

**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
August 19, 2013**

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. Chapter 302 ensures that approximately 9,800 water and wastewater system 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 fees relate to training and certification activities regulated under the Act. The 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. 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 1,600 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.
2. **Initial Certification, Certification Upgrade, Reciprocity, Certificate Renewal** – Program staff annually process 800 initial operator certification applications or upgrades and annually process 3,000 applications for certificate renewal. Staff determine whether education, experience, criminal history, 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 Service Institute Instructors (wage payroll employees), who assist with proctoring at exam sites and provide on-site technical assistance at water and wastewater facilities.
4. **Training and Continuing Education** – DEP program staff review applications to become an approved training provider and annually review 250 training course applications submitted by these providers. Staff also provide quality control and analysis of course roster data; 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 cover the programmatic costs to implement all components for the wastewater treatment aspects of the program. In addition, the fees cover the costs to implement the first and second components for the drinking water program. Through at least FY '13-14, the set-asides within the federal Drinking Water State Revolving Fund will cover the costs of the three remaining drinking water components.

Timesheet charges have been changed partially or in full for existing positions in DEP's Bureau of Safe Drinking Water and Bureau of Point & Non-Point Source Management. A phase-in occurred during FY '12-13 after stable Operator Certification revenue from new fees was demonstrated during the previous fiscal year (FY). This phase-in will continue in FY '13-14. To implement the five program components listed above, designated staff will continue migrating their 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; and maintaining data in DEP's enterprise data system for 9,800 drinking water and wastewater operators.
- Information Technology Staff – 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, DEP's Web-based mechanism for delivering and tracking operator training.
- Water Program Specialists – 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; and supervising wage payroll employees.
- Public Services Institute Instructors – Annually, a pool of trained wage payroll employees assist with proctoring at approximately 20 certification examination sites in Pennsylvania and provide on-site technical assistance at drinking water and wastewater facilities.
- Temporary Clerical Pool – Continuation of duties previously assigned to a full-time Clerk Typist. The employee performs data entry, provides clerical support for the Operator Certification annual fees and Available Operator Reports (AOR), and generates reports to assist staff in evaluating facility compliance with the fee and AOR requirements.

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

- 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. Due to staff training and administrative enhancements, approximately 1,600 exams are projected for 2013, thus increasing 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.
- PayPal credit card payment was initiated in mid 2011 for DEP Web-based courses under the Operator Certification program. Operators can now use credit cards to pay for thirteen Web-based courses covering drinking water and wastewater regulatory topics, including the DEP-required system security course.
- Starting in October 2013, DEP will pilot test online exams 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 will maintain possession with the proposed online exam system. In lieu of building a new electronic system, DEP’s current learning management system will be used to host exams, and cost savings will be realized through the 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.

Fee Objective, Title and Rate

The fee schedule established in 25 Pa. Code Chapter 302 is designed to cover the Operator Certification program costs. In preparation for FY ‘14-15 and FY ‘15-16, when a reduction in federal funding is anticipated, the fees will cover more program costs. Fund fees are deposited into 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.

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 FYs '10-11 through '12-13 and projected revenues for FYs '13-14 through '15-16.

Table 2. Summary of Chapter 302 Revenues¹

Rev. Source	FY '10-11	FY '11-12	FY '12-13 ²	FY '13-14	FY '14-15	FY '15-16
Certification	\$203,975	\$283,350	\$233,330	\$232,000	\$232,000	\$232,000
Training	\$ 43,898	\$ 62,700	\$ 64,701	\$ 67,000	\$ 67,000	\$ 67,000
Annual Service	\$106,540	\$332,071	\$620,285	\$523,000	\$523,000	\$523,000
TOTAL	\$354,413	\$678,121	\$918,316	\$822,000	\$822,000	\$822,000

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 FY '12-13 revenue includes delinquent annual service fee payments plus 12% interest per annum from FY '11-12. See the section below titled "Annual Service Fee Delinquency."

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.

