



CO L O R A D O

**Water & Wastewater Facility
Operators Certification Board**

Department of Public Health & Environment

Board Guidance 16-1

Disciplinary Action Recommendation Guidance

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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 104.3 C.R.S. and under sections 100.20.1 and 100.20.2, *Water and Wastewater Facility Operators Certification Requirements*, 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 (“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, “Board Procedure 16-2, Operator Misconduct Investigation and Disciplinary Action Adjudicatory Hearing Procedures”. All certificate suspension and revocation actions are governed by the procedures in section 24-4-104, C.R.S. 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 or 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. The board may take disciplinary action against one or all certificates issued to a certified operator by the board, depending on the level of misconduct. However, the board will not enter into the disciplinary action process to address minor problems unless these are willful and/or repeated. The division will work to address minor problems through an informal reprimand as discussed later in this guidance.

In accordance with section 100.20.8, Regulation 100, following the suspension or revocation of his or her certificate, an operator shall not represent that he or she holds a certificate in the classification category for which the certificate was suspended or revoked. No person shall operate a water or wastewater facility in reliance on a suspended or revoked certificate.

Definitions

1. **Reprimand** (section 100.20.4, Regulation 100): A reprimand is an official admonition for wrongdoing issued to a certified operator by 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.
2. **Suspension** : An official action taken by the board that withdraws an operator’s certificate for a specifically defined period of time.

- (a) The Board may suspend a certificate for a period not to exceed three (3) years.
 - (b) At the end of the suspension period, an operator may resume prior duties without being required to submit a new application for certification.
 - (c) If an operator's certificate is due for renewal during the period of suspension, the operator shall remain subject to the renewal deadline and shall renew the certificate in a timely manner.
 - (d) Certificates renewed during a suspension period shall become valid for a period of three (3) years, effective on the ending date of the suspension period.
3. **Revocation** : An official action taken by the board that terminates an operator's certificate. Revocation is the most severe disciplinary action taken by the board for operator misconduct.
- (a) Following the revocation of a certificate, an operator may not apply for another certificate in the same classification category as that of the revoked certificate for a period of three (3) years.
 - (b) Any operator whose certificate is revoked shall be treated as a new applicant for purposes of Regulation 100 and must meet all the initial certification requirements, including passing the appropriate certification examination.

Grounds for disciplinary action

Sections 100.20.1 and 100.20.2, Regulation 100 enumerate 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 and degree of responsibility for the operation of a water or wastewater facility.
- (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 100.15, Regulation 100.
- (c) Willfully or negligently causing or allowing the violation of Regulation 100, 5CCR 1003-2; the Colorado Primary Drinking Water Regulations, 5 CCR 1002-11; the Colorado Discharge Permit System Regulation, 5 CCR 1002-61; or the facility's Colorado Discharge Permit System (CDPS) permit; or any other relevant regulations.
- (d) Submitting false or misleading information on any relevant document provided to the department, division, board, or designee.
- (e) Using fraud or deception in the course of employment as a certified operator.
- (f) Failing to conform with minimum standards of performance of a certified operator's duty.
- (g) Engaging in dishonest conduct during an examination.

- (h) Obtaining a certificate through fraud, deceit, or the submission of materially inaccurate application information.
- (i) Representing oneself as holding a valid operator's certificate after the expiration, suspension, or revocation of the certificate.
- (j) When acting in the capacity of a certified operator, behaving in a threatening, intimidating, demeaning or similar manner in verbal or written communications or in interactions with the public, the regulated community or regulators.

Additional grounds for disciplinary action for certified operators in responsible charge include either of the following:

- (a) Failing to meet the requirements of a certified operator in responsible charge as defined in section 100.16, Regulation 100.
- (b) Willfully or negligently causing, instructing, or allowing any other person or operator under his or her charge, direction, or supervision to act in a manner inconsistent with a certified operator's duties and obligations as described in section 100.15 or other relevant parts of Regulation 100, or to act in a manner inconsistent with the Colorado Primary Drinking Water Regulations, 5 CCR 1002-11; the Colorado Discharge Permit System Regulation, 5 CCR 1002-61 or a discharge permit issued thereunder; or any other relevant regulations.

