

## OP Cert Regulations Finalized

by

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The Water and Wastewater Systems Operators' Certification Program Regulations, Chapter 302 were published as final in the *Pennsylvania Bulletin* on September 18, 2010.

The purpose of this regulation 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 is why the Drinking Water and Wastewater Systems Operation Certification Program exists. This final rule also ensures that Pennsylvania's 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 as well as avoid the loss of federal funds for the Drinking Water State Revolving Loan Fund.

So, what do you, as the owner and/or operator of a drinking water or wastewater treatment system need to know in order to stay in compliance with these regulations? Since 2002, the Department of Environmental Protection and the State Board of Certification for Water and Wastewater Systems Operators, otherwise known as the Op Cert Board, have been implementing this program through interim guidelines. The new regulations do not change any of the following requirements that have been in place since 2002:

- All process control decisions must be made by a certified operator who is on-site or available. A process control decision is defined as, "any decision that maintains or changes the water quality or quantity of a water system or wastewater system in a manner that may affect the public health or environment."
- All community and nontransient noncommunity drinking water systems, any wastewater treatment system with discharge flows greater than 2,000 gallons per day and all wastewater collection systems with at least one pump station that are owned and operated independently of the wastewater treatment system must have an appropriately certified operator on-site or available to make all process control decisions.
- Requirements for certification include:
  1. A criminal history background check -- The criminal background check is obtained from the Pennsylvania State Police. The Op Cert Board reviews these reports to see if there are any convictions relative to the operation of a drinking water or wastewater treatment system.
  2. A High School Diploma or GED

3. Experience --The experience requirements are based on national averages and coincide with the size of the system. These requirements can be further reduced through the completion of additional training.
  4. Successful completion of the appropriate psychometrically valid examinations.
- Completion of a defined number of continuing education contact hours every three years is required for certificate renewal. Most operators are now in their second or third renewal cycle for continuing education. There are now more than 2,000 department-approved courses offered by more than 100 approved training providers.
  - An operator may be the available operator for more than one system owned by different entities (circuit rider). According to DEP records, approximately 634 drinking water and 357 wastewater systems are operated by 121 circuit riders.
  - An owner is required to report to DEP the names of available operators for his or her system upon the department's written request. Additionally, owners are required to notify DEP within 10 days of an addition, loss, change or replacement of an available operator. Owners also must provide, to all available operators, a copy of all current water or wastewater permits in order to make process control decisions to comply with regulatory requirements.

There are also a few things that will change as a result of the new regulations. These include:

- The creation of a laboratory supervisor subclassification for certified operators who are also responsible for the supervision of testing or analysis of environmental samples and reporting of analytical data for an accredited laboratory under Chapter 252, Department Laboratory Accreditation Regulations. The department and the Op Cert Board are working in partnership with DEP's Laboratory Accreditation Program to develop the examination for these subclassifications. Certified operators who want to continue in this capacity will have one year after the Op Cert Board offers this examination to get this subclassification added to their license.
- To continue as a circuit rider, a general work plan and a system specific management plan will need to be developed and submitted to the owner of each system the circuit rider plans to continue operating.
- Every certified operator shall successfully complete a department-approved system security training course. The training is being made available in three formats: Web-based (Course ID 2954), correspondence (Course ID 2953), and classroom (Course ID 2952). **These are the only courses that fulfill the requirement.** You only need to take one of the versions. The classroom and correspondence versions are worth 5 contact hours. The web-based version will be worth 2.5 contact hours. The contact hours associated with this course qualifies toward approved continuing education. This requirement must be completed at the end of your first full three year cycle that

starts after September 18, 2010. For example, if your next cycle starts January 1, 2011, you must complete this course by December 31, 2013.

