supporting documents presented to the Environmental Quality Board (EQB) at the April 21, 2009 meeting that describe how these regulations are in the public interest. Specifically:

1. 302.102(a) – This section describes how these regulations are intended to protect public health and safety and the environment by ensuring that certified operators with the appropriate knowledge, skills and abilities make appropriate process control decisions during the operation of water and wastewater treatment systems, water distribution systems and wastewater collection systems.
2. Preamble, Section D – This section describes how the regulations ensure that Pennsylvania’s Operator Certification Program continues to meet the new federal requirements established in the 1996 Amendments to the Federal Safe Drinking Water Act (SDWA). It also identifies where the regulations are more stringent than federal requirements and the reasons why.
3. Preamble, Section F – Benefits of the program cited in this section include protection of the environment, public health and safety and the promotion of the long-term sustainability of the Commonwealth’s drinking water and wastewater treatment systems by ensuring that certified operators with the appropriate knowledge, skills and abilities are available to make the necessary process control decisions. The classification and subclassification framework more accurately reflects what the operator needs to understand to operate a system effectively and successfully. In addition, in some instances, once certified, many operators will receive an increase in pay. System owners may also benefit from cost savings realized through more effective and efficient operation of their water or wastewater system. Implementation of these regulations will ensure continued approval of Pennsylvania’s Operator Certification Program by EPA. This approval is reviewed on an annual basis. If the EPA chooses not to approve the program, the state stands to lose approximately \$5.8 million per year in federal funding for the State Revolving Loan Fund, administered by the Pennsylvania Infrastructure Investment Authority.
4. Regulatory Analysis Form, Paragraph 11 – This paragraph itemizes specific reasons why these regulations are in the public interest. The primary reason cited is the need to protect the significant investment that has been made for the state’s drinking water and wastewater treatment system infrastructure and the need to operate and maintain this infrastructure effectively and efficiently. The certified operator is key to achieving this goal. The certified operator’s process control decisions impact the environment, aquatic life and the public health and safety of Pennsylvania’s citizens. Other reasons cited in this paragraph include the fact that the proposed rulemaking will formalize the restructuring of the operator certification program, expand training opportunities through privatization and formalize the new technology-based certification classes and subclassifications to allow operators to train and test for the types of treatment technology they choose to operate. These changes have streamlined the entire training and examination process, resulting in operators that are more qualified in a shorter time.

In conclusion, the objectives, regulatory purpose, benefits and the required regulatory analysis included in the published regulatory package do make a clear connection to the public interest.

8. Comment

The Preamble to the final-form regulation should explain why this rulemaking will not have an adverse effect on the number of certified operators in the Commonwealth as well as explain what

actions will be taken to protect the public health if the rulemaking does create a shortage of operators. (76)

Response

These regulations codify the Operator Certification Program, in existence since 2002 for ensuring the competency of operators of drinking water and wastewater treatment systems. In the past three years the Department has seen the number of examinees and applicants for certification double. Therefore, at this point, there is no evidence that these regulations will have an adverse effect on the number of certified operators. The Department also recognizes the fact that a significant number of the existing certified operators will be retiring within the next five to ten years. In an effort to ensure there are a sufficient number of operators to take their place the Department has started a number of workforce development initiatives with the Department of Education and the Department of Labor and Industry, a number of community colleges, universities in the state and industry associations. The regulations also provide a number of options to ensure owners are able to comply with the requirements of the act and these regulations should a shortage of operators occur. These options include the use of circuit riders and standard operating procedures.

REGULATION TRAINING

9. Comment

Will there be a regulations training course to ensure full understanding of the new regulations? How will these regulation changes address the pass/fail results associated with the operator certification exams? (36, 68)

Response

Yes, the Department intends to conduct a number of training sessions and workshops on the regulations, much like what was done after the guidelines were finalized in 2002. The regulations will have no impact on the pass/fail results associated with the examinations. The pass/fail rates for the majority of the examinations improved significantly as a result of the conversion to a two-part examination framework in 2004. In addition, using industry standards for examination development, the Department recently completed a comprehensive review of all the examinations and made revisions, as needed, on the examination length, passing score and content. One of the factors used in this review is the pass/fail rate of the examinations.

SHORT TIME FRAME FOR PUBLIC COMMENTS

10. Comment

Concerns about the short time allotted for public comments for the proposed rulemaking and requests an extension in the comment period.

(1,5,6,7,8,9,10,11,12,13,14,16,17,18,19,20,21,22,23,25,26,28,31,32,34,38,39,41,42,43,45,46,47, 61,70, 76)

Response

The public comment period was extended an extra 30 days until September 9, 2009. As explained in the response to Comment 11 the regulated community has had many opportunities to review and comment on the proposed regulations. Therefore, a 60-day comment period was more than ample enough to enable the public to review and comment on these regulations.

STAKEHOLDER INVOLVEMENT

11. Comment

The draft regulations have not been subject to stakeholder input and should be withdrawn for regulatory negotiation.

(1,5,6,7,8,9,10,11,12,13,14,16,17,18,19,20,21,22,23,25,26,28,32,34,39,41,42,43,44,45,46,47,48,49,55,61,75,76,77)

Response

The Department, in partnership with the Op Cert Board, started the outreach effort for this program when Congress first passed the 1996 Amendments to the Federal Safe Drinking Water Act. The US Environmental Protection Agency (EPA) thinks this effort more than adequately meets the federal requirements for stakeholder involvement in the program. This outreach effort can be summarized as follows:

Public Meetings:

- November 1997 – 4 public meetings held around the state to solicit input on the first draft of statutory language to amend the program to ensure compliance with the new federal requirements.
- December & January 1998 – 6 public meetings held in each of the Department Regional Offices to solicit additional input on draft statutory language and to highlight changes made based on the input received the previous year.

Concept Papers:

To build consensus for the passage of the statutory language, the Department developed a series of concept papers that were subsequently used to draft the existing guidelines and the draft regulations. The topics of these concept papers covered the major outstanding issues defined in the second round of public meetings and included training, testing, experience requirements, site specific certification, process control decisions, standard operating procedures, circuit riders, security training, application to professional engineers and system and operator certification classifications. These concept papers were drafted using input from a series of workshops held as part of the major industry association conferences in 1999. The papers were then circulated and revised at subsequent conferences and workshops in March 2000, July 2001, October 2002 and July 2003.

The concept papers were also reviewed and revised in partnership with the Op Cert Board, the CPAC and the Small Systems Technical Assistance Center Advisory Board (TAC Board) before they began development of the program guidelines and draft regulations.

Presentations at Conferences, Seminars and Workshops:

Department program staff presented materials on the development of the program, the established federal requirements at various industry association conferences, seminars and workshops upon request. The following is a listing of organizations that asked for these presentations:

- AFSCME, Council 13
- Centre County Water Authority
- Citizens Advisory Council

- Department of Conservation and Natural Resources
- Eastern Pennsylvania Water Pollution Control Operators Association
- Penn Hills Municipal Authority
- Pennsylvania Association of School Business Officials
- Pennsylvania Municipal Authorities Association
- Pennsylvania Rural Water Association
- Pennsylvania Section of American Water Works Association.
- Pennsylvania Water Environment Association
- Philadelphia Water Authority
- Water Utility Council
- Water Works Operators Association of Pennsylvania
- Western Pennsylvania Water Pollution Control Operators Association

Workgroups:

- February through April, 1998 -- Operator Certification Issues Workgroup – this was a group of stakeholders convened to help the Department work through a number of issues that were identified in the public meetings and to address the required elements in EPA federal guidelines.
- January through June, 1999 -- Drinking Water and Wastewater Training Needs Assessment Workgroups – these two groups were convened to define the knowledge, skills and abilities operators need to have in order to operate a system. This information was used for the definition of the treatment technologies and subclassifications, the content of the examinations and the training, continuing education and experience requirements defined in the regulations.

Development of Program Guidelines:

Using the concept papers described above, the Department and the Op Cert Board began development of program guidelines in February, 2002. There were two separate guidance documents developed; “State Board for Certification of Water and Wastewater System Operators, Operator Certification Program Guidelines”, *Document Number 150-0200-002*, and “Pennsylvania’s Interim Program for Operator Certification”, *Document Number 383-2300-001*. The first document covers the roles and responsibilities of the Op Cert Board, the second document captures the program requirements needed by the state to obtain EPA approval of the program and avoid the loss of 20% of the Drinking Water State Revolving Loan Fund. The Department worked with the Op Cert Board, CPAC and TAC to finalize these two guidance documents. All meetings of these three committees were advertised and open to the public. These meetings involved a page-by-page discussion and editing of these guidance documents. The Department’s process for the development of technical guidance documents was followed. The timeline is as follows:

“Pennsylvania’s Interim Program for Operator Certification”, *Document Number 383-2300-001 Version 1*

- Publication in the *Pennsylvania Bulletin* – Notice of Availability for Public Comment – March 16, 2002. Public comment period ended April 30, 2002.
- Final meetings with the Op Cert Board, CPAC and TAC to finalize comments – April, 2002.
- Publication in the *Pennsylvania Bulletin* – Final Guidance Document – July 20, 2002

Version 2

- Publication in the *Pennsylvania Bulletin* – Notice of Availability for Public Comment – August 2, 2003. Public comment period ended September 1, 2003.
- Final meetings with the Op Cert Board, CPAC and TAC to finalize comments – July, 2003
- Publication in the *Pennsylvania Bulletin* – Final Guidance Document – February 21, 2004

Final Version

- Publication in the *Pennsylvania Bulletin* – Notice of Availability for Public Comment – March 5, 2005. Public comment period ended April 4, 2005.
- Meetings with the Op Cert Board, CPAC and TAC to finalize comments – April 2005.
- Publication in the *Pennsylvania Bulletin* – Final Guidance Document – June 25, 2005.

The revisions to this guidance document were made in response to discussions and meetings with various stakeholders as the program was being implemented and the draft regulations finalized. Language negotiated in this guidance document became the framework for the draft regulations.

State Board for Certification of Water and Wastewater System Operators, Operator Certification Program Guidelines”, *Document Number 150-0200-002*

Version 1

- Public meetings with the Op Cert Board to develop draft guidelines – October 2002 through February 2003.
- Publication in the *Pennsylvania Bulletin* – Notice of Availability for Public Comment – August 2, 2003. Public comment period ended September 1, 2003.
- Public meetings with CPAC and TAC – July 2003
- Publication in the *Pennsylvania Bulletin* – Final Guidance Document -- February 21, 2004.

Version 2

The Op Cert Board began drafting revisions to this guidance document in 2007. All meetings to discuss these revisions were advertised and open to the public. Instead of finalizing these revisions into a new guidance document, they were incorporated into the current draft version of Chapter 302 which was shared with the Op Cert Board, TAC and CPAC in April and June, 2008. The Op Cert Board adopted this draft version of the regulations in December 2008 to replace this guidance document.

Training Workshops

As the new program requirements were put in place, the Department conducted a series of training workshops for the regulated community impacted by the program changes. In addition to describing the new requirements, program staff used these sessions as an opportunity to solicit input and opinions on aspects of the program from the attendees. This input was used to make adjustments to the program and to the draft regulatory language. These workshops included:

- Certified Operator Workshops – July and August 2002 – 14 locations across the state
- Facility Owner Workshops – October and November 2002 – 10 locations across the state
- Grandparented Operator Workshops – August and September 2002 – 8 locations across the state

12. Comment

Various associations did participate in a regulatory negotiation ("reg-neg") process in 2003 and 2004 but the process was abruptly terminated by DEP in 2004 without discussing, much less reaching consensus on, a number of important issues. No communication with regard to the proposed regulations has been allowed by DEP since that time.

(1,5,6,7,8,9,10,11,12,13, 14,16, 17,18,19,20,21,22,23,25,26,28,32,34,39,41,42,43, 44, 45,46,47, 48, 49,55,61,75, 76, 77)

Response

The Department did not terminate discussions on the regulations in 2004. Once the program guidelines were in place and the training workshops completed as described above, the Department took the language from the program guidelines and used this as the framework for the first draft of the regulations. Since 2004 there have been three draft versions of the regulations that were shared with CPAC, TAC and the Op Cert Board, in accordance with the policies and procedures established for the development of regulations to ensure compliance with state and federal statutory requirements. All meetings with these three groups were advertised and open to the public. The review of draft versions of the regulations was done through a facilitation process where every page was reviewed, discussed and edited repeatedly as appropriate. The development of these three versions of the draft regulations can be summarized as follows:

Version 1

This version of the regulations maintained two separate chapters. One chapter captured the roles and responsibilities of the Op Cert Board and mimicked the language in the Op Cert Board guidelines that were finalized in February, 2004. The second chapter captured the Department's roles and responsibilities. It also includes the provisions required to meet the EPA guidelines including standards for certification, certificate renewal, grandparenting of operators, classification of systems based on size and complexity and the requirements for the operation of a system. This chapter used the Interim Program guidelines that were finalized in July 2002 and revised in February 2004 as the framework for this chapter. The timeline for the development of this first version was:

- Began meetings with TAC, CPAC and the Op Cert Board – Spring, 2003
- Final meeting with TAC and CPAC – February 12 and 19, 2004
- Final meeting with the Op Cert Board – February 20, 2004

The draft fee structure in this version of the regulations was based on input from the regulated community and a survey of fees charged in other states. Since program staff could not demonstrate that the proposed fees would cover program costs, they were asked to go back and complete this analysis before submittal to the EQB.

