Water and Wastewater Facility Operators Certification Statute

Revised and reproduced by:

The Colorado Department of Public Health and Environment

June 2009

(PLEASE NOTE: This is an unofficial copy of this statute. The official copy is published as the Colorado Revised Statutes under the supervision and direction of the Committee on Legal Services.)

TABLE OF CONTENTS

		Page
25-9-101	**Legislative declaration**	3
25-9-102	**Definitions**	3
25-9-103	**Water and wastewater facility operators certification board - composition - repeal of article**	4
25-9-104	**Duties of the board**	6
25-9-105	**Water treatment facility operator**	8
25-9-106	**Domestic wastewater treatment facility operator**	8
25-9-106.2	**Industrial wastewater treatment facility operator**	9
25-9-106.3	**Multiple facility operator**	9
25-9-106.5	**Education and experience - substitution allowed**	9
25-9-107	**Certification procedure**	10
25-9-108	**Fees**	11
25-9-109	**Use of title**	12
25-9-110	**Violations - penalty**	12

25-9-101. <u>Legislative declaration.</u>

To assure adequate operation of water and wastewater facilities, and to preserve the public peace, health, and safety, the provisions of this article and any rules authorized pursuant thereto are enacted to provide for the examination, classification, and certification of water and wastewater facility operators and to establish minimum standards therefore based upon their knowledge and experience, to provide procedures for certification, to encourage vocational education for such operators, to provide a penalty for the wrongful use of the title "certified operator", to require each water and wastewater facility to be under the supervision of a certified operator, to provide for the classification of all water and wastewater facilities in the state, and to provide a penalty for the operation of a water or wastewater facility without supervision of a certified operator.

25-9-102. <u>Definitions.</u>

As used in this article, unless the context otherwise requires:

(1) "Board" means the water and wastewater facility operators certification board.

(2) "Certificate" means the certificate of competency issued by the board stating that the operator named thereon has met the requirements for the specified operator classification of the certification program.

(3) "Certified operator" means the person who has responsibility for the operation of any water and wastewater facility covered under this article and is certified in accordance with the provisions of this article.

(4) "Department" means the Colorado department of public health and environment.

(4.3) "Division" means the water quality control division within the department of public health and environment.

(4.5) "Domestic wastewater treatment facility" means any facility or group of units used for the treatment of domestic wastewater or for the reduction and handling of solids and gases removed from such wastes, whether or not such facility or group of units is discharging into state waters. "Domestic wastewater treatment facility" specifically excludes individual sewage disposal systems.

(4.7) "Industrial wastewater treatment facility" means any facility or group of units used for the pretreatment, treatment, or handling of industrial waters, wastewater, reuse water, and wastes that are discharged into state

waters. "Industrial wastewater treatment facility" includes facilities that clean up contaminated ground water or spills; except that such term does not include facilities designed to operate for less than one year or facilities with in-situ discharge.

(4.8) "Small system" means a water or wastewater facility that serves a population of three thousand three hundred or less.

(4.9) "Wastewater collection system" means a system of pipes, conduits, and associated appurtenances that transports domestic wastewater from the point of entry to a domestic wastewater treatment facility. The term does not include collection systems that are within the property of the owner of the facility.

(5) "Wastewater treatment facility" means either a domestic wastewater treatment facility or an industrial wastewater treatment facility.

(5.3) "Water and wastewater facility" means a water treatment facility, wastewater treatment facility, water distribution system, or wastewater collection system.

(6) "Water distribution system" means any combination of pipes, tanks, pumps, or other facilities that delivers water from a source or treatment facility to the consumer.

(7) "Water treatment facility" means the facility or facilities within the water distribution system that can alter the physical, chemical, or bacteriological quality of the water.

