

**Notice of Proposed Rulemaking
Department of Environmental Protection
Environmental Quality Board
(25 Pa. Code, Chapters 301, 302, 303 and 305)
Administration of the Water and Wastewater Systems Operators' Certification Program**

Preamble

The Environmental Quality Board (Board) proposes to delete 25 Pa. Code, Chapter 301, 303 and 305 (relating to the certification of water and wastewater treatment system operators) and create a new Chapter 302. These regulations describe the process the State Board for Certification of Water and Wastewater System Operators (Certification Board) shall follow to administer the program and identify the duties and responsibilities of the Department of Environmental Protection (Department) and the operators and owners of the Commonwealth's drinking water and wastewater treatment systems. These regulations also establish standards for operator certification, re-certification, certification renewal and security training; define the certification renewal period and requirements for certification renewal; establish appropriate fees; and define classifications and subclassifications for certification.

This proposal was adopted by the Board at its meeting of (blank).

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information contact Veronica Kasi, Chief, Division of Technical and Financial Assistance, P. O. Box 8467, Rachel Carson State Office Building, Harrisburg, PA 17105-8467, (717) 787-0122, or Mary Lou Barton, Attorney, P. O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Information regarding submitting comments on this proposal appears in Section J of this preamble. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposal is available electronically through the DEP Web site at www.depweb.state.pa.us.

C. Statutory Authority

The proposed rulemaking is being made under the authority of Section 4(c) of the Water and Wastewater Systems Operators' Certification Act (63 P.S. § 1001 et seq) (Act), which directs the adoption of such rules and regulations necessary to implement the provisions of the Act.

D. Background and Purpose

This proposed rulemaking describes the policies and procedures the Certification Board will follow to implement their responsibilities and duties under the Act. This includes the procedures to be followed by applicants to become certified for the first time, to renew their certification, and to apply for reciprocity based on certification received from another state. The regulations also describe the procedure the Certification Board will follow for the review of all applications for certification, including the review of criminal history records. The regulations also define requirements for the suspension or revocation of an operator's certification, upon petition by the Department of Environmental Protection (Department) and for the review of Department decisions related to operator training programs and courses.

The proposed rulemaking 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 related to the operation of a community or nontransient noncommunity water system, water distribution system, wastewater treatment system treating more than 2000 gallons per day and a satellite wastewater collection system with a pump station. The role and responsibilities of the Department and the procedures it must follow to implement these duties are also defined. Finally, the procedure for establishing fees for program administration is established.

The proposed rulemaking ensures 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) for all state drinking water programs. This proposed rulemaking is more stringent than the federal guidelines in one area. The federal guidelines apply only to drinking water system operators; this proposed rulemaking also applies to wastewater system operators. The decision to include wastewater system operators in the new requirements was made early in the process by the State Board for Certification of Water and Wastewater Systems Operators (Certification Board) and the Department of Environmental Protection (Department) after significant public input. This was done to improve program consistency and implementation.

The Department and the Certification Board worked very closely with the Small Systems Technical Assistance Center for Small Systems (TAC) and the Certification Program Advisory Committee (CPAC) to draft Chapter 302. All elements of the overall structure of the Operator Certification Program were discussed in-depth with the respective committees. This resulted in consensus on the essential requirements and standards for certification and the roles and responsibilities of operators and system owners.

E. Summary of Regulatory Requirements

The proposed rulemaking deletes Title 25, Chapters 301, 303 and 305 and replaces them with new language in Chapter 302. It also establishes the administrative requirements for:

- Conducting the State Board for Certification of Water and Wastewater Systems Operators (Certification Board) administrative hearings.
- Processing certification, certification renewal and recertification applications.
- Administering certification examinations.

- Reviewing and acting on an operator's criminal history records.

This proposed rulemaking ensures that Pennsylvania's Operator Certification Program meets the new federal requirements established in the 1996 Amendments to the Federal Safe Drinking Water Act (SDWA) for all state drinking water programs. This proposed rulemaking is more stringent than the federal guidelines in one area. The federal guidelines apply only to drinking water system operators; this proposed rulemaking also applies to wastewater system operators. The decision to include wastewater system operators in the new requirements was made early in the process by the State Board for Certification of Water and Wastewater Systems Operators (Certification Board) and the Department of Environmental Protection (Department) after significant public input. This was done to improve program consistency and implementation. Consistent with these federal guidelines, this proposed rulemaking defines the:

- Classification and subclassification method for approximately 10,000 system operators and their treatment systems.
- Minimum education, experience and examination requirements for all operators to become certified.
- Requirements and conditions that must be met to maintain certification.
- Duties and responsibilities of operators and owners related to the operation of a community or nontransient noncommunity water system, water distribution system, wastewater treatment system treating more than 2,000 gallons per day, and a satellite wastewater collection system with a pump.

