

STATE 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 implement the provisions of HB08-1073. 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, April 28, 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 April 15, 2007. 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 23rd day of February 2009 at Denver, Colorado.

WATER AND WASTEWATER FACILITY OPERATORS CERTIFICATION BOARD

A handwritten signature in black ink, reading "Paul D. Frohardt". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Paul D. Frohardt, Administrator

EXHIBIT 1
WATER QUALITY CONTROL DIVISION

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

100.2 DEFINITIONS

...

(12) "Environmental Professional" means an individual with a post-secondary degree in environmental engineering, a directly related engineering field, environmental science, or a basic science such as chemistry, biology, or physics.

(123) "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.

(134) "NON-COMMUNITY WATER SYSTEM" means a public water system that is not a community water system.

(145) "NON-TRANSIENT NON-COMMUNITY WATER SYSTEM" means a public water system that is not a community water system and that regularly serves at least 25 of the same individuals for over 6 months per year.

(156) "OPERATOR" means any person who performs or supervises tasks pertinent to controlling the operation of a water or wastewater facility, such as:

...

(167) "OPERATOR IN RESPONSIBLE CHARGE" means the person designated by the owner of the water or wastewater facility to be the certified operator(s) who has ultimate responsibility for decisions regarding the daily operational activities of the facility that will directly impact the quality and/or quantity of drinking water, treated wastewater, or treated effluent.

(18) "Passive Wastewater Treatment" means treatment in which chemical, mechanical, or biological treatment techniques are not utilized.

(179) "PLANT DESIGN FLOW" means the maximum flow rate (water) or the hydraulic capacity (wastewater) approved for a water or wastewater treatment facility by the Division.

(4820) "PRIMARY DRINKING WATER REQUIREMENT" means any of the set of enforceable Maximum Contaminant Levels for drinking water regulated under the Colorado Primary Drinking Water Regulations (5 CCR 1003-1).

- (~~1921~~) "PUBLIC WATER SYSTEM" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves an average of at least twenty-five individuals, at least 60 days out of the year. Such term includes:
- (~~aA~~) Any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such systems, and
 - (~~bB~~) Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such systems.
- (~~229~~) "SECONDARY DRINKING WATER STANDARD" means any of the set of Secondary Contaminant Level guidelines for drinking water regulated under the Colorado Primary Drinking Water Regulations (5 CCR 1003-1).
- (~~234~~) "SMALL SYSTEM" means a water or wastewater facility that serves a population of 3300 or less and that would be classified as a class "D" treatment facility and as a class "1" distribution or collection system under the provisions of this regulation.
- (~~242~~) "TRAINING UNIT" means the credit given for an increment of training approved as applicable to the fulfillment of certification renewal requirements.
- (~~253~~) "TRANSIENT NON-COMMUNITY CERTIFICATION" means the certification available to those Transient Non-Community water systems which meet the conditions in subsection 100.19.2 of this regulation.
- (~~264~~) "TRANSIENT NON-COMMUNITY WATER SYSTEM" means a non-community public water system that does not regularly serve at least 25 of the same individuals for over six months per year.
- (~~275~~) "VALIDATED EXAMINATION" means an examination that is independently reviewed by subject matter experts to ensure that the examination is based on a job analysis and is related to the classification of the system or facility.
- (~~286~~) "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.
- (~~297~~) "WASTEWATER TREATMENT FACILITY" means either a domestic wastewater treatment facility or an industrial wastewater treatment facility.
- (~~3028~~) "WATER AND/OR WASTEWATER FACILITY" means a water treatment facility, domestic wastewater treatment facility, industrial wastewater treatment facility, water distribution system, or wastewater collection system.
- (~~3129~~) "WATER DISTRIBUTION SYSTEM" means any combination of pipes, tanks, pumps, or other facilities that delivers water from a source or treatment facility to a consumer.
- (~~329~~) "WATER TREATMENT FACILITY" means the facility or facilities upstream of, within, or downstream of the water distribution system that alters the physical, chemical, or bacteriological quality of the water by the application of physical, chemical or bacteriological means.

