

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

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## Operator Certification Program Fees Chapter 302. Administration of the Water and Wastewater Systems Operators' Certification Program August 17, 2020

### 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 5,235 Water Operators and 5,134 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.

Section 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 2016 with a summary provided to the Certification Board on December 14, 2016. At that time, the Board concurred with the Department's recommendation to keep fees static. The EQB then reviewed the report on June 20, 2017.

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 Water Systems Technical Assistance Center 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 offer approximately 1,900 examination seats annually. On average, 1,690 certification examination seats are filled by examinees each year. DEP manages the examination question bank; reviews and validates 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. DEP program 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, program staff supervise Water Professional Exam Proctors (wage payroll employees), who assist with proctoring at exam sites. An ongoing task, due to retirement and staff turnover, is providing additional DEP staff with proctor training, in order to provide adequate proctor coverage for all test sites.
2. **Initial Certification, Certification Upgrade, Reciprocity, Certificate Renewal** – Program staff annually process approximately 640 initial (new) operator certification applications, 390 upgrades of existing operator licenses, and, 2,910 applications for certificate renewals. On average, 15 reciprocity applications are granted each year, allowing operators from other states to operate some level of treatment in Pennsylvania. Program 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 and managerial 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 170 training applications, related to continuing education courses, 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 approved 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 8,607 drinking water and wastewater operators; and supervising wage payroll employees.
- **Information Technology (IT) Staff** – Costs are incurred 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 webpage; updating electronic databases and supporting the Earthwise Academy. This work is primarily accomplished via IT analyst staff and a 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.
- **Compliance Assistance Specialists** – At least one specialist in each of the six DEP regions are available to provide compliance assistance, and investigative services to DEP and the Certification Board when issues at a system or with an operator lead to enforcement.

- DEP Proctors – DEP provides a lead proctor for every operator certification exam which occurs throughout the state. The general rule is one proctor is needed for every 25 operators sitting for an exam. DEP proctors for paper exams are primarily Water Program Specialists. DEP proctors for computer exams are primarily Compliance Assistance Specialists. To cover the full volume of approximately 60 examination sessions which occur each year on various dates and locations statewide, lead proctor responsibilities are spread amongst approximately 15 different DEP staff.
- Water Professional Exam Proctors (PEP) – Assisting with proctoring at certification examination sites in Pennsylvania through a pool of trained wage payroll employees. Throughout the review period covered by this report, an average of seven PEP(s) are utilized each year to assist as needed to proctor exams.
- Public Services Institute Instructors – Providing on-site technical assistance at drinking water and wastewater facilities through a pool of trained wage payroll employees.

Following publication of the 25 Pa. Code Chapter 302 final rulemaking in September 2010, DEP faced several challenges and implemented a number of changes to improve the program. A historical summary of some of the most notable items:

- 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, exam numbers increased above pre-furlough levels beginning in 2013, when approximately 1,600 exams occurred.
- 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 has improved by partially automating the generation of invoices, tracking of annual fees, and managing Available Operator Reports in lieu of full manual tracking.
- Since successfully piloting a computer-based exam program in 2013 and 2014, DEP has been implementing a computer-based exam program to supplement the traditional paper-based exams. To maintain the security of the exams, DEP proctors the exam sessions in DEP's regional office computer rooms using a unique log-in to the Commonwealth network that completely locks the computer from accessing any other websites or software. The maximum number of examinees in each session ranges from 11 to 22, depending on the location. Certification staff's time for pre-exam preparation and post-exam scoring is greatly reduced when compared to the paper-based exams. DEP held an average of 25 computer-based exam sessions per year for each of the past three years.
- A total of approximately 5,025 operator exams were taken in the past three years (2017, 2018, and 2019). Every year for the past seven consecutive years, the number of examination seats offered exceeded the number of seats actually filled by at least 10%. For the past three years, the demand for exams has stabilized. However, it is anticipated

that the demand for exams will steadily increase with time due to aging workforce resulting in retirements, and the considerable number of systems relying on only one properly certified operator. DEP will be vigilant to make adjustments as necessary to meet fluctuations in testing demand. The goal is to establish an exam schedule in January of each year that provides testing opportunities which were at least equivalent to the number of examinee seats filled the previous year.

**Fee Objective, Title and Rate**

The fee schedule established in 25 Pa. Code Chapter 302 is designed to cover the Operator Certification program costs. Fees are deposited into three categories within a dedicated Operator Certification sub-fund within the Safe Drinking Water Fund, which is a special restricted revenue account in the General Fund. This fund is 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 categories 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 which result in program revenue.

**Table 1. Summary of Current Fees in Chapter 302**

<b>Fee</b>	<b>Entity Paying Fee</b>	<b>Amount</b>
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
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

<b>Fee</b>	<b>Entity Paying Fee</b>	<b>Amount</b>
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
<b>Annual Service Fee</b>		
	Class A Systems	\$500
	Class B Systems	\$150
	Class C Systems	\$100
	Class D and E Systems	\$65
<b>DEP Classroom Courses</b>		
DEP Classroom Courses	Course attendees	\$10 per hour maximum
<b>DEP Web-based Courses</b>		
DEP Web-based Courses	Course attendees	\$30 per hour maximum
<b>Department On-site Training</b>		
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 '16-17 through '18-19 and projected revenues through FY '21-22.