To support the administration of the Operator Certification Program, the proposed rulemaking includes fees for system owners, training providers, approved examination providers and operators. The Department developed the new fee structure with input from TAC, CPAC, the Certification Board, and individual stakeholders. A major focus of the discussions that was incorporated into the structure was the necessity for all entities to pay a fair share of the program costs. The comments received from these meetings are attached, as well as written comments submitted by the Pennsylvania Rural Water Association and the Eastern Pennsylvania Water Pollution Control Operators Association. The final proposed fee structure is summarized in Table 1.

Table 1. Summary of Fees

Fee	Entity Paying Fee	Amount
Training Provider Approval	Training Provider	\$90
Full Course Approval	Training Provider	\$300
Brief Course Approval	Training Provider	\$115
Conference Approval	Training Provider	\$70
Course Rosters (fee per name)	Training Provider	\$1
10 or more examination sessions per year	Approved Examination Provider	\$800
5 to 10 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
New License (3 yr)	Operator	\$150
License Renewals (3 yr)	Operator	\$60
Exam Session (per 4 hrs)	Operator	\$35
Post-Presentation Credit Application Fee	Operator	\$250
Annual Service Fee	Class A Systems (> 5 mgd)	\$500
	Class B Systems (1 to 5 mgd)	\$150
	Class C Systems (100,000 gpd to 1 mgd)	\$100
	Class D Systems (<100,000 gpd)	\$ 65
	Class E Systems	\$ 65
Department Classroom Courses	Course attendees	\$10 per hour
Department Web-based Courses	Course attendees	\$30 per hour
Department On-site Training	Systems asking for the training	\$1600 per course

NOTE: To insure no person is covering a large percentage of the total costs, a maximum fee of \$10,000 is proposed. This fee structure results in 37% of the program costs covered by operators, 53% by systems and 10% by the training and examination providers.

The Board is specifically seeking public comment on one aspect of the Operator Certification Program, relating to reciprocity. The Board is proposing to grant reciprocity for only the Part 1 General Examination to operators certified in other states. This would require any certified operator from another state to take the treatment technology specific examinations before being granted certification in Pennsylvania.

F. Benefits, Costs and Compliance

Benefits

The intended results of these regulations are 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. Therefore, the biggest beneficiary of these regulations is the general public.

The classification and subclassification framework more accurately reflects what the operator needs to understand to operate a system effectively and successfully. This framework was developed in partnership with representatives of the regulated community to meet their needs. In addition, in some instances, once certified, many operators will receive an increase in pay. Finally, the 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.

Compliance Costs

Any individual responsible for making process control decisions at a drinking water or wastewater treatment system in Pennsylvania must be appropriately certified for that system. A process control decision is any decision that changes or maintains water quality or water quantity to protect public health or the environment. All owners of a drinking water community or nontransient noncommunity water system, drinking water distribution system, wastewater treatment system treating more than 2000 gallons per day or a satellite wastewater collection system with a pump station must designate at least one certified operator to make all the process control decisions for the system.

The estimated costs to the operator to comply with provisions of these regulations are summarized in Table 2.

Table 2. Estimated Costs to the Operator

Requirement	Cost	Description / Comments
Initial certification	\$150	Paid to the Department, this fee is incurred when a person submits an application to become a certified operator. This certification is valid for 3 years.
Certification Renewal	\$60	Paid to the Department, this cost is incurred once every 3 years after the initial certification period.
Examination fee: for both initial certification and certain upgrades to license	\$35 per examination session	Paid to the Department. Operators are allowed to take as many examinations as they think they can complete in four hours. Most operators are able to complete the necessary examinations needed for the more common treatment systems within one or two sessions.
Examination Provider Registration fee	Varies	Paid to the Approved Examination Provider. These fees are not established by the Department, however, we recommend less than \$100. Fees are designed to allow the Approved Examination Provider the ability to recover incurred costs.
Criminal History Record	\$10	One time fee charged by the Pennsylvania State Police.
Continuing Education	\$240 – \$900	Paid to one of the Department’s Approved Training Providers. Depends on number of hours needed and average cost per hour for training

These regulations propose to charge an annual service fee for system owners, based on the amount of flow the system is permitted to treat. The assessment of this fee is tied to the classification of the system and the certification class needed by the system owner’s designated available operator(s). The maximum fee that any one owner of more than one system pays is \$10,000. This fee structure is summarized in Table 1. The only other cost for compliance for the owner is the actual costs for hiring a certified operator. The average cost to hire a certified operator is between \$30,000 and \$80,000 per year (based on a limited survey of operators completed in 2003). It is strongly advised that owners hire more than one certified operator. However, unless there are problems at the system, this responsibility is left to the owner. If necessary, the Department does have the authority to order the owner to hire additional certified operators, to address specific environmental compliance problems. In addition, the owner may choose to cover the operator’s costs for obtaining continuing education contact hours. This is an arrangement negotiated between the owner(s) and their certified operator(s).