Version 2

The analysis of the fee structure resulted in program staff doing a very extensive analysis of the business processes of the Op Cert Program. Their conclusion was that the existing administrative processes were cumbersome; and in some cases, duplicative. In partnership with various industry associations, TAC, CPAC and the Op Cert Board, program staff streamlined and revised the administrative aspects of the program. These changes were incorporated into the second version of these regulations. In addition, the two chapters were merged into one Chapter. The timeline for the development of this version was:

- Began meetings with TAC, CPAC and the Op Cert Board – Spring, 2004
- Final meeting with TAC and CPAC – June 9 and 27, 2004
- Final meeting with the Op Cert Board – July 2005.

This version of the regulations was not submitted to the EQB due to issues raised by the regulated community related to the administration’s proposed language for automatic fee increases.

Version 3

This version of the regulations was only slightly modified to:

- (1) Address issues identified by the regulated community due to a drafting error in the statute,
 - (2) Include new language for the review of the fee structure every three years.
 - (3) Cover changes the Department wanted made related to the certification of collection system operators,
 - (4) Address the results of a study conducted by the Department to determine the need for a nutrient reduction wastewater subclassification,
 - (5) Cover changes the Op Cert Board made to its policies and procedures as a result of a detailed review of its program guidelines,
 - (6) Solicit input on the requirements for reciprocity.
- Meeting with CPAC – April 7, 2008
 - Meeting with the Op Cert Board – April 9 and June 5, 2008
 - TAC members were invited to attend the April and June meetings of CPAC and the Op Cert Board

When program staff was putting the final package together, it became evident that the fee structure first proposed in the first and second versions of these regulations would no longer cover the costs for the administration of the Operator Certification Program. Therefore, the Department put together an options paper to address the shortfall and shared it on December 1, 2008 with TAC, December 2, 2008 with CPAC and December 15, 2008 with the Op Cert Board. The current proposed fee structure is a result of the negotiations conducted with members of these three committees, the Water Utility Council and members of the regulated community.

This version of the regulations was submitted and approved as draft regulations at the April 21, 2009 EQB meeting.

13. Comment

Continue to meet with the regulated community on this rulemaking and suggest that the EQB issue an Advanced Notice of Final Rulemaking. This would allow interested parties and the EQB the opportunity to resolve as many concerns as possible prior to the submittal of the final-form regulation. (76)

Response

The Department is going to issue an Advanced Notice of Final Rulemaking in early 2010. There will be a 30-day comment period associated with this notice. The Department intends to have the final rulemaking package to the EQB in summer 2010 for approval.

TYPOGRAPHICAL ERRORS

14. Comment

Under Sections 302.202 (f) and (g), the references to Section 302.202(b) are incorrect. The correct reference is Section 302.202(d). (30,76)

Response

The Department has corrected these references.

15. Comment

At a number of places the draft regulations refer to "this act." Reference should be to "the act." (17, 18)

Response

The Department has corrected the wording to "the act".

SPECIFIC REGULATORY LANGUAGE

Subchapter A. General Provisions

302.101 -DEFINITIONS

16. Comment

Administrative Code – is defined but it does not appear to be used anywhere in the proposed regulation; recommend this term be deleted from this section in the final-form regulation. (76)

Response

The Department has deleted this definition.

17. Comment

Board-designated agent – the definition refers to a "committee member," but never explains what committee is at issue. The final-form regulation should specify what particular committee is being referred to in this definition. (76)

Response

The Department revised this definition to include any Certification Program Advisory Committee member or Department staff person designated by the Board to complete a particular task on behalf of the Board.

18. Comment

Board Secretary - what is meant by the term "program?" and also, the Certification Act requires an election of the Board Secretary and the Chairman and the definition identifies a Department-recommended staff member. (76)

Response

The Department revised this definition to reflect the fact that the Board needs to elect a Secretary to administer the administrative aspects of the program. Additional language is also added to include the entire name for the Operator Certification Program.

19. Comment

Certificate program - definition is vague; does not provide enough information to explain how it is related to this Chapter or the subject matter contained therein as well as the definition refers to a "type" of "Department-approved training" which should be clarified as to what is Department approved training. (76)

Response

This definition was revised to reflect the definition in the Department's training approval process guidelines, Document Number 383-2300-002, "*Training Provider Manual for the Pennsylvania Water and Wastewater System Operator Training Program.*" Pursuant to section 1004(b)(6) of the Act, this comprehensive guidance document was developed in consultation with the Op Cert Board, TAC and CPAC to define what is considered "Department-approved" training.

20. Comment

Contact hour - what is considered a "Department-approved education experience?" Also, the definition does not establish specific amount of time that would constitute a "contact hour". (76)

Response

Pursuant to section 1004(b)(6) of the Act, a comprehensive guidance document was developed in consultation with the Op Cert Board, TAC and CPAC to define what is considered "Department-approved" training. The document also describes how a contact hour would be defined and assigned to different types of training and continuing education experiences. This document is "*Training Provider Manual for the Pennsylvania Water and Wastewater System Operator Training Program*", Document Number 383-2300-002

21. Comment

Direct filtration - Paragraph (ii) begins with the phrase "The term normally includes flocculation after coagulation..." The term "normally" is non-regulatory language which results in a vague definition. The definition should be amended to specify under what circumstances "flocculation after coagulation" is, and is not, considered "direct filtration." (76)

Response

The Department revised this definition to eliminate the term "normally".

22. Comment

Fees - definition indicates that fees are only charged to an "applicant" and the definition does not address operators who take training courses for continuing education. (76)

Response

The Department has deleted the phrase "an applicant assigned to".

23. Comment

Operator - The proposed regulations do not copy definition of "Operator" as it appears in the Act, and omit this exemption. Hence, reading the regulations without reference to the Act, the rules appear to require operators of industrial waste treatment facilities to be certified. This is contrary to the Act. The error can easily be corrected by including the exemption in the definition of Operator as it appears in the Act. (17, 18, 76)

Response

Including the exemption for industrial waste water treatment systems in the definition is placing a substantive requirement in the definition which is contrary to the Legislative Reference Bureau's style manual. The definition of operator is exactly as written in the statute but for the substantive exclusion. The substantive exclusion is in Section 302.103(c) (relating to Scope). Further wording in the regulatory definition of operator is not needed.

24. Comment

Permitted Average Daily Discharge Flow - The term "hydraulic design capacity" should be deleted and the term "Permitted Average Daily Discharge Flow" should be defined, for POTWs, as "the permitted annual average daily discharge flow, as stated in the WQM permit." (17, 18, 35, 76)

Response

The Department agrees with the comment and these changes have been made to the definition.

25. Comment

Person - Paragraph (i) includes "political subdivision" as an example of what would be considered a person. However, the term is not included as an example in the statutory definition (see Section 1002 of the Certification Act) and the term is not included as an example in paragraph (ii) of the proposed definition. (76)

Response

The Department deleted the phrase "political subdivision" from the definition.

26. Comment

The text in the definition of Recertification includes an inadvertent clause. The definition should say, "The process by which an individual, previously certified under the act, obtains a new certificate following expiration, suspension, or revocation of the previous certificate." (17, 18)

Response

The Department made this change.

27. Comment

Satellite collection system - definition would require regulation of conveyance systems that are not regulated by the Certification Act, and that it would also waive regulation of privately-owned collection systems that are required to be regulated by the Certification Act. According to the commentator, the main reason for this result is that unlike the Certification Act, the regulation omits the term "collection facilities" and uses the term "wastewater system." Through this change, the commentator contends that the end result would be that anyone making process control decisions at facilities like hotels, restaurants or schools would be required to maintain a Class E operator's certificate, (see Section 302.109.) What is the EQB's intent and statutory authority for making this change? (76)

Response

The wording in the definition has been modified accordingly. Consistent with the act, any industrial, commercial or other wastewater collection system that generates more than 2000 gallons per day, regardless of whether or not the system is publicly or privately owned, must have a certified operator. Section 1209 (Satellite Collection Systems) has been deleted and replaced with new Section 1209 (Assessment of Fines and Penalties).

28. Comment

302.301 & 302.902(a)(5) - Erroneous definition of "Satellite Collection System" results in regulation of industrial, commercial, and other conveyance systems not intended to be regulated by the statute. The draft regulations change the definition of Class E systems so as to include a number of facilities not intended to be regulated by the Act. The problem is that the definition differs from the statute by omitting the term "collection facilities" used in the Act and substituting for it the term "wastewater system." (17, 18)

Response

See the response for Comment 27. The Department has modified this definition to coincide with the definition in the statute.

29. Comment

Upgrade - The term is not clear and does not appear to be correct. The concept is that a certification is "upgraded" to reflect an increase in the classification, or an addition of a new

subclassification of an operator's certificate. This does not "increase" the operator's authority "of a system of a specific flow," but changes his authority to include operation of a system that has been modified so that it is now of a different classification or subclassification.(17, 18)

Response

The Department revised this definition to more accurately reflect what an "upgrade" in an operator certificate means.

302.103 - SCOPE

30. Comment

Designation of Available Operator - Although included in the "scope" section of the regulations, and therefore unlikely to be carefully reviewed for substantive requirements, this provision implies that owners must formally designate "available operators" in order for them to be allowed to make process control decisions. While we do not object to the principle that certified operators be designated as available operators in order to be authorized to make Process Control Decisions at a particular facility, there is ambiguity in this provision regarding how such designation must be made. We suggest that the rule be clarified by stating that designation of available operators be "by any means determined to be appropriate by the owner." (17, 18)

Response

As identified by these commentators, one of the duties of the owner is to designate which certified operators are authorized to make process control decisions for his or her system and to identify those operators to the Department. There must be one method of reporting these identifications to the Department if confusion and misinformation is to be avoided. This mechanism is identified in Section 302.1202 (b) and (c). The Department added a cross-reference to this section for clarity.

31. Comment

This section contains substantive provisions that are inappropriate for a "scope" section. For example, it lists what an applicant must do to become an operator. If this language is needed, we recommend that it be moved to more appropriate subchapters and sections. (76)

Response

The Department revised section 103 to focus on the types of facilities covered and not covered by the act and these regulations. The language defining the requirements for operator certification has now been put into a new Section 302.104.

32. Comment

302.103(c) - The regulations regulate owners and operators, not systems. Therefore, the introductory sentence in this section should say "Owners and operators of the following systems are exempt from the requirements of this chapter." (17, 18)

Response

The Department revised this sentence as suggested.

33. Comment

302.103(c)(5) - The proposed rule would exempt ONLY a "water treatment device that serves a single private residence." However, water systems that serve as many as fourteen connections or

serve 24 people are not public water supplies and not required to be operated by certified operators. By misstating the exemption, the rule appears to require certified operators for these unregulated systems. (17, 18)

Response

There is the possibility that some people may be confused as to which facilities are covered and which are exempted. To clarify the issue identified here, The Department re-wrote this section to clearly delineate all the types of water and wastewater systems subject to these regulations and which types are exempted.

Subchapter B. General Requirements for Applications for Certification Actions

302.201 – FORM OF APPLICATION

34. Comment

302.201(b)(1) - Obtaining a Criminal History Record may be difficult for some operators, especially those in rural areas. (Suggests Department provide that it will obtain applicant's records, for an appropriate fee). (17, 18)

Response

The Department can not make this request on behalf of the operator. The Pennsylvania State Police have made this as simple as possible by providing a number of different ways to obtain this report. The report can be obtained from any of their local barracks or electronically through their website. It can be completed electronically on the website or by mailing a hardcopy to them.

35. Comment

302.201 (b)(c)(d)(e) - Notaries do not “affirm” signatures. Signatures are "acknowledged" by notaries, not affirmed. It would be impossible to comply with the requirements as drafted.(17, 18)

Response

The Department changed the language to “notarized signature.”

36. Comment

Should include information as to where/how a Department-approved form can be obtained.(76)

Response

The Department added this information to 302.201(a).

37. Comment

Subsections (b)(2)(ii) and (e)(3)(ii) refer to written verifications of direct knowledge of an operator's work experience before February 21, 2002. How would a supervisor "verify" this information? (76)

Response

The application contains an area signed by the supervisor attesting to the fact that the operator was working at a system prior to February 21, 2002. There are a number of ways the operator can prove this if he or she was not working for the same supervisor prior to February 21, 2002 including a letter from the previous system, copies of personnel records or oral confirmation

from the operator's co-workers. The Department feels the method of verification should be left to the discretion of the operator and the direct supervisor and not mandated by regulation. If the operator can not prove this to the satisfaction of the supervisor, then the supervisor shouldn't sign off on this verification. In that case, the operator is going to have to demonstrate that he or she has a high school diploma or GED in order to get certified.

38. Comment

Subsection (e) pertains to applications for certification action for reciprocity which requires an applicant to provide a copy of their PSP criminal history. If an applicant is from outside the Commonwealth, would the PSP criminal history provide the necessary information? Should the criminal history from the applicant's state of residence be required in addition? (76)

Response

The Op Cert Board discussed this at length. The Pennsylvania State Police report may, or may not, have this information. Because the statute specifically asks for a criminal history report from the Pennsylvania State Police we can not request a criminal history from the applicant's state of residence.

302.202 – OPERATOR CERTIFICATION PROGRAM FEES

39. Comment

302.202(a) - requirement for Client IDs for new applications; the requirement to print the Client ID is acceptable for certified operators. However, those initially applying for certification will not have a Client ID to use. This section should say "if one has been assigned." (17, 18)

Response

Client IDs are assigned the first time an applicant registers for an examination. Therefore, they will have a Client ID when they are submitting the paperwork for initial certification.

