



COLORADO

**Water & Wastewater Facility
Operators Certification Board**

Department of Public Health & Environment

Board Policy 14-3

Administrative Complaints and Appeals to the Water and Wastewater Facility Operators Certification Board Procedures

Revised November 25, 2014

Expires November 25, 2019

Authority

The authority of the Water and Wastewater Facility Operators Certification Board to hear administrative appeals is set forth in section 25-9-104(5)(a), C.R.S. This statutory provision further requires the board to establish a procedure for appealing decisions of the Water Quality Control Division or any organization performing duties on behalf of the board.

Administrative complaints and appeals

Administrative complaints

1. Written complaints about the administration of the certification program are generally handled at the lowest administrative level available. For example, a complaint about the content or difficulty of a water treatment plant operator certification examination shall be first addressed by the board's contractor.
2. Division, contractor, or subcontractor responses to written complaints shall be made in writing with copies sent to the board for its information and for filing.

Appeals of program administration decisions

1. Administrative appeals to the board may be filed by persons who believe that the division, the board's contractor, or subcontractor has decided incorrectly on an administrative matter. Examples of administrative actions that may be appealed to the board include, but are not limited to:
 - (a) Denial of an application to sit for a certification examination.
 - (b) Assignment of training units for courses.
 - (c) The classification of a facility.
2. Administrative appeals shall be filed with the board in writing, but direct communication with the board's administrator is also recommended to expedite the appeal to the degree possible.
3. The person shall file with the board a letter detailing the subject matter of the appeal (i.e., the final decision of the division, contractor or subcontractor being challenged) and grounds for appeal.
4. The division, contractor or subcontractor is requested to file a written response to the appeal. If the person filing the appeal chooses, the appeal may be resolved based solely upon the written record.

5. When an appeal is filed with the board, the division, contractor or subcontractor may choose to reconsider the decision that is the subject of the appeal. If the person filing the appeal is satisfied with the result of such reconsideration, the matter may be resolved without the need for a hearing. If the person filing the appeal is not satisfied with the result of the reconsideration, a hearing will be held before the board.
6. If new evidence pertinent to the division, contractor or subcontractor's determination becomes available to any of the parties between the time of the division, contractor or subcontractor's determination and the hearing, the parties shall exchange such information in an effort to resolve the issues prior to hearing. Communication between the parties is strongly encouraged at all stages prior to the hearing before the board.
7. Generally, appeal hearings will be scheduled for the next available regularly scheduled board meeting. The hearing shall be held in accordance with section 24-4-105, C.R.S., the State Administrative Procedures Act. The person challenging a division, contractor or subcontractor's determination shall have the burden of proof with respect to overturning the determination in question.
8. Each party to the proceeding has the right to be present, to have an attorney and/or witnesses present, and to provide oral and documentary evidence at the hearing. With narrow exception such as new evidence, the board will only consider oral and documentary evidence that was exchanged among the parties during the decision-making process prior to appeal. The purposes of this requirement are to encourage communication among the parties early in the process and to ensure that the division, contractor or subcontractor's determinations on appeal were based on all relevant information.
9. All parties to a hearing will be sworn in before testimony is presented. Generally, the person filing the appeal will present testimony first; the division, contractor or subcontractor will follow with testimony; and then any interested persons in attendance may present testimony. Each party has the right to present rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Board members may ask questions of any witness during testimony. The board, at its discretion, may allow for testimony by telephone by any of the parties or their witnesses for good cause shown.
10. If time is of the essence, the executive committee of the board (president, vice-president and secretary) shall have the authority to hear the appeal and issue a ruling. At the executive committee's discretion, the hearing may be held by teleconference.

11. After receiving all testimony, the board will close the hearing record and deliberate. The board may re-open the record during deliberations to ask questions of the parties. Upon motion of one of the board members, the board will typically issue a ruling immediately following deliberations. If the board determines, however, that more information is needed to issue a ruling, the board may re-open the record to request more information from one or more of the parties.
12. The board's ruling on the appeal of any administrative determination is considered "final agency action" subject to judicial review in accordance with section 24-4-106, C.R.S., of the State Administrative Procedures Act.