25-9-103. <u>Water and wastewater facility operators certification board - composition - repeal of article.</u>

(1) There is hereby created the water and wastewater facility operators certification board which shall constitute a section of the division of administration of the department and shall consist of the following ten members:

(a) A certified water treatment or domestic wastewater treatment facility operator with the highest level of certification available in Colorado;

(b) A certified industrial wastewater treatment facility operator or other representative of a private entity that operates an industrial wastewater facility;

(c) A city manager, manager of a special district, or utility manager in a city, county, or city and county that operates a domestic water or wastewater treatment facility;

(d) A representative of the department of public health and environment who shall be an ex officio, nonvoting member;

(e) A certified water distribution or wastewater collection system operator with the highest level of certification available in Colorado;

(f) A representative from the Colorado rural water association; and

(g) Four members appointed to achieve geographical representation and to reflect the various interests in the water and wastewater facility certification program. At least one of such members shall reside west of the continental divide, and at least one shall reside in the rural portion of the eastern plains of Colorado.

(2) All members of the board shall be appointed by the governor. At least four of the voting members of the board shall be certified water or wastewater facility operators, including representatives of both the water and wastewater industries.

(3) (a) Except as otherwise provided in paragraph (b) of this subsection (3), appointments shall be for terms of four years, and a member of the board shall serve no more than two consecutive four-year terms.

(b) The board shall be reconstituted as of July 1, 2004. Members who were serving as of June 30, 2004, and who are qualified for membership under subsections (1) and (2) of this section, as amended, may be reappointed by the governor and, if a member is so reappointed, his or her service shall be deemed to have been continuous. The governor shall make initial appointments or reappointments to the reconstituted board so that two voting members' terms expire in 2005, two voting members' terms expire in 2006, two voting members' terms expire in 2007, and three voting members' terms expire in 2008. Notwithstanding paragraph (a) of this subsection (3), members who were serving as of June 30, 2004, and who are reappointed shall not be eligible for more than a total of ten years continuous service.

(4) This article is repealed, effective July 1, 2013. Prior to such repeal, the water and wastewater facility operators certification board shall be reviewed as provided for in section 24-34-104, C.R.S.

25-9-104. <u>Duties of the board.</u>

(1) (a) The board shall elect a chair and secretary each year, establish rules in accordance with article 4 of title 24, C.R.S., setting forth the requirements governing certification for water and wastewater facility operators, including application for certification; admission to the examinations; setting and coordination of exam schedules; recording and issuing of certificates for the class of operator for which the applicant is found to be qualified; renewal of certificates; issuance of certificates based on reciprocity; minimum standards of operator performance; and standards for the accreditation of training programs. The board may select and appoint one or more independent nonprofit corporations to carry out the administration of the program and examinations, including, but not limited to, maintaining records of certified operators; notifying operators of expiration of certification; providing information on accredited training requirements; preparing and furnishing the examination material; collecting fees as set forth in section 25-9-108; setting the times, dates, and places for holding examinations, one of which shall be given at least annually, in accordance with rules of the board; grading examination papers; evaluating work experience of applicants; evaluating continuing training achievements for renewal of certification; and evaluating requests for reciprocity. The board shall ensure that an office is maintained for contact with operators and employers. The board shall also ensure, through the use of subject matter experts, that all certification examinations test for information that is relevant to the knowledge that is necessary to operate the level of facility for which certification is sought. The board may adopt such rules in accordance with article 4 of title 24, C.R.S., as are necessary to ensure the proper administration of the program and shall enter into contracts with any nonprofit corporation selected or appointed by the board to ensure that each nonprofit corporation receives applications and fees, conducts such examinations as may be directed by the board, records the results thereof, notifies applicants of results, recommends issuance of certificates, provides feedback to examinees upon request following each examination, and prepares and distributes an annual report. With the permission of the board, a nonprofit corporation contracted with by the board may enter into subsidiary agreements with other nonprofit corporations, educational institutions, and for-profit corporations to carry out the duties assigned by the board; except that any such subsidiary agreements shall be subject to prior approval by the board. The board shall be responsible for and shall retain the final authority for all actions and decisions carried out on behalf of the board by any such nonprofit corporation, educational

institution, or for-profit corporation. Such authority shall include, but shall not be limited to, the authority to modify, suspend, or reverse any action or decision of any nonprofit corporation, educational institution, or for-profit corporation.