40. Comment

The "fees" presented in this section are substantially in conflict with the requirements of the Act and many of them have no legal basis whatsoever. In fact, with some exceptions, the proposed fee schedule appears to be an unlawful attempt to tax the regulated community. The Association objects to most, but not all, the proposed "fee schedule" for three reasons:

- A. Some of the proposed charges are taxes, not a fee
 - B. The proposal assesses fees on persons not subject to fees
 - C. The proposal assesses fees that are not related to the services provided
- (17, 18, 31, 34, 53, 62, 63, 64, 67, 68, 76, 77)

Response

The Department disagrees with this comment. The fees set forth in section 302.202 are authorized under Sections 1004(b)(6) and 1004(b)(3) of the Act. Section 1004(b)(6) authorizes the Department to "...establish and collect such fees for attendance at department-sponsored training or continuing education...and for approval of training and continuing education conducted by others as may be reasonable and appropriate to recover the cost of providing such services." Section 1004(c)(3) of the Act provides that the Environmental Quality Board has the power and duty to "establish fees for examinations and applications for certification, recertification and renewal of certification as may be appropriate to recover the cost of providing such services." The proposed fees are equitable and relate to training and certification activities

regulated under the Act. The fees were developed with input from CPAC, TAC, the Op Cert Board, the Water Utility Council and other members of the regulated community through a series of public meetings held in December 2008. The services provided under the Act are for the benefit of owners, training providers and examination providers as well as for operators. Accordingly, it is only fair that all beneficiaries of the services provided under the Act share equitably in recovering the costs of the administration of the Act.

41. Comment

The fee structure is aimed at covering the Department's entire annual cost of administering the operator certification program. Is the annual revenues and annual costs information available? Do these fees exceed the legislative intent of "reasonable and necessary" as defined in the operator certification law? 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. 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. 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. (38, 68, 70)

Response

The fee analysis completed by the Department was part of the package submitted to the EQB and was available to the public. These fees are designed to recover the 69% of the program costs covered with general funds. The Department receives funding from the EPA State Revolving Loan Fund Program set-asides for the remaining 31%. As stated above, the statute gives the Department the ability to establish and collect fees for examinations, applications for certification, recertification, certificate renewal and training. The current fee proposal to split the costs of the program between operators, owners, training providers and examination providers was designed with input from TAC, CPAC and the Op Cert Board, the Water Utility Council and other members of the regulated community through a series of public meetings held in December 2008. They felt that every one of these entities receives a "service" from the administration of this program and should, therefore, share in the costs for providing that service. The annual service fee for system owners is based on discussions with TAC, CPAC, the Op Cert Board and others that the larger systems may need more certified operators than the smaller systems. They, therefore, generate a larger percentage of the workload to the Department.

42. Comment

EPA's concern is the creation of fees for training sponsors. EPA would not be able to pay such fees and would therefore be unable to offer contact hours to operators. EPA cannot charge fees for hosting events therefore this is not a viable option. EPA believes that the fees are not appropriate to be charged to EPA, given the range of activities funded under various federal grant programs offered by EPA and PA. These grants far exceed EPA's share of this program's administrative costs as an approved training provider. It is recommended that DEP create exemption categories whereby certain providers such as EPA will be exempt from all fees. (60, 76)

Response

The Department added language to this section exempting federal or state agencies that provide funding to the Department for the administration of the Operator Certification Program from these fees.

43. Comment

Course approval fees will discourage the creation of new courses and adding courses similar to those approved. The result will be training menus will not grow. Operator educational opportunities will be reduced and new technology and approaches will not reach them quickly. Costs increases will lead to a reduction in the number of operators trained. I suggest a phased 5 year approach to course approval fee increases and in the interim continue to seek grants to cover the shortfall. Increasing exam fees will further increase the shortage of operators. Increasing the exam provider fees will reduce the numbers of operators taking exams and reduce the number of exam providers. Other solutions (1) Increase the cost per exam paid by the operator when they apply for their certificate. (2) A phased 5 year approach to exam provider fee increases. Fully implement electronic testing as these can spread the cost increase over a larger base than the individual provider. (2)

Response

The Department already gets grant assistance from the US Environmental Protection Agency to help with the administration of this program. There are no other funding sources available that the Department can apply for in order to supplement this program. A phased five year approach as suggested would require additional administrative staff to implement, thus increasing the cost of the program. The existing framework was negotiated in partnership with CPAC, TAC, the Op Cert Board, the Water Utility Council and other members of the regulated community through a series of public meetings held in December 2008. The Department feels this approach is the most fair and equitable approach to the assessment of fees to cover the costs of the program. In addition, the Department is looking into options to convert to an electronic testing format. This service should be available once the regulations are in place and the Department is able to collect the necessary fees to cover the costs for examination administration.

44. Comment

In the fee calculations consider a reasonable approach to contact time comparison with course content. Suggest a flat fee per course credit hour, in that, this would be easier to control in the long run (Should include electronic credit card transactions). Per-unit assessment fee should be utilized like \$1.00 per course entry per student as this would minimize fee assessment charges and calculations as many course rosters include multiple course credits for the same operator. An incentive idea for course credit-database reporting is to make the Training Provider adhere to policy for reporting within 30 days with extension of 10 days or they are fined a fee for late reporting. (54)

Response

An approach as suggested would require additional administrative staff to implement, thus increasing the cost of the program. The Department believes it would also promote the development of shorter, less comprehensive courses that may not meet the needs of the operators. The existing framework was negotiated in partnership with CPAC, TAC, the Op Cert Board, the Water Utility Council and other members of the regulated community through a series of public meetings held in December, 2008. The Department feels this approach is the most fair and equitable approach to the assessment of fees to cover the costs of the program.

45. Comment

The effect of increasing fees will be to drive out small specialized training providers leaving the field to the larger ones. Specialty training (incinerators, co-generators, screw presses etc) will not be addressed in mass market courses. The new fees discourage smaller more specific training and mandates generalized broad based training. The maximum fee a training provider or owner will be charged is \$10,000 per year. Why the cap? You are transferring the costs for large training providers and municipalities onto the smaller ones. This makes it harder for small towns to run their plants, raises barriers for new providers and drives out the small training providers. I suggest that total costs should be divided by the number of students and that should be what the training provider pays. This is zero sum. At the end of the day all costs are born by the wastewater treatment plants. (3)

Response

The proposed fee structure was designed in partnership with TAC, CPAC, the Op Cert Board the Water Utility Council and other members of the regulated community through a series of public meetings held in December, 2008. A number of smaller training providers were also in the audience at these meetings. The concerns of this commentator were raised and the proposed fees adjusted to ensure this does not happen. This fee structure was developed to distribute the costs equitably based on the amount of time needed by program staff to provide the services. This way, the training provider, large or small, will only pay for the services he is asking be provided. Our second goal was to make the fees equitable. At some point, these fees become unaffordable for the large training provider as well, thus the need for a cap. There is no perfect solution, but we feel this fee structure is as fair and equitable as possible. The fees are no different for specialty training or generalized training, so it is unclear how these fees would result in more generalized broad based training.

46. Comment

\$1.00 fee is not worth the labor. This fee should be deleted. (24)

Response

The largest cost to the Department for the administration of the training program is the processing of the course rosters to ensure operators get credit for the continuing education they take. Rosters with more names on them take longer to process. By assessing the costs based on the number of names, the small training providers that train a limited number of people can still do that training without incurring the same large fee that a larger training provider would pay for the same service.

47. Comment

The proposed fee structure for Examination Providers is unfair to small companies who would be charged exorbitantly more dollars per registrant than some of the larger Associations simply because we won't be providing as many exam sessions. (66)

Response

The proposed fees for Examination Providers are a one-time, annual fee that would be paid at the beginning of each year. Assessing a fee based on the number of registrants, while possibly more equitable, would require the collection of a fee from the examination provider before each examination session. Collecting the fees upfront, once a year will minimize program staff time in processing and collecting these fees, thus minimizing administrative costs.

48. Comment

Pennsylvania operators will refrain from seeking new subclassification certifications if the proposed \$150.00 fee for new certifications is written into law. That is a heavy financial burden to place on operators, considering that there are 14 water subclassifications and 4 wastewater subclassifications. Suggest that utilities share a larger portion of the certification programs as they are the entities who are empowered to adjust their rates to better reflect the true cost of producing safe and clean water. (66)

Response

The \$150 initial certification fee is just that, a fee for the operator to get certified. There is no additional fee for subsequent upgrades as the operator adds subclassifications or increases the class of certification of his or her license. All certified operators, effective the date the final regulations, are also exempt from having to pay this fee in the future. The only fee they will incur in the future is the \$60 fee for renewal every three years.

49. Comment

Clarify that the proposed fees for "Approved Examination Providers" are one-time fees on an annual basis. Specifically, the language should clearly indicate that the fee for a conference covers the entire conference, not individual sessions within the conference. Moreover, the course approval fee should specify that it is a one-time approval for that particular course, and not an annual approval for the course. In addition, further clarification is needed regarding the proposed fees for "Owners" to specify that the Annual Service Fee for Class A through E Systems is based on Public Water System ID (PWSID) for water systems or National Pollutant Discharge Elimination System (NPDES) permit numbers for wastewater systems, with the maximum fee a trainer or owner will be charged is \$10,000 per year. (65, 69, 74, 77)

Response

The Department made these revisions.

50. Comment

(Costs of Renewal \$ 60 and Initial Certificate \$ 150) - The added cost to the licensee and the system owners are being ignored. The amount of younger persons applying for and attaining certification is dwindling. Thus the state should be actively recruiting additional operators, not seeking to put added strain on the current license pool. By not enlisting new blood into the operator pool the health of the Commonwealth's citizens will be in jeopardy. Extensive review and control over the quality and content of the approved education courses has prohibitively increased the administrative costs resulting in increased fees. Do we need this extensive control? (33, 59)

Response

The Department recognizes the importance of generating workforce development initiatives to encourage younger people into the industry. This was also identified as a priority by the Governor's Sustainable Water Infrastructure Task Force. As a result we have worked with the Department of Labor and Industry to get this profession identified as a high priority. This designation allows community colleges and universities to apply to the Department of Education for funding to reimburse them for costs incurred developing and delivering a training program for operators. We are also working with a number of community colleges to develop a training certificate program. Completion of this training program allows applicants to cut the required

years of experience for certification in half. The Department also recognizes that with the assessment of fees comes a responsibility to ensure those funds are used effectively and efficiently. The existing training program has successfully approved over 2000 different water and wastewater courses and developed over 32 web-based courses. Planned enhancements include the release of a web-based training approval process where course rosters and new courses can be submitted electronically. Finally, one of the EPA federal requirements is to complete a comprehensive external review of the program every five years. CPAC has chosen the training program as a key component for their first external review. Preliminary results of their analysis should be available within the next year. If suggested recommendations from this review and the implementation of the new online training approval process result in a streamlined training approval process that costs less to implement, the fees will be reduced. The regulations require the EQB to review and adjust these fees every three years based on costs incurred.

51. Comment

Post-Presentation Credit (PPC) Fees - Estimated costs to the operator appears to inadequately address the potential cost for an operator to acquire contact hours by the Post Presentation Credit (PPC) process. Some operators may be restricted in acquiring sufficient contact hours through the normal process due to employment restrictions and therefore, must resort to a PPC process. If a fee for the application is charged at \$250, the operator is incurring more than two (2) days of work to pay for the fee imposed by PADEP. (58)

Response

There are over 2000 different courses now approved that an operator can take to complete the continuing education requirement. More are being reviewed and approved on a continuing basis. As a result, the Department has seen a significant drop in the number of post presentation applications submitted as operators become more comfortable finding the continuing education opportunities that meet their needs. The review and approval of these post-presentation applications is very staff intensive. The intent behind this fee is to recover the costs for the processing of these applications and to discourage the use of this alternative. The other option that was considered was the elimination of PPC process.

52. Comment

(Operator and Owner Fees) - 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. Our 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. 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. (72)

Response

The fee analysis done by the Department was submitted as part of the regulatory package to the EQB. This analysis included a workload analysis to ensure the available resources and program costs were accurately captured. The technical support to the administrative staff is essential to ensure elements of the applications for certification and certificate renewal are captured accurately. Without this review, the potential exists for operators to be given either too much or not enough credit for completion of the requirements to obtain and maintain their operator's certificate. The compliance assistance elements of the program are designed to expand our workforce development efforts to address the shortfall of operators mentioned by this comment. In addition, without this element of the program the only alternative to the Department is enforcement, either through the assessment of fines and penalties or petitioning the Op Cert Board to suspend or revoke an operator's license. Finally, an initial drop in the number of certified operators was seen when the first renewal cycles ended for a number of operators. This was the first time continuing education was required for certificate renewal. Since this initial drop, and with the implementation of a number of process changes in how the application is submitted and processed, the number of new operators tested and certified each year has doubled. Instead of the rapid decline of operators cited by this comment, we are actually seeing the opposite.

53. Comment

302.202(a)&(c) - These subsections state that IDs or permit numbers "should" be included on the check or money order. Use of the word "should" indicates provision is optional. Recommend that "should" be amended to "shall." Also, how would new applicant know their "client ID" number? (76)

Response

Adding this information helps the Department process an application for certification action. However, it does not prevent the application from being processed. In discussing the wording for this section with CPAC and the Op Cert Board, it was deliberately left as "should". If this language was revised as suggested, the amount of staff time required to send the application back as incomplete is more than the time required to look up the information in the data management system used for the administration of the program. Members of CPAC and the Op Cert Board were also concerned about the delay this would cause the operator in obtaining certification. Under 302.202(c), the form completed by the owner also includes the PWSID or NPDES permit number. Having this information on the check helps staff process the payment more efficiently, but does not prevent this processing. Sending the paperwork back as incomplete just adds more time to the process. An applicant is assigned a client ID number the first time he or she registers for an examination. This number is given to him at the examination session and is included in all future correspondence the Department or the Op Cert Board has with that operator.

