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Colorado Department of Public Health and Environment

Disciplinary Action Policy

Approved by the
Water and Wastewater Facility Operators Certification Board
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Introduction

The Water and Wastewater Facility Operators Certification Board ("the Board") is authorized to take disciplinary action against a certified operator as provided under sections 25-9-104(6) and -104(6.5) C.R.S. and under multiple sections of Regulation 100, 5 C.C.R. 1003-2. This authority provides the Board with the discretion to suspend or revoke an operator's certification or, in cases where operator's actions are deemed not so egregious in nature to warrant suspension or revocation, to issue a letter of reprimand.

The Water Quality Control Division ("the Division") is tasked, under these same statutory and regulatory authorities, with investigating alleged instances of operator misconduct and with making recommendations to the Board regarding further action.

The procedures to be followed by the Board and the Division in pursuing disciplinary actions are contained in the companion document, "Adjudicatory Process: Procedures for Investigation of Alleged Operator Misconduct by the Water Quality Control Division and Disciplinary Action by the Water and Wastewater Facility Operators Certification Board" (July 12, 2007). The material below provides guidance to the Division for determining the appropriate recommendation for Board action for different types of operator misconduct.

General Principles

The Board recognizes the importance of the operator acting fully in accordance with the requirements for operator conduct given that the operator is, quite literally, the last line of defense for the protection of public health and the environment. The Board is also mindful of the fact that disciplinary action can have serious consequences for an operator, negatively affecting his/her standing in the work place and in the community.

The Board views as unacceptable any misconduct that undermines the integrity of the certified operator profession or puts the public health or the environment at greater risk. However, the Board will not enter into the disciplinary action process to address minor failures unless these are willful and/or repeated.

Grounds for Disciplinary Action

Section 100.23, Regulation 100 enumerates the grounds for disciplinary action. In summary, these grounds are:

(a) failing to exercise reasonable care and judgment consistent with the operator's level of certification;
(b) failing to properly perform and/or supervise tasks pertinent to controlling the operation of a water or wastewater facility, including but not limited to the activities described in section 100.16 and 100.17 of Regulation 100**;**
(c) willfully or negligently causing or allowing the violation of Regulation 100, the Colorado Primary Drinking Water Regulations or the facility's Colorado Discharge Permit System (CDPS) permit;
(d) submitting false or misleading information on any relevant document provided to the Department, Division, Board, designee of the Board or other entity legally entitled to such documents;
(e) using fraud or deception in the course of employment as an operator;
(f) engaging in dishonest conduct during an examination or obtaining a certificate through fraud, deceit, or the submission of materially inaccurate application information; or
(g) representing oneself as holding a valid operator's certificate after the expiration, suspension, or revocation of the certificate.

An additional ground for disciplinary action is specified against operators in responsible charge who willfully or negligently cause, instruct or allow any person or operator under his/her supervision to act in a manner inconsistent with relevant regulations or at variance with an operator's obligations.

Considerations

The Board recognizes that very few disciplinary actions will be straightforward and without aggravating or mitigating circumstances. The Board expects not only that the Division will examine the facts carefully but that it will present to the Board those considerations beyond the "bare facts" which may be relevant to the situation. The Division's recommendations should reflect a careful evaluation of the circumstances surrounding each case.

The following considerations should be evaluated by the Division in considering whether to recommend disciplinary action. These are also "aggravating or mitigating factors" to be considered on a case-by-case basis when determining the appropriate disciplinary action.

- The inherent gravity of the incident(s) at issue, including the level of risk posed to the public health or environment by the incident(s);
- Factors beyond the operator's control that may have affected her/his behavior, and the operator's degree of control over the incident(s) at issue; and
- The operator's professional attitude during and after the incident(s), including the operator's willingness to cooperate with the Division during its investigation.

The following discussion illustrates how these factors should be considered.

The inherent gravity of the act or omission with which an operator is charged should be the first consideration taken into account. Generally, failure to report required but routine monitoring results may be considered inherently less serious than failure to report an exceedance of an established maximum contaminant level (MCL). Transient values in excess of a discharge parameter may be considered less serious than the illegal discharge of untreated wastewater. Continuing to serve as an ORC after a certificate expires may be considered less egregious than altering a certificate.

The risk to public health and/or the environment of operator failures must also be considered as part of the gravity factor. An incident that results in actual illness or contamination should be considered a more serious failure than an incident that does not result in any adverse effect on the public.

The degree of control an operator has of a situation, where known, must be taken into consideration in each case. Situations in which the operator has complete control over both process and outcome should be viewed in a much different light than situations over which an owner has control. For example, monitoring/reporting violations caused by an owner's failure to pay laboratory bills should not constitute grounds for action against an operator. System failures caused by avalanche, tornado, or freezing and thawing ground conditions cannot be attributed to the operator. On the other hand, failure to disinfect after flushing lines, improper sampling techniques/locations, misrepresentation on an application form or "dry-labbing" are considered to be situations over which the operator has significant, if not complete, control.