(b) In order to qualify for consideration to administer the duties set forth in this section, a nonprofit corporation must have expertise in training and testing procedures, as well as demonstrated knowledge of water and wastewater treatment, collection, and distribution systems.

(2) The board may promote and assist in regular training schools and programs designed to aid applicants and other interested persons to acquire the necessary knowledge to meet the certification requirements of this article.

(3) The board shall establish classes of certified water treatment facility operators, classes of domestic wastewater treatment facility operators, classes of industrial wastewater treatment facility operators, classes of water distribution system operators, classes of wastewater collection system operators, classes of operators for small systems, and classes of other persons who require and qualify for multiple certifications. In establishing each classification, the board shall differentiate the various levels of complexity to be encountered in water and wastewater facility operation and the appropriate qualifications for certification for each class. The board shall set minimum education, experience, examination, and ongoing training requirements for each class.

(4) The board shall maintain for each water and wastewater facility a minimum class of certified operators required for its supervision; except that the board may exempt certain industrial wastewater treatment facilities or classes of facilities from the requirement to operate under the supervision of a certified operator, based upon a determination that such an exemption is not inconsistent with the goal of assuring adequate operation of water and wastewater facilities to protect public health and the environment. In determining whether to provide such an exemption, the board may consider criteria including, but not limited to:

(a) Discharges of limited duration;

(b) The sensitivity of the receiving waters;

(c) The level of toxic pollutants in the discharge, and

(d) Situations where chemical, mechanical, or biological treatment techniques are not required to meet permit limits, including, but not

limited to, sedimentation ponds at mining operations for construction materials, as that term is defined in section 34-32.5-103 (3), C.R.S.

(5) The board shall establish a procedure whereby any decision of the board, the division, or any organization performing duties on behalf of the division can be subject to appeal to the board.

(6) The board shall exercise such other powers and duties as are deemed necessary within the scope of this article. The board, in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., shall establish criteria for the discipline or reprimand of any water or wastewater facility operator and for the suspension or revocation of the certification of any such operator. Such criteria shall include but shall not be limited to:

(a) Willfully or negligently violating, causing, or allowing the violation of rules promulgated pursuant to this article or failing to comply with the provisions of this article;

(b) Submitting false or misleading information on any document provided to the department, the board, or any organization acting on behalf of the board;

(c) Using fraud or deception in the course of employment as an operator;

(d) Failing to conform with minimum standards in the performance of an operator's duties; and

(e) Engaging in dishonest conduct during an examination.

(6.5) The division shall have the primary responsibility for the investigation of instances of possible misconduct by water and wastewater facility operators and shall report the results of any investigation to the board and make recommendations regarding appropriate disciplinary action to the board. The board may promulgate rules in accordance with article 4 of title 24, C.R.S., to allow the division to immediately suspend or revoke certifications where such immediate action is necessary to protect the public health or environment.

(7) Members of the board shall serve without compensation, but shall be reimbursed for their necessary expenses.

(8) The board shall exercise its powers and perform its duties and functions as if it were transferred to the department by a type 1 transfer under the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

25-9-105. <u>Water treatment facility operator.</u>

(1) Persons who by specifically relevant examination, education, and experience are found to be qualified for certification as water treatment facility operators or water distribution system operators shall be certified as having the minimum qualifications required for each of the respective classes as established by the board by rules promulgated in accordance with article 4 of title 24, C.R.S.

(a) to (d) (Deleted by amendment, L. 2000, p. 771, § 5, effective May 23, 2000.)

25-9-106. <u>Domestic wastewater treatment facility operator.</u>

(1) Persons who by specifically relevant examination, education, and experience are found to be qualified for certification as domestic wastewater treatment facility operators or wastewater collection system operators shall be certified as having the minimum qualifications required for each of the respective classes as established by the board by rules promulgated in accordance with article 4 of title 24, C.R.S.

(a) to (d) (Deleted by amendment, L. 2000, p. 772, § 6, effective May 23, 2000.)

25-9-106.2. <u>Industrial wastewater treatment facility operator.</u>

(1) Persons who by specifically relevant examination, education, and experience are found to be qualified for certification as industrial wastewater treatment facility operators shall be certified as having the minimum qualifications required for each of the respective classes as established by the board by rules promulgated in accordance with article 4 of title 24, C.R.S.