54. Comment

302.202(e)&(h) - we question EQB's statutory authority for imposing \$10,000 limit. Commentators believe the proposed limit transfers costs from larger training providers and municipalities to smaller ones (we ask the EQB to explain why this approach is reasonable and to

consider the effects it could have on small businesses). Also, given the language of Subsection (h), what is the need for Subsection (e)? (76)

Response

The \$10,000 limit was established in response to negotiations with the regulated community and CPAC, TAC and the Op Cert Board in December 2008. It was established in an effort at fairness to ensure no one entity had to cover an unfair percentage of the total program costs. The other provisions for fees also protect the smaller providers and municipalities by establishing a smaller fee based on the amount of work generated and the level of service provided. Subsection (e) is duplicative of (h) and is deleted.

55. Comment

302.202(f) - operators holding a valid certification when this rulemaking becomes effective will be exempt from paying "certification fees." Should this exemption be narrowed to "initial certification fees"? (76)

Response

The Department made this revision.

Subchapter C. Board Procedures and Actions

302.301 – BOARD PROCEDURES FOR CERTIFICATION ACTION

56. Comment

302.301(i) - Although the Secretary is given 60 days to notify an applicant of a denial, and the proposed rule states that the notice will include a description of the right to appeal, it would be helpful if the regulation acknowledged that the right of appeal lasts for 30 days, commencing on the date that the notice is received by the applicant. Including this in the regulation will provide guidance to the Secretary in drafting the notice properly. (17, 18, 76)

Response

This is unnecessary. There is standard language identifying a 30 day appeal period that goes into all Department notice of appeal documents.

57. Comment

Provide more specific times for review and action. Recommend clarifying:

302.301(a) - provides that applications for certification action will be reviewed by the Department "under the supervision of the Board Secretary." What is the EQB's statutory authority for permitting this type of supervision? (76)

Response

The Department deleted the phrase "under the supervision of the Board Secretary."

58. Comment

302.301(b) - the phrase "...notified, in a timely manner from receipt of the application" is vague. (30, 76)

Response

The Department clarified this section to require this notification within 14 days.

59. Comment

302.301(d) - requires that action occur on a completed application "within two scheduled Board meetings;" lacks clarity, since it is unclear when these meetings would actually occur. Also, what does the EQB consider to be "sufficient information" for the Board to make a decision? The final-form regulation should clarify this issue. (30, 76)

Response

This language was replaced to require action "within 120 days". The following language was also added: "The board will approve an application once the applicant has demonstrated to the board's satisfaction that the standards for certification as defined in this chapter have been met."

60. Comment

302.301(e) - the Board Secretary *will* issue operator's certificate within 60 days of Board action. However, subsection (i) states that the Board will not notify an applicant of a denial of a certificate until 60 days after the Board's decision. In both subsection (e) and (i), what is the reason for such a long delay in issuing a certificate or a denial? (76)

Response

Due to staffing and budgetary constraints, the 60 days is needed for existing staff to process the necessary paperwork and deal with any data management issues that arise.

61. Comment

302.301(h) - authorizes Board Secretary to deny an application for certification without Board approval under certain circumstances. Explain the EQB's statutory authority to delegate authorization to the Board Secretary in these specific situations contained in the subsection. (76)

Response

The criteria listed in this subsection are basic eligibility criteria as defined by the act and the EQB. These criteria are all part of the administrative review, and do not comprise action on a complete application. As such, they can be done on the administrative purview of the Board Secretary.

302.304 – RECIPROACITY

62. Comment

I feel that not recognizing someone's achievements just because they crossed state lines would be an insult of our abilities, accomplishments and borderline discriminatory. I do not feel they should be made to test if the other states program requirements are comparable to PA's. Include language that requires that equal or greater qualifications are required by the other state certifications before allowing credit toward a PA Operator Certification. (33, 52, 62, 65, 74)

Response

No responses were received in favor of limiting reciprocity to only the passage of the General Examination. The current framework will be kept in place. This framework requires the operator to demonstrate the same level of experience and education as an operator in Pennsylvania. In addition, unlike operators who gain their experience in Pennsylvania, the class of certification is based solely on the largest system where the operator met the minimum experience requirements. Credit for working at systems in a lower class is not given to these operators.

63. Comment

Explain how these requirements are consistent with those contained in Section 9 of the Certification Act. (76)

Response

Section 9 of the Act allows the Op Cert Board to authorize the issuance of an operator certificate without examination provided the operator has a valid certificate from another state or board-approved registry and has successfully completed an examination that is equivalent to the examination given in Pennsylvania. The statutory language gives the Op Cert Board the discretion to authorize this issuance or not. This section identifies the provisions under which the Op Cert Board will complete this task. The key point is that under section 9 the out of state examination must be equivalent to the Department's examination. This is also the standard under section 302.304.

302.306 - CERTIFICATE RENEWAL

64. Comment

302.306(d) - Excess credits should be carried forward. Operators should be encouraged to obtain training that is applicable and useful for their employment, not just randomly chosen classes to generate "credits". Because courses are offered at different times, it has been the experience of many operators under the current system that they forego needed training because they already have sufficient credits, and take pointless training (for them) because they need to obtain credits by a date certain. Allowing excess credits to carry forward into subsequent training cycles will allow operators to be more judicious in their choice of training, taking courses that they need, when they are offered, without reference to an arbitrary schedule. The administration of a carry-forward program would be simple, since the process is already computerized.

(1,5,6,7,8,9,10,11,12,13,16,17,18,19,20,21,22,23,25,26,28,31,32,34,38,39,41,42,43,45,46,47,55, 61,70, 76)

Response

The EPA guidelines establish two requirements: (1) Continuing education must be a requirement for certificate renewal and (2) the renewal cycle can not exceed three years. Based on conversations with EPA early in the development of this program, our initial interpretation of these two requirements was that allowing excess credits to carry forward into subsequent cycles would jeopardize EPA approval of the program. This would result in the loss of 20% of the grant funds the state receives from the Drinking Water State Revolving Loan Fund program, or between \$6 and \$10 million per year. At the request of TAC, CPAC and the Op Cert Board, Department staff has approached EPA again concerning this issue, only to find that some EPA Regions have allowed states to do this. Currently, the program does not have the administrative capability to allow for this. A comprehensive analysis of the data management changes and additional administrative support needs, complete with a timeframe for completion, is needed. This analysis and timeframe for completion will be part of the package to go to the EQB as part of the final rulemaking package this summer.

65. Comment

302.306(g) - Unreasonable delay in certification renewal after expiration. There is no rational reason for this imposed delay. Once a certificate is approved it should become effective, not two or three months later. The "effective issuance date" should be the date that the Board takes action, not some arbitrary later date.

(1,5,6,7,8,9,10,11,12,13,16,17,18,19,20,21,22,23,24,25,26,28,32,34,38,39,41,42,43,45,46,47,55, 61,70,76)

Response

The Department modified this language as suggested.

66. Comment

302.306(l) - Unreasonably short time to provide documentation of additional completed continuing education. The proposed rule would give an operator only 14 days to provide missing continuing education documentation. In light of the probable need to contact the training provider to obtain that information, this is unreasonable. There is no need for extreme haste in deciding to deny renewal of certification and operators should be given a reasonable time to find needed documentation. We recommend at least 30 days. (17, 18, 76)

Response

Through the Earthwise Academy the operator can check his transcript at any time and track the amount of continuing education that we have on record. If a record of any training the operator takes does not show up within a reasonable period of time after completing the course, the operator can contact the training provider or the Department. In addition, the operator is sent a renewal application 60 days before his license is due to expire with a copy of his or her transcript. The operator can complete the necessary forms provided with the renewal application if he or she feels there is a discrepancy between what the Department has on record and his or her records. The operator submits these forms with copies of any completion certificates with his renewal application. Program staff then works with that operator to resolve any outstanding issues. It is only after a complete review of these additional records that a recommendation is made to the Op Cert Board to deny an operator's application for certificate renewal. The operator also has an additional 90 days after his license has expired to submit any applications for post-presentation credit for courses taken that were not pre-approved by the Department. In most cases, the Op Cert Board does not take final action to deny an operator's application for certificate renewal until 60 to 90 days after the operator's license has expired. His license is deemed valid until such time as the Op Cert Board takes final action to deny the application for certificate renewal. The operator then has another 14 days to contest the decision of the Op Cert Board to deny the application for certificate renewal before the operator's license is deemed invalid. The Department feels the operator has had plenty of time and opportunity to resolve any issues with his or her continuing education records. Extending the 14 day response time to 30 days is not necessary at this point in the process.

67. Comment

302.306(k) - Second sentence of this subsection begins with the phrase "if possible." This phrase is nonregulatory language and should be deleted from the regulation. If there are instances in which the Secretary will not send a copy of the letter to the parties identified in Subsection (k), then those instances should be identified. (76)

Response

The Department deleted this wording and re-wrote the sentence to identify who needs to receive this letter.

302.307 EXTENSIONS

68. Comment

302.307(a)(3) states that any Board extension is consistent with "only those specific powers and duties granted to the Board." The final-form regulation should specify the relevant powers and duties, and include a cross-reference to those sections of the Certification Act that list them. (76)

Response

The statute clearly lists the powers and duties of the Op Cert Board. There is no need to re-list them in the regulations. It is also unnecessary to require only extension requests be consistent with those powers and duties. Therefore, this sentence has been deleted.

69. Comment

302.307(b) - within what timeframe will the Board Secretary provide an explanation of the Board's decision and any requirements for compliance? (76)

Response

Language has been added to require the Board Secretary to provide this explanation within 14 days of the Op Cert Board's action.

302.308 - SUSPENSIONS, REVOCATION OR MODIFICATION OF OPERATORS CERTIFICATE

70. Comment

302.308(d) – Will a certified operator have opportunity to challenge a Board action under this section? What is the process? (76)

Response

Any action of the Board modifying, suspending or revoking a certificate is an action of the Department appealable to the Environmental Hearing Board. This right of appeal exists whether or not it is restated in this subsection. However, the Department did add language to this section to clarify this.

71. Comment

302.308(b)(1) - clarify negligence in operating a system.

302.308(b)(2) - the definition of fraud should be provided or referenced.

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.

302.308(b)(5) - exceedence of an NPDES limit regardless of the impact could result in loss of certification.

(38, 70, 71, 76)

Response

Language in these sections was modified to more accurately reflect the wording in the statute and narrow the scope of the conditions that justify the suspension, revocation or modification of an operator's license by the Op Cert Board. It is understood that the standard definitions in any Webster's dictionary for "fraud" and "negligence" will be used. The standards of the industry for "reasonable care" and "professional judgment" would be determined as part of the administrative hearing process the Op Cert Board will follow. Defining these terms to anticipate every situation that might come up in regulation is not possible.

72. Comment

302.308(b)(6)&(7) - Suspension/revocation of certification for 'failure to comply with the duties assigned to a certified operator and threats to public health.' The striking ambiguity of this proposed rule is of considerable concern to operators. Believe that this clause is invalid and should be deleted from the final form rulemaking both as too vague to comply with and as contrary to law. This is so vague as to be capable of many different interpretations. By definition, the operation of water and wastewater facilities always has the "potential" to affect public health if anything goes wrong. Minor malfunctions, or at least the need for operational adjustments, happen frequently, and the vast majority are addressed without incident. However, the proposed rule would allow the Board to revoke a certificate for almost anything that goes wrong at a treatment plant.

(1,5,6,7,8,9,10,11,12,13,16,17,18,19,20,21,22,23,25,26, 27,28,31,32,34,38,39,41,42,43,45,46,47, 50,53,55,61,70,71,76,77)

Response

The Department is deleting 302.308(b)(6) because it is unnecessary and, based on the number of comments, confusing. This statement is more of a description of why misconduct is grounds for suspension, revocation or modification of an operator's license. Subsection 302.308(b)(7) is duplicative of 302.308(b)(4) and is also deleted.

73. Comment

302.308(b)(3) - Expansion of the falsification of records provision. The Act provides that certification may be denied or revoked if, among other things, an operator is guilty of "falsification of operating records." The proposed regulation, however, would allow this result for "falsification of State, local or Federal documents or records." Clearly, this is much broader than the cause contemplated by the Act and is in conflict with the narrow scope of liability created by the Act.

(1,5,6,7,8,9,10,11,12,13,16, 17, 18,19,20,21,22,23,25,26, 27,28,32,34,38,39,41,42,43,45,46,47, 50, 55,61,70, 75)

Response

This subsection has been edited to narrow the scope of these records related to the operation of a water or wastewater system.

302.309 – BOARD REVIEW OF DEPARTMENT TRAINING DECISIONS

74. Comment

Appeal of Certification Board Actions - An earlier discussion draft of the proposed rulemaking provided a subparagraph (d) in section 309 that stated that actions of the Certification Board are

appealable to the Environmental Hearing Board. That provision reflected the statutory mandate at §1004(a)(1) of the Act. The provision was deleted from the Proposed Rule. While we understand that removing it from the regulations does not negate the provision of the Act, we believe that it would be helpful to the regulated community to include this notice in the regulations as originally drafted; there was no need to delete it and we request that the notice be restored in the final version of the regulations. (17, 18)

Response

The Department has inserted this language into the draft regulations as requested.

75. Comment

302.309(b)(1) - Board review of DEP training decisions. The request for Board review should include "the reasons given by the Department for its decision." The proposed rule, as written, cannot be complied with because it would require speculation by the applicant as to why DEP denied the application. (17, 18)

Response

The Department, in denying any request, is obligated to provide a reason for its decision. There is no speculation on the part of the applicant.

Subchapter D. Criminal History Records

302.402 - CHR INVESTIGATIONS

76. Comment

Given the language of Subsection (a)(2), we question the need for Subsection (a)(3), which requires further investigation for a misdemeanor that "appears to pose a threat to public health, safety or the environment." Also, the language in Subsection (a)(3) is vague. We recommend that this provision be deleted. (76)

Response

The Department deleted subsection (a)(3) as suggested.

