

3-YEAR REGULATORY FEE AND PROGRAM COST ANALYSIS REPORT TO THE ENVIRONMENTAL QUALITY BOARD

Operator Certification Program Fees Chapter 302. Administration of the Water and Wastewater Systems Operators' Certification Program December 14, 2016

BACKGROUND:

Introduction

25 Pa. Code Chapter 302 establishes the policies and procedures for the State Board for Certification of Water and Wastewater Systems Operators (Certification Board) and the Department of Environmental Protection (DEP) in implementing duties and responsibilities under the Water and Wastewater Systems Operators' Certification Act (Act) (63 P.S. §§ 1001 – 1015.1). Chapter 302, Administration of the Water and Wastewater Systems Operators' Certification Program, was published as final rulemaking in the *Pennsylvania Bulletin* on September 18, 2010.

The purpose of Chapter 302 is to protect the public's health and safety, protect the aquatic environment, and promote the long-term sustainability of the Commonwealth's drinking water and wastewater treatment systems. Currently, Chapter 302 ensures that approximately 5,040 Water Operators and 4,960 Wastewater Operators have the appropriate knowledge, skills, and abilities to make the necessary process control decisions at treatment facilities. Chapter 302 also ensures that Pennsylvania's Operator Certification Program will continue to meet the federal requirements established in the 1996 Amendments to the Federal Safe Drinking Water Act for all State drinking water programs. The Safe Drinking Water Act requires the U.S. Environmental Protection Agency to withhold 20 percent of the state's Drinking Water State Revolving Loan Fund if Pennsylvania's Operator Certification Program does not meet federal guidelines.

§ 302.202 (relating to operator certification program fees) specifies that DEP will review the adequacy of the fees established in this section at least once every 3 years and provide a written report to the Environmental Quality Board (EQB). The previous fee review occurred in 2013 with a summary provided to the Certification Board on October 16, 2013. At that time, the Board concurred with the Department's recommendation to keep fees static.

The fees relate to training and certification activities regulated under the Act. The initial fees were developed with considerable input from the Certification Board, the Certification Program Advisory Committee, the Small Systems Technical Assistance Center Advisory Board, the Water Utility Council, and other members of the regulated community through a series of public meetings held in December 2008. Specific fee amounts have remained unchanged since 2008. The services provided under the Act are for the benefit of operators,

owners, training providers, and examination providers. Accordingly, all beneficiaries of the services provided under the Act share equitably in covering the costs of the administration of the Act.

Fee Related Activities and Costs

Components of the Certification Program

The Operator Certification Program consists of the following five components:

1. **Examination Delivery** – Program staff, in accordance with procedures established by the Certification Board, coordinate with approved examination providers (AEPs) to deliver certification examinations to approximately 2,400 examinees annually. DEP manages the examination question bank along with the review and validation of exams; processes applications for examination; coordinates selection of exam sites; prints, delivers, proctors, and scores the exams; and delivers the final results to examinees within 30 days of the exam date. Staff also provide the necessary training and work with the AEPs to provide testing opportunities in areas of the state where there is an identified need. Additionally, staff supervise Water Professional Exam Proctors (wage payroll employees), who assist with proctoring at exam sites. Throughout 2015 and 2016, additional DEP staff were provided with proctor training, in order to offer more testing opportunities.
2. **Initial Certification, Certification Upgrade, Reciprocity, Certificate Renewal** – Program staff annually process 1,250 initial operator certification applications or upgrades; and, annually process 3,000 applications for certificate renewal. In comparison to 2013, 800 initial operator certification applications or upgrades were processed annually. Staff conduct a preliminary determination regarding whether education, experience, criminal history (concerns presented to the Certification Board), examination scores, and continuing education hours meet minimum requirements for certification, certification upgrade, or certification renewal. An operator certificate is mailed to the applicant after the Certification Board takes action to approve the application for certification.
3. **Technical Support** – DEP program staff provide technical support to administrative staff and compliance assistance to the regulated community. Central Office staff direct and coordinate program implementation with the regional staff to assure compliance with the legislation and regulations. Staff also supervise Public Services Institute Instructors (wage payroll employees), who provide on-site technical assistance at water and wastewater facilities.
4. **Training and Continuing Education** – DEP program staff are responsible for the review and approval of new drinking water and wastewater training providers, courses, and conferences. Program staff review approximately 200 training applications, related to continuing education, each year. Staff also audit approved training courses; resolve

discrepancies between the operators' and the approved training providers' records; and manage data for 19,000 operator course completions.

