

No. 2002-11

AN ACT

HB 1830

Amending the act of November 18, 1968 (P.L.1052, No.322), entitled, as amended, "An act providing for the certification of sewage treatment plant and waterworks operators; creating the State Board for Certification of Sewage Treatment Plant and Waterworks Operators and prescribing its powers and duties; conferring powers and duties upon the Department of Environmental Resources; and providing penalties," amending the title; further providing for definitions, for the State Board for Certification of Sewage Treatment Plant and Waterworks, for certification, for professional engineers, for special certificates, for reciprocity, for suspension and revocation, for administrative procedure and judicial review, for fees, for operation of plants, for penalties and enforcement, and for civil relief; establishing the Certification Program Advisory Committee; providing for continuing education and for interim program authorization; and making editorial changes.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The title of the act of November 18, 1968 (P.L.1052, No.322), known as the Sewage Treatment Plant and Waterworks Operators' Certification Act, amended December 22, 1989 (P.L.790, No.112), is amended to read:

AN ACT

Providing for the certification of [**sewage treatment plant and waterworks**] *water and wastewater systems* operators; creating the State Board for Certification of [**Sewage Treatment Plant and Waterworks**] *Water and Wastewater Systems* Operators and prescribing its powers and duties; conferring powers and duties upon the Department of Environmental [**Resources**] *Protection, the Environmental Hearing Board and the Environmental Quality Board; providing for continuing education requirements*; and providing for *civil relief and penalties*.

Section 2. Section 1 of the act is amended to read:

Section 1. Short Title.—This act shall be known, and may be cited, as the "[**Sewage Treatment Plant and Waterworks**] *Water and Wastewater Systems* Operators' Certification Act."

Section 3. Section 2 of the act, amended December 22, 1989 (P.L.790, No.112), is amended to read:

Section 2. Definitions.—The following words and phrases, when used in this act, shall have the meanings ascribed to them in this section, unless the context clearly indicates otherwise.

"Available operator" means a certified operator who is on site or able to be contacted as needed to make process control decisions in a timely manner to protect the environment and public health.

[(1)] “Board” means the State Board for Certification of [Sewage Treatment Plant and Waterworks] *Water and Wastewater Systems Operators.*

“Certification” means the process by which an individual obtains a water or wastewater system operator’s certificate in accordance with the requirements of this act and the rules and regulations adopted thereunder.

[(2)] “Certified operator” means any operator who holds a valid certificate in accordance with this act.

“Continuing education” means approved activities to include training, outreach programs, contact hours, meetings, presentations and/or other activities designed to increase the knowledge, abilities and skills of system operators.

[(3)] “Department” means the Department of Environmental [Resources] *Protection* of the Commonwealth.

[(4)] “Distribution system” means a system, not including a treatment plant, comprising structures which, operating alone or with other structures, result in the derivation, conveyance or distribution of water for potable purposes to the public.]

“Environmental Hearing Board” means the board established pursuant to the act of July 13, 1988 (P.L.530, No.94), known as the “Environmental Hearing Board Act.”

“Environmental Quality Board” means the board established pursuant to section 1920-A of the act of April 9, 1929 (P.L.177, No.175), known as “The Administrative Code of 1929,” for the purposes set forth in that section.

“Grandparenting” means the temporary exemption for an existing operator of an existing system, as of the effective date of this act, from the initial educational and examination requirements for certification where a system was not required by prior law to have a certified operator. A grandparented operator may be an operator in responsible charge.

“Industrial wastewater treatment facility” means any facility that treats industrial waste or pollution, but not sewage, as those terms are defined in the act of June 22, 1937 (P.L.1987, No.394), known as “The Clean Streams Law.”

[(5)] “Operator” means [the] an individual who [has the direct responsibility for the operation of a treatment plant or distribution system.] *works with water or wastewater system processes or portions thereof. The term includes, but is not limited to, an individual who may be gaining experience to obtain certification in appropriate subclassifications within classifications of certification. These individuals shall have a working knowledge of system operation. Nothing in this act shall be construed to require operators of industrial wastewater treatment facilities to obtain an operator’s certificate. However, operators of industrial wastewater treatment facilities may voluntarily obtain a*

wastewater system operator's certificate consistent with the provisions of this act and the rules and regulations adopted thereunder.

"Operator in responsible charge" means an individual designated by the owner to be the certified operator who makes the process control decisions that directly impact the quality and/or quantity of water.

[(6)] *"Owner" means a person [owning or operating a treatment plant or distribution] who owns or is the holder of an applicable permit for the operation of a water or wastewater system.*

[(7)] *"Person" means any individual, [municipal or private] company, corporation, municipality [authority], municipal authority, partnership, firm, association, trust, estate, public or private institution, or [political subdivision.] any agency of Federal or State government. The term also includes the officers, directors, employes and agents of any partnership, firm, association, company, corporation, municipality, municipal authority, public or private institution or any agency of Federal or State government.*

[(8)] *"Purveyor" means a person owning or operating a water treatment plant or distribution system.]*

"Political subdivision" means any county, city, borough, town, township, school district, institution or any authority created by any one or more of the foregoing.

