



COLORADO

**Water & Wastewater Facility
Operators Certification Board**

Department of Public Health & Environment

Board Procedure 16-2

Operator Misconduct Investigation and Disciplinary Action Adjudicatory Hearing Procedures

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Authority

Article 9 of Title 25 section 104(6), Colorado Revised Statutes, authorizes the Water and Wastewater Facility Operators Certification Board (board) to take disciplinary action against certified operators, including suspending or revoking certifications. Section 104.3, C.R.S, directs the Water Quality Control Division (division) to investigate instances of possible misconduct by water and wastewater facility operators and make recommendations regarding appropriate disciplinary action to the board.

Section 25-9-104(5)(c) allows the board to promulgate rules to allow the division to immediately suspend or revoke a certificate if immediate action is necessary to protect the public health or environment. Section 100.20.7, Regulation 100 authorizes the division to suspend or revoke certificates if immediate action is necessary to protect the public health or environment. The division must incorporate the investigation findings into an order pending proceedings for suspension or revocation before the board.

Complaints and investigations of alleged operator misconduct

Complaints

Complaints against certified water or wastewater facility operators may be filed by anyone who alleges that a certified operator has not complied with the requirements of sections 25-9-101 through -110, C.R.S. or the *Water and Wastewater Facility Operators Certification Requirements*, Regulation 100, 5 CCR 1003-2. Complaints may be filed by the general public, by affected consumers, by water or wastewater system owners, or by the division.

Complaints against certified operators shall be filed in writing and shall be accompanied by documentation in support of the complaint. Written complaints should be directed to the division's liaison to the board.

An investigative file shall be maintained by the division for each formal complaint received. Copies of all documents relating to the complaint shall be kept in this file.

If the subject matter of the complaint is outside the jurisdiction of the division and the board, the division will prepare a letter to the complainant explaining the lack of jurisdiction.

Investigation

In review and resolution of complaints, priority shall be given to those that directly involve a risk to the public health or to the environment.

Complaints against certified operators for actions found to be within the board's jurisdiction shall be investigated by the division.

The division shall present to the board the results of any investigation which leads to a recommended disciplinary action. The division shall also provide to the board a periodic general summary of the results of any investigations not leading to recommendation for disciplinary action.

Discontinuation of investigation

The division may discontinue the investigation if the division determines that the complaint lacks merit, either because the allegations are not supported by evidence or because the allegations do not rise to an actionable level. In either case, a letter will be sent to the complainant explaining the division's action and notifying the complainant of the right to a hearing before the board to further address the complaint in accordance with sections 100.21.2 and 100.21.3, Regulation 100:

100.21.2 Any certified operator, certified operator in responsible charge, or other person affected or aggrieved by a decision of the Board's designee or the Division may request a hearing before the Board within thirty (30) days of notice of such decision by submitting a request containing the following information:

- (a) identification of the person(s) requesting the hearing and the subject matter of the request;
- (b) the statutory and/or regulatory authority and factual basis for the request; and
- (c) the relief requested.

100.21.3 The Board shall grant any hearing request made pursuant to section 100.21.1 or 100.21.2 of this regulation and shall schedule and conduct an adjudicatory hearing in accordance with section 24-4-105, C.R.S.

Should the complainant request a hearing, the division shall send a copy of the hearing request to the certified operator in question.

Disciplinary proceedings

Request for disciplinary action

For complaints leading to the division's recommendation to the board for revocation, suspension, limitation, or modification of a certified operator's certificate, the division shall initiate formal action by submitting a request for disciplinary action to the board. The request for disciplinary action is the division's formal request that the board address a specific allegation of certified operator misconduct and its preliminary recommendation to the board for disciplinary action. The recommendation will follow Board Guidance 16-2, Disciplinary Action Recommendation Guidance.

The division's request for disciplinary action shall set forth the allegations against the certified operator. The document shall:

1. Identify the specific sections of the statute and/or the regulation alleged to have been violated.
2. Contain detailed evidence, including objective facts or conduct of the certified operator, to support each allegation.
3. Recommend specific disciplinary action to the board, including reprimand, suspension or revocation of a certificate, consistent with the criteria in section 25-9-104(6)(a-e), C.R.S., sections 100.20.1 and 100.20.2 of the regulation and board guidance 16-2, Disciplinary Action Recommendation Guidance.

A copy of the request for disciplinary action shall be sent to the certified operator along with a notice of alleged violation.

Notice of alleged violation

1. The notice of alleged violation will contain three distinct elements:
 - a. A notice of the statutory and/or regulatory requirements alleged to have been violated.
 - b. A notice of the requirement to answer.

- c. A notice of the right to request a hearing before the board to challenge the division's factual allegations and/or the recommended disciplinary action.
2. The notice of alleged violation will clearly inform the operator that the required answer and request for hearing are separate matters and must be responded to separately.
3. The notice of alleged violation and the accompanying request for disciplinary action will serve as the formal complaint for purposes of further proceedings.

Service of notice of alleged violation and request for disciplinary action

The division shall ensure service of the notice of alleged violation and the request for disciplinary action by processor server or by certified mail, return receipt requested, upon the certified operator, at the address listed in the database of operator contact information maintained by the board's contractor.