Professional attitude is an extremely important component of the analysis of a potential disciplinary action. Outcomes that happen despite the operator's best professional efforts warrant different consideration than system malfunctions resulting from carelessness, negligence, callous disregard or malice. An accident with gaseous chlorine where the operator has maintained the highest safety standard for signage, storage and handling should be viewed in a very different light than the failure to observe any safety standards – even if there is no incident. An operator's willingness to cooperate with the Division during its investigation of the incident(s) at issue, including but not limited to the degree of forthright and open communication, must also be considered.

The Board will also consider any precedent set by previous cases, or the precedent that taking the recommended action would set. If a departure from established precedent based on past actions is deemed appropriate, the Division should present the Board with a summary of established precedent and reasons why a departure from precedent is appropriate.

The Board further recognizes that it is neither practical nor desirable for all incidents of operator misconduct to result in formal disciplinary action. The Board expects that the Division will develop informal procedures to notify operators of failings that do not rise to a level requiring formal action. Such informal notifications may be either by direct communication (phone call or e-mail) or by letter. It is the Division's responsibility to determine whether these notifications should include the operator's employer or supervisor.

The Board also notes that disciplinary action may be required for escalating circumstances in which the reported operator misconduct may not be a stand-alone incident. This type of continued contempt for the law and regulations governing water and wastewater facility operators and their responsibilities and duties as certified water professionals will be treated as blatant indifference and disrespect of the

certified operator's accountability and duties. Operator reprimand, in such cases, will not be considered appropriate or sufficient for disciplinary action. Certification suspension in conjunction with a probationary period, or in more severe and potentially dangerous circumstances, certification revocation, would be the appropriate course of action.

It is expected that even minor infractions will be corrected and not repeated. Continued flaunting of certified operator responsibilities is indicative of a lack of care and warrants Board action if Division efforts to address the problem are not successful.

Any disciplinary action taken by the Board does not preclude Division from taking enforcement action for violations of other statutes and regulations caused by the operator's poor judgment or behavior.

DEFINITIONS OF TERMS USED IN FOLLOWING DISCIPLINARY ACTION RECOMMENDATION TABLE

REPRIMAND: An official admonition for wrongdoing issued to an operator by the Division or the Board in the form of a letter, which includes the facts and circumstances leading to the reprimand, the statutory and regulatory provisions at-issue, and a warning of more serious consequences for future wrongdoings.

SUSPENSION OF CERTIFICATION: An official action taken by the Board by which the operator's certification is withdrawn for a specifically defined period of time up to three years. During the suspension period, an operator shall not represent that he or she holds a certification in the class for which the certification was suspended. No person shall operate a water or wastewater facility in reliance on a suspended certification. At the end of the suspension period, an operator may resume his or her duties as a certified operator without being required to submit a new application for certification. If the operator's certification is set to expire during the suspension period, the operator shall remain subject to the renewal deadline, and any certification renewal shall not take effect until the suspension period ends. Any certification renewed during a period of suspension shall be effective for a period of three years beginning with the ending date of the suspension. All certification suspension actions are governed by the procedures in section 24-4-104, C.R.S.

REVOCATION OF CERTIFICATION: An official action taken by the Board by which the operator's certification is terminated. Revocation is the most severe disciplinary action taken by the Board for operator misconduct. Once an operator's certification is revoked, the operator shall not represent that he or she holds a certificate in the class for which the certification was revoked. No person shall operate a water or wastewater facility in reliance on a revoked certification. An operator may not apply for a new certification until three years have elapsed from the time of revocation. All certification revocation actions are governed by the procedures in section 24-4-104, C.R.S.

Disciplinary action taken by the Board is a public process and any such action will be made available to the public via **"Summary of Recent WWFOCB Disciplinary Actions**" on the Board's web site at http://www.cdphe.state.co.us/op/ocb/meetings/wwfocbdiscactions.html

Examples: The following table illustrates the examples of actions or omissions for which the Board will consider disciplinary action. The table defines the broad categories of inappropriate behavior, including the applicable Regulation 100 provisions, the specific examples of misconduct, and the "default" Board disciplinary action (in bold), along with the spectrum of possible Board actions in light of the aggravating or mitigating factors discussed above. There may be other violations of the standards set in Regulation 100, not listed below, which also merit review/action by the Board.