"Process control decision" means a decision which 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.

"Recertification" means the process by which an individual's water or wastewater system operator certificate, previously certified under this act, obtains a new certificate following expiration, suspension or revocation of the previous certificate.

"Renewal of certification" means the process by which an individual extends for another period of time an existing, valid water system or wastewater system operator's certificate under this act.

"Secretary" means the Secretary of Environmental Protection of the Commonwealth.

[(9)] *"Sewage treatment plant" means any structure or structures designed to treat sewage]*

"The Administrative Code" means the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

"Wastewater" means a substance that contains the waste products or excrement or other discharge from the bodies of human beings or animals and noxious or deleterious substances being harmful or inimical to the public health or to animal or aquatic life or to the use of water for domestic water supply or for recreation, or which constitutes pollution under the act of June 22, 1937 (P.L.1987, No.394), known as "The Clean Streams Law."

“Wastewater system” means any structure designed to collect, convey or treat wastewater and from which effluent in excess of two thousand gallons per day is discharged into waters of the Commonwealth.

[(10) “Water treatment plant” means any structure or structures by which water prior to discharge into a distribution system is subjected to the addition or removal of a substance or substances in order to enhance the safety or suitability of the water.]

“Water system” means a community water system or a nontransient noncommunity water system, as those terms are defined in the act of May 1, 1984 (P.L.206, No.43), known as the “Pennsylvania Safe Drinking Water Act.”

Section 4. Section 3 of the act, reenacted and amended December 22, 1989 (P.L.790, No.112), is amended to read:

Section 3. State Board for Certification of [Sewage Treatment Plant and Waterworks] *Water and Wastewater Systems* Operators.—(a)(1) There is hereby created within the [Department of Environmental Resources,] *department* a State Board for Certification of [Sewage Treatment Plant and Waterworks] *Water and Wastewater Systems* Operators. The board shall consist of the [Secretary of Environmental Resources of the Commonwealth of Pennsylvania] *secretary*, or his representative, and [five] *six* additional members to be appointed by the Governor.

(2) One member shall be an employe of a [municipality or municipality authority which operates a sewage treatment plant, water treatment plant or water distribution system or a representative of a State association of municipalities or municipality authorities.] *political subdivision who is certified to operate a water or wastewater system or a certified operator who represents a State association of political subdivisions.*

(3) One member shall be an individual [qualified] *certified* under this act to operate [any] *a* water [treatment plant] *system.*

(3.1) One member shall be an individual certified under this act to operate a wastewater system.

(4) One member shall be *a certified operator who is* the owner or official of a privately owned [waterworks] *water or wastewater system.*

[(5) One member shall be an individual qualified under this act to operate any sewage treatment plant.]

(6) One member shall be on the teaching staff of the civil, *environmental* or sanitary engineering department of an accredited Pennsylvania university or college.

(7) One member shall be a member of the general public who is knowledgeable in water systems or wastewater systems.

(b) The original appointed members of the board, in the order listed above, shall hold office for one, two, three, three, *four* and four years respectively. Thereafter, each appointment shall be for a period of four years

duration. The Governor may reappoint board members for successive terms. Members of the board shall remain in office until a successor is appointed and qualified. If vacancies occur prior to completion of a term the Governor shall appoint another member in accordance with this section to fill the unexpired term.

(c) **[The Secretary of Environmental Resources, or his representative, shall call the first meeting of the board at which time a chairman and secretary of the board shall be elected. Thereafter the]** A chairman and secretary shall be elected annually. Four members of the board shall constitute a quorum. Meetings may be called by the chairman as needed to conduct the business of the board.

(d) The members of the board shall receive no compensation for their service but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties *in accordance with Commonwealth policy or regulations*.

Section 5. Section 4 of the act is amended to read:

Section 4. Powers and Duties.—(a) The board shall have the power and its duty shall be to:

(1) Review and **[pass]** *act* upon applications for certification, *recertification and renewal of certification* of **[sewage treatment plant and waterworks operators.]** *water and wastewater systems operators. All applications for certification and all applications for recertification must be accompanied by a report of criminal history record from the Pennsylvania State Police pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal history record information). All operators certified on or before the effective date of this act shall submit a report of criminal history record from the Pennsylvania State Police pursuant to 18 Pa.C.S. Ch. 91 with an application for renewal within three years of the effective date of this section pursuant to a schedule established by the board. The board may establish a schedule for subsequent submissions of a report of criminal history record from the Pennsylvania State Police. The board's decision shall be considered an action of the department and shall be appealable to the Environmental Hearing Board.*