(a) to (c) (Deleted by amendment, L. 2000, p. 773, § 7, effective May 23, 2000.)

25-9-106.3. <u>Multiple facility operator.</u>

Persons who by specifically related examination, education, and experience are found to be qualified for certification in more than one category of facility operators shall be certified as having the minimum qualifications required for such applicable multiple facility operator classes as the board may establish by rules promulgated in accordance with article 4 of title 24, C.R.S. Such classes of multiple facility operators shall be designed to minimize the number of separate

examinations and separate operator certifications that must be held by persons working for small systems, persons in the private sector performing work for a municipality or industry, and other categories and classes where a multiple facility operator certification would be efficient and meet the goals of this article. Such multiple facility certifications may contain conditions established by the board restricting the certification to specific facilities, types of facilities, or activities.

25-9-106.5. <u>Education and experience - substitution allowed.</u>

Water and wastewater facility operator applicants must have a high school diploma or have successfully completed the GED as defined in section 22-33-102 (4.5), C.R.S.; except that experience or relevant training may be substituted for the high school diploma or GED. Education, training as established under section 25-9-104 (2), and cross-experience may be substituted for experience requirements for certification as a water facility operator, as a water distribution system operator, as a domestic wastewater facility operator, as a wastewater collection system operator, as an industrial wastewater treatment facility operator, or as a multiple facility operator; except that at least fifty percent of any experience requirement shall be met by actual on-site operating experience in a water facility or a wastewater facility, as the case may be. For the lowest classification of operator in each category, the board may establish rules allowing complete substitution of education for experience for any applicant who passes the applicable examination. For purposes of this section, "cross-experience" means that experience as a wastewater treatment facility operator may be substituted for experience requirements for certification as water treatment facility operator and vice versa.

25-9-107. <u>Certification procedure.</u>

(1) Any individual possessing the required education and experience may apply for certification in the manner designated by the board on such forms as required and approved by the board. The application shall be accompanied by such fee as required by section 25-9-108. Those applicants who meet the minimum qualifications as established by rules of the board promulgated in accordance with article 4 of title 24, C.R.S., for certification shall be admitted for examination.

(2) When an individual desires certification in a field other than the field in which the individual has experience, the individual's experience shall be evaluated by the board or as directed by the board. The certificate issued is to be based upon the knowledge demonstrated by the applicant through examination and the individual's verified record of work experience in water and wastewater facility operation.

(3) Certificates shall be awarded by the board or at the direction of the board for a period of three years only to those applicants successfully meeting all of the requirements.

(4) (a) Certificates shall be renewed upon payment of the required renewal fee and a showing that the applicant for renewal has met the requirements established by the board for ongoing training.

(b) If any operator fails to renew the operator's certification before the expiration date of such certification, such certification is expired. If a certification expires because of failure to renew before the expiration date of such certification, the operator may renew the certification up to two years after the expiration date upon paying the required renewal fee and meeting the applicable ongoing training requirements for the certification being renewed. If an operator does not renew a certification within two years after the expiration date of such certification, the certification is automatically revoked and an applicant for recertification must meet all the requirements for certification as a new applicant.

(4.5) (Deleted by amendment, L. 96, p. 360, 8, effective July 1, 1996.)

(5) The board, upon application therefor, may issue a certificate, without examination, in a comparable classification to any person who holds a certificate in any state, territory, or possession of the United States or any country, providing the requirements for certification of operators under which the person's certificate was issued do not conflict with the provisions of this article and are of a standard not lower than that specified by regulations adopted under this article. Where there is a question as to the level of certification that should be granted, the board may authorize special examination or other procedures to confirm the appropriate certification level.

(6) to (8) (Deleted by amendment, L. 96, p. 360, § 8, effective July 1, 1996.)