**Table 2. Summary of Chapter 302 Revenues<sup>1</sup>**

<b>Rev. Source</b>	<b>FY '16-17</b>	<b>FY '17-18</b>	<b>FY '18-19</b>	<b>FY '19-20<sup>2</sup></b>	<b>FY '20-21<sup>2</sup></b>	<b>FY '21-22<sup>2</sup></b>
Certification	\$308,052	\$316,747	\$268,710	\$297,836	\$297,836	\$297,836
Training	\$ 54,110	\$ 53,283	\$ 50,116	\$ 52,503	\$ 52,503	\$ 52,503
Annual Service	<u>\$500,328</u>	<u>\$505,228</u>	<u>\$500,743</u>	<u>\$502,100</u>	<u>\$502,100</u>	<u>\$502,100</u>
<b>TOTAL</b>	<b>\$862,490</b>	<b>\$875,258</b>	<b>\$819,569</b>	<b>\$852,439</b>	<b>\$852,439</b>	<b>\$852,439</b>

Notes:

- <sup>1</sup> Revenues listed in the table are deposited into a dedicated Operator Certification sub-fund within the Safe Drinking Water Fund. Revenues do not include supplemental funding from the U.S. Environmental Protection Agency for technical support and training program development and implementation.
- <sup>2</sup> Revenue projections for FY '19/20, FY '20/21, and FY '21/22 are based on averages of each Revenue Source line item for FY '16/17 through '18/19.

**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 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 2018, 413 systems (17%)
- October 2017, 253 systems (11%)
- October 2016, 268 systems (11%)

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

- December 2018, 59 systems (2%) failed to respond, resulting in Notice of Violation (NOV).

December 2017, 68 systems (3%) received an NOV.  
December 2016, 60 systems (2%) received an NOV.

The final summary of wastewater systems which did not pay the fee as of January of the following year and were considered in non-compliance:

December 2018, 8 wastewater systems (0.32%)  
December 2017, 16 wastewater systems (0.64%)  
December 2016, 19 wastewater systems (0.76%)

### ***Drinking 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 2018, 365 systems (12%)  
October 2017, 557 systems (19%)  
October 2016, 907 systems (32%)

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

December 2018, 113 systems (4%) failed to respond, resulting in an NOV  
December 2017, 160 systems (6%) received an NOV  
December 2016, 213 systems (7%) received an NOV

The final summary of drinking water systems which did not pay the fee as of January of the following year and were considered in non-compliance:

December 2018, 19 water systems (0.6%)  
December 2017, 47 water systems (1.6%)  
December 2016, 60 water systems (2.1%)

Two Water Program Specialist staff continue efforts to improve compliance and timely payment of fees. Recent retirements have resulted in a new staff person responsible for drinking water compliance and a current vacancy for the wastewater compliance position.

**PROGRAM COSTS:**

Table 3 provides a summary of actual program expenses for state FY '16-17 through '18-19 and projected expenses for FY '19-20 through '21-22.

**Table 3. Summary of Operator Certification Program Expenses<sup>1</sup>**

<b>Expense</b>	<b>FY '16-17</b>	<b>FY '17-18</b>	<b>FY '18-19</b>	<b>FY '19-20<sup>2</sup></b>	<b>FY '20-21<sup>2</sup></b>	<b>FY '21-22<sup>2</sup></b>
Personnel	\$ 791,573	\$737,390	\$631,683	\$741,822	\$764,077	\$786,999
Operating	\$ 35,245	\$ 22,883	\$ 25,824	\$ 28,824	\$ 29,689	\$ 30,579
IT Expenses <sup>3</sup>	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000
<b>TOTAL</b>	<b>\$ 856,818</b>	<b>\$790,273</b>	<b>\$687,507</b>	<b>\$800,646</b>	<b>\$823,766</b>	<b>\$847,578</b>

Notes:

- <sup>1</sup> Expenses listed in the table are charged to the Operator Certification expense sub-fund within the Safe Drinking Water Fund.
- <sup>2</sup> Starting in FY '19-20, 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.
- <sup>3</sup> 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 '16-17 through '18-19, and projected ratios for FY '19-20 through '21-22.

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

	<b>FY '16-17</b>	<b>FY '17-18</b>	<b>FY '18-19</b>	<b>FY '19-20</b>	<b>FY '20-21</b>	<b>FY '21-22</b>
Ratio	1.01	1.11	1.19	1.06	1.03	1.01

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 '20 through FY '22.

## **ADVISORY COMMITTEE REVIEW:**

DEP presented this *Three-Year Regulatory Fee and Program Cost Analysis Report* for review and discussion at the August 12, 2020 meeting of the State Board for Certification of Water and Wastewater Systems Operators. At that time, DEP staff answered questions from members of the Certification Board, edited and added information within the report, as per their request. The Certification Board voted unanimously that the report content was complete and supported the below recommendation to retain the current fee schedule.

## **RECOMMENDATION AND COMMENT:**

Through careful evaluation of revenues and expenses from FY '16-17 through FY '18-19, as well as projected figures through FY '21-22, it appears that the current Operator Certification fee structure is adequate to support all applicable operating costs. Any surplus revenues will be maintained in a dedicated operator certification specific sub-fund within the Safe Drinking Water Fund and will be applied to cover increased future operating costs and improvements to the overall program. Surplus revenues would also provide temporary relief of revenue deficits that may occur in future years due to various extenuating circumstances. **Therefore, DEP recommends retaining the fee schedule currently established in 25 Pa. Code Chapter 302 and listed in Table 1 of this report. At this time, DEP recommends no regulatory amendments to modify program fees.**