- 5. Course Development and Delivery** – While most of the training and continuing education needs are fulfilled through training providers, DEP fulfills ongoing training needs associated with regulatory requirements and certification examination preparation. Depending on the scope of training needed, the format for this training is either classroom or Web-based.

Implementation of the Certification Program

To maintain full implementation of the Operator Certification Program, the fees in 25 Pa. Code Chapter 302 must cover the programmatic costs to implement all components for the water and wastewater treatment aspects of the program. To implement the five program components listed above, designated staff will continue coding applicable timesheet charges to the Operator Certification sub-fund within the Safe Drinking Water Fund. Duties are divided among the following classifications:

- Administrative Staff – Preparing recommendations regarding Certification Board policies; docketing petitions and appeals of DEP actions for the Certification Board; evaluating and processing applications for certification; administering examinations; ensuring conformance to certification, training, and continuing education requirements; maintaining data in DEP's enterprise data system for 8,500 drinking water and wastewater operators; and supervising wage payroll employees.
- Information Technology (IT) Staff – In FY '13-14 through '15-16, two dedicated Safe Drinking Water staff were responsible for a variety of IT related tasks such as processing continuing education records and supporting the training approval process; developing new procedures for online examinations; maintaining the Drinking Water and Wastewater Operator Information Center Web page; and supporting the Earthwise Academy. These positions have recently been lost due to retirement and reorganization. These duties will now be assigned as additional duties for other Safe Drinking Water staff, primarily one Group Manager.
- Water Program Specialists and Group Manager – Providing technical support to the program, compliance assistance, and investigative services to DEP and the Certification Board when issues at a system or with an operator lead to enforcement; approving operator training courses, reviewing post-presentation courses for credit, and developing regulation-related and examination preparation training; supporting the Earthwise Academy, DEP's Web-based mechanism for delivering operator training; developing new procedures for online examinations; and supervising wage payroll employees.
- Public Services Institute Instructors – Providing on-site technical assistance at drinking water and wastewater facilities through a pool of trained wage payroll employees.

- Water Professional Exam Proctors (PEP) – Assisting with proctoring at certification examination sites in Pennsylvania through a pool of trained wage payroll employees. In 2014, six additional PEPS were trained to enable additional capability
- Compliance Assistance Specialists: At least one in each of the six DEP regions.
- DEP Proctors - Additionally in 2015, Water Program Specialist and Compliance Assistance Specialist

Following publication of 25 Pa. Code Chapter 302 final rulemaking, DEP implemented a number of changes to improve program efficiencies. A historical summary:

- In late 2009, furloughs of Commonwealth employees resulted in a reduction of available exams for operators from a three-year average of 1,400 exams per year to less than 400 exams in 2010. Due to staff training and administrative enhancements, approximately 1,600 exams occurred 2013, thus increasing exam numbers above pre-furlough levels. At their August 22, 2012 meeting, the Certification Board unanimously approved a motion that expressed satisfaction with the current number of exams offered.
- In 2013 and 2014 DEP successfully piloted a web-based exam program to supplement the traditional classroom exams. 25 Pa. Code Chapter 302 states that Approved Exam Providers “will not at any time be in possession of any Department–developed examination materials or examination content.” DEP maintains possession by delivering the web-based exams in DEP’s regional office computer labs via DEP’s current learning management system. The web-based exam system continues to expand including 28 sessions in 2016. Additional cost savings will be realized via the ultimate elimination of manual exam scoring.
- In 2013, DEP’s eFACTS application was enhanced to automate the existing annual fee collection system for Chapter 302 Administration of the Water and Wastewater Systems Operators’ Certification Program. Productivity will be improved by partially automating the generation of invoices, tracking of annual fees, and managing Available Operator Reports in lieu of full manual tracking.
- A total of approximately 10,000 operator exams were taken in the past three years; (2013, 2014, and 2015); this resulted from a targeted effort to meet a backlog in testing demand. It appears that the backlog has been eliminated as demand for exams is now decreasing. Thus far in calendar year 2016, several exams were cancelled and many other exams did not fill to capacity in 2016.
- Approximately 1,600 exams are projected for 2017. This will be a decrease of 800 exam seats from 2016. However, it is anticipated that the demand for exams will steadily increase with time due to aging workforce resulting in retirements, and considerable number of systems lacking a properly certified full time or back-up operator. DEP will be vigilant to make adjustments as necessary to meet fluctuations in testing demand.

