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OFFICIAL PUBLICATION:
Keystone Water Quality Manager

Pennsylvania Water Environment Association

February 26, 2010

Ms. Veronica Kasi
Chief, Div of Technical & Financial Assistance
Bureau of Water Standards & Facility Regulation
PA Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 8477
Harrisburg, PA 17105-8477

RE: Proposed Title 25: Chapter 302

Dear Ms. Kasi:

The proposed regulation for certification of wastewater treatment and waterworks operators (Chapter 302) is extremely complex when compared to other states and further is not mandated by the federal regulations. This regulation imposes severe liability and increased expense for both the owner and operator. The regulation elevated wastewater operator certificates to the same level as water operators, even though the federal regulations are directed solely to water operators. For those reasons, the Pennsylvania Water Environment Association (PWEA), which represents wastewater facilities, has been apprehensive concerning this rule and has requested further clarification or deletion of certain sections.

PWEA and Department Environmental Protection representatives met on three occasions during the comment period to review our concerns and make suggestions to resolve our issues. We have been able to verbally sort out some of the issues. Therefore based on the Department's assurances that additional edits will be made and that the Department will investigate interim changes and implement future administrative processes that will be less taxing on the operators, PWEA conditionally supports the proposed rulemaking.

The items discussed at the meetings that PWEA would like to see the Department include additional information in the proposed rulemaking to clarify the proposed language:

1. Civil Penalties—Section 1209. The new liability provision in § 1209 does not track the statute as interpreted by the PA DEP. Violation of other types of orders, or violations of orders without a separate violation of the provisions of the Act, are not a basis for civil penalties. Civil Penalties are assessed under Section 14 (c) of the statute, Section 4(b)(1.1 are merely examples of tasks, and that use of "may" perform is not intended to actually impose any duties on operators. We suggested revising § 308(b) so that it cannot be interpreted as mandating the "examples."

The suggested revision to this section is:

“A civil penalty assessed under Section 14(c) of the Act will be assessed only when (1) the person has violated a provision of the applicable section of the Act (section 13 for owners and operators, section 5(d) or 6(d) for non-certified operators), and (2) the person has also violated an order issued by the PA DEP under section 4(b)(1.1) of the Act.”

2. Operators’ Duties—Sections 308(b) and 1201(b). The added reference in § 308(b)(4) to § 1201(b) is interpreted as mandating the listed examples of § 1201(b). Although the PA DEP response to comments submitted regarding section § 1201(b) states that the “duties” of operators stated in § 1201(b) are merely examples § 1201(b) are merely examples of tasks that operators “may” perform to actually impose any duties on operators. We suggested revising § 308(b) so that it cannot be interpreted as mandating the “examples.”

The suggested revision to this section is:

“Incompetence or failure to use reasonable care and professional judgement in performing the owner-assigned duties of a certified operator.”

As well in § 1201(b) the suggested revision to this section is:

“Examples of available operator tasks which may be assigned by the owner include the following; none of the following tasks shall be considered a duty of an available operator unless assigned by the owner in writing.”

3. Liability for “consequences of process control decisions, § 1201(d). We continue to have a great concern with the use of “Consequences” of a process control decision. Given the vague language and the inequitable provisions, substantive due process violations are of great concern. This could be used to extend liability to more remote violations, such as fish kills, equipment malfunction, in which an operator is held personally liable for civil penalties when people not under her supervision are negligent, and other things occur which are not directly related to the process control decision itself. In addition, the provisions at section 308(b) provide appropriate penalties for operators who are incompetent, negligent, or fail to use reasonable care and professional judgment in undertaking their duties.

The suggested revision to this section is:

“Available operators are responsible for making process control decisions as directed by the owner. Available operators are responsible for the results of process control decisions that are erroneous or which directly result in noncompliance with applicable rules and regulations or permit conditions. In determining if an available operator was negligent in making a process control decision, the PA DEP will consider other relevant factors, including, but not limited to: available resources; whether the owner responded appropriately to reports by available operators; the presence of intervening factors including decisions by other operators; and professional standards applicable to the process control decision that was made.”