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, or

(B) which discharge pursuant to the Division's Low Risk Discharge Policy and follow the associated Low Risk Guidance documents.

(C) 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

(D) 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.

(ii) Facilities which discharge pursuant to one of the following Colorado Discharge Permit System general industrial wastewater permits are eligible for classification as class 2 facilities:

COG-070000 Construction Dewatering Activities.

COG-130000 Aquatic Animal Production with Continuous and Intermittent Discharge.

COG-380000 Treated Water Distribution System Wastewater.

COG-500000 Sand and Gravel Process Water and Stormwater Combined.

COG-600000 Minimal Industrial Discharge

COG-603000 Subterranean Dewatering and Well Development.

COG-604000 Hydrostatic Testing of Pipelines, Tanks and Similar Vessels.

COG-605000 Non-Contact Cooling Water, and

COG-607000 Commercial Washing of Outdoor Structures.

(A) Such a facility shall be classified as a class 2 facility following verification by the Division of the facility's written certification that:

- (I) the quality of the wastewater discharged is such that discharge permit limits can be met utilizing only passive treatment or no treatment, and
 - (II) the facility has designated an environmental professional 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.
 - (B) The Division shall notify the facility in writing of its classification determination.
 - (C) Each facility classified as a class 2 facility under the authority of this subsection shall re-certify in writing, by December 31st of each year, that the conditions in part (A) of this subsection continue to be met.
 - (D) The Board has the authority to reclassify any facility if the facility fails to comply with the requirements of its discharge permit or if the facility's operational practices result in a direct, negative impact on the public health or the environment.
- (iii) A facility which discharges pursuant to either an individual industrial wastewater discharge permit or a general industrial permit not listed in 100.6.1(b)(ii) above may request classification by the Board as a class 2 facility.
- (A) Considering the criteria in sections 25-9-104(4)(a) through (d), C.R.S., the Board may approve class 2 classification for such a facility where it determines that the facility has demonstrated that:
 - (I) the quality of the wastewater discharged is such that discharge permit limits can be met utilizing only passive treatment or no treatment, and
 - (II) the facility has designated an environmental professional 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.
 - (B) The Division shall evaluate a written request from the facility and shall provide the Board with a classification recommendation based upon the criteria in part (A) of this subsection and upon the criteria listed in sections 25-9-104(4)(a) through (d), C.R.S.
 - (C) The Board shall approve or deny such classification requests at an adjudicatory hearing to be held at a regularly scheduled Board meeting.
 - (D) Each facility classified as a class 2 facility under the authority of this subsection shall re-certify in writing, by December 31st of each year, that the conditions in part (A) of this subsection continue to be met.
 - (E) The Board has the authority to reclassify any facility if the facility fails to comply with the requirements of its discharge permit or if the facility's operational practices result in a direct, negative impact on the public health or the environment.
- (c) Class 1 Facilities.

Class 1 industrial wastewater treatment facilities shall be further classified by the Division in accordance with the following four classes: Class D, Class C, Class B, or Class A. Class A is the highest level of classification and Class D is the lowest level of classification. The Division may

make changes in classification in accordance with the needs created by particular complexities of any specific industrial wastewater treatment facility based on consideration of facility specific factors, including, but not limited to:

- (a) design features or other characteristics that make the plant more difficult to operate;
- (b) treatment of a waste that is unusually difficult to process adequately;
- (c) flow conditions, use classifications and/or water quality standards assigned to the waters receiving the treated effluent requiring an unusually high degree of plant operation control in order to meet permit conditions; or
- (d) any combination of the above conditions or circumstances.

**100.44 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY AND PURPOSE: APRIL 28, 2009
RULEMAKING; ADOPTED JULY 31, 2009; EFFECTIVE SEPTEMBER 30, 2009**

The provisions of section 25-9-104(4), C.R.S. (2008), 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 100.2(12). The Board added a definition of "Environmental Professional" that sets requirements for persons charged with the responsibility for supervising industrial wastewater operations and for ensuring compliance with CDPS permit requirements. The Board intends that such persons be trained in fields relevant to their responsibilities.