Fee Objective, Title and Rate

The fee schedule established in 25 Pa. Code Chapter 302 is designed to cover the Operator Certification program costs. Fund fees include three Operator Certification sub-funds within the Safe Drinking Water Fund, a special restricted revenue account in the General Fund administered by DEP for use in protecting the public from the hazards of unsafe drinking water and for which funds are appropriated to DEP for purposes authorized in the Safe Drinking Water Act. Revenue sub-funds include “Certification” (fees paid by operators), “Training” (fees paid by training providers, approved examination providers, and for attending DEP classroom and Web-based courses), and “System Annual Fees” (fees paid by drinking water and wastewater systems). Table 1 provides a summary of current fees.

DRAFT FOR CERTIFICATION BOARD COMMENT

Table 1. Summary of Current Fees in Chapter 302

Fee	Entity Paying Fee	Amount
Training Provider Approval Application	Training Provider	\$90
Brief Course Approval	Training Provider	\$115
Full Course Approval	Training Provider	\$300
Conference Approval	Training Provider	\$70
Course Rosters (fee per name)	Training Provider	\$1
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10 or more examination sessions per year	Approved Examination Provider	\$800
6 to 9 examination sessions per year	Approved Examination Provider	\$700
2 to 5 examination sessions per year	Approved Examination Provider	\$600
1 examination session per year	Approved Examination Provider	\$400
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Initial Certification Class A, B, C, D	Operator	\$150
Initial Certification Class Dc, Class E	Operator	\$100
Certification through Reciprocity Class A, B, C, D	Operator	\$150
Certification through Reciprocity Class Dc, Class E	Operator	\$100
Certification Renewal (3 year)	Operator	\$60
Examination Session	Operator	\$35
Replacement of Certificate or Pocket Card	Operator	\$25
Post-Presentation Credit Application Fee	Operator	\$250

Fee	Entity Paying Fee	Amount
Annual Service Fee	Class A Systems	\$500
	Class B Systems	\$150
	Class C Systems	\$100
	Class D and E Systems	\$65
DEP Classroom Courses	Course attendees	\$10 per hour maximum
DEP Web-based Courses	Course attendees	\$30 per hour maximum
Department On-site Training	Systems asking for the training	\$1,600 per event

FEE COLLECTIONS:

Table 2 provides a summary of actual revenues collected during state FY '13-14 through '15-16 and projected revenues for FY '16-17 through '18-19.

Table 2. Summary of Chapter 302 Revenues¹

Rev. Source	FY '13-14	FY '14-15	FY '15-16	FY '16-17²	FY '17-18²	FY '18-19²
Certification	\$314,952	\$328,482	\$303,110	\$315,514	\$315,514	\$315,514
Training	\$ 70,259	\$ 57,038	\$ 57,928	\$ 61,741	\$ 61,741	\$ 61,741
Annual Service	\$467,185	\$669,992	\$342,086	\$493,087	\$493,087	\$493,087
TOTAL	\$852,397	\$1,055,512	\$703,126	\$870,342	\$870,342	\$870,342

Notes:

¹ Revenues listed in the table are deposited into three Operator Certification sub-funds within the Safe Drinking Water Fund. Revenues do not include funding from the U.S. Environmental Protection Agency for technical support and training program development and implementation.

² Revenue projections for FY '16/17, FY '17/18, and FY '18/19 are based on averages of each Revenue Source line item for FY '13/14 through '15/16

Annual Service Fee Delinquency

Failure to submit the annual service fee payment in full constitutes a violation of 25 Pa. Code § 302.202 and subjects the owner to enforcement action under Section 14 of the Water and Wastewater Systems Operators' Certification Act (63 P.S. § 1014). The Act provides for up to \$1,000 per day in civil penalties and up to \$1,000 per day in summary criminal penalties for each violation.

Wastewater

A historical review of wastewater fee payments reveals the following trends...

Wastewater systems that did not return either their AOR or Annual Fee after the 60 day period of the initial mailing:

- October 2015, 280 systems (11%)
- October 2014, 377 systems (15%)
- October 2013, 653 systems (25%)

A reminder letter was sent to each of these systems regarding the requirement to pay fees, which resulted in:

- December 2015, 50 systems (2%) failed to respond, resulting in Notice of Violation (NOV)
- December 2014, 83 systems (3%) received an NOV.
- December 2013, 201 systems (8%) received an NOV.

