

## ATTENTION: WATER AND WASTEWATER FACILITIES OWNERS, MANAGERS AND OPERATORS Strict Liability Survey Results

The results are in! Several of your colleagues, in response to an article entitled *A Truly Unique Profession?*<sup>1</sup>, suggested that CET conduct a survey on the subject of strict liability to gauge the thoughts of those in the field. About 60 of you responded, and the results are presented in this article.

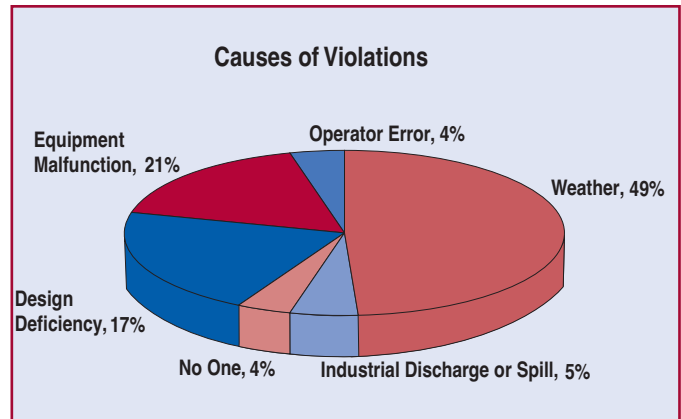
You may want to reread *A Truly Unique Profession?*, which explains an incident that had occurred where certain wastewater treatment plant operators were investigated by DEP. The investigations were conducted under provisions contained in the Operator Certification Act and were within DEP's discretion under the Act. *A Truly Unique Profession?* discusses strict liability penalties and raises questions about personal risk and insurance. This has generated concerns in the operating community, and CET's survey asked several questions.

When asked how familiar respondents were with the Operator Certification Act, less than 10 percent said they were "very familiar" with it. The majority indicated that they were only "somewhat familiar."

As far as how they came to understand the Act, most indicated through self-education or through a trade association. A small percentage said that they learned about the Act through DEP or their employer.

With respect to violations at plants, the average reported one violation every four years. Respondents believed that half of these violations were a result of

<sup>1</sup>Randy Hurst, QEP, "A Truly Unique Profession?," *PWEA Keystone Water Quality Manager* (July/August/September 2006): 31-32.



weather. About 21 percent were as a result of equipment malfunction and another 17 percent were due to design deficiencies. Five percent were from shock loads (industrial discharge or spill). Respondents believed that less than 5 percent were the result of operator error.

With respect to personal liability and fines, while three quarters of the respondents had not discussed it with their employer, almost all wanted their employer to address the subject and handle the cost of defense on their behalf.

The possibility of personal fines has raised concerns on the part of a number of the respondents. About one fourth indicated that they were giving consideration to no longer serving as a certified operator. So concerned were some, that about one quarter indicated that they would be inclined to tell newcomers to not consider operations as an occupation.

*"The imposition of strict liability on operators does nothing to encourage anyone to enter our field."*

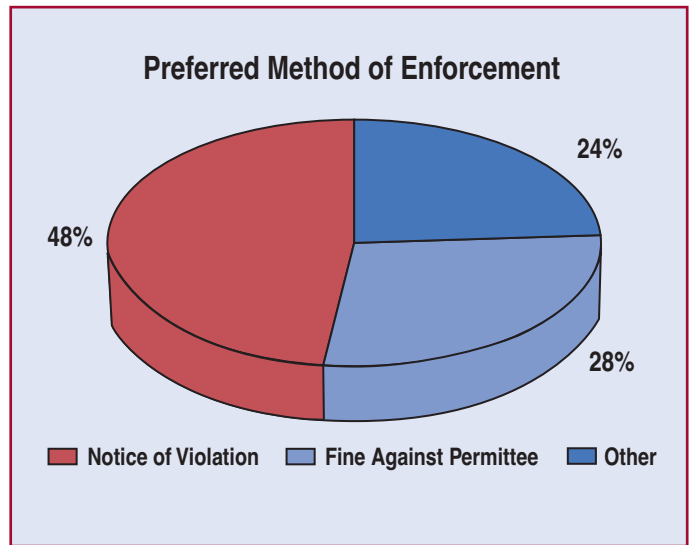
Lee Myers, Milford-Trumbauerville Municipal Authority

An overwhelming number of the respondents were not in favor of DEP using a procedure of personal fines as a method of enforcement. Three quarters felt that a notice of violation or a fine against the permittee would accomplish the same objective.

About two-thirds felt that strict liability would result in spending more money on redundancy, increased maintenance or other equipment to increase the margin of safety. Less than half felt the policy would reduce violations.

*“If the system must be failsafe, rates will dramatically increase.”*

Bob Leber, Township of Abington



Prior to issuing this summary, we contacted Mr. Hurst, author of *A Truly Unique Profession?* who cautioned that strict liability can be thought of as “liability without fault”. He illustrated the issue by noting that while “operator error” may be responsible for 4 percent of the reported plant violations, operators can be held personally responsible for the other 96 percent of the violations as well. Readers are urged to consult with their personal attorney to learn more.

In summary, this survey indicates that operators need to be educated on the provisions of the Certification Act. Most believe that violations are caused by matters that are outside the control of operators. Many are concerned that DEP is over-reacting by these recent developments with the result that good operators will leave the profession and new people will stay away from it. Almost all want their employer to cover them financially should personal fines ever be used against them.

*Compiled by Raymond H. Myers, P.E., BCEE, principal engineer with CET Engineering Services.*

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If there are other issues that you would like surveyed, please contact CET Engineering Services.

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