302.403 - REVIEW OF CHR BY THE BOARD

77. Comment

302.403(c) - why is the written report from the Department submitted to the Board or a Board-designated agent, and not the preliminary review committee? (76)

Response

The reason the Department submits the written report to the Op Cert Board is strictly one of expediency. The purpose of the preliminary review committee is to make an initial screening as to whether the convictions of the operator warrant further investigation. The purpose of the written report is to provide the Op Cert Board with any additional information found in the investigation that helps the Op Cert Board make a determination as to whether the application for certification should be granted or denied.

78. Comment

302.403(d) - requires a Department employee on the preliminary review committee to solicit further information from the appropriate regional office as it relates to the circumstances that resulted in a *conviction* and the applicant's record as an operator. We question the reasonableness of soliciting information pertaining to any conviction and wonder why a regional office would have any information about a felony or misdemeanor conviction of an applicant, especially if the conviction was not related to the operation of a water or wastewater facility? (76)

Response

The revisions to the process and the provisions in this subsection were added in response to findings of the Environmental Hearing Board when an operator appealed the Op Cert Board's decision to deny the renewal of an operator's license based on his criminal history record. As provided in this subsection the only time the regional office is asked for information is if the preliminary review committee suspects the conviction is connected to the operation of a water or wastewater treatment system. In many cases regional office staff was involved in the original conviction or have a working knowledge of the circumstances leading to the conviction. The Op Cert Board has also found it helpful to factor in the record of the operator since the conviction and the compliance history of the system where the operator is employed before making a final decision.

79. Comment

302.403(e) - When will the preliminary review committee provide reasons and documentation for their recommendation? (76)

Response

When their recommendation is presented to the Op Cert Board and before the Op Cert Board takes final action on the application for certification.

80. Comment

302.403(i) - requires the Department to complete its investigation "in a timely manner." This phrase is vague and should be defined further. (76)

Response

These investigations can be very simple, or extremely complicated. The amount of time needed to complete these investigations is dependent on the level of detail of the records of the case, the ease in accessing these local records and when the conviction occurred. Therefore, the Department revised this section to require the Department to complete these investigations within 120 days, unless the preliminary review committee grants an extension based on issues that the Department's investigator finds during the completion of the investigation.

302.404 - BOARD ACTION AS RESULT OF CHR

81. Comment

302.404(a) - states that: "The Board will act on all CHR submitted with an application for certification action." 302.404(b) states that no further Board action is necessary when an applicant's CHR shows no convictions. Why must the Board act on all applications, even applications with no convictions? (76)

Response

An operator submits an application for certification action when he or she feels the conditions for initial certification or certificate upgrade have been met. The only entity that can make the decision to issue or deny this application is the Op Cert Board. Therefore, they must act on all applications of this nature.

82. Comment

302.404(e) - when will the Board Secretary notify an applicant of the Board's decision to deny an application? This should be included in regulation. (76)

Response

This will be done within 14 days of the Op Cert Board's action. Language has been added to this effect.

83. Comment

302.404(f) - If Board denies certification based on its review of a CHR, the reasons should be presented in writing, so that the applicant has a record for an appeal. This section should say that "the Board will provide a written report setting forth the reasons for the denial." (17,18,76)

Response

This subsection was deleted. Subsection (e) was modified to require the written notification sent to the operator to also include the Op Cert Board's reasons for denial.

84. Comment

Section 404(g) - provides a misleading standard for filing an appeal. Appeals to the Environmental Hearing Board are initiated through a Notice of Appeal, not a "petition" as the proposed rule states. See 25 Pa. Code § 1021.51. (17, 18, 76)

Response

This subsection was revised to be consistent with similar statements in other sections of the regulations.

Subchapter E. Administrative Hearings of the Board

302.501 – General Requirements

85. Comment

The definition of Administrative Hearing and the discussion in § 302.501 (d) refer to the rules governing administrative hearings as 2 Pa. C.S.A. Chapter 5, Subchapter A (which is correct). However, these sections also refer to Chapter 7, Subchapter A, which refers to judicial review of the administrative hearing, not the conduct of the administrative hearing. While the Board is subject to judicial review (see § 1101 of the Act), this statutory provision does not govern the conduct of administrative hearings as the proposed regulations state. The citation to Chapter 7 should be removed as irrelevant to the subject matter of the regulation. (17,18)

Response

The Department deleted the reference to Chapter 7.

Subchapter F. Preparation and Administration of Certification Examinations

302.601 – General Provisions

86. Comment

302.601(i) - Disclosure of examination scores. Obviously, an operator should be able to disclose her examination score to others at her discretion. It also may be a violation of the Right to Know Law to prohibit the disclosure of examination scores. Certainly, there is nothing in the Act that requires such confidentiality. Assuming that the proposed provision is not in violation of the Right to Know Law, the Association suggests that this section should say that the scores will not be disclosed "by the Department." Otherwise, an operator who discloses her score to others, including her employer, could be considered to be in violation of the regulations and subject to penalties. (17,18)

Response

The Op Cert Board is the entity responsible for the administration of the examinations. When processing scores, Department program staff act as staff to the Op Cert Board. Therefore, this subsection was modified as suggested and references the Op Cert Board and not the Board Secretary or the Department.

87. Comment

302.601(a) - Who determines whether a certification examination is "valid"? (76)

Response

The Department is responsible for the preparation of the examinations. The Department uses defined psychometric principles and industry standards in the development, preparation and revision of the examinations. Finally, the Department completed a content validation analysis of the process used to develop the examinations in accordance with existing industry standards and relevant case law to ensure the examinations and the process used to develop the examinations is "valid".

302.602 – APPROVED EXAMINATION PROVIDER

88. Comment

302.602(c); this subsection states that examination providers "will not at any time be in possession of any Department-developed examination materials or examination content." This appears to reflect the procedure, in which examination providers merely schedule the exam and provide the physical facilities, but Department personnel actually administer the exam. Since an examination provider's role is limited to booking a room, the proposal to assess hundreds of dollars of taxes on such providers (comment 13B under Conflicts with the Act, above) has no rational basis. In fact, it would appear that the Department should be paying the examination providers for the service that they provide to the Department by doing all the work of setting up examinations. (17, 18, 76)

Response

The reason the approved examination provider can not have possession of the examination material and content is to ensure the confidentiality and validity of the examination. Most approved examination providers are also training providers that provide training to examinees

prior to taking the examination. If these trainers also knew the content of the examination, the entire validity of the examination process could be brought into question. Administering the examination after these training sessions is a service the Department provides to these examination providers. It is recognized that without these Approved Examination Providers the Op Cert Board would still be administering one examination at six sites across the state on a quarterly basis. It is only through the assistance of these providers that the number of examination sessions has increased so significantly in the past few years. However, with this success has come an additional workload for program staff that must prepare the examination packets and process the examination results. The decision to charge a fee for this service was made in negotiation with members of CPAC, TAC, the Op Cert Board, the Water Utility Council and other members of the regulated community through a series of public meetings held in December, 2008. .

89. Comment

302.602(b) - Allows examination providers to charge fees to cover certain costs of administering the examination; is this fee in addition to the fees found in Section 302.202, related to operator certification program fees? Also, this subsection discusses "examination providers," Section 302.601 (g) references "third-party examination proctors." Regulation should clarify whether "examination providers" and "third-party examination proctors" are the same thing. Has the EQB determined whether a proctor can, like an examination provider, charge a fee? If so, such a fee should be included in the final-form regulation. (76)

Response

Yes, the fee charged by the Approved Examination Provider is an additional fee not covered in the fee schedule for the administration of the program in Section 302.202. The fees in Section 302.202 are to cover the Department and Op Cert Board's costs for the implementation of the Operator Certification Program, not the costs incurred by the Approved Examination Provider. Third party examination proctors can not be examination providers. In accordance with the Board guidelines for the administration of the examinations this is a direct conflict of interest. Third party examination proctors are paid an hourly rate by the Op Cert Board for their time proctoring the examination. The costs for these proctors are included in the costs for the program under Section 302.202.

302.603 – EXAMINATION ELIGIBILITY

90. Comment

302.603(d) - this section is unclear. As best we can understand it based on information provided by DEP staff, the intent is to charge nothing for the examination session until the operator applies for certification, at which time the operator would pay both the certification fee and the examination fee. Section 603(d) is intended to recover costs of the exam from operators who do not pass and therefore do not apply for certification—after multiple attempts. First, this system is not reflected in the proposed regulations. More importantly, this seems to be an unnecessarily complicated system that results in un-recovered costs and additional administrative costs to DEP. The Association believes that charging the exam fee each time the exam is taken is reasonable, since the Department expends effort in grading the exam and notifying the applicant of her score. If the exams are offered for free until the operator applies for certification, there is no incentive

to make the test "count," and operators might take the tests over and over as a means of self education, which apparently has already become a costly problem. We suggest that the exam fee be charged every time the exam is taken and this section be deleted as an unnecessary complication. (17,18)

Response

The paperwork to process an examination fee every time an operator registers for an examination will increase the administrative staff workload by a factor of five, because the same amount of work has to be done to process the fee for one examination session or five. It will also result in more time needed to prepare the materials needed for the examination session and diminish the flexibility now available to Approved Examination Providers to register examinees. The Op Cert Board has already established the policy to charge this fee after five examinations. This fee, in addition to the fee charged by the Approved Examination Provider, should provide the necessary incentive to make the test "count".

91. Comment

302.603(a) - Why must an applicant for an examination pay a fee to have their request to take the exam processed? Is this processing fee in addition to the fees required by Section 302.202? Why is the fee set by the exam provider and not the Department or the EQB? What is the potential fiscal impact of this fee? Will applicants be charged for taking the exam? (76)

Response

Under Section 302.602(b), the Approved Examination Provider is allowed to charge a fee to only recover their costs for the scheduling of the examination and the processing of the registration forms. The processing of these registration forms is not done by program staff. Therefore it is not covered in the fee schedule required under Section 302.202. The examination session fee paid by the applicant in Section 302.202 covers the staff costs for preparing the examination packets and the processing of the examination results. This fee is traditionally between \$25 and \$100 per examination session, depending on who the Approved Examination Provider is and the additional services provided by the Approved Examination Provider. This framework has been in place for three years now and has proven very successful. With this framework the Op Cert Board has been able to increase the number of examination sessions by a factor of ten. In addition, applicants are able to take the examination in convenient locations across the state, with an average driving time of an hour or less. Before this framework was established, some examinees were traveling several hours or staying overnight in order to be at the examination site on time.

302.604 -- EXAMINATION ADMINISTRATION

92. Comment

When will Board notify an applicant that they have agreed to their request for exceptions to the scheduled date and location of the examination? (76)

Response

This section has been modified to indicate the Board Secretary will notify the applicant within 14 days of the Board's action on the request.

Subchapter G. Education, Examination and Experience Requirements

302.702 -- EXAMINATION REQUIREMENTS

93. Comment

302.702(c) - Who sets the "minimum numerical score"? Should be included in regulation. (76)

Response

The Department establishes the minimum numerical score for passing the examination as part of the examination preparation process. In accordance with Section 302.601(a) these scores are established in accordance with industry recognized psychometric principles and standards.

302.703 - EXPERIENCE REQUIREMENTS

94. Comment

302.703(d)(2) - What process will the Department use to approve associate degrees in water or wastewater operation? How will the regulated community know if a particular degree program has been approved? (76)

Response

The entire training approval process is established in the Department guidelines, "*Training Provider Manual for the Water and Wastewater System Operator Training Program, 383-2300-002*". All courses, including associate degree programs, approved by the Department are listed in the Department's Earthwise Academy. The applicant can also contact the Department for a listing of these approved programs. Language has been added to this section to clarify this approval process and when the approval process will be applied.

302.704 – DETERMINING QUALIFYING EXPERIENCE

95. Comment

Source water program experience should qualify as acceptable experience toward operator certification. (40)

Response

Further definition of what is meant for source water program experience and how that experience relates to the operation of a drinking water system is needed. A source water protection program can be implemented by an individual without ever setting foot in a treatment system. If the operator feels this experience is relevant, he or she can provide a detailed description of what tasks are done on the application for certification action. The Op Cert Board will take this description into account when the review is completed and the amount of experience completed is quantified.

302.705 - ACCELERATED CERTIFICATION REQUIREMENTS FOR SYSTEM MODIFICATIONS

96. Comment

302.705; as drafted, the regulation appears to require a certification upgrade for any increase in system capacity. In fact, this is only necessary when the change in capacity results in a change in the classification of the system. The second sentence in subparagraph (a) should be revised to say, "When the capacity of a system is increased so as to change the classification of the system, the existing available operators will qualify for . . . Same for the subclassification provision. We see no need for such a permit provision and request that it be deleted. The permitting staff should not be charged with making Certification Act decisions. In the case that DEP decides not to delete this provision from the final rule, it at least needs to be made clear that when applying for the permit amendment, the owner should also request that the new permit include approval of the certificate upgrade program as described in this regulation. Finally, the provision at subparagraph (b)(3) should be revised to make it clear that an operator can be upgraded if he has already passed the appropriate Part II Technology Specific examination.. (17, 18, 76)

Response

The Department made the suggested changes.

97. Comment

302.705(b) should also waive the one year additional experience requirement when there is a change in treatment processes and the operator has completed the manufacturer's training course and the Part II Treatment Technology Specific Examination. Otherwise, the operator would have to take the Part II Treatment Technology Specific Examination and wait one year. (65, 69, 74)

Response

The Department revised this section to waive the one year experience requirement.

