

3-14-2024

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Attn: Water and Wastewater Operator Certification

Chairman Keisling,

I wrote to you concerning operator certification in February 2020. At that time I had been on a stakeholder's committee which reported back to the Operator Certification Board. The Stakeholder committee recommended that the State divest from involvement with a third party exam provider for the development and maintenance of exams for the State's water and wastewater operators. Unfortunately, TDEC unilaterally decided to contract with MTSU for exam and question development. This process played out over the last few years and has ended without new exams to evaluate operator competency. I was not involved in the MTSU process but my understanding is the questions developed were woefully inadequate from all accounts.

Last week at a TAUD conference in Knoxville, Jennifer Dodd, Director of Water Resources for TDEC gave a presentation on Operator certification. Her and TDEC's position is to support moving forward with a private third party, WPI formally known as ABC, to develop exams. **This is the same group that developed the current exams and the aforementioned stakeholders group rejected as an acceptable path forward for exams in TN.**

From my 2020 letter, "The stakeholder committee convened by the Board held several meetings and ultimately concluded the State should develop its own exam for the following reasons:

- The current exam overly emphasized questions which were specific to minute details not germane to determining operator competency.
- The current exam relies on far too many reference materials for a prospective operator to be expected to be evaluated upon.

- The current exam is structured for operators to advance from lower to higher grades of certification as their experience increases but our regulations are not structured in a similar fashion.
- The Current exam is designed for prospective operators to have significantly more technical course training than is required by TN regulations. WT4 exam for example was written for someone with 1800 hours of technical course training.
- The third-party vendor has changed their procedures for new test development resulting in either:
 - Exams with the same questions
 - Exams which did not include TN or EPA regulatory requirements and were based upon a Global ISO standard
- **Utilization of a third-party vendor diminishes the Boards ability to determine acceptable criteria for evaluation of prospective operators.”**

In Director Dodd’s presentation last week, she did not mention another stakeholder group to be convened to evaluate options since the MTSU process failed. She made it clear that TDEC believes the path forward is to hire a third party to determine what operators need to know to determine minimum competence. I asked Ms. Dodd if she personally or TDEC had an issue delegating authority given by the legislature to TDEC to a third party to determine operator competence. Her only response that I recall was TDEC couldn’t do this work. The same nonsense we always here about not having enough staff or resources. I spoke with another high level TDEC individual at this conference last week which tried to give me the same line of reasoning. TDEC just can’t develop exams themselves. TDEC can and has in the past. The problem is an utter lack of leadership.

Bureaucrats in TDEC continually push a falsehood claiming an EPA requirement for psycho-metric evaluation of exams. Ms. Dodd last week claimed the exams had to be evaluated by a psychometrician due to an EPA requirement. When I confronted her on this point by pointing out that psycho-metric evaluation was not a statutory requirement but rather something an EPA staffer put in a guidance document, she claimed TDEC could loose SRF funding if they don’t comply with the psycho-metric evaluation. I then asked if she was aware part of the psycho-metric evaluation employed by WPI, the third party developer, was to assess race and other socio economic aspects for exam questions. She claimed to not be aware of this in her public answer but then in a one on one discussion she claimed race and gender were only one category used for evaluation.

Included with this correspondence are references to the actual statutory requirements for evaluation of exams promulgated by EPA at Federal Register / Vol. 64, No. 24 / Friday, February 5, 1999, EPA memorandum and desk guide for evaluating State certification programs, and WPI’s guidance on validating an exam. In EPA desk guide checklist item section 3a states “Take and pass an exam that demonstrates that the operator has the necessary skills, knowledge, ability and judgement as appropriate for

the classification. All exam questions must be validated.” EPA then lists items it will be looking at to evaluate this category. The germane issue to this discussion is the final bullet point “• Exam question validation activities for the year (Short summary of issues reviewed, pass/fail rate, new questions, subject matter experts, psychometrician)”. As is clear the requirement is for questions to be validated and one of the criteria EPA has decided to toss into the evaluation is that of psycho-metrics.

This is further delineated in the actual federal register from 1999 which established the requirements. It's important we understand the scope of the federal requirements and their purpose. EPA makes clear the scope of these regulations in the last paragraph of Section 1 which states “All of the requirements contained in these guidelines are to avoid DWSRF capitalization grant withholding. There are no other sanctions for States with operator certification programs that do not meet the requirements of these guidelines.” To be clear it isn't all of the drinking water SRF funding which is subject to EPA's operator certification criteria but rather 20%. EPA issued responses to key comments as part of the federal notice process. Importantly EPA stated in 1999 they received several comments on the type of operator certification exam that should be required by the guidelines. In part EPA's answer was “EPA believes that the type of test that best measures the knowledge, skills, ability, and judgement of an operator for a particular classification level should be left up to the State that is responsible for the design and administration of the test. EPA received several comments on the requirement that exams be State-validated. Some commenters asked for clarification. In the final guidelines, EPA eliminated the word “State” from the above phrase. For clarification, EPA included a definition of “validated exam” in the final guidelines.” This is the definition of validated exam published in 1999 “Validated Exam—An exam that is independently reviewed by subject matter experts to ensure that the exam is based on a job analysis and related to the classification of the system or facility”. As you can see no mention of psycho-metric evaluation was published. The federal register notice described above can be found at: [99-2692.pdf \(govinfo.gov\)](https://www.govinfo.gov/procurement/99-2692.pdf)

I have grave concern for the psycho-metric evaluation process TDEC seems to so eager to utilize to evaluate exams for operators. WPI published a document entitled *VALIDATING YOUR CERTIFICATION EXAM* which goes through the process they have determined is necessary to validate exams. Step 2 Develop and Validate items subheading B. states “Analyzing questions for technical accuracy, style, readability, and possible bias toward subgroups. Determine that the correct answer is the best answer, that the distractors (incorrect answers) are wrong, and that the question is free from bias with respect to race, gender, and culture”. What is this nonsense in their evaluation of questions for operators? Oh its DEI, diversity, equity, and inclusion. It is unacceptable to write exams for our operators in TN which are evaluated in anyway with respect to race, gender, or culture of the applicants taking the exam. Individuals either know the technical requirements required to perform the duties necessary to protect public health or they do not.

Other issues are also apparent with the WPI process to be used by TN to develop exams. Our categories of operators are based on the complexity of the system which they operate and do not align with WPI exam categories. The new global WPI exams do not ask any State or Federal regulatory questions. Ms. Dodd was asked about the lack of regulatory questions on the new exam by another questioner last week. Her response was on the current exam someone could miss all the regulation questions and still pass the exam, so she didn't think it was an issue. Imagine that the chief regulator for TDEC would say hey it doesn't matter if operators are tested on knowing the regulations to be certified. As a former TDEC employee and WT-4 certified operator, it's hard for me to believe someone in her position could actually believe something so ridiculous unless of course they don't actually want operators who know the regulations.

I urge you to draft regulations specific to operator certification which make it clear that TDEC does not have the authority to delegate exam questions, development, or validation to any third party nor does it have the authority to develop a psycho-metric algorithm with any input from DEI categories. Any statistics utilized to categorize questions or exams must be open to the public for review. I would further suggest that a new stakeholder committee be established to oversee the exam development and implementation as TDEC's execution of its legislative authority in this area has gone way off course for a number of years.

Sincerely,

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