Operator response to the notice of alleged violation

The certified operator must answer the notice of alleged violation within thirty days of being served with the notice of alleged violation. The certified operator's answer shall admit or deny each violation alleged in the notice of alleged violation and, if desired, provide additional relevant information with respect to the facts or conduct alleged.

Request for adjudicatory hearing

The certified operator may request an adjudicatory hearing before the board to address the allegations and disciplinary action recommendations in the notice of alleged violation and request for disciplinary action. The request for an adjudicatory hearing must be submitted in writing within thirty days of service of the notice of alleged violation and request for disciplinary action. The request for hearing must contain the following information:

1. Identification of the person or persons requesting the hearing and the subject matter of the request.
2. The statutory and/or regulatory authority and factual basis for the request.
3. The relief requested.

Failure to answer the notice of alleged violation

If a certified operator fails to answer the notice of alleged violation or to request a public hearing within the required time, the division may request that the board enter a default judgment in the matter.

Notice of hearing

Upon receiving a request for a hearing, the board may issue a notice of hearing that identifies the alleged violations in the notice of alleged violation and request for disciplinary action and states the time, date, and place of a hearing.

The notice of hearing may name a member of the board to serve as hearing chair, who shall convene a prehearing conference to discuss prehearing issues, such as discovery, and any procedural matters (such as time allocations for oral testimony) regarding the hearing. If desired by the parties or if directed by the hearing chair, the parties may submit prehearing statements outlining their arguments.

Service of notice of hearing

The division shall serve the notice of hearing personally or by certified mail, return receipt requested, upon the certified operator, at the address listed in the database of operator contact information maintained by the board's contractor.

Continuance or vacation of a scheduled hearing

Continuance or vacation of a scheduled hearing may be requested by filing a request to continue hearing or a request to vacate hearing with the board. The hearing chair shall have the discretion to act on any such requests, as well as any other procedural matters related to the hearing, or to refer the requests to the full board for action.

Negotiated resolution

After receiving the certified operator's answer to the notice of alleged violation, the division, the division's legal counsel and the certified operator may negotiate a settlement for proposal to the board, typically in the form of a compliance order on consent. Through this process, the division, the division's legal counsel and the certified operator may agree to appropriate disciplinary action including, but not limited to, reprimand, suspension, or revocation of the certified operator's certificate or certificates, as appropriate. Suspensions and revocations may include conditions for re-application by the operator.

By entering into negotiations for a settlement, a certified operator does not waive the right to a hearing, provided that the hearing was requested within the thirty day time limit.

If settlement negotiations fail, the matter shall proceed to a hearing.

If an agreement is reached between the division, division's legal counsel and the certified operator, the proposed compliance order on consent will be submitted to the board for approval. If approved, the order shall become effective when signed by all parties.

If the board does not approve a negotiated settlement, then the matter shall proceed to a hearing.

Hearing Procedures

The board shall conduct hearings in accordance with section 24-4-105, C.R.S., of the *State Administrative Procedures Act*.

The board shall conduct each hearing and shall hear evidence from all parties. The board shall also accept relevant documentary evidence from the parties at the hearing or prior to the hearing, as directed by the board or the hearing chair.

Each party may cross-examine witnesses who testify at the hearing.

A party may appear on his or her own behalf at the hearing, or may be represented by an attorney at that party's own expense.

Board order

After the board reaches a decision, the board shall enter findings of fact, conclusions of law, and decision into an order). The order shall contain the board's final disciplinary action against the certified operator, if any, including reprimand, suspension, or revocation of the certified operator's certificate(s). Suspensions and revocations may include conditions for re-application by the operator.

Service of board order

The board order shall be served upon each party to the hearing by first class or certified mail. The order shall be effective on the date mailed to the parties or such later date as specified in the board order.

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. Board actions will remain on the board's web site for a period of three years following the action.

Checklist

Order of activities		Minimum due date	Responsible party
1	Receive written complaint		Division liaison to the board
2	Complete investigation		
	2a Discontinue investigation because of lack of evidence of operator misconduct		Division
	2b Investigation warrants informal disciplinary action and informal letter of reprimand sent to the operator and facility owner if appropriate		Division liaison
	2c Draft the notice of alleged violation and request for disciplinary action		Division liaison to the board
3	Serve the notice of alleged violation and request for disciplinary action upon the certified operator. Submit request for disciplinary action to the board.		Division
4	Answer to notice of alleged violation and request for disciplinary action due to the board's office	30-days from date of service of the notice of alleged violation and request for disciplinary action	Certified operator
5	Request for adjudicatory hearing due to the board's office	30-days from date of service of the notice of alleged violation and request for disciplinary action	Certified operator
6	Track 1: Set a hearing date and appoint a hearing chair		Board and board office
	6a Serve notice of hearing upon certified operator		Board office
	6b Hearing	At least 30-days from date of service of the notice of hearing	Board

	6c Board issues an order		Board
	6d Serve the order upon each party to the hearing		Board office
	6e Post the order to the board's web page on the department's web site	The effective date of the order	Board office
7	Track 2: The division and certified operator negotiate a compliance order on consent		Division
	7a The compliance order on consent is submitted to the board for approval		Board office
	7b If approved, the order is effective when all parties have signed		Board and certified operator
	7c If the board disapproves the compliance order on consent, the matter goes to hearing as described in step #6 above		Board office
	7d Post the order to the board's web page on the department's web site	The effective date of the order	Board office