Inappropriate Behavior/Applicable Reg. 100 Citation(s)	Definitions/Examples of Misconduct for Disciplinary Action	Recommended Action
• Failing to exercise reasonable care and judgment **100.23.1(a)** **100.23.1(b)** **100.23.1(d)** **100.23.1(f)**	- Failing to provide subordinate personnel with appropriate, written operating procedures;	*Division operator reprimand* ***Board operator reprimand*** *Operator suspension*
	-Allowing uncertified, subordinate personnel to make decisions reserved to certified operators;	*Board operator reprimand* ***Operator certification suspension*** *Operator certification revocation*
	-Failing to observe and respond to conditions that might cause a need to discharge untreated or incompletely treated effluent;	*Division operator reprimand* ***Board operator reprimand*** *Operator suspension*
	-Failing to recognize and respond to conditions requiring notification to the Division or to the public;	*Division operator reprimand* ***Board operator reprimand*** *Operator certification suspension*
	-Failing to properly close valves, thereby allowing the mixing of raw water with finished water;	*Board operator reprimand* ***Operator certification suspension*** *Operator certification revocation*
	-Failing to properly control pressure levels in a distribution system;	*Division operator reprimand* ***Board operator reprimand*** *Operator certification suspension*
	-Failing to use, or to insist that others use, appropriate safety equipment during construction, excavation, or in enclosed space areas;	*Division operator reprimand* ***Board operator reprimand*** *Operator certification suspension*
	-Repeated failure to perform required Discharge Monitoring Report (DMR) calculations properly;	*Division operator reprimand* ***Board operator reprimand*** *Operator certification suspension*

• Violating or causing or allowing the violation of relevant regulations **100.23.1(a)** **100.23.1(b)** **100.23.1(d)** **100.23.1(e)** **100.23.1(f)**	-Authorizing an un-permitted discharge of effluent;	*Board operator reprimand* ***Operator certification suspension*** *Operator certification revocation*
	-Authorizing or cooperating in the alteration of approved treatment processes without the approval of the Division;	*Board operator reprimand* ***Operator certification suspension*** *Operator certification revocation*
	-Failing to perform required sampling, testing, or monitoring;	*Division operator reprimand* ***Board operator reprimand*** *Operator certification suspension*
	-Failing to submit required sampling/monitoring reports in a timely manner;	*Division operator reprimand* ***Board operator reprimand*** *Operator suspension*
	-Failing to disinfect lines following a line break;	*Board operator reprimand* ***Operator certification suspension*** *Operator certification revocation*
	-Maintenance failures which allow sewage collection system spills/overflows;	*Board operator reprimand* ***Operator certification suspension*** *Operator certification revocation*
	-Failing to develop required sampling and monitoring plans;	*Division operator reprimand* ***Board operator reprimand*** *Operator certification suspension*
	-Failure to respond to Division requests and/or inquiries	*Division operator reprimand* ***Board operator reprimand*** *Operator certification suspension*
	-Failing to sample in accordance with existing sampling and monitoring plans;	*Division operator reprimand* ***Board operator reprimand*** *Operator certification suspension*
	-Authorizing or allowing the discharge of effluent which does not meet permit conditions;	*Board operator reprimand* ***Operator certification suspension*** *Operator certification revocation*
	-Failure in treatment techniques, failing to clean/maintain filters, failing to disinfect or to maintain appropriate disinfection levels, etc.	*Board operator reprimand* ***Operator certification suspension*** *Operator certification revocation*

• Submitting false or misleading documents **100.23.1(d)** **100.23.1(f)**	-Recording values not actually measured (dry labbing);	*Operator certification suspension* ***Operator certification revocation***
	-Compromising the integrity of samples;	*Operator certification suspension* ***Operator certification revocation***
	-Selectively omitting measurements;	***Operator certification suspension*** *Operator certification revocation*
	-Altering log books, lab sheets, or other primary documentation;	*Operator certification suspension* ***Operator certification revocation***
	-Submitting false reports.	*Operator certification suspension* ***Operator certification revocation***
• False representation to employers **100.23.1(d)** **100.23.1(e)** **100.23.1(f)** **100.23.1(i)**	-Submitting false or altered monitoring/sampling documents to an employer for submission to the state;	*Operator certification suspension* ***Operator certification revocation***
	-Misrepresenting or presenting altered examination results to an employer;	***Operator certification revocation***
	-Misrepresenting or presenting altered proof of certification to an employer;	***Operator certification revocation***
	-Continuing to act as an operator in responsible charge with an expired certification without Division approval.	*Board operator reprimand* ***Operator certification suspension*** *Operator certification revocation*
• Misconduct related to examinations **100.23.1(h)**	-Presenting false information on an application when that information influences the acceptance or rejection of an application;	*Operator certification suspension* ***Operator certification revocation***
	-Presenting false, forged, or altered documentation in support of any application;	***Operator certification revocation***
	-Cheating in any way on a certification examination;	***Operator certification revocation***
	-Photographing or otherwise copying a certification examination;	*Operator certification suspension* ***Operator certification revocation***
	-Distributing, or facilitating the distribution of, certification examination questions prior to any examination.	***Operator certification revocation***