

EXECUTIVE SUMMARY

Chapter 302: Administration of the Water and Wastewater Systems Operators' Certification Program

Background

This final rulemaking describes the policies and procedures the State Board for Certification of Water and Wastewater Systems Operators (Certification Board) and the Department will follow to implement their responsibilities and duties under the Drinking Water and Wastewater Systems Operators' Certification Act (63 P.S. §§1001 – 1015.1). (Act) The final rule also establishes the standards and requirements for operators of water and wastewater systems to become certified and maintain their certification. It also establishes the duties and responsibilities of operators and owners of the Commonwealth's water and wastewater system infrastructure. Finally, fees to cover the costs of program administration are established.

Purpose

The objective of this final rule is to protect the environment, ensure the public's health and safety and promote 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.

This final rule 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 (SDWA) for all State drinking water programs. The SDWA requires EPA to withhold 20 percent of the state's Revolving Loan Fund if Pennsylvania's Operator Certification Program does not continue to meet federal guidelines. EPA has indicated that the current situation where budget cuts and furloughs resulted in a significant reduction in the delivery of examinations and the issuances of new operator certificates may force EPA to withhold 20 percent of the FY2010 allocation, or approximately \$7.9 million. To avoid this, the finalization of these regulations needs to be expedited and the fees put in place to cover the costs for the program as quickly as possible.

Regulated Community

The regulated community impacted by this proposed rulemaking includes the owners and operators of drinking water community systems, nontransient noncommunity water systems, water distribution systems, wastewater treatment systems treating more than 2000 gallons per day and satellite wastewater collection systems with pump stations. This includes approximately 1,157 non-transient non-community water systems; 2,077 community water systems; 2,544 wastewater treatment systems, collection systems with pump stations, 10,400 certified operators and a large number of non-certified operators.

Advisory Committees

For the past eight years, the Certification Board and the Department worked with the Certification Program Advisory Committee (CPAC) and the Small Systems Technical Assistance Center (TAC) to draft these regulations. Extensive comments and response documents were developed during the course of development of this final rulemaking. Final comments and letters of support from the Certification Board, CPAC and TAC are included in the submittal package to the Environmental Quality Board (Board).

Regulatory Fees

Program activities covered by the fees in the final rulemaking include the processing of applications for certification, certificate renewal and recertification; the administration of examinations; compliance assistance; implementing the Operator Training Approval Program in accordance with Department guidelines and the development and delivery of classroom and web-based training courses.

Public Comment Period

Because of the extensive outreach already completed, no public meetings or hearings were held. The Board approved the proposed rulemaking with a 30-day public comment period on April 21, 2009. A notice of proposed rulemaking was published in the *Pennsylvania Bulletin* at 39 PaB.3591 (July 11, 2009). Public comments were accepted from July 11, 2009 through September 9, 2009. The Department received comments from 77 commentators. Based on comments received during this official comment period and because the proposed regulation contained significant changes from existing regulations in several areas, the Department prepared an Advanced Notice of Final Rulemaking (ANFR) package for additional public comment. A notice of availability of the ANFR was published in the *Pennsylvania Bulletin* at 40 PaB.560 (January 23, 2010). Comments from the ANFR were received through February 26, 2010 with the Department receiving comments from 13 commentators.

The major changes made to the final rulemaking in response to comments received during the public comment period include revisions to definitions, changes to the scope to more accurately capture the standards that must be met to ensure compliance, clarification of the fee structure, revisions to the definitions for single entity and satellite collection systems to parallel statutory language, clarification of the requirements for the laboratory supervisor subclassification, resolution of an issue regarding the assessment of fines and penalties caused by a statutory compilation error, revisions to the list of the duties of operators, elimination of language pertaining to Department staff making process control decisions, clarification of when process control plans would be required and the addition of further criteria to identify when and how the Department could require additional security training beyond the initial training.

The major changes made to the final rulemaking in response to comments received during the ANFR include revisions to the scope to more accurately capture who is impacted by the regulations and revisions to the sections regarding the use of PLC or SCADA systems and circuit riders.

Comments received during the public comment period that did not result in a change in the final rulemaking include the elimination of the Available Operator Report and comments regarding the consequences of process control decisions. These same topics were also raised by some commentators as part of the ANFR. In addition, during the ANFR, commentators proposed revisions allowing for an automatic 90-day extension of an operator's renewal cycle if the operator had completed some, but not all, of the continuing education hours needed for certificate renewal.

One final issue identified by the commentators during the public comment period that did not result in a change in the regulations at this time is allowing operators to "bank" extra continuing education credits from one renewal cycle to the next cycle. The Department has done a preliminary review on what it would take to administer this component of the program. As a result of this analysis, the Department is recommending that the Environmental Quality Board move forward with the regulations without this option. Over the next several months, the Department will work with CPAC, the Certification Board and other representatives of the regulated community, including approved training providers and certified operators, to resolve the issues identified above. The Department may then come back to the Board with the results and proposed revisions to the regulations, should the conclusion be to include "banking" as an option. This will be done as soon as possible, but no later than three years from now when the Department is required to submit the first review of the proposed fee structure.