25-9-108. <u>Fees.</u>

(1) Each application for certification shall be accompanied by a fee in the amount of fifteen dollars that is not refundable. The board shall adopt rules that set program fees in addition to the nonrefundable application fee in accordance with the provisions of article 4 of title 24, C.R.S., and such fees shall reflect the actual costs of administering the program as set forth in section 25-9-104 (1). Such fees may be collected and retained by a nonprofit corporation selected and appointed by the board pursuant to

section 25-9-104 (1) to pay for its actual costs to administer the program as approved by the board through duly adopted rules. However, any such nonprofit corporation shall remit a portion of the fee in the amount of five dollars for each new and renewal certificate to be issued to the department of the treasury pursuant to the provisions of section 24-36-103, C.R.S. With the approval of the board, all moneys may be paid to the nonprofit corporation and except for the five dollars for new and renewal certifications may be retained by the nonprofit corporation to defray program expenses. Alternatively, if certification and renewal fees are received directly by the board, all moneys shall be deposited with the department of the treasury pursuant to the provisions of section 24-36-103, C.R.S.

(2) Notwithstanding the amount specified for any fee in subsection (1) of this section, the board by rule or as otherwise provided by law may reduce the amount of one or more of the fees if necessary pursuant to section 24-75-402 (3), C.R.S., to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the board by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4), C.R.S.

25-9-109. <u>Use of title.</u>

Only a person who has been qualified by the board as a certified operator and who possesses a valid certificate attesting to this certification in this state shall have the right and privilege of using the title "certified water treatment facility operator, class....", "certified domestic wastewater treatment facility operator, class....", "certified industrial wastewater treatment plant operator, class....", "certified wastewater collection system operator, class....", "certified water distribution system operator, class ....", or "multiple facilities operator, class....".

25-9-110. <u>Violations - penalty.</u>

(1) It is unlawful for any person to represent himself or herself as a certified operator of any category and of any class without first being so certified by the board and without being the holder of a current valid certificate issued by the board. Any person violating the provisions of this subsection (1) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than three thousand dollars.

(2) (a) It is unlawful for any owner of a water treatment facility, a domestic or industrial wastewater treatment facility, a wastewater collection system, or a water distribution system in the state of Colorado to allow the facility to be operated without the supervision of a certified

operator of the classification required by the board for the specific facility.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), a sedimentary pond maintained in accordance with a permit issued by the division of reclamation, mining, and safety that does not require a permit issued by the water quality control division of the department of public health and environment shall not require the supervision of a certified operator.

(3) Whenever the division has reason to believe that a violation of subsection (2) of this section has occurred, the division shall cause written notice to be served personally or by certified mail, return receipt requested, upon the alleged violator or their agent for service of process. The notice shall state the provision of subsection (2) alleged to be violated and the facts alleged to constitute a violation and it may include specific action proposed to be required to cease the alleged violation. The division shall require the alleged violator to answer each alleged violation.

(4) Upon being served with any notice given under subsection (3) of this section, the alleged violator may request a public hearing. Such request shall be filed in writing with the division no later than thirty days after service of the notice. If such a request is made, a hearing shall be held within a reasonable time. Hearings held pursuant to this subsection (4) shall be conducted before the board in accordance with section 24-4-105, C.R.S. The determination of the board following a hearing shall be considered final agency action as to whether a violation has occurred.

(5) Any owner of a water treatment facility, a domestic or industrial wastewater treatment facility, a wastewater collection system, or a water distribution system in the state of Colorado who violates subsection (2) of this section shall be subject to a civil penalty of not more than three hundred dollars per day for each day during which such violation occurs. Any civil penalty collected under this section shall be credited to the general fund.

(6) Upon application of the division, any penalty for a violation of subsection (2) of this section shall be determined by the executive director of the department or his or her designee and may be collected by the division through a collection action instituted in a court of competent jurisdiction. The final decision of the executive director or his or her designee may be appealed to the board. A stay of any order of the division pending judicial review shall not relieve any person from any liability under this section, but the reason for the request for judicial review shall be considered in the determination of the amount of the penalty. In the event that such an action is instituted for the collection of such penalty, the court may

consider the appropriateness of the amount of the penalty if the party against whom the penalty was assessed raises the issue.