(2) **[Prepare and hold]** *Administer* such examinations *prepared by the department* as may be deemed necessary to determine the **[fitness of candidates]** *competency of applicants* for certification *and recertification*. At least one examination shall be held each year at a time and place designated by the board. *Whenever it is practicable to do so, the board and the department shall provide examinations which are based upon nationally accepted standards of practice which shall promote reciprocity with other jurisdictions.*

(3) Revoke, suspend, *modify* or reinstate certificates**[.]** *upon petition of the department. Upon receipt of such petition, the board shall promptly schedule a hearing and give due notice to the certificate holder of the time and place of such hearing. The board shall hold administrative*

hearings and issue adjudications in accordance with the provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action), known as the "Administrative Agency Law." The board's decision shall be considered an action of the department and shall be appealable to the Environmental Hearing Board. The board may revoke, suspend or modify a certificate for misconduct, including, but not limited to, negligence in the operation of a water or wastewater system, fraud, falsification of application, falsification of operating records, incompetence or failure to use reasonable care or judgment in performance of duties as specified in this act or other applicable laws administered by the department.

(4) *Receive and act upon complaints arising under its powers and duties.*

(5) *[Compel attendance of witnesses and the production of books or records.] Subpoena witnesses, records and other physical evidence. The board may enforce its subpoenas in Commonwealth Court.*

(6) *[Formulate, adopt, promulgate and repeal such rules and regulations as are deemed necessary to implement the provisions of this act.] Review, provide written comments and make recommendations to the department on such rules and regulations as are deemed necessary to implement this act prior to submission to the Environmental Quality Board under subsection (c). These comments and recommendations of the Certification Board, with appropriate response and comment from the department, will be presented as part of the department rulemaking package to the Environmental Quality Board.*

(7) *Issue [such] written orders, or modifications thereof, as may be necessary in connection with proceedings under this act.*

(8) *Adopt bylaws as needed to properly direct and carry out the activities of the board.*

(9) *Collect fees for examinations and applications for certification, recertification and renewal of certification.*

(10) *Upon request, approve or disapprove department decisions regarding training for certification and continuing education for recertification and renewal of certification. Upon disapproval, suspension or revocation by the department, the board may approve training for certification and continuing education for recertification and renewal of certification.*

(11) *Authorize the one-time reissuance of certificates by the department to all existing certified operators at the time revised regulations adopted by the Environmental Quality Board under subsection (c) take effect. The special certificate will reflect the revised operator certification classifications and subclassifications contained in the amendatory act and the revised regulations. There shall be no examination required for this one-time reissuance of operator certificates.*

(b) The department shall have the power and its duty shall be to:

(1) Initiate proceedings before the board *by petition as may be necessary and appropriate to modify, suspend, revoke or reinstate certificates*, receive and process applications, [administer] *prepare and validate* examinations, make recommendations, issue certificates to applicants approved by the board[,] and establish and implement such procedures as are necessary and desirable to carry out the provisions of this act [and the rules, regulations], *rules and regulations promulgated under it* and orders of the board.

(1.1) *Issue written orders as necessary to owners or operators to comply with sections 5, 6 or 13 or to correct violations of this act.*

(2) Determine the number and class of [sewage treatment plants, water treatment plants and distribution] *water and wastewater* systems which may be supervised by a single *certified* operator and issue orders requiring owners to employ the services of additional certified operators and such orders shall be made in accordance *with this act and* with the rules and regulations [of the board] *promulgated under it.*

(3) Compile and keep current a register showing the names and addresses of certified operators[, **which register shall be published at least once every two years**]. Copies of this register shall be furnished on request upon payment of such reasonable fee as the department shall establish.

(4) *Enter into agreements, contracts or cooperative arrangements to carry out the purposes of this act, under such terms and conditions as may be deemed appropriate, with other Federal or State agencies, political subdivisions, public or private agencies or other persons, including agreements to give or receive financial and technical assistance. The department may delegate one or more of its powers and duties, including enforcement of this act, to local health departments under such terms and conditions as may be deemed appropriate; notwithstanding the grant of this power, in any case where administration and enforcement of this act by a local health department conflicts with the administration and enforcement by the department, the department shall notify the local health department of the conflict, and administration and enforcement by the department shall take precedence over administration and enforcement by a local health department.*

(5) *With available funding, may reimburse water and wastewater system operators or owners for the costs of training and continuing education and certification as may be appropriate.*