4. Liability of the Operator In Responsible Charge for violations. § 1206(e). Placing liability for ALL violations that occur when an SOP is in use will simply make it impossible for the facilities to develop SOPs, since there is no limit to the violations for which the Operator in Responsible Charge could be liable (power failure, toxic influent, etc.). If there is to be liability at all, it should be limited to violations that occur because the SOP itself was deficient in some way.

The suggested revision to this section following to the end of the proposed sentence is:

“provided that the violation occurred as a direct result of an error in the SOP as written.”

In addition, there is no provision regarding what happens when an Operator in Responsible Charge (ORC) is no longer in that position. The ORC’s liability for SOPs should end when his status as an ORC ends; either through leaving employment or having the owner rescind the appointment (whether or not someone else is appointed as the ORC in his place). The provision in § 1206(a) that the employer will notify the PA DEP when the ORC changes should also state that when that notice occurs, that person’s liability for use of SOPs developed by that ORC will then end.

5. Contents of Reports. § 1201(c). This section requires further editing to make it reasonable and acceptable under the Act. Specifically, the list of required contents of the report seems unnecessary since 99% of reports will be oral. We suggest in item 1 that “making” should replace “filing”.

The suggested revision to this section § 1201(c) is:

“1) The name of the operator making the report.”

Because the report may be oral, subparagraphs (1) through (6) should be deleted as deemed unnecessary. However, if the list is to remain, items (4) and (5) (“cause” and “threat to public health” are not required by the statute and (as noted in detail in our comments on the first draft of the regulation, to which no response was provided), the requested information is not available to operators in many cases. It is not reasonable to invent a new requirement that operators must make extensive investigations of “causes” and of “the severity of the threat to public health and the environment” for every required report of system conditions.

6. Retake Certification Exam for lack of training credits § 603(e)(2). This section requires an operator to re-take the certification exam if the individual fails to complete the required amount of continuing education within the 3-year cycle. This is excessive, pointless and punitive. It would result in trained, experienced operators losing certification for months while waiting for the next exam, as well as the added expense (assuming that they don’t just decide to not renew their certification). This draconian requirement is NOT required by the EPA guidelines. Obviously, if an operator obtains no training, their certification should be forfeited. But, some reasonable accommodation should be made for operators who are close to having the necessary training credits. Instead of rescission, suspension of certification until the credits are obtained can be added as a provision under §§ 306 and 308. A time limit to do so would also be appropriate (and this would automatically limit the number of hours that the operator could be deficient). This would “punish” the operator sufficiently without causing the loss of even more trained, certified operators.

The suggested revision to this section is:

“Certification will be suspended by the Board if an operator does not attain the continuing education credits as set forth in Section 803 and has not received an extension as provided by Section 307. A suspension under this paragraph will be referred by the Board Secretary to the Board for revocation if the necessary continuing education credits are not obtained within 90 days of the expiration of the certification. If the necessary training credits are obtained and all other requirements for renewal are met, the Certificate will then be renewed by action of the Board. The 3-year renewal period will commence from the date of the expiration of the original certification. Training credits obtained to meet this section do not count toward the required training for the new compliance period. An operator subject to revocation under this paragraph may apply for recertification.”

7. Retake Certification Exam after suspension or modification § 603(e)(3). This section requires re-taking the examination after “suspension or modification” of certification. Again, the only apparent reason for this is to inconvenience and punish operators, not to further the purposes of professional certification. Certainly, there is nothing in the Act or in the EPA program requirements that require this. While re-taking the certification exam may be appropriate in certain instances, a blanket requirement applicable to ALL suspensions has no rational purpose.

The suggested revision to this section is:

“The Board takes action to suspend certification pursuant to § 302.308(b)(1) or (4) (related to suspension for negligence, incompetence or failure to use reasonable care and professional judgement in performing the duties of a certified operator). A certified operator whose license is revoked by action of the Board under this paragraph may not apply for recertification.”