In FY '11-12, DEP mailed annual service fee invoices to 3,213 drinking water systems and 2,543 wastewater systems. Near the end of the fiscal year, approximately \$53,000 remained in unpaid annual service fees from drinking water systems and approximately \$32,000 remained in unpaid annual service fees from wastewater systems. Due to the amount of unpaid fees in FY '11-12, DEP completed the following activities between June 1, 2012 and June 30, 2013:

- Modified DEP's enterprise data system (eFACTS) to produce invoice letters and track all annual service fees.
- June 6, 2012: DEP issues invoices for payment of the annual service fee and a request for an Available Operator Report to affected drinking water and wastewater systems. Systems that did not pay the fee in FY '11-12 also received an invoice for the previous year, and interest was assessed at an accrual rate of 12% per annum.
- September 21, 2012: DEP issues reminder letters to drinking water and wastewater systems that did not pay fees in response to the June invoicing.
- January 10, 2013: DEP issues Notice of Violation (NOV) letters to 120 delinquent wastewater systems. The systems owed a combined total of \$14,210 in unpaid annual service fees.
- March 5, 2013: DEP issues Administrative Orders to 56 delinquent wastewater systems that did not respond to the NOV letter.
- April 2013: DEP refers 12 wastewater systems that failed to submit annual service fee payment in full to the Pennsylvania Office of Attorney General for collection. The 12 systems owed a combined total of \$1,644 in unpaid fees.
- April 17, 2013: DEP issues NOV letters to 174 delinquent drinking water systems. The systems owed a combined total of \$20,499 in unpaid annual service fees.

After July 1, 2013, for delinquent drinking water systems, DEP will follow an enforcement track that is similar to the above efforts that were focused on the wastewater systems.

PROGRAM COSTS:

Table 3 provides a summary of actual program expenses for state FYs '10-11 through '12-13 and projected expenses for FYs '13-14 through '15-16.

Table 3. Summary of Operator Certification Program Expenses¹

Expense	FY '10-11	FY '11-12	FY '12-13	FY '13-14²	FY '14-15²	FY '15-16²
Personnel	\$ 34,232	\$248,667	\$565,970	\$686,627	\$772,371	\$804,553
Operating	\$ -	\$ 3,581	\$ 65,478	\$ 93,128	\$105,989	\$110,405
Contracts ³	\$ -	\$ 12,079	\$ -	\$ 50,000	\$ 50,000	\$ 50,000
TOTAL	\$ 34,232	\$264,327	\$631,448	\$829,755	\$928,360	\$964,958

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 '13-14, the projected expenses are based on the following assumptions:
- DEP will transfer timesheet charges and/or complement from the federal Drinking Water State Revolving Fund to the state Safe Drinking Water Fund. Complement will remain at existing levels and staff will continue to carry out duties under the Operator Certification program.
 - Ongoing contracted services will continue for Operator Certification program enhancements to DEP's enterprise data system (eFACTS) and the Earthwise Academy.
 - A standard inflationary increase of 4% per year is applied to personnel and operating expenses.
- ³ Contracted services are provided through DEP's enterprise contractor and include enhancements to eFACTS and the Learning Management System for the Earthwise Academy (DEP's Web-based university for operators). Adept Consulting, Inc. is currently DEP's enterprise contractor.

TREND ANALYSIS:

Table 4 provides actual revenue/expense ratios for state FYs '10-11 through '12-13 and projected ratios for FYs '13-14 through '15-16.

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

	FY '10-11	FY '11-12	FY '12-13	FY '13-14	FY '14-15	FY '15-16
Ratio	N/A ¹	2.57	1.45	0.99	0.88	0.85

Notes:

- 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. FY '10-11 was a transition year, which skews the results of the revenue/expense ratio.

The projected revenue/expense ratios indicate that the current fee schedule established in 25 Pa. Code Chapter 302 will cover most Operator Certification program costs for the next

three state fiscal years. Surplus revenues from FYs '10-11 through '12-13 will cover shortfalls in FYs '14-15 and '15-16.

During the next three years, DEP will implement administrative changes as indicated in the assumptions under Table 3. These changes include transferring timesheet charges and/or complement from the federal Drinking Water State Revolving Fund to the state Safe Drinking Water Fund. Complement will remain at existing levels, and staff will continue to carry out duties under the Operator Certification program. Contractual costs are also included to support ongoing needs for Operator Certification program enhancements to DEP's enterprise data system (eFACTS) and the Earthwise Academy.

RECOMMENDATION AND COMMENT:

By state fiscal years '14-15 and '15-16, expenses will exceed revenue within the Operator Certification program. However, surplus revenues from FYs '10-11 through '12-13 will provide temporary relief for these deficits. 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.