(6) *Approve, disapprove, suspend, revoke approval for and offer training for certification and continuing education for recertification and renewal of certification. The department may accredit sponsors providing training or continuing education on either a program basis or an individual activity basis. The department may approve the course content, instructor's qualifications and appropriate credit hours or continuing education units to be assigned in accordance with such specifications or*

guidelines the department may develop in consultation with the board and the Certification Program Advisory Committee. The department may audit, examine, inspect and review the operations of sponsors, including instructors, classes, curricula, teaching materials, facilities and other matters pertaining to the provision of training or continuing education in accordance with the department's guidelines. The department may establish and collect such fees for attendance at department-sponsored training and continuing education, which may include the cost of manuals and other training materials and services, and for approval of training and continuing education conducted by others as may be reasonable and appropriate to recover the cost of providing such services. Department-approved training and continuing education, whether department-sponsored or not, shall satisfy the requirements of section 10(j) of the act of March 1, 1988 (P.L.82, No.16), known as the "Pennsylvania Infrastructure Investment Authority Act."

(c) The Environmental Quality Board shall have the power and its duty shall be to adopt such rules and regulations of the department as it deems necessary for the implementation of the provisions of this act, including, but not limited to, the following:

(1) Set standards in regulation for certification, recertification and renewal of certification of water and wastewater systems operators, including minimum education, experience, training and continuing education requirements. Standards for operators shall take into account the size and complexity of the system. Standards for certification, recertification and renewal of certification shall be designed to meet the requirements of any applicable Federal or State law. The standards for certification, recertification and renewal of certification shall include training related to the security of water and wastewater systems. The standards heretofore prescribed by regulation shall continue in full force and effect until superseded and repealed by the rules and regulations promulgated pursuant to this subsection.

(2) Establish appropriate periods, not to exceed three years, for renewal of certification in lieu of annual renewals. Annual renewals of certificates shall continue in full force and effect upon payment of the renewal fees heretofore prescribed by law in section 607-A of The Administrative Code until superseded and repealed by rules and regulations promulgated pursuant to this subsection.

(3) Establish fees for examinations and applications for certification, recertification and renewal of certification as may be reasonable and appropriate to recover the cost of providing such services. When fees are set by regulation, the fees heretofore prescribed by law in section 607-A of The Administrative Code shall be deemed repealed.

(4) Establish subclassifications within classifications for the certification of water and wastewater operators. When establishing subclassifications within classifications for certification, the size and

complexity of the water and wastewater systems and the quality of source water or water systems shall be taken into consideration. A special site-specific certificate for operators of community water systems serving less than 150 connections or 500 persons, operators of nontransient noncommunity water systems and the operators of collection system facilities associated with wastewater systems may be established. The site-specific certificate is not transferable to any other system. An Operator in Training certificate for individuals who have passed the appropriate certification examination but need the required experience may be established.

Section 6. The act is amended by adding a section to read:

Section 4.1. Certification Program Advisory Committee.—(a) The Certification Program Advisory Committee is hereby established. Within 30 days of the effective date of this section, the secretary shall appoint members to the Certification Program Advisory Committee as follows:

(1) This committee shall consist of not more than nineteen members.

(2) The secretary shall specify the term of service for each member.

(b) The committee shall comprise:

(1) One member appointed from each certification classification established under sections 5 and 6.

(2) One member from the teaching staff of the civil, environmental or sanitary engineering department of an accredited Pennsylvania university or college with a water system or wastewater treatment curriculum.

(3) Four members who represent owners of water and wastewater systems, two of whom shall be owners of a manufactured housing community that have water/wastewater systems.

(4) An engineer registered under the act of May 23, 1945 (P.L.913, No.367), known as the "Engineer, Land Surveyor and Geologist Registration Law," and who is a certified operator.

(5) One member from the general public.

(c) The secretary may appoint additional persons to the committee beyond seventeen members, but no more than two additional members, on a temporary basis to address specific issues at his discretion or at the board's request.

(d) The committee shall be provided with an opportunity to provide written comments and recommendations to the board and the department on regulatory proposals and department guidance. The committee may provide written comments and recommendations related to operator certification issues at the board's or the department's request. A representative of the committee may request that an issue be considered and that appropriate assignments be made to the committee for consideration.

(e) The committee members shall elect a chairman annually by majority vote and shall serve without compensation other than reimbursement for actual and necessary expenses incurred in the

performance of their duties, in accordance with Commonwealth policy or regulations. The committee shall hold its first meeting within sixty days of the effective date of this section. It shall meet quarterly unless the secretary determines that a more or less frequent meeting schedule is in the best interest of the department or the board.

