

STATE OF COLORADO

Bill Ritter, Jr., Governor
James B. Martin, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

NOTICE OF PUBLIC RULEMAKING HEARING BEFORE THE WATER AND WASTEWATER FACILITY OPERATORS CERTIFICATION BOARD

SUBJECT:

For consideration of proposed revisions to Regulation No. 100, "Water and Wastewater Facility Operators Certification Requirements" (5 CCR 1003-2) to (1) clarify provisions in section 100.13 regarding the timing operator certificate expiration and (2) revise the provisions of section 100.6.1(b) regarding class 2 industrial wastewater treatment facilities to address an "incorporation by reference" issue. A copy of proposed revisions, along with a proposed Statement of Basis, Specific Statutory Authority and Purpose, is attached to this notice as Exhibit 1.

HEARING SCHEDULE:

DATE: Tuesday, September 29, 2009
TIME: 9:30 a.m.
PLACE: Sabin Room
 Department of Public Health and Environment
 4300 Cherry Creek Drive South
 Denver, Colorado

WRITTEN AND ORAL COMMENTS:

The Operators Certification Board encourages all interested persons to provide their opinions or recommendations regarding the matters to be addressed in this rulemaking hearing. Oral comments on the proposed rule will be received at the hearing. Depending on the number of people wishing to speak, a time limit for oral comments may be established.

In order to enhance the Board members' ability to review and consider public comments on the proposal, the submission of written comments in advance of the hearing is strongly encouraged. Written comments are due in the Board Office by September 16, 2009. The Board requests that 20 copies of all written statements be submitted. Anyone for whom the expense of providing these copies presents an economic hardship should contact the Board Office to make alternative arrangements. This will provide an opportunity for comments to be distributed to and reviewed by Board members prior to the hearing.

SPECIFIC STATUTORY AUTHORITY:

The provisions of C.R.S. 25-9-101 through 25-9-110 provide the specific statutory authority for consideration of the regulatory provisions proposed by this notice. Should the Operators Certification Board adopt the regulatory language as proposed in this notice or alternative provisions, it will also adopt, in compliance with section 24-4-103(4) C.R.S., an appropriate Statement of Basis, Specific Statutory Authority, and Purpose.

Dated this 29th day of July 2009 at Denver, Colorado.

WATER AND WASTEWATER FACILITY OPERATORS CERTIFICATION BOARD

A handwritten signature in cursive script that reads "Paul D. Frohardt".

Paul D. Frohardt, Administrator

EXHIBIT 1
WATER QUALITY CONTROL DIVISION PROPOSAL

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

Water and Wastewater Facility Operators Certification Board

REGULATION NO. 100

5 CCR 1003-2

WATER AND WASTEWATER FACILITY OPERATORS CERTIFICATION REQUIREMENTS

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100.6 INDUSTRIAL WASTEWATER TREATMENT FACILITY CLASSIFICATION

100.6.1 Classification

- (a) Pursuant to section 25-9-104(4), C.R.S., industrial wastewater treatment facilities shall be classified by the Board as Class 1 or Class 2 facilities. Class 2 facilities shall be exempt from the requirement to operate under the supervision of a certified operator. Facilities not classified by the Board as Class 2 facilities shall be classified as Class 1 facilities.
- (b) Class 2 Facilities
 - (i) Class 2 facilities shall include facilities:
 - (A) which discharge only pursuant to an industrial stormwater permit, a construction stormwater permit, or a municipal stormwater permit,
 - ~~(B) which discharge pursuant to the Division's Low Risk Discharge Policy and follow the associated Low Risk Guidance documents,~~
 - (B) which discharge pursuant to Colorado Discharge System general industrial permit COG-380000, Treated Water Distribution System Wastewater Discharge, provided that the permitted distribution system is under the supervision of a properly certified water distribution system operator who is specifically responsible for overseeing the system's operation and for ensuring compliance with the system's discharge permit, including monitoring and reporting requirements, or
 - (C) which discharge pursuant to Colorado Discharge System general industrial permit COG-641000, Water Treatment Plant Wastewater Discharge, provided that the permitted water treatment facility is under the supervision of a properly certified water treatment facility operator who is specifically responsible for overseeing the facility's operation and for ensuring compliance with the facility's discharge permit, including monitoring and reporting requirements.