Certificates can be modified for a variety of reasons. Since modification would not be used for malfeasance, there does not seem to be any reason to require re-testing as a result of certification modification. For instance, an Upgrade is a modification. The regulation as written requires an operator to take the certification exam again simply because the Board agreed that he was eligible for an Upgrade. This is clearly not a reasonable requirement. In many cases the modification is not covered under the test, therefore, the testing is not always linked to the modification.

The suggested revision to this section is to remove “modify” under re-testing and focus modification under training and experience.

8. Circuit Rider provisions. § 1207(a). The introduction to this section refers to more than one “system.” However, the concept of circuit riders properly applies to more than one “owner” (as noted in the Definition of Circuit Rider). That is, one authority may own two treatment plants and the operators work at both. Although there are two “systems,” this is not a circuit rider situation. The discussion in § 1207 should be consistent with the definition of Circuit Rider.

The suggested revision is to clarify item 1 is so that it reads more than one system of different owners.

The work plan to be developed for each system that a circuit rider services has merit. However, the time required to conduct operational activities at any system may vary from day to day, depending on conditions and operational necessities. Many circuit riders and owners have a contract that defines the services and hours. Thereby, the requirement is unnecessary.

The suggested revision to clarify item (d) is:

“A circuit rider shall develop and submit a general work plan (unless specified in a contract) to the owner of each system that includes:”

The suggested revision to clarify item (d) (4) is:

The number of estimated hours per week the circuit rider works at each system, with the methods of documentation to be used for each visit.

9. Applicants take exams for free. § 603. The current examination process has been shown not to work, creates additional work for the PA DEP, and does not compensate the PA DEP for the associated labor, therefore raising the costs for others. Specifically, the current system allows operators to take the exam without charge any number of times, and only charges an operator once he or she passes the exam and applies for certification. As a result, it has been reported that some applicants take the exam merely as a free training aid. Operators and owners are being asked to fund

the cost of examinations for people who are not capable of passing it or who are using the exam as free education. Proposed Section 603 perpetuates this costly and absurd system.

The suggested revision is deleting paragraph (d) and providing in paragraph (a) that the applicant pay the examination fee for every exam he/she sits for.

10. Security Training. § 804(g). This provision, newly added to the second draft, is vague with regard to when the PA DEP can require additional security training. Specifically, with regard to ¶¶ (2) and (3), what are “security issues?” That is, if the SCADA system is hacked, would the solids handling operator need to be re-trained? There must be some criteria in the regulation that DEP and the operators can turn to.

The suggested revision to this section § 804(g) is:

“ (g) The Department may issue an order under section 1004(b)(1.1) of the Act to one or more certified operators requiring them to attend and successfully complete an additional Department-approved system security course(s) when one or more of the following occur:

(1) (As drafted.)

(2) The Department identifies deficiencies in security measures or practices at a system, identifies the operators responsible for implementing these measures or practices, and identifies the additional security training necessary to address these deficiencies..

(3) The Department identifies security breaches or deficiencies caused by one or more operators for which additional training would be beneficial.

(4) A new or updated security course becomes available and is determined by the Department to be beneficial for certified operators.”

11. Experience credit for college courses. § 702(c). College course credits for certification are too narrowly defined. Section 702(c) provides that college credits only apply for “water or wastewater” courses. Many useful classes are not titled that way and people taking them would not even submit them for review since the regulation is so specific. Many colleges have classes in related areas such as chemistry and math, and in vo-tech classes such as pump maintenance and electrical systems, that are not specifically “water” or “wastewater” classes, but which help prepare operators for their professional duties.

The suggested revision to this section § 702(c) last sentence is:

“...completion of one college credit in water or wastewater related classes from an accredited college or university.”

12. Loss of grandparent certification. § 1005(d)(3) This paragraph refers to “violations attributed to the operator that threaten the public health, the environment, and public safety.” The PA DEP agreed to remove this sort of vague language from many other provisions of the regulations, and should do the same here.