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. The following 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 certified operator's control that may have affected her/his behavior and the certified operator's degree of control over the incident(s) at issue.
- The certified operator's professional attitude during and after the incident(s), including the certified operator's willingness to cooperate with the division during its investigation.

The following discussion illustrates how these factors should be considered.

1. 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) or permit effluent limit.
 - 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.
2. 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 or the environment.
 3. 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.
 4. 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.

Division informal reprimand

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 problems that do not rise to a level requiring formal action. Such informal notifications may be either by direct communication (in person meetings, phone calls 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.

Repeated operator misconduct

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 with the certified operator are not successful.

Formal enforcement actions resulting from operator misconduct

Any disciplinary action taken by the board does not preclude the division from taking enforcement action against a facility owner for violations of other statutes, regulations or permits caused by the operator's poor judgment or behavior.

Availability of board actions

Disciplinary action taken by the board is a public process and any such action will be made available to the public on the department web site. Board actions will remain on the board's web site for a period of three years following the action.

Examples of misconduct and possible board action

The following table illustrates 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, 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.

The table below serves as guidance to the division, but each case will be considered on its own merits. Additionally, the board will consider more serious disciplinary action from those listed in the table for cases of misconduct involving multiple facilities or multiple types of misconduct.

There may be other violations of the standards set in Regulation 100, not listed below, which also merit review and action by the board.

Table 1 - Disciplinary action recommendations

Inappropriate behavior/Applicable Reg. 100 citation(s)	Definitions and examples of misconduct for disciplinary action	Recommended action
Failing to exercise reasonable care and judgment/sections 100.20.1(a) 100.20.1(b) 100.20.1(d) 100.20.1(f)	Failing to provide subordinate personnel with appropriate, written operating procedures	<i>Division operator reprimand</i> <i>Board operator reprimand</i> <i>Operator suspension</i>
	Allowing uncertified, subordinate personnel to make decisions reserved to certified operators	<i>Board operator reprimand</i> <i>Operator certification suspension</i> <i>Operator certification revocation</i>
	Failing to observe and respond to conditions that might cause a need to discharge untreated or incompletely treated effluent	<i>Division operator reprimand</i> <i>Board operator reprimand</i> <i>Operator suspension</i>
	Failing to recognize and notify the owner of conditions requiring notification to the Division or to the public	<i>Division operator reprimand</i> <i>Board operator reprimand</i> <i>Operator certification suspension</i>
	Failing to properly close valves, thereby allowing the mixing of raw water with finished water	<i>Board operator reprimand</i> <i>Operator certification suspension</i> <i>Operator certification revocation</i>
	Failing to properly control pressure levels in a distribution system	<i>Division operator reprimand</i> <i>Board operator reprimand</i> <i>Operator certification suspension</i>
	Failing to use, or to insist that others use, appropriate safety equipment during construction, excavation, or in enclosed space areas	<i>Division operator reprimand</i> <i>Board operator reprimand</i> <i>Operator certification suspension</i>
	Failing to report instances of non-compliance or situations that could result in non-compliance, as appropriate, to the certified operator in responsible charge, the owner and the division	<i>Board operator reprimand</i> <i>Operator certification suspension</i> <i>Operator certification revocation</i>
	As the ORC, failing to develop and maintain a written operation plan for the delegation of tasks and activities of other facility operators	<i>Division operator reprimand</i> <i>Board operator reprimand</i> <i>Operator certification suspension</i>
Repeated failure to perform required Discharge Monitoring Report (DMR) or monthly operating reports (MOR) calculations properly	<i>Division operator reprimand</i> <i>Board operator reprimand</i> <i>Operator certification suspension</i>	
Violating or causing or allowing the violation of relevant	Authorizing an unpermitted discharge of effluent	<i>Board operator reprimand</i> <i>Operator certification suspension</i> <i>Operator certification revocation</i>