- Certified operators and owners of systems that will be either expanding in capacity or adding treatment technologies to their system can now minimize the requirements for additional certification by participating in an Accelerated Certification Program. The available operators of systems that are expanding in capacity can eliminate any additional experience requirements by applying for an upgrade in class before the larger system becomes operational. Additional experience requirements are also eliminated for those available operators of systems that are adding a treatment technology by completing a department-approved training program delivered by the manufacturing firm of the new treatment technology and successfully passing the appropriate examination for the relevant certification subclassification.
- New fees for the program are designed to cover the costs for program implementation. Table 1 is a summary of the fees that operators, system owners, training and examination providers will pay.

**Table 1. Summary of Proposed Fees**

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

A major concern of operators and owners that was expressed during the public comment period for the regulations was a perception of increased liability created by the regulations. This is simply not the case. A water and wastewater system certified operator and the owner have always been subject to, and could incur, liability for the operation of a water or wastewater system under the Safe Drinking Water Act and the Clean Streams Law. Both these laws address "any person" and not just the "municipality" in their enforcement sections. It is important to note that the strict liability provisions only apply to the civil penalty provisions of the program. This is consistent with all other environmental programs DEP administers. While many environmental statutes require willful, intentional or grossly negligent acts to impose criminal penalties, civil liability for a violation of environmental laws is based upon strict liability. Culpability or willfulness is a factor in the amount of a civil penalty but it is not a consideration in whether or not there is a violation of the environmental law or regulation. Please keep in mind that before DEP can impose any criminal or civil penalties based solely on the authority provided in the Drinking Water and Wastewater Systems Operator's Certification Act, operators or owners must violate their duties **AND** an order of the Department. No other environmental statute affords certified, licensed professionals with this type of protection.

An available operator is only responsible for the process control decisions he or she makes and the consequences of those decisions. They are also responsible for the actions of only those uncertified or inappropriately certified operators under their direct supervision. The Operator's Certification Act provides additional protection for those certified operators who exercise care and their best professional judgment in carrying out responsibility by:

- (1) Recognizing that the certified operator can not be held responsible for consequences beyond his control due to a lack of resources provided by the owner of the system.
- (2) Recognizing that the certified operator can not be held responsible for consequences resulting from conditions beyond his control such as damage to the system from flooding or other acts of nature.
- (3) Recognizing that the certified operator can not be held responsible for the consequences of actions done by a negligent employee or with malice.
- (4) Requiring the department to petition the Op Cert Board to suspend, modify or revoke an operator's license. The board must conduct a complete administrative hearing before taking action on the petition. In other words, the operator gets his "day in court" before losing his or her license.
- (5) Giving the certified operator a chance to remedy a situation through compliance with a department order. DEP can only assess fines and penalties after the certified operator fails to comply with the agency's order.

An operator is responsible for informing the owner of any system conditions that pose an imminent threat to the public health, safety or environment if not corrected. An owner is responsible for making a good faith effort to address the operator's concerns. Owners and operators must communicate. The method of communication between the owner and operator (i.e., log book, computer, meeting minutes, etc.) should be worked out between

the operator and his or her supervisor. Use this report as a tool to document serious and major conditions and the actions taken to resolve them. The report should be written using an operator's best professional judgment and understanding of the situation at that time. It should not take long to write. It is hoped that this increased operator/owner partnership fostered through these analyses will result in the owner and operator working together to more effectively and efficiently operate and maintain their system. Keep in mind, the original intent behind this report was to not only protect the operator, but also the system owner should a violation occur.

Water and wastewater operators carry a great responsibility in maintaining the integrity of the Commonwealth's waters and protecting public health. We must remember that with increased professionalism comes increased responsibility. An operator of a water or wastewater treatment system is a professional, and licensed for a reason.

DEP plans to conduct a series of workshops for its staff, and operators and owners in the Spring of 2011 to help everyone understand what their roles and responsibilities are in relation to this program and the new regulations. A handbook designed to be an on-going reference for operators, owners and department staff is also under development. This handbook will be shared with everyone during the workshops.

Finally, an excellent source of information is the department's Operator Information Center Website at [www.depweb.state.pa.us](http://www.depweb.state.pa.us). DEP Programs A-Z: "operator" Keep checking this website for current information regarding these workshops, examination schedules, and other Program information.

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