The final tally of wastewater systems which did not pay the fee resulting in the following end of year number of **wastewater systems in non-compliance:**

- December 2015, 16 wastewater systems (Less than 1%)
- December 2014, 5 wastewater systems (Less than 1%)
- December 2013, 11 wastewater systems (Less than 1%)

Water

A historical review of drinking water fee payments reveals the following trends...

Drinking water systems that did not return either their AOR or Annual Fee after the 60 day period of the initial mailing:

- October 2015, 238 systems (7.8%)
- September 2014, 390 systems (13%)
- October 2013, 530 systems (17%)

A reminder letter was sent to each of these systems regarding the requirement to pay fees, which resulted in:

- December 2015, 87 systems (2.8%) were sent an NOV
- December 2014, 127 systems (4%) were sent an NOV
- December 2013, 141 systems (4.5%) were sent an NOV

The final tally of drinking water systems which did not pay the fee resulting in the following end of year number of **drinking water systems in non-compliance**:

- December 2015, 41 water systems (1.5%)
- December 2014, 49 water systems (1.6%)
- December 2013, 74 water systems (2%)

Two Water Program Specialist staff continue efforts to improve compliance and timely payment of fees.

PROGRAM COSTS:

Table 3 provides a summary of actual program expenses for state FY ‘13-14 through ‘15-16 and projected expenses for FY ‘16-17 through ‘18-19.

Table 3. Summary of Operator Certification Program Expenses¹

Expense	FY ‘13-14	FY ‘14-15	FY ‘15-16	FY ‘16-17²	FY ‘17-18²	FY ‘18-19²
Personnel	\$ 669,809	\$813,854	\$762,484	\$815,858	\$840,334	\$865,544
Operating	\$ 19,803	\$ 56,304	\$ 37,779	\$ 38,912	\$ 40,080	\$ 41,282
IT Expenses ³	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000	\$ 20,000
TOTAL	\$ 709,612	\$890,158	\$828,836	\$874,770	\$900,413	\$926,826

Notes:

¹ Expenses listed in the table are charged to the Operator Certification expense sub-fund within the Safe Drinking Water Fund.

² Starting in FY ‘16-17, the projected expenses are based on the following assumptions:
 a. Complement will remain at existing levels and staff will continue to carry out duties under the Operator Certification program.
 b. A standard inflationary increase of 3% per year is applied to personnel and operating expenses.

³ IT services are provided through DEP’s enterprise contractor and include support and enhancements to eFACTS and the Earthwise Academy operator transcript and continuing education catalog system. Adept Consulting, Inc. is currently DEP’s enterprise contractor.

TREND ANALYSIS:

Table 4 provides actual revenue/expense ratios for state FY ‘13-14 through ‘15-16, and projected ratios for FY ‘16-17 through ‘18-19.

Table 4. Revenue/Expense Ratios for the Operator Certification Program

	FY '13-14	FY '14-15	FY '15-16	FY '16-17	FY '17-18	FY '18-19
Ratio	1.20	1.18	0.85	0.99	0.97	0.94

The projected revenue/expense ratios indicate that it is reasonable to assume that the current fee schedule established in 25 Pa. Code Chapter 302 should cover most Operator Certification program costs for the next three state fiscal years. Surplus revenues from previous Fiscal years will cover actual shortfalls that may occur in FY '16 through FY '19.

ADVISORY COMMITTEE REVIEW:

DEP will present this *Three-Year Regulatory Fee and Program Cost Analysis Report* for review and discussion at the December 14, 2016 meeting of the State Board for Certification of Water and Wastewater Systems Operators. At that time, the Department will answer questions from members of the Board and request their feedback and approval (documented in meeting minutes) of the below recommendation.

RECOMMENDATION AND COMMENT:

Through careful evaluation of revenues and expenses from FY '13-14 through FY '15-16; as well as projected figures for FY '16-17 forward, it appears that the current Operator Certification fee structure is adequate to support the majority of applicable operating costs. Surplus revenues would provide temporary relief of projected minor deficits that may occur in the future. Therefore, DEP recommends retaining the fee schedule currently established in 25 Pa. Code Chapter 302 and listed in Table 1. At this time, DEP recommends no regulatory amendments to modify program fees. The goal is to present this fee and cost analysis report to the EQB during the first quarter of 2017.