Inappropriate behavior/Applicable Reg. 100 citation(s)	Definitions and examples of misconduct for disciplinary action	Recommended action
regulations/sections 100.20.1(a) 100.20.1(b) 100.20.1(d) 100.20.1(e) 100.20.1(f)	Authorizing or cooperating in the alteration of approved treatment processes without the approval of the division	<i>Board operator reprimand Operator certification suspension Operator certification revocation</i>
	Failing to perform required process control sampling, testing, or monitoring	<i>Division operator reprimand Board operator reprimand Operator certification suspension</i>
	Failing to submit required sampling and monitoring reports in a timely manner to the facility owner for reporting to the division	<i>Division operator reprimand Board operator reprimand Operator suspension</i>
	Failing to disinfect lines following a line break	<i>Board operator reprimand Operator certification suspension Operator certification revocation</i>
	Maintenance failures which allow sewage collection system spills/overflows	<i>Board operator reprimand Operator certification suspension Operator certification revocation</i>
	As the ORC, failing to understand the requirements of the facility's applicable permits, laws and regulations	<i>Board operator reprimand Operator certification suspension Operator certification revocation</i>
	Failure to respond to division requests and/or inquiries	<i>Division operator reprimand Board operator reprimand Operator certification suspension</i>
	Authorizing or allowing the discharge of effluent which does not meet permit conditions	<i>Board operator reprimand Operator certification suspension Operator certification revocation</i>
	Failure in treatment techniques, failing to clean/maintain filters, failing to disinfect or to maintain appropriate disinfection levels, etc.	<i>Board operator reprimand Operator certification suspension Operator certification revocation</i>
Submitting false or misleading documents/sections 100.20.1(d) 100.20.1(f)	Recording values not actually measured, i.e., "dry-labbing"	<i>Operator certification suspension Operator certification revocation</i>
	Compromising the integrity of samples	<i>Operator certification suspension Operator certification revocation</i>
	Selectively omitting measurements	<i>Operator certification suspension Operator certification revocation</i>
	Making a false declaration that training unit certificates have not been used previously	<i>Board operator reprimand Operator certification suspension Operator certification revocation</i>

Inappropriate behavior/Applicable Reg. 100 citation(s)	Definitions and examples of misconduct for disciplinary action	Recommended action
	Altering log books, lab sheets, or other primary documentation	<i>Operator certification suspension</i> <i>Operator certification revocation</i>
	If the operator has accepted additional duties, such as compliance monitoring and/or reporting, failing to sample and/or report to the division in accordance with all applicable regulations and/or permit requirements	<i>Board operator reprimand</i> <i>Operator certification suspension</i> <i>Operator certification revocation</i>
False representation to employers/sections 100.20.1(d) 100.20.1(e) 100.20.1(f) 100.20.1(i)	Submitting false or altered monitoring/sampling documents to an employer for submission to the state	<i>Operator certification suspension</i> <i>Operator certification revocation</i>
	Misrepresenting or presenting altered examination results to an employer	<i>Operator certification revocation</i>
	Misrepresenting or presenting altered proof of certification to an employer	<i>Operator certification revocation</i>
	Continuing to act as an operator in responsible charge with an expired certification	<i>Board operator reprimand</i> <i>Operator certification suspension</i> <i>Operator certification revocation</i>
Misconduct related to examinations/section 100.20.1(h)	Presenting false information on an application when that information influences the acceptance or rejection of an application	<i>Operator certification suspension</i> <i>Operator certification revocation</i>
	Presenting false, forged, or altered documentation in support of any application	<i>Operator certification revocation</i>
	Cheating in any way on a certification examination	<i>Operator certification revocation</i>
	Photographing or otherwise copying a certification examination	<i>Operator certification suspension</i> <i>Operator certification revocation</i>
	Distributing, or facilitating the distribution of, certification examination questions prior to any examination	<i>Operator certification revocation</i>

Inappropriate behavior/Applicable Reg. 100 citation(s)	Definitions and examples of misconduct for disciplinary action	Recommended action
Misconduct related to interactions with the public, the regulated community and regulators / section 100.20.1(j)	Exhibiting threatening, intimidating, demeaning or similar behavior in interactions with the public, the regulated community and regulators	<i>Division operator reprimand Board operator reprimand Operator certification suspension Operator certification revocation</i>
	Behaving in a threatening, intimidating, demeaning or similar behavior in verbal or written communications with the public, the regulated community and regulators	<i>Division operator reprimand Board operator reprimand Operator certification suspension Operator certification revocation</i>