The suggested revision to § 1005(d)(3) is to delete this paragraph.

13. SCADA systems. § 1208. The provisions of this section are far from clear and create a host of compliance questions. Most of these systems are designed by professional engineers, programmed by computer specialists, and control parameters of operation established through the DEP permitting process. System operators are not consulted by manufacturers about how to program the controls of the equipment that they manufacture. It is impossible to require that individual operators will be responsible for the design of treatment equipment and for the equipment operational parameters. There are a large number of practical questions surrounding this

provision as drafted, and the literal impossibility of meeting the requirements as drafted. Operators by definition are not SCADA designers or experts nor should they be required to have liability for such systems.

The suggested revision to § 1208(b) is:

“The system owner shall provide for routine observation or reading (which may include remote reading) of a SCADA or PLC system by an available operator.”

13. Upgrade definition. § 101. The definition of Upgrade was not corrected as we requested in our comments on the first draft of the regulation. An Upgrade is only required when the increased flow or new technology results in a requirement that the certification class or subclass be changed.

The suggested definition is:

“The certification process an existing certified operator follows to change his classification to a higher one or to add a new sub-classification to allow him to make process control decisions in a facility in which the classification has increased or the sub-classification has changed, or for an operator in training to become certified, as set forth in section 302.303.”

14. Certification for Operators of Collection Systems §§ 101, 902(a) & (b), and 1003. The classification of an E-4 license is confusing in terms of the satellite collection system and single entity collection system.

The suggestion change which PA DEP agreed with is to provide clarity on was to add satellite collection systems and single entity systems to Section 302.1003(c).

15. Scope §103. The “exemption” provisions of paragraph (b) are incomplete, leaving a class of systems that is not mentioned in this section at all. Specifically: water systems that are not public water systems are not required to have certified operators. The exemption, however, refers only to “a water treatment device that serves a single private residence.” In fact, however, water treatment devices that serve several private residences are exempt because they are not public water systems.

The suggested change is to separate water and wastewater and take out devices.

16. Carry-forward of Continuing Education Credits §§ 306(d) & 802(d). In prior comments it was suggested that hours be allowed to carry forward into the next cycle so that some excess continuing education credits could be carried over any of the three year cycles. We repeat that suggestion here, modified slightly to allow for the different number of required credits for different operators. In response to our prior comments on this matter, the PA DEP admitted that there is no restriction on credit carry-forward by the EPA and that this is an acceptable practice. (Comment Response Document Comment #64.) However, the Department noted that it does not currently have the technical capabilities to implement such a program, apparently due to lack of qualified computer programmers. This current technical incapacity does not mean that the program should be permanently prohibited from ever implementing a carry-forward program.

The suggested new language to Section 306(d) is:

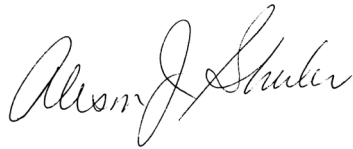
“Continuing education must be successfully completed during the certified operator’s three-year certification period. Carry-forward credits from a prior certification period may be applied as provided in section 802(d).

The suggested new language to Section 802(d) is:

"If the Department's continuing education tracking program is capable of allowing carry-forward of training credits, then operators will be allowed to carry forward a maximum of one-third of the required contact hours (in excess of the number required by section 302.803) into the next renewal cycle. For instance, if the required number of hours is 30, the operator may obtain 40 hours of training during one cycle and carry 10 hours forward into the next training cycle."

PWEA appreciates the opportunity of working through our issues with the Department and again present comments on this proposed rulemaking regulating the wastewater and waterworks systems operators' certification program. We welcome the opportunity to continue working on this regulation and/or subsequent guidance documents to bring about a positive change and movement toward the direction we all wish to obtain, which is safe water and a clean environment.

Very truly yours,

A handwritten signature in cursive script that reads "Alison J. Shuler".

Alison J Shuler
PWEA President

c: John Hanger, Secretary – PA DEP
John Hines, Deputy Secretary – PA DEP