Section 7. Sections 5 and 6 of the act are amended to read:

Section 5. [Sewage Treatment Plant] *Wastewater System Operator Certificates.*—(a) [Classification.] A certificate *approved by the board and* issued by the department shall authorize the [person] *individual* to whom it is issued to operate [sewage treatment plants] *a wastewater system* in accordance with the following classification:

“Class A certificate.” [Treatment plants of all types and capacities.] *Wastewater systems of unlimited permitted discharge flow.*

“Class B certificate.” [Treatment plants whose operation depends substantially upon the use of an activated sludge or chemical precipitation process and which have a design capacity of not more than twenty million gallons per day or all other treatment plants.] *Wastewater systems with a permitted average daily discharge flow equal to or less than five million gallons.*

“Class C certificate.” [Treatment plants whose operation depends substantially upon the use of an activated sludge or chemical precipitation process and which have a design capacity of not more than seven and one-half million gallons per day or other treatment plants which have a design capacity of not more than twenty million gallons per day.] *Wastewater systems with a permitted average daily discharge flow equal to or less than one million gallons.*

“Class D certificate.” [Treatment plants whose operation depends substantially upon the use of an activated sludge or chemical precipitation process and which have a design capacity of not more than one and one-half million gallons per day or other treatment plants which have a design capacity of not more than seven and one-half million gallons per day.] *Wastewater systems with a permitted average daily discharge flow equal to or less than one hundred thousand gallons.*

“Class E certificate.” [Treatment plants whose operation depends substantially upon the use of an activated sludge or chemical precipitation process and which have a design capacity of not more than two hundred thousand gallons per day or other treatment plants which have a design capacity of not more than one and one-half million gallons per day.]

“Class F certificate.” Treatment plants whose operation depends substantially upon the use of an activated sludge or chemical precipitation process and which have a design capacity of not more than twenty thousand gallons per day or other treatment plants which have a design capacity of not more than two hundred thousand gallons per day.] *Wastewater systems consisting only of collection facilities with*

pumping stations which discharge untreated wastewater into another system.

(b) [Requirements for Certification.—]In order to be eligible for certification, an applicant shall have had sufficient experience acceptable to the board in the operation of [treatment plants. The minimum experience which the board may accept shall be two years for a Class A certificate, one year for a Class B certificate, and six months for a Class C or Class D certificate.] *wastewater systems*. In determining whether minimum experience requirements are met, the board may make reasonable allowance for education and training in the field of [sewage treatment] *wastewater system operation* and for training and experience in allied fields. [Minimum experience requirements shall not be applicable to the holder of a special certificate under section 8 of this act who applies for a certificate of the same or next higher classification.]

(c) *In order to be eligible for renewal of certification, in addition to submitting an application and the appropriate fee, an applicant:*

(1) *shall be in compliance with the conditions of his or her current certificate, the act and the rules and regulations adopted thereunder and any orders of the board or the department relative to certification; and*

(2) *shall have completed the minimum continuing education requirements as specified in the rules and regulations adopted under this act.*

(d) *No operator shall make any process control decisions unless the individual is in possession of a valid certificate for the applicable classification and subclassification assigned to the wastewater system.*

Section 6. [Waterworks] *Water System Operator Certificates*.—(a) [Classification.] A certificate *approved by the board and issued by the department shall authorize the [person] individual to whom it is issued to operate [any distribution] a water system [and to operate treatment plants] in accordance with the following classifications:*

“Class A certificate.” [Treatment plants] *Water systems* of all types and capacities.

“Class B certificate.” [Treatment plants utilizing filtration and] *Water systems* serving an average of not more than five million gallons per day. [or treatment plants not utilizing filtration and serving an average of not more than ten million gallons per day.]

“Class C certificate.” [Treatment plants utilizing filtration and] *Water systems* serving an average of not more than one million gallons per day. [or treatment plants not utilizing filtration and serving an average of not more than five million gallons per day.]

“Class D certificate.” *Water systems serving an average of not more than one hundred thousand gallons per day.*

“Class E certificate.” This certificate covers *the distribution portion of water systems only.*

(b) [Requirements for Certification.—]In order to be eligible for certification, an applicant shall have had sufficient experience acceptable to the board in the operation of [treatment plants. Except as herein provided the minimum experience which the board may accept shall be eight years for a Class A certificate, six years for a Class B certificate, four years for a Class C certificate, and two years for a Class D certificate, provided that these minimum experience requirements may be reduced to not less than two years for a Class B certificate, one year for a Class C certificate, and eliminated completely for a Class D certificate when the board finds that the applicant is qualified to operate a distribution system. The board may make allowance for experience for the following reasons:

(1) For successful completion of each grade of school or high school above the sixth grade the experience required may be reduced by six months.

(2) For the successful completion of each waterworks short course of at least twenty-four hours' duration or equivalent which is acceptable to the board the experience required may be reduced by six months.

(3) For the successful completion of each correspondence course in sanitary engineering or water supply treatment which is acceptable to the board the experience required may be reduced by one year.

(4) For the successful completion of each academic year with major work in engineering, chemistry, or other scientific subjects closely allied to the field of water treatment, the experience required may be reduced by one year. Appropriate credit may be given for completed semesters or other normal portions of an academic year.