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100.13 CERTIFICATES

- 100.13.1 Upon satisfactory fulfillment of the requirements of this regulation, the Board or its designee shall ~~issue~~ award to the applicant a certificate designating the appropriate certification level. Newly awarded operator certificates shall be valid for three years unless revoked or suspended as provided in section 100.23 of these regulations.
- 100.13.2 ~~Operator certificates shall be valid for three years unless revoked or suspended as provided in section 100.23 of these regulations.~~ Operators may seek renewal of a certificate by submitting a written application for renewal to the Board or its designee prior to the expiration date of the certificate. Renewed certificates shall be valid for three years from the date of expiration of the prior certificate, not from the issue date of the renewed certificate.
- 100.13.3 Renewal applications must demonstrate that the operator satisfies the requirements of this regulation including meeting the renewal training unit requirements stated in section 100.14 of this regulation. See §100.25 for transitional renewal training unit requirements for certifications expiring prior to January 30, 2004.
- 100.13.4 The Board or its designee shall provide all application forms for renewal of certificates.
- 100.13.5 ~~Any certificate not renewed by the operator expires on the third anniversary of its issuance.~~ Following expiration of the certificate, the operator shall not represent that he or she holds a certificate in the class for which the certificate expired and no operator of a water or wastewater facility shall operate a facility in reliance on the expired certificate.
- 100.13.6 An operator may apply for renewal for two years following expiration of the certificate. The Board or its designee will renew the certificate if the operator pays the renewal fee and satisfies all applicable requirements. Certificates which are renewed after their expiration date shall be valid for three years from the date of expiration of the prior certificate, not from the issue date of a renewed certificate. ~~Any certificate not renewed by the operator prior to the fifth anniversary of its issuance is automatically revoked. Any operator whose certificate is revoked shall be treated as a new applicant for purposes of this regulation and must meet all the initial certification requirements.~~
- 100.13.7 Any certificate not renewed by the operator ~~prior to the fifth anniversary of its issuance~~ within two years of its expiration is automatically revoked. Any operator whose certificate is revoked shall be treated as a new applicant for purposes of this regulation and must meet all the initial certification requirements.
- 100.13.8 Reciprocity--Certificates may be issued by the Board or its designee, without examination, on a case-by-case basis, to persons in a comparable classification who have passed an adequate written examination and who hold a valid certificate in another state, territory or possession of the United States or any country provided the requirements for certification of operators under which the person's certificate was issued do not conflict with the provisions of Article 9 of Title 25, C.R.S., and are of a standard not lower than that specified by these regulations.

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100.46 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE: SEPTEMBER 29, 2009 RULEMAKING; ADOPTED SEPTEMBER 29, 2009; EFFECTIVE NOVEMBER 30, 2009

The provisions of section 25-9-107, C.R.S., provide the specific statutory authority for the adoption of these amendments to the established regulatory provisions of Regulation 100 (5 CCR 1003-2). The Board also adopted, in compliance with section 24-4-103(4), C.R.S., the following statement of basis and purpose.

BASIS AND PURPOSE

Subsection 100.6.1. The Board added subsection 100.6.1 in April 2009 to implement the provisions of section 25-9-104(4), C.R.S., as amended by the General Assembly in 2008. The Office of Legislative Legal Services, which conducts legal reviews of all newly-promulgated agency rules, subsequently expressed concerns regarding the apparent "incorporation by reference" of the Division's Low Risk Discharge Policy in subsection 100.6.1(b)(i)(B). Based on these concerns, the Board decided as part of this rulemaking proceeding to delete subsection 100.6.1(b)(i)(B) (and to re-number the subsection accordingly).

The Board's initial intent in referencing the Division's Policy was to categorically exempt such facilities from the certified operator requirement because of their low risk of impacting the quality of state waters. The Board and the Division have agreed that the Board's intent can be accomplished alternatively through language in the Division's Low Risk Discharge Policy itself. Thus, the Low Risk Discharge Policy will soon be amended to state that the Division will use its enforcement discretion with respect to facilities which do not have a certified operator, where such facilities can prove that they are discharging pursuant to the Policy and implementing the best management practices outlined in the related guidance documents.

Subsection 100.13. The Board recognizes that section 25-9-107, C.R.S., refers to the "award" of a certificate, that certificates shall be "awarded for a period of three years", and that the timing of automatic revocation for non-renewal is referenced to the "expiration date" of the certificate. Earlier versions of this regulation, however, reference the date of automatic revocation of a certificate to the "issue" date. Because certificates may not always be issued exactly three years prior to the expiration date, this difference in language is significant.

The Board has, therefore, chosen to align the language of subsection 100.13 of this regulation more closely with the language of the governing statute and refer the three year validity period of all certificates either to the date of "award" (for new certificates) or to the date of expiration of the previous certificate (for renewed certificates). It is clarified that renewed certificates are valid for three years from the date of expiration of the certificate being renewed and not from the date of issue of the renewal certificate.

The Board further determined to adopt language which clarifies that the date of issue of a certificate does not determine the date on which a non-renewed certificate is automatically revoked. The Board intends to clarify that certificates shall be automatically revoked if not renewed within two years of the expiration of the certificate.