302.802 - CONTINUING EDUCATION REQUIREMENTS FOR CERTIFICATE RENEWAL

98. Comment

302.802(d) - Excess credits should be carried forward. Operators should be encouraged to obtain training that is applicable and useful for their employment, not just randomly chosen classes to generate "credits". Because courses are offered at different times, it has been the experience of many operators under the current system that they forego needed training because they already have sufficient credits, and take pointless training (for them) because they need to obtain credits by a date certain. Allowing excess credits to carry forward into subsequent training cycles will allow operators to be more judicious in their choice of training, taking courses that they need, when they are offered, without reference to an arbitrary schedule. The administration of a carry-forward program would be simple, since the process is already computerized.

(1,5,6,7,8,9,10,11,12,13,16,17,18,19,20,21,22,23,25,26,28,31,32,34,38,39,41,42,43,45,46,47,55, 61,70, 76)

Response

The EPA guidelines establish two requirements: (1) Continuing education must be a requirement for certificate renewal and (2) the renewal cycle can not exceed three years. Based on

conversations with EPA early in the development of this program, our initial interpretation of these two requirements was that allowing excess credits to carry forward into subsequent cycles would jeopardize EPA approval of the program. This would result in the loss of 20% of the grant funds the state receives from the Drinking Water State Revolving Loan Fund program, or between \$6 and \$10 million per year. At the request of TAC, CPAC and the Op Cert Board, Department staff has approached EPA again concerning this issue, only to find that some EPA Regions have allowed states to do this. Currently, the program does not have the administrative capability to allow for this. A comprehensive analysis of the data management changes and additional administrative support needs, complete with a timeframe for completion, is needed. This analysis and timeframe for completion will be part of the package to go to the EQB as part of the final rulemaking package this summer.

99. Comment

302.802(g) - Documentation of training. The draft regulation states that credit is given "in the 3 year renewal cycle in which the training provider documents successful completion of the training." It is more accurate to say that credit will be given "in the 3 year renewal cycle in which the training was provided, as documented by the training provider." Otherwise, if a training provider delayed reporting until the next cycle; credit would not appear in proper renewal cycle. (17, 18)

Response

The Department revised this section as suggested. However, to clear up some confusion the Department is having with correspondence courses, the word "provided" was changed to "completed".

302.804 - SYSTEM SECURITY TRAINING REQUIREMENTS

100. Comment

302.804(a) – System security training requirement
Specify what type of security training is acceptable to DEP. Will NIMS courses already taken meet the security training course requirement? (40, 68, 76)

Response

The Department has developed the necessary training to meet this requirement. Consistent with 302.804(b) other security-related training already taken by the operator will not satisfy this requirement.

101. Comment

302.804(b) - The time provisions for security training require clarification. The proposed rule requires all operators to complete security training "before the conclusion of the operator's first subsequent 3 year renewal period following [publication of the Final Rule]." We interpret this to mean that, following final publication of the rule, no such training will be required until after the current 3-year training cycle is completed, and then the training will be required sometime during the next ("subsequent") 3 year cycle. Depending on when their current cycle ends, operators will have anywhere from a minimum of three to a maximum of six years to complete this training, If this is not the intent, then the provision needs to be clarified in the final rule. (17, 18)

Response

This is exactly the intent. However, to make this clearer, the language has been modified to read, "...the system security training requirement in the certified operator's first renewal period commencing on or after _____."

102. Comment

Is there a fee associated with the security training course? If so, is it in addition to the fees found in Section 302.202? The final-form regulation should explain the fiscal impact of these training requirements. (76)

Response

The operator will pay the fees identified in Section 302.202 if he or she takes the course as delivered by the Department. However, other approved training providers may also be delivering the course, or something similar if approved by the Department. In that case, the fee charged will be determined by the training provider. The operator can then choose which provider to take the course from and in what format.

103. Comment

302.804 - how many contact hours will the course be? Is this course required every three years? What types of courses are acceptable to the Department? In addition, what constitutes successful completion of the course? The same concern applies to Subsections (f) and (g). The final-form regulation should clarify these issues. (76)

Response

The Department has developed a five hour classroom and web-based course for this purpose. The operator can either take the course from the Department or another training provider approved by the Department to deliver the same, or a similar course. These courses have been created in accordance with the Department's training approval guidance document, "*Training Provider Manual for the Water and Wastewater System Operator Training Program*, Document number 383-2300-002.

104. Comment

302.804(c) - What criteria will be used to determine if a person has successfully demonstrated the knowledge, skills and abilities contained in the course? The final-form regulation should clarify this issue. (76)

Response

The operator will demonstrate that he or she has the necessary knowledge, skills and abilities through successful completion of the course. The assessment methods used in the course were created in accordance with the Department's training approval guidance document, "*Training Provider Manual for the Water and Wastewater System Operator Training Program*, Document number 383-2300-002.

105. Comment

302.804(g) - the Department "may" require certified operators to attend and successfully complete additional system security courses. Under what circumstances would the Department require this? (76)

Response

The Department added the following criteria to this section:

1. A certified operator failed the existing Department-approved security course in subsection (a).
2. There is a history of security issues at a water or wastewater system where the certified operators work.
3. There is a history of security issues with the certified operator.
4. New or updated security courses become available.
5. The department determines a situation or threat (federal, state, local) exists that requires additional specific security courses.

Subchapter I. System Classification and Subclassifications

302.901 - CLASSIFICATIONS AND SUBCLASSIFICATIONS OF WATER SYSTEMS

106. Comment

302.901(d) - Final-form regulation should clarify what "changes in the conditions or circumstances at the system" would warrant a change in the system's classification or subclassification. (76)

Response

The Department added the following examples to this section:

- (1) An increase in capacity that changes the class of the system.
- (2) The addition or loss of a treatment technology.
- (3) Other federal or state regulatory changes in the definition of a treatment technology used at the system.
- (4) The issuance of a permit changing the class or subclassification of a system.

302.902 CLASSIFICATIONS AND SUBCLASSIFICATIONS OF WASTEWATER SYSTEMS

107. Comment

Class E/4 should be separated into collections systems with major and minor pump stations. A BNR subclass makes more sense than adding a Lab Supervisor subclass. Lab skills are already covered under the General exam. (24)

Response

The knowledge, skills and abilities to operate a collection system are the same, regardless of the size of the system and the need for one or more pump stations. As a result there is only one set of requirements for certification and certificate renewal. Separating this into two separate classifications would require separate requirements. None of the examination, including the General examination have any content relative to the knowledge, skills and abilities needed to serve as a laboratory supervisor as defined by the Laboratory Accreditation Act and Chapter 252, the associated regulations.

108. Comment

302.902(c) - Arbitrary changes in classification and subclassification. It is the intent of the regulations to establish a uniform method of subclassification. Therefore, changes in either classification or subclassification must be based on specific changes, such as an increase in the design flow or a change in the treatment process. Any such change would be reflected in a permit. As drafted, the regulation may result in misunderstanding by Department staff as to the manner in which a change in classification and subclassification is made under the Act. Suggests that this provision state:

“Upon issuance of a permit changing the classification or subclassification of a system, the Department will provide notice to the Owner and all Certified Operators of record for the system of the change”. (17, 18, 760)

Response

The Department added the suggested language.

109. Comment

In Section 302.901(b), the Department may reclassify a water system "upon written request by the owner." Why is a comparable provision not included for wastewater systems in Section 302.902? (76)

Response

This situation is only available for small drinking water systems wanting to change their classification to Dc, thus reducing the certification and certificate renewal requirements for the available operator(s) of the system. The classification framework for wastewater systems does not include this provision.

Subchapter J. Operator Classes and Subclassifications**302.1004 –OPERATOR IN TRAINING STATUS****110. Comment**

An OIT should be able to make process control changes under the supervision of certified operator. During an emergency an OIT should be able to make process control decisions. (40)

Response

An OIT can make process control decisions as long as he or she is following standard operating procedures approved by the system’s operator in responsible charge. Allowing an OIT to make

process control decisions during an emergency is in direct conflict with federal guidelines and the Drinking Water and Wastewater Systems Operator Certification Act.

302.1006 – LABORATORY SUPERVISOR CERTIFICATION

111. Comment

Section 1006 of the draft regulations purports to create a "subclassification" which is not related to any classification. The regulations claim that this is a "stand-alone" subclass. The creation of subclassifications is governed by § 1004(c)(4) of the Act. Subclassifications are established "within classifications" and are based on "the size and complexity of the . . . systems and the quality of source water." Accordingly, the law does not authorize the creation of a "subclassification" when there is no classification, nor does it authorize subclassifications for facilities and operations not related to the size or complexity of the system. The proposed subclass of "Laboratory Supervisor" is therefore not authorized by the Act and is *ultra vires*. We would also note that the proposed definition of Subclassification in the definitions section of the regulation conflicts with the definition in the Statute and should be corrected. (17, 18, 34, 73)

Response

The definition of subclassification is consistent with the Act as it is tied to each treatment technology definition. The two definitions need to be tied together. There is no claim that the laboratory supervisor subclassification is a "stand alone" subclassification. An operator wanting to also serve as the laboratory supervisor for a water or wastewater system who does not meet any of the other criteria for laboratory supervisor as defined in Chapter 252, the laboratory accreditation regulations, must be certified with the appropriate class and subclassifications for the system where he or she is working before obtaining the laboratory supervisor subclassification. Section 1004 (c)(1) authorizes the creation of standards for certification. The knowledge, skills and abilities needed to serve as a laboratory supervisor can not be covered under the other subclassifications. By creating a separate subclassification the standards can be appropriately defined and addressed within the classification and subclassification framework that was established.

112. Comment

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. (50)

Response

The laboratory supervisor subclassification was created in partnership with the Laboratory Accreditation Advisory Committee when the Chapter 252, Laboratory Accreditation regulations were first drafted. This subclassification was created at the request of representatives of the drinking water and wastewater treatment system owners and operators who were on this committee. The purpose of the subclassification is to provide another alternative to small drinking water and wastewater treatment system owners who could not afford to hire additional staff to serve in the capacity of laboratory supervisor. Provisions in Chapter 252.302(h) allow existing certified operators to serve in this capacity until such time as this subclassification is

offered. Once the Op Cert Board is able to offer this subclassification certified operators who want to continue to serve in the capacity of laboratory supervisor, and do not meet any of the other criteria for laboratory supervisor as defined in Chapter 252, will have twelve months to meet the standards for certification in this subclassification. Language has been added to this section to clarify this requirement and to ensure consistency between the two regulations.

113. Comment

Should include an accelerated PADEP approved course for master operator to take so DEP is assured that they are familiar with lab procedures rather than add a new Lab Supervisor subclass. Lab skills are already covered under the GEN exam. (24)

Response

As described above, the laboratory supervisor subclassification was created in partnership with the Laboratory Accreditation Advisory Committee when the Chapter 252, Laboratory Accreditation regulations were first drafted. This subclassification was created at the request of representatives of the drinking water and wastewater treatment system owners and operators who were on this committee. The purpose of the subclassification is to provide another alternative to small drinking water and wastewater treatment system owners who could not afford to hire additional staff to serve in the capacity of laboratory supervisor. The knowledge, skills and abilities to serve as a laboratory supervisor as defined in Chapter 252 are not covered on any of the existing examinations.

114. Comment

To be consistent with the Environmental Laboratory Accreditation regulations at 25 Pa. Code § 252.302(h), the requirements of § 302.1006 should clearly indicate that they will not take effect until 12 months after a certificate for laboratory supervisor in the appropriate water or wastewater subclassification becomes available from the DEP. (65, 69, 74, 76)

Response

The Department added references to the Environmental Laboratory Accreditation regulations to ensure that operators have the requisite 12 months to meet these requirements.

115. Comment

Section seems to ignore the current EXISTING laboratory supervisors, in that there are no provisions to keep them on as supervisors unless they obtain a passing score on the Part II Laboratory Supervisor for Water and or Wastewater examination. Here again this does not utilize the current workforce and again places the burden of cost upon the operator. The current laboratory workforce needs to be GRAND FATHERED. (59)

Response

The existing laboratory supervisors will have twelve months to pass the examination and meet the standards for certification in this subclassification. They will only need to meet these standards if they do not already meet the other qualifications for laboratory supervisor as defined in Chapter 252.302, qualifications of the laboratory supervisor. This includes provisions for the grandfathering of existing laboratory supervisors. Language to this effect has been added to this section of the regulations.

116. Comment

Will laboratory supervisors now be required to obtain operator certification? Will existing lab supervisors be grandfathered, and automatically become certified operators? Do they need to take operator certification tests to keep their lab certification? Feel existing lab supervisors, qualified under the lab certification program should not be impacted by the operator certification program.(36, 68, 76)

Response

Only laboratory supervisors who do not meet any of the other qualifications for laboratory supervisor as identified in Chapter 252.302 or do not meet the grandfathering provisions in Chapter 252.303 will need to take the examinations for operator certification and the laboratory supervisor subclassification in order to continue serving as the laboratory supervisor for a drinking water or wastewater system. Those laboratory supervisors deemed qualified under the laboratory certification program solely based on the fact that they are also a certified operator will have twelve months to pass the examination and meet the standards for certification in the laboratory supervisor subclassification.

117. Comment

This requires laboratory supervisor sub-classification for all facilities. Some small systems chose to contract laboratory analysis rather than pursue laboratory accreditation, however this rulemaking requires the certified operator completing DMRs to obtain this sub-classification as they are responsible for the testing and reporting. (71)

Response

This subclassification was provided as another alternative for small systems that want to continue using their own laboratory but do not have the resources to hire additional staff to serve as the laboratory supervisor. If the system has a contract in place with a certified laboratory for all their analyses, this subclassification is not needed. This subclassification does not apply to the systems, it is only another subclassification available to certified operators who also want to serve in this capacity and do not meet any of the other qualifications for laboratory supervisor as defined by Chapter 252, the Laboratory Accreditation regulations. The certified operator completing DMRs is covered under the existing certification framework.