(5) For each graduate degree in engineering, chemistry, or other scientific subjects closely allied to the field of water treatment, the experience required may be reduced by one year.

(6) For each year's experience as a sanitary engineer in the field of water treatment the experience required may be reduced by one year.

(7) Experience in the design, construction, or operation of water, sewage or industrial waste treatment plants or allied fields may be evaluated by the board and applied to reduce the minimum experience requirements set forth above.] *water systems. In determining whether minimum experience requirements are met, the board may make reasonable allowance for education and training in the field of water system operation and for training and experience in allied fields.*

(c) *In order to be eligible for renewal of certification, in addition to submitting an application and the appropriate fee, an applicant:*

(1) *shall be in compliance with the conditions of his or her current certificate, the act and the rules and regulations adopted thereunder and any orders of the board or the department relative to certification; and*

(2) shall have completed the minimum continuing education requirements as specified in the rules and regulations adopted under this act.

(d) No operator shall make any process control decisions unless he or she is in possession of a valid certificate for the applicable classification and subclassification assigned to the water system.

Section 8. The act is amended by adding a section to read:

Section 6.1. Interim Program Authorization.—(a) Notwithstanding any provision to the contrary, the department shall implement an interim certification program to meet the requirements of section 1419 of the Safe Drinking Water Act (Public Law 93-523, 21 U.S.C. § 349 and 42 U.S.C. §§ 201 and 300f et seq.) in a timely manner. The interim program shall expire after the Environmental Quality Board adopts regulations under section 4(c).

(b) The program shall meet the requirements of the final Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems published in the Federal Register under the requirements of section 1419 of the Safe Drinking Water Act (Public Law 93-523, 21 U.S.C. § 349 and 42 U.S.C. §§ 201 and 300f et seq.). The program may include comparable requirements for wastewater treatment operators including continuing education requirements.

(c) The department may develop, after notice and opportunity for comments, guidelines to implement an interim program authorized under this section.

Section 9. Section 7 of the act, amended June 17, 1973 (P.L.87, No.37), is amended to read:

Section 7. Professional Engineers.—*[(a) Anyone] An engineer registered under the [“Professional Engineers Registration Law,” approved] act of May 23, 1945 (P.L.913[)], No.367), known as the “Engineer, Land Surveyor and Geologist Registration Law,” after the effective date of this amendment who has been examined in civil [or sanitary engineering or otherwise proves he is proficient shall be granted a certificate upon application to the board.], environmental or sanitary engineering and is otherwise qualified consistent with the act and the rules and regulations adopted under it shall be granted a certificate upon application to the board after successfully passing a certification examination for the appropriate classification and subclassification and payment of the appropriate fee. The requirements related to recertification, renewal of certification and continuing education shall also apply to engineers. To the extent authorized by Federal requirements, the board shall allow a registered professional engineer to rely upon the examination testing under the “Engineer, Land Surveyor and Geologist Registration Law” related to civil, environmental or sanitary engineers to demonstrate that the registered professional*

engineer has the necessary skills, knowledge, ability and judgment for classifications and subclassifications, as appropriate, and to meet all or a portion of the certification examination requirement in this section. To the extent authorized by Federal requirements, the board may allow a registered professional engineer to rely upon examination testing associated with board-approved college or university courses or curriculum to demonstrate that the registered professional has the necessary skills, knowledge, ability and judgment for classifications and subclassifications, as appropriate, and to meet all or a portion of the certification examination requirements in this section. For purposes of this section, the requirements for wastewater system certificates shall be deemed the same as water system operation certificates.

[(b) Subsection (a) of this section or any other provision of this act shall not be construed to require certification and registration for operation of any class of treatment plant or distribution system by a professional engineer registered under the "Professional Engineers Registration Law" who is competent to perform professional civil or sanitary engineering services.]

Section 10. Sections 8 and 9 of the act are amended to read:

[Section 8. **Special Certificates.**—The board shall issue a certificate to any person who at the time of the passage of this act has the direct responsibility for the operation of a sewage treatment plant, water treatment plant or distribution system. Such special certificate shall permit the holder to operate only the type of plants or distribution systems for which certificated. This certificate shall be issued without examination upon submission of an application and payment of the required fee as set forth in section 12.]

Section 9. **Reciprocity.**—The board may [issue] *authorize the issuance of certificates without examination to applicants who hold valid certificates issued under laws of any other state, territory, [or] the District of Columbia or any board-approved reciprocity register*, provided the out-of-state certificate was issued as a result of the successful passing of an examination equivalent to the examination given by the board for the same [grade] *classification and subclassification*. Experience *and training* requirements of applicants for certification as operators set forth in [sections 5 and 6] *the rules and regulations promulgated under this act* shall apply to all such applicants. *The requirements relating to recertification and renewal of certification shall apply to operators who receive their certificate under this section.*

Section 11. Section 10 of the act is repealed.

