

Action needed on proposed corrections to the Operator Certification Act

From Randy Hurst

Most of you are aware of the problems with the Operator Certification Act in that DEP can assess substantial monetary penalties against individual operators without any requirement of negligence or wrongdoing. Many operators have expressed concern about this potential liability.

On September 4 I met with my state representative, Sue Helm, who is a member of the Professional Licensure Committee of the State House of Representatives. Ms. Helm promised to take our recommendation for corrective changes (see below) to the Committee for discussion.

Now is the time to contact your state representative to let them know that this correction is important to our profession. Please call, e-mail or write to your state representative to support the correction to the Operator Certification Act. Of particular importance are the members of the Professional Licensure Committee, who are listed below. If any of these representatives is your rep, please make an extra effort to let them know that this issue is important.

The statute is: 63 P.S. § 1001, Act of February 21, 2002, P.L. 134, No. 11 (usually called Act 11 of 2002). The section in question is § 1014(c). Our recommended corrections are indicated

(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 ***in either case also violates an*** ~~any order~~ issued by the department under section ~~4(b)(1.1) 4(b)(2)~~. A penalty may be assessed ***only if*** ~~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.

Members of the Professional Licensure Committee are:

Michael Sturla (D) Chair	Vince Biancucci (D)	James Casorio (D)
Harry Readshaw (D) Vice Chair	Marc Gergely (D)	Neal Goodman (D)
Sean Ramaley (D) Secretary	Nick Kotik (D)	Joseph Petrarca (D)
John Sabatina, Jr. (D)	Timothy Solobay (D)	Don Walko (D)
Jim Wansacz (D)	Ronald Waters (D)	Thomas Yewcic (D)
John Yudichak (D)	William Adolph Jr. (R) Minority Chair	
Stephen Barrar (R)	Craig Dally (R)	Gene DiGirolamo (R)
Keith Gillespie (R)	Julie Harhart (R)	Sue Helm (R)
Thomas Killion (R)	John Maher (R)	Mark Mustio (R)
Bernie O'Neill (R)	Stanley Saylor (R)	Richard Stevenson (R)