Subchapter K. Professional Engineers

302.1102 – INITIAL CERTIFICATION FOR PROFESSIONAL ENGINEERS

118. Comment

What does the EQB consider to be appropriate “written proof of a valid professional engineer’s license? The regulation should clarify this issue. (76)

Response

This section has been revised to require a copy of the professional engineer’s license or other similar written proof of licensure.

Subchapter L. System Operation

302.1201 – DUTIES OF OPERATORS

119. Comment

302.1201(a) – certified operators are required to comply with “applicable federal and state laws.” We believe the regulated community would benefit from knowing what those laws are and recommend they be specified in the final-form regulation. Also, subsection describes the Department’s role in determining compliance as follows: “The Department will *recognize* the ability of the certified operator to meet these requirements” Given the potential liability associated with being a certified operator, the term “recognize” does not provide adequate protection, is vague, and does not adequately describe how this section will be administered if an owner has not provided the proper support to a certified operator (suggest the regulation be revised to state that the “Department *will* consider owner-provided resources when deciding if a certified operator is in compliance.” (38, 70, 76)

Response

The Department revised this section to clarify what factors the Department would consider and to narrow the scope of laws and regulations to only those related to the operation of a water or wastewater treatment system.

120. Comment

302.1201(b) – A commentator believes that the requirement of "self-monitoring" of samples under Subsection (b)(14) is problematic because operator certification training does not adequately prepare a system technician to evaluate and interpret self-monitoring data against the requirements. How will this provision be administered and enforced by the Department? (76)

Response

The listed operator tasks are simply examples of tasks an operator MAY perform. This was never intended to be an all inclusive list. Because of the many variations of water or wastewater systems and management of those systems an operator may be assigned a few to all of these tasks. In fact, many systems have operators perform compliance-monitoring for their system. The language was changed from self-monitoring to compliance-monitoring to better reflect the language in the Safe Drinking Water Act and the Clean Streams Law.

121. Comment

Merck is concerned, however, that several subsections exceed that skill set as established through the operator certification program, conflict with established company environmental compliance management systems, or conflict with existing DEP/EPA regulations. Specifically,

- 302.1201(b)(14) - Merck requests the words, "and self-monitoring" be deleted from this subsection. This subsection indicates the duty of an operator as "overseeing or performing the collection, analysis, and interpretation of all process control and self monitoring samples. Merck agrees that oversight of process control samples and data is an integral part of the operator's responsibility to operate the regulated water system. But inclusion of the words "self-monitoring samples" raises concern. Self monitoring sampling and analysis refers to sample results that are reported to the applicable regulatory agency as part of water supply or wastewater discharge permit requirements

- 302.1201(b)(15) - Merck requests this subsection be changed to state: "Collect, prepare, and submit applicable samples or data to the applicable persons or organization for report preparation and submission to the appropriate agencies." Language in the proposed rule states that a duty of a certified operator is "preparing and submitting applicable reports to the appropriate persons or agencies." For water systems, this language conflicts with 25 PA Code 109.810(a). 109.810(a) places the responsibility and authority on environmental laboratories accredited under 25 PA Code 252 for preparation and submission of required laboratory reports to DEP. (30)

Response

There are many variations of how water or wastewater systems are managed. An operator may be assigned a few to all of the tasks listed in this section. In fact, many systems have operators perform compliance-monitoring for their system. The language was changed from self-monitoring to compliance-monitoring to better reflect the language in the Safe Drinking Water Act and the Clean Streams Law.

122. Comment

Why this section since owners have the final accountability. (36)

Response

The certified operator, not the owner, is the one responsible for making process control decisions for the system. Only in some cases, such as when the owner has not provided the necessary resources to the operator to adequately complete the duties of an operator, will the owner have the final accountability.

123. Comment

302.1201(b)(II) - (source water protection); 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. (38, 70)

Response

Some operators can have a significant impact in the implementation of a system's source water protection plan. This is why this is listed.

124. Comment

302.1201(c) - requirement to provide notice by specific means. We believe that the proposed rule is so contrary to common sense and sound operational practices that it constitutes a conflict with the Act. The first option (registered mail or overnight delivery service) is expensive, time consuming, burdensome, and slow. The proposed regulation does not reflect the nature of treatment plant operations. We acknowledge that when a certified operator makes a required report under the terms of the Act, that documentation in the form of a receipt is desirable, especially in circumstances where past reports have been ignored or the situation is potentially serious. As operators, we believe that if the proposed rule were adopted, large numbers of certified operators would drop their certifications rather than be subject to the extreme and arbitrary liability that this section imposes.

(1,5,6,7,8,9,10,11,12,13,16,17,18,19,20,21,22,23,25,26,27,28,31,32,34,35,38,39,41,42,43,45,46, 47,53,55,57,61,62,63,64,67,70, 71, 73, 75, 77)

Response

This requirement was put into the statute at the request of the regulated community. The sole reason for this report, and the only time the report should be written or submitted to the owner, is when the operator feels the current policy or a decision of the owner is, or may be, causing a violation. It is a tool for the operator to protect himself should the Department take an enforcement action as a result of a violation. Language in this section has been revised to parallel the original statutory language.

125. Comment

302.1201(c) - This subsection requires that certified operators notify system owners (typically their employer) in writing of conditions that are causing or may cause a violation; we are concerned that the prescriptive nature of this subsection may in fact contribute to or exasperate violations. We requests this subsection be changed to read: "Certified operators shall notify system owners of any known violations or system conditions that may potentially cause or are causing violations of any Department regulation or permit conditions or requirement using any appropriate means based on the severity of the situation and/or violation. If notification is by verbal means, the certified operator should provide a follow up written report to the system owner. Requests the receipt requirement is deleted from this subsection. (30)

Response

This requirement was put into the statute at the request of the regulated community. The sole purpose for this report, and the only time the report should be written or submitted to the owner, is when the operator feels the current policy or a decision of the owner is causing, or may be causing, a violation of applicable federal or state laws or regulations. It is a tool for the operator to protect himself should the Department take an enforcement action as a result of a violation. As such, language defining the format and delivery mechanism for this report has been deleted from the regulatory language and will be put in guidance as one of many formats the operator can use to meet this requirement, depending on the situation in the system.

126. Comment

The proposed regulation is not very clear in what may be a possible potential for violation and needs to be clarified, as well as eliminate the requirement for registered mail notification. Once clarification is made in the regulation, we recommend that the DEP prepare a guidance document to outline and describe the type of scenarios that should be reported to the system owner and establish a menu of notification options, such as e-mail or documenting concerns in logs. 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? (62, 65, 68, 69, 74)

Response

The purpose of the report is to document situations that the operator feels may be, or are, causing a violation. It is a tool for the operator to protect himself should the Department take an enforcement action as a result of a violation. The language defining the format and delivery mechanism for this report has been deleted from the regulatory language and will be put in guidance, as suggested.

127. Comment

The regulation proposes to dictate the contents of each and every report submitted by an operator to an owner regarding potential noncompliance. As for the method of making the notice, no such provisions appear in the Act and the provisions as drafted are unreasonable, unnecessary, and create potential liability for operators where none was intended by the Act. In many, probably most, cases an operator will be unable to provide all of this information, thereby violating the regulations and becoming subject to civil penalties. The provisions are unreasonable in that they would require all of the indicated information in each and every report, no matter how minor the problem or how difficult the information would be to obtain. With regard to reports, we recommend that the regulations for reporting only require what the Act does. We and PA DEP agreed to include in the regulation a non-binding suggestion to provide written reports. We request that the final regulations return to that provision.

(1,5,6,7,8,9,10,11,12,13,16,17,18,19,20,21,22,23,25,26,27,28,31,32,34,35,38,39,41,42,43,45,46,47,51,55, 57,61,62, 63,64,65,67,70,71,73,75,76,77)

Response

This requirement was put into the statute at the request of the regulated community. The sole reason for this report, and the only time the report should be written or submitted to the owner, is when the operator feels the current policy or a decision of the owner is, or may be, causing a violation. It is a tool for the operator to protect himself should the Department take an enforcement action as a result of a violation. Language in this section has been revised to more accurately parallel the statutory language creating this requirement.

128. Comment

302.1201(d) - This provision creates significant new liability to operators which is not authorized by the Act. Specifically, this section imposes liability for "consequences" of process control decisions. While the language is extremely vague, it appears to impose liability for any result of a process control decision, whether or not it was reasonably anticipated. If an operator makes an unreasonable or imprudent decision which has adverse consequences, 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. Since the proposed provision is so ambiguously worded as to be unenforceable ("void for vagueness"), and because it clearly intends to create liability not provided for by the Act, as well as liability for things totally beyond the control of the operator, it cannot be included in the final regulation.

(1,5,6,7,8,9,10,11,12,13,14,16,17,18,19,20,21,22,23,25,26,27,28,29,32,33,34,35,39,41,42,43,44,45,46,47, 50, 55,61, 62, 64, 67, 68,72,76)

Response

The 1996 Amendments to the Federal Safe Drinking Water Act and the EPA guidelines developed in response to these amendments require all process control decisions be made by a certified operator with the appropriate knowledge, skills and abilities to do so. This is why a certification program exists. These provisions are needed to ensure continued compliance with the EPA guidelines to avoid the loss of federal funds for the Drinking Water State Revolving Loan Fund.

This section and the Drinking Water and Wastewater Systems Operator's Certification Act provides additional protection for those certified operators who exercise care and their best professional judgment in carrying out this responsibility by:

- (1) Recognizing the certified operator can not be held responsible for consequences beyond his control due to a lack of resources provided by the owner of the system.
- (2) Recognizing the certified operator can not be held responsible for the consequences of actions done by a negligent employee or with malice.
- (3) Requiring the Department to petition the Op Cert Board to suspend, modify or revoke an operator's license. The Op Cert Board must conduct a complete administrative hearing before taking action on the petition. In other words, the operator gets his "day in court" before losing his or her license.
- (4) Giving the certified operator a chance to remedy a situation through compliance with a Department order. The Department can only assess fines and penalties after the certified operator fails to comply with the Department order. This is a level of protection that does not exist in any other statute or regulation implemented by the Department.

The changes to the program that were made to ensure compliance with the federal requirements have been in place since 2002. These regulations are a formalization of these requirements. Since 2006, the Department has submitted 7 petitions to the Op Cert Board. All of these petitions have been settled through negotiations with the operator before the Op Cert Board held an Administrative Hearing. In addition, not one operator or owner has been assessed a fine or penalty based solely on a violation of the Drinking Water and Wastewater Systems Operator's Certification Act or the existing program guidelines. The Department feels the process is working as designed.

302.1202 - DUTIES OF OWNERS

129. Comment

302.1202(a)(5) includes the phrase "in a timely manner." This phrase is vague. We recommend that the final-form regulation include a more precise timeframe for responding to problems identified in written reports from certified operators. Also, 302.1202(a)(6) requires owners to provide copies of permits to "all available operators." However, Section 1013(f)(3) of the Certification Act only requires copies of permits be provided to "operators in responsible charge." What is the need for expanding the scope of the Certification Act to include all available operators instead of operators in responsible charge? (76)

Response

Every situation is different. Some situations may be relatively simple to resolve, others may require significant changes to the treatment system requiring design and construction. For this reason a more precise time frame can not be specified. In many cases, the available operator and the operator in responsible charge are the same person. The current regulatory language only requires the designation of an operator in responsible charge if a system wants to use standard operating procedures. Therefore, there may be a large number of systems that do not have, nor do they need, an "operator in responsible charge." All systems are required to have at least one available operator to make process control decisions. In many cases, they need a working knowledge of the permit conditions to make those decisions.

130. Comment

302.1202(a)(6) & 302.1202(d) - The Act provides that owners will provide copies of permits to the operator(s) in responsible charge. (Act § 1013(f)(3).) The proposed Regulation changes this statutory provision by requiring owners to provide permits to all "available operators," which by definition may be a different, and certainly a larger, group of personnel. Hence, this provision is clearly contrary to the Act. Again, the proper way to address this issue is for the Department to make a recommendation to owners in non-binding guidance. (17, 18)

Response

In many cases, the available operator and the operator in responsible charge are the same person. The current regulatory language only requires the designation of an operator in responsible charge if a system wants to use standard operating procedures. Therefore, there may be a large number of systems that do not have, nor do they need, an "operator in responsible charge." All systems are required to have at least one available operator to make process control decisions. In many cases, they need a working knowledge of the permit conditions to make those decisions.

131. Comment

302.1202(b) - Annual Report from Owner. The requirement to submit an annual report listing the available operators and their personal information serves no purpose. The Department has on file the reports submitted under the Interim Guidelines, and the requirement to report any change in the operators (§ 1202(c)) will serve to keep that information up to date. 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. (4,17, 18, 38,70,72)

Response

This report is the mechanism the Department uses to comply with the statutory requirement that all system owners designate the available operators for their systems. However, it does not have to be submitted on an annual basis. Therefore this section has been revised to require submittal of the report upon written request of the Department. The link between the report and the annual service fee has been eliminated.

132. Comment

Include this information in the Chapter 94 Annual Wasteload Management Report or DMR. (15)

Response

This may be a possible option, provided the data management system can handle this. The Department will look into this as a possible alternative to the submittal of a separate report.

133. Comment

302.1202(b) - Six pieces of information are required to be reported to the Department on an annual basis under this subsection. We believe that the Department is already in possession of this information so why report the information again? Also, the regulation is silent on when and where the report is to be submitted. If the EQB retains this provision, we recommend that the final-form regulation specify when and where the report should be submitted. (76)

Response

This report is the mechanism the Department uses to comply with the statutory requirement that all system owners designate the available operators for their systems. This information can change over time and should be updated on a regular basis. We have revised the regulatory language to change the timeframe for the submittal of this report to be only upon written request

from the Department. Since the mailing address or location of where the report is to be submitted may change, this information needs to be left out of the regulatory language. This information will be included in the written request from the Department.