Section 12. Section 11 of the act is amended to read:

Section 11. **Administrative Procedure and Judicial Review.**—The board shall be subject to the provisions of [the "Administrative Agency Law," approved June 4, 1945 (P.L.1388), and its amendments.] *2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth*

agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action), known as the "Administrative Agency Law."

Section 13. Section 12 of the act is repealed.

Section 14. Sections 13 and 14 of the act are amended to read:

Section 13. Operation of [Treatment Plants] *Water or Wastewater Systems.*—(a) After [two years from the effective date of this act] *January 1, 1971*, and, except as provided in the following [paragraph] *paragraphs*, each owner [and each purveyor] shall employ the services of a certified operator of the required classification *and subclassification* who shall have the direct responsibility for the operation of the [treatment plant or distribution] *water or wastewater* system and shall employ the services of such additional certified operators as are required pursuant to the provisions of this act *and rules and regulations promulgated under it*. The name of [such individual] *operators in responsible charge* must be on file at all times with the department.

[(b) In the event of an emergency or unforeseeable circumstance which results in a treatment plant or distribution system being temporarily without the services of a certified operator of the required classification, the services of a certified operator must be engaged within thirty days. In such a case, the department may issue a temporary certificate to an operator holding a certificate not more than one grade lower than that required for the plant involved, and, in the case of a sewage treatment plant requiring an operator with a Class F certificate, or in the case of a water treatment plant or distribution system requiring an operator with a Class D certificate, to any person selected by the owner who is deemed by the department to be capable of operating the plant or system. Any temporary certificate issued by the department shall specify the period of time for which said certificate shall be in effect.]

(b) On or before three years from the effective date of this amendatory act, each owner must place the direct supervision of their water or wastewater system under the responsible charge of available operators who hold a valid certificate of the applicable classification and subclassification to operate their system. Each owner shall employ the services of available operators of the required classification and subclassification who shall make process control decisions for the operation of the water or wastewater system during all periods of operation. All process control decisions must be made by a certified operator. Such decisions may be made on site, from a remote location and communicated to operators on site or by means of an approved standard operating procedure as provided by the rules and regulations adopted under this act.

(c) An individual who holds a valid certificate issued pursuant to the rules and regulations adopted under this act which were in effect before the effective date of this act may continue to operate under the terms and

conditions of that certification as long as he or she is in compliance with the act and the rules and regulations adopted thereunder and any orders of the board or the department relative to certification. Annual renewals of certificates shall continue in full force and effect upon application and payment of the renewal fees heretofore prescribed by law in section 607-A of The Administrative Code until such fees are superseded and repealed by the rules and regulations adopted under this act. Such certification shall expire and the operator shall apply for renewal of certification within such time as may be set by the revised rules and regulations adopted under this act and upon the receipt of notice from the board that such operator shall apply for and obtain certification in accordance with the revised rules and regulations.

(d) An owner of a nontransient noncommunity water system or a wastewater collection system who has not employed a certified operator prior to the effective date of this act and is required to comply with the provisions of the act may continue to employ such operator as was associated with the system on the effective date of this act on an interim basis provided that the owner applies for the grandparenting of such operator or operators within sixty days of notification by the department, but in any case no later than two years after the effective date of this act. Certification for such grandparented operators shall be temporary, site-specific and nontransferable to other systems. The grandparenting of such operator shall expire and the operator must apply for and be granted certification or renewal of certification on or before a date specified in the rules and regulations adopted under this act.

(e) It shall be the duty of all certified operators to comply with the applicable Federal and State laws, and rules and regulations associated with a water or wastewater system, including, but not limited to:

(1) Meeting all the requirements for recertification or renewal of certification, including any continuing education requirements.

(2) Reporting to the system owner any known violations or system conditions that may be or are causing violations of any department regulation or permit conditions or requirements.

(3) Providing for the suitable operation and maintenance of a water or wastewater system utilizing available resources needed to comply with all applicable laws, rules and regulations and permit conditions or requirements.

(4) Reporting to the system owner any action necessary to prevent or eliminate a violation of applicable water or wastewater system laws, rules and regulations and permit conditions and requirements.

(5) Making or implementing appropriate process control decisions or taking or directing actions related to process control decisions for specific water or wastewater systems.

(f) It shall be the duty of all owners to comply with the applicable Federal and State laws, and rules and regulations associated with a water or wastewater system, including, but not limited to:

(1) Employing, identifying and reporting to the department the names of available operators and other information required by the department.

(2) Requiring, supervising and directing certified operators to take such action so that the water and wastewater system is in compliance with all applicable laws, rules, regulations and permits.