Compliance Assistance Plan

The Department is implementing a comprehensive training and compliance assistance strategy to assist operators and owners who are required to comply with provisions of the Operator Certification Program. This includes web-based training through the Department’s EarthWise Academy, additional classroom training as needed, a comprehensive training approval process and packaged training programs. This comprehensive strategy is designed to take advantage of existing training expertise in the industry; and promote a market for training providers to meet the training needs of this program.

Additional compliance assistance is available through the Drinking Water Capability Enhancement Program, the Wastewater Diagnostics Program and the Drinking Water and Wastewater Outreach Assistance Provider Programs.

Paperwork Requirements

The following is a list of paperwork requirements for the operator as established in Chapter 302. Beyond the operator's time and the program fees identified above, there are no additional costs for this paperwork.

1. Certification Examination Registration Form (to register to take an examination)
2. Application for Certification Action (for certification, re-certification, certification upgrade, or certification through reciprocity)
3. Application for Certification Renewal (done once every three years)
4. Criminal History Report from the Pennsylvania State Police
5. Application for Exemption (only needed if operator will not be able to complete requirements for initial certification or certification renewal due to extenuating circumstances such as military service or health problems)
6. The development and approval of Standard Operating Procedures, if the operator and owner choose to utilize this tool to ensure all process control decisions are made by an available operator.
7. The development and approval of a Process Control Plan that describes all the operational procedures for a drinking water or wastewater treatment system. This will only be required by the Department on a case-by-case basis; depending on the level of non-compliance at the system and the existence of equivalent plans, such as an Operation and Maintenance Plan, an Emergency Response Plan or Standard Operating Procedures.
8. The development of a Management Plan, if an operator wants to serve as a circuit rider, where he or she is responsible for more than one drinking water or wastewater treatment system. The Management Plan identifies the systems, their characteristics, points of contact, and the number of visits the operator will complete in a designated time frame. System specific plans must also be developed for each system to include procedures to be followed by personnel at the system when the circuit rider isn't at the system.
9. The operator must notify the owner in writing of any violations or potential violations at the system. Recommendations, if the operator has any, for resolving the problem should also be included.

The owner will need to report the names, addresses and level of certification of all operators designated as available operators for the system on an annual basis. Changes in available operators must be reported within ten days. If the owner(s) chooses to designate an operator(s) in responsible

charge in order to utilize standard operating procedures, the name(s), addresses and level of certification of these operators must also be reported to the Department on an annual basis.

Any training provider who would like to provide training to operators to meet the training or continuing education requirements must become an approved training sponsor, and have all courses approved. This process is documented in the “Training Provider Manual for the Pennsylvania Water and Wastewater System Operator Training Program,” DEP ID: 383-2300-002.

Any entity who would like to become an Approved Examination Provider must become approved and comply with the Certification Board guidelines for the scheduling of examinations and the registration of applicants.

G. Pollution Prevention

The Federal Pollution Prevention Act of 1990 established a national policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance. This regulation has incorporated the following pollution prevention incentives:

By ensuring that qualified, certified operators are making all operational decisions in Pennsylvania’s drinking water and wastewater treatment systems, pollution prevention efforts will be enhanced. The water and wastewater treatment system operator is the key element in overall process control. By improving the certified operator’s capabilities, more effective treatment and removal of pollutants and better use of available resources will result. Testing and training programs are designed to focus on different ways the operator can more effectively operate his or her system to minimize and prevent pollution and conserve energy.

H. Sunset Review

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

I. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on (blank) , the Department submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees. In addition to submitting the proposed amendments, the Department provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Department. A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed regulations within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of these issues by the Department, the General Assembly and the Governor prior to final publication of the regulations.

J. Public Comments

Written Comments – Interested persons are invited to submit comments, suggestions, or objections regarding the proposed regulation to the Environmental Quality Board, P.O. Box 8477, Harrisburg, PA 17105-8477 (express mail: Rachel Carson State Office Building, 16th Floor, 400 Market Street, Harrisburg, PA 17101-2301). Comments submitted by facsimile will not be accepted. The Board must receive any comments, suggestions or objections by (blank) (within thirty days of publication in the *Pennsylvania Bulletin*). Interested persons may also submit a summary of their comments to the Board. The summary may not exceed one page in length and must also be received by (blank) (within days following publication in the *Pennsylvania Bulletin*). The one-page summary will be provided to each member of the Board in the agenda packet distributed prior to the meeting at which the final regulation will be considered.

Electronic Comments – Comments may be submitted electronically to the Board at RegComments@dep.state.pa.us and must also be received by the Board by (blank). A subject heading of the proposal and a return name and address must be included in each transmission. If the sender does not receive an acknowledgement of electronic comments within two working days, the comments should be retransmitted to ensure receipt.

BY:

JOHN HANGER
Acting Chairman
Environmental Quality Board