134. Comment

302.1202(c) - Owners notifying Dept. in writing within 10-calendar days of addition, loss, change or replacement of available operator is not necessary. (38, 70)

Response

Over 80% of the systems in the state are small systems with only one reported operator. To continue to ensure compliance and protect public health, the Department needs to know if this operator leaves the system. In addition, keeping this data current helps with the long-term implementation, compliance and enforcement of the program.

302.1203 - PROCESS CONTROL DECISIONS

135. Comment

Situation where an uncertified supervisor (or owner's representative) makes process changes contrary to what the certified operator would make? The Revisions should contain some sort of whistleblower provision and shield without having to go to other Acts. (38, 70)

Response

Section 15.1 of the Drinking Water and Wastewater Systems Operator's Certification Act provides this protection. There is no need for additional provisions.

136. Comment

302.1203(c) - No such power is created by the Act. There is nothing about developing special operating plans. Additionally, the powers of the Department are set forth in §1004(b) of the Act, which does not give the Department the power to impose extensive planning requirements on wastewater systems. Neither is the Board empowered. 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"}. Under what circumstances will such plans be required? What will the Department do with such plans? (17, 18, 34,68, 72, 76)

Response

Section 1004(b)(1) allows the Department to establish and implement procedures as necessary to carry out and support the Act. The intent of a Process Control Plan is to assist systems establish and implement procedures that facilitate the operation of the system and help the operator develop standard operating procedures. The Department will use this option only for systems that have demonstrated histories of non-compliance, are having difficulties adjusting to new treatment requirements or have other unique circumstances where the development of such a plan is warranted. Subsection 302.1203(d) limits the development of these plans to situations where an operation and maintenance plan, emergency response plan or other similar documentation does not already exist and is designed to establish uniform standards for all drinking water and wastewater treatment system operation.

137. Comment

302.1203(c) Process Control Plans & 302.1204 Standard Operating Procedures - Costs of complying with the operational portions of the regulation have been totally ignored in the Preamble Section F. A system owner may have most of the items described in 302.1203(c) but not in the compiled narrative form required by the regulations. The same may be true of the required format of standard operating procedures detailed in §302.1204. (73)

Response

A process control plan will only be required in cases of non-compliance or other unique situations where a similar operations and maintenance or emergency response plan is not in place. The development of standard operating procedures is one tool the owner can use to ensure all process control decisions are made by a certified operator. The decision to utilize these procedures is up to the owner and a certified operator designated by the owner as the operator in responsible charge. These procedures must be approved by this operator in responsible charge, not the Department. The costs for the development of these documents should be minimal and are considered part of the everyday costs for the operation and maintenance of the system.

138. Comment

302.1203(e) - 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), 1013(e)(5).) The Proposed Regulation, however, attempts to create an exception to the definition based on *who is making the decision*.

(Vagueness of the proposed rule). PaDEP has the power to issue Orders regarding treatment plant operations under both the Certification Act and the Clean Streams Law; there is no need to circumvent the protective provisions of the Act by changing a statutory definition. 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. The Association notes that we do not object to the provisions that local government actions to approve land development are not Process Control Decisions because this is merely a clarification of a common sense idea. Similarly, for the purposes of clarification, it would also be worthwhile to include a notation that the administration and operation of a Municipal Industrial Pretreatment Program is not a Process Control Decision for the same reason.

(1,5,6,7,8,9,10,11,12,13,16,17,18,19,20,21,22,23,25,26,28,29,32,34,38,39,41,42,43,45,46,47,55, 61,64,67,68, 69,70,72,74,76)

Response

The reason for this subsection was to add clarification. As stated by the commentators the situations listed are more of a common sense idea and have no additional value. Therefore, this section was deleted.

139. Comment

Would these provisions prevent a person in a management position (not an operator) from issuing a boil water notice? (68)

Response

No. However the decisions made to resolve the problem resulting in a boil water notice must be made by a certified operator

302.1204 – STANDARD OPERATING PROCEDURES

140. Comment

302.1204(b)(3) - Compliance with Standard Operating Procedures; the sentence as drafted is confusing. We believe that this subparagraph should say, "State which treatment processes are covered by the standard operating procedures; for processes that are not covered by the standard operating procedure, the operator should be instructed to contact an available operator to make any necessary process control decisions." (17, 18)

Response

The Department agrees with this concept. However, the sole responsibility for an operator in responsible charge is the development and approval of standard operating procedures, if the system decides to use them. Therefore, the suggested language was modified slightly to have the operator contact this individual, not another available operator.

141. Comment

302.1204 - What good is the rule if it is not enforced? Plants should always be run by a certified operator. SOP's should not be used to get around the law, there should be a certified operator at the plants whenever they are operating. (56)

Response

Standard operating procedures are not intended as a substitution for a certified operator. Section 13(b) of the Drinking Water and Wastewater Systems Operator's Certification Act allows the use of these procedures. These procedures must be developed and approved by an operator in responsible charge designated by the system owner.

142. Comment

302.1204 - Standard Operating Procedures should be part of the design of the facility and developed by certified professional engineers, not by a facility operator or DEP operative who have not been trained, evaluated and certified to have the knowledge to understand the full implications of the system design parameters. These SOPs should be part of the Operating Permit for the facility and reviewed by other certified professionals as part of the design and permitting process, NOT developed by DEP, the plant operators or owners independently after permitting. In no way should the operator be "liable" for damages incurred during operation of the facility in full compliance with approved design, operating, and permit instructions. (62)

Response

Standard operating procedures are to cover process control decisions needed in the daily operation and maintenance of the system. These decisions need to be made by a certified operator, not a professional engineer or a Department employee. They need to be developed and approved by the certified operator designated by the system owner as the operator in responsible charge. Therefore, he or she needs to be held responsible for the content and implementation of these procedures. In no way do the development or use of these procedures hold the operator "liable" for damages incurred during operation of the facility in full compliance with approved design, operating, and permit instructions unless the standard operating procedures developed by the certified operator contradict these operating and permit instructions and implementation of the procedures results in a violation of applicable state and federal rules and regulations.

143. Comment

302.1204(f) - 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? (68)

Response

Department staff asking for this information would be regional office staff involved in permitting and facility compliance with Department rules and regulations.

302.1205 - NUMBER OF REQUIRED CERTIFIED OPERATORS

144. Comment

Could a system hire a professional as the operator in responsible-charge and not need a certified operator to complete daily activities? (36)

Response

No. The individual(s) making process control decisions at a drinking water or wastewater treatment system must be a certified operator.

302.1206 – OPERATOR IN RESPONSIBLE CHARGE

145. Comment

302.1206(a) - Are the reporting requirements found in this subsection in addition to the reporting requirements found in Section 302.1202(b)? If so, what is the need for this provision? (76)

Response

The only time an owner will designate an operator in responsible charge is if the decision has been made to utilize standard operating procedures. The reporting requirements to designate this individual are the same for the convenience of the owner and the Department.

146. Comment

302.1206(d)(1) - With respect to approval of SOPs, since the Act defines the term to be the operator “designated by the owner to ... make the process control decisions, such a requirement is not in conflict with the Act, and appears to be reasonable. We do not object to the requirement that the Operator-In- Responsible-Charge approve all SOPs. We note that the proposed regulations do not require that SOPs be developed exclusively by the Operator-In-Responsible-Charge, a concept with which we also agree. (17, 18)

Response:

Thank you for the comment and support for the proposed rulemaking.

147. Comment

302.1206(d)(2) - The proposed regulation would usurp the powers and responsibilities of the owner by mandating certain work assignments to a particular operator, regardless of job description, training, or the wishes of the owner. If an owner desires or is required to develop a process control plan, it should be able to choose who will do so. For the Board to legally deny the owner the use of all of these professionals and mandate that only the Operator in Responsible

Charge may develop such plans is to go far beyond the Board's legal authority, as well as simple common sense. (68,76)

Response

The Department deleted this subsection.

148. Comment

302.1206(e) - The attempt to create new responsibilities and liabilities not provided for in the Act and is not within the powers of the Environmental Quality Board. It may be true that action or inaction by an operator could result in a permit violation, in which case liability might lie under the Pennsylvania Clean Streams Law. The Act clearly establishes the liabilities of operators in section 1014 as those with regard to the duties enumerated in section 1013. Additionally, since one of the duties of a certified operator is to operate the water or wastewater system "utilizing available resources in conformance with applicable regulations and permits (Act § 1013(e)(3)), violation of a permit may result in liability of the operator under certain circumstances.

Specifically, such liability would only lie if the violation occurred because the operator did not provide for "suitable operation . . . utilizing available resources." Hence, the liability established by the statute is defined and delineated to a stated standard. The proposed regulation however goes beyond these statutory provisions by imposing liability for actions which may even not be a result of the operator's decisions.

(1,5,6,7,8,9,10,11,12,13,16, 17,18,19,20,21,22,23,25,26,27,28,32,34,38,39,41,42,43,45,46,47,50, 55,61, 63,70, 72, 76)

Response

The 1996 Amendments to the Federal Safe Drinking Water Act and the EPA guidelines developed in response to these amendments require all process control decisions be made by a certified operator with the appropriate knowledge, skills and abilities to do so. This is why a certification program exists. These provisions are needed to ensure continued compliance with the EPA guidelines to avoid the loss of federal funds for the Drinking Water State Revolving Loan Fund.

This section and the Drinking Water and Wastewater Systems Operator's Certification Act provides additional protection for those certified operators who exercise care and their best professional judgment in carrying out this responsibility by:

1. Recognizing the certified operator can not be held responsible for consequences beyond his control due to a lack of resources provided by the owner of the system.
2. Recognizing the certified operator can not be held responsible for the consequences of actions done by a negligent employee or with malice.
3. Requiring the Department to petition the Op Cert Board to suspend, modify or revoke an operator's license. The Op Cert Board must conduct a complete administrative hearing before taking action on the petition. In other words, the operator gets his "day in court" before losing his or her license.
4. Giving the certified operator a chance to remedy a situation through compliance with a Department order. The Department can only assess fines and penalties after the certified operator fails to comply with the Department order. This is a level of protection that does not exist in any other statute or regulation implemented by the Department.

The changes to the program that were made to ensure compliance with the federal requirements have been in place since 2002. These regulations are a formalization of these requirements. Since 2006, the Department has submitted 7 petitions to the Op Cert Board. All of these petitions have been settled through negotiations with the operator before the Op Cert Board held an Administrative Hearing. In addition, not one operator or owner has been assessed a fine or penalty based solely on a violation of the Drinking Water and Wastewater Systems Operator's Certification Act or the existing program guidelines. The Department feels the process is working as designed.

302.1207 – OPERATION OF MULTIPLE TREATMENT SYSTEMS (CIRCUIT RIDER)

149. Comment

302.1207(f) - Circuit Rider Process Control Decisions; This rule as written makes no sense and is impossible to understand. It appears to be the purpose of the proposed rule to require each owner to "sign off on the management plan for his system before the circuit rider is allowed to commence operating that system. This is what the rule should say. (17, 18)

Response

The Department revised this language as suggested.

150. Comment

302.1207(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. We recognize that owners need to understand their responsibilities and circuit riders need to provide services that will protect the waters of the Commonwealth. Recommend section be reworded or more appropriately handled as guidance. (72)

Response

The reason for the general work plan and the system specific management plan is to require the circuit rider to demonstrate how he or she is going to operate multiple systems with different treatment technologies and capacities. The Department created this framework specifically to allow for diversity in plant design, treatment technology, size and location. The general work plan provides a blueprint for how the circuit rider plans to operate multiple systems. If ongoing compliance issues arise at the systems operated by a circuit rider, the Department will step in and require the owner of one or more of these systems to hire another available operator or circuit rider. Requiring the system owner to sign off on the system specific management plan ensures the owner is at least familiar with how the circuit rider plans to operate his or her system and acknowledges the fact that he or she is sharing the certified operator with at least one more system. In response to this comment, the Department changed the wording from "approved" to "sign off". The Department intends to provide further guidance on the development of the circuit rider program in guidance.

151. Comment

302.1207(k)(2) - The Department may direct an owner or available operator to cease participation in a circuit rider program if there is a threat to public health, safety and the

environment. Is this due to the action of the circuit rider? If so it should say that. Many emergencies happen when no one is present. Operator should be given time to work on problem. (51)

Response

The Department added language as suggested.

152. Comment

302.1207(k)(3) - The Department may direct an owner or available operator to cease participation in a circuit rider program if; changes have occurred at the system that are not included in the system specific management plan. Why not ask the circuit rider to update the system specific management plan before having the owner cease participation in the circuit rider program? Sometimes changes are made to improved treatment. Until changes are proven the new SOP is not committed to paper. (51)

Response

The Department will take a number of factors into consideration before making the determination to direct an owner to cease participation in a circuit rider program based on a change in treatment. In most cases, a revision to the management plan will suffice. However, this language is here to give the Department the option, if needed, to not allow for these revisions and to require the owner to hire another available operator.

153. Comment

Recommend the term "circuit rider" be defined in either this section or Section 302.101 (Definitions). We also recommend that the term be deleted from the title of this section. (76)

Response

This term is defined in Section 302.101 (Definitions). The term has been removed from the title.

302.1208 PROGRAMMABLE LOGIC CONTROLS (PLC'S) AND SUPERVISORY CONTROL AND DATA ACQUISITION SYSTEMS (SCADA)

154. Comment

Both of the terms are also used in Section 302.1203(a). We recommend that the terms be defined in Section 302.101, relating to definitions. (76)

Response

The Department added definitions for these terms in Section 302.101.