(3) Providing to all certified operators in responsible charge a copy of all current water or wastewater permits in order to make process control decisions to comply with regulatory requirements. Upon written request from an owner, the department shall provide the current water and wastewater permits to a single certified operator in responsible charge as designated by the owner.

Section 14. [Penalties] *Enforcement.*—[Any person] *(a) An owner who violates any applicable provision of section 13 and any written order of the department issued under section 4(b)(2) of this act[,] is guilty of a summary offense and shall, upon conviction thereof, in a summary proceeding, be sentenced to pay a fine or not less than fifty dollars (\$50) nor more than [one hundred dollars (\$100)] one thousand dollars (\$1,000) and costs. For the purpose of this section, each day that an offense continues shall be construed to constitute a separate offense. The department shall have the power and duty to initiate summary proceedings in accordance with this section.*

(b) An operator who violates any provision of section 5(d) or 6(d) and an order of the department issued under section 4(b)(2) is guilty of a summary offense and shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) and costs. For the purpose of this section, each day that a violation continues shall be construed to constitute a separate offense. The department shall have the power and duty to initiate summary proceedings in accordance with this section.

(c) In addition to a proceeding under any other remedy available at law or in equity, the department may assess a civil penalty upon any person who violates any applicable provision of section 13 or any operator who violates section 5(d) or 6(d) and any order issued by the department under section 4(b)(2). A penalty may be assessed whether or not the violation was willful or negligent. When the department assesses a civil penalty, it shall inform the person of the amount of the penalty. The amount must be commensurate with the type, severity and frequency of the violation and its measurable impact on the environment or public health. The owner or operator so assessed shall have thirty days to pay the penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, the person shall, within the thirty-day period, file an appeal with the Environmental Hearing Board. Failure to

appeal within thirty days of the assessment shall result in a waiver of all legal rights to contest the violation or the amount of the penalty. The maximum civil penalty which may be assessed is one thousand dollars (\$1,000) per day for each violation. For the purpose of this section, each day that a violation continues shall be construed to constitute a separate violation.

(d) The civil penalty assessed in section 14(c) after administrative hearing or after waiver of administrative hearing shall be payable to the Commonwealth of Pennsylvania and shall be collectable in any manner provided by law for the collection of debts. If any person liable to pay any such penalty neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall constitute a judgment in favor of the Commonwealth upon the property of such person from the date it has been entered and docketed on record by the prothonotary of the county where such is situated. The department may, at any time, transmit to the prothonotary's office of the respective counties certified copies of all such judgments and it shall be the duty of each prothonotary to enter and docket them of record in his office and to index the same as judgments are indexed.

Section 15. Section 15 of the act, amended December 22, 1989 (P.L.790, No.112), is amended to read:

Section 15. Civil Relief.—The [Secretary of Environmental Resources] *department* may maintain an action in the name of the Commonwealth for an injunction or other process against [any person] *an owner or operator* to restrain or prevent such person from violating the provisions of [this act] *sections 5(d), 6(d) or 13* or any order[, rules or regulation] of the [board issued pursuant to the provisions of this act] *department issued under section 4(b)(2).*

Section 16. The act is amended by adding a section to read:

Section 15.1. Whistleblower.—(a) No employer may discharge, threaten or otherwise discriminate or retaliate against an employe regarding the employe's compensation, terms, conditions, location or privileges of employment because the employe makes a good faith report or is about to report, verbally or in writing, to the owner or appropriate authority an instance of wrongdoing.

(b) The remedies, penalties and enforcement procedures for violations of this section shall be provided in the act of December 12, 1986 (P.L.1559, No.169), known as the "Whistleblower Law."

(c) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Appropriate authority." A Federal, State or local government body, agency or organization having jurisdiction over criminal law enforcement or regulatory violations; or a member, officer, agent, representative or supervisory employe of the body, agency or organization.

“Employee.” A person who performs services for wages or other remunerations under a contract for hire, written or oral, express or implied, at a water and wastewater system, including the operators of such systems.

“Employer.” A person supervising employes at water and wastewater systems, including owners of such systems.

“Good faith report.” A report of conduct defined in this section as wrongdoing which is made without malice or consideration of personal benefit and which the person making the report has reasonable cause to believe is true.

“Wrongdoing.” A violation which is not of a merely technical or minimal nature of a Federal or State statute, regulation, license, permit, certificate or order relating to the operation of water and wastewater systems or relating to the preservation of public health and safety in relation to such systems.

Section 17. All rules and regulations promulgated under this act are continued in full force and effect until superseded by the interim program authorized under section 6.1 or by rules or regulations promulgated under it.

Section 18. This act shall take effect immediately.

APPROVED—The 21st day of February, A.D. 2002.

MARK S. SCHWEIKER