Subsection 100.2(18). The Board adopted a definition of "Passive Wastewater Treatment" that parallels the statutory language of section 25-9-104(4)(d), C.R.S.

Subsection 100.6.1. The Board adopted this amendment to Regulation 100 to implement the provisions of section 25-9-104(4), C.R.S., as amended by the Colorado General Assembly in 2008. The Board recognizes that there are wastewater treatment activities in Colorado that require only passive treatment in order to meet Colorado Discharge Permit System ("CDPS") effluent limitations. The Board also recognizes that many of these activities are currently managed under a variety of Best Management Practice ("BMP") requirements. Additionally, the Board recognizes that it is current practice in many of these industrial activities to place the facility/activity under the supervision of an environmental professional responsible for effluent quality, for overseeing monitoring, and for ensuring timely and accurate discharge monitoring reporting.

In light of the above considerations, the Board divided permitted industrial wastewater facilities into two distinct classes. Class 2 facilities shall not be subject to the requirements to operate under the supervision of a certified operator. The Board maintained the requirement for all industrial wastewater facilities not classified as class 2 facilities to remain subject to the requirements of Regulation 100 to operate under the supervision of a certified operator and designated these facilities as class 1 facilities.

Subsection 100.6.1(b)(i). The Board has determined that facilities/activities which discharge solely under the authority of stormwater permits shall be classified as class 2 facilities without the need for specific Board action other than the adoption of this amendment to Regulation 100. The Board recognizes that such facilities utilize only passive treatment or no treatment of stormwater and are subject to significant requirements, including the filing of and adherence to Stormwater Management Plans. The Board has determined that facilities subject to stormwater discharge permits are appropriately classified as class 2 pursuant to the criteria in section 25-9-104(4) C.R.S. since these discharges generally do not contain substantial concentrations of toxic pollutants and do not require chemical, mechanical, or biological treatment. The Board intends that the designation as class 2 shall include facilities discharging under the authority of municipal stormwater permits, industrial stormwater permits and construction stormwater permits. The Board does not grant automatic class 2 classification to facilities discharging under the authority of combined process water and stormwater permits.

The Board has further determined that facilities/activities discharging pursuant to the Water Quality Control Division's "Low Risk Discharge Policy" shall be classified as class 2 facilities. The Board recognizes that the discharge from such activities is considered to pose minimal risk of environmental degradation. Such discharges generally do not contain substantial concentrations of toxic pollutants and do not require chemical, mechanical, or biological treatment. The Board further recognizes that water distribution systems holding "Treated Water Distribution System" permits are already required to be under the direct supervision of certified water distribution system operators whose training and certification criteria include the handling of the type of discharges covered under these permits. Similarly, water treatment facilities holding "Water Treatment Plant Discharge" permits are already required to be under the direct supervision of certified water treatment operators whose training and certification criteria include the handling of the type of discharges covered under these permits.

Subsection 100.6.1(b)(ii). The Board recognizes that there are additional CDPS general industrial discharge permits whose effluent requirements can ordinarily be met by utilizing, at most, passive treatment techniques. These general industrial permits are listed within the amendment in subsection 100.6.1(b)(ii). The Board has provided that facilities holding these discharge permits shall be recognized as class 2 facilities based upon the Water Quality Control Division's verification of a facility's written certification that effluent limitations can be met utilizing only passive treatment and that the facility is under the supervision of an environmental professional as defined in subsection 100.2(12) of this regulation. Verification by the Division will serve to confirm that a facility qualifies as a class 2 facility consistent with the classification determinations made by the Board in revisions to Regulation 100. The Board intends that the Division retain a record of such classifications. The Board recognizes that facilities denied a class 2 classification may appeal the Division's determination to the Board pursuant to section 100.24 of this regulation.

Subsection 100.6.1(b)(iii). The Board further recognizes that certain facilities are required to hold individual industrial discharge permits rather than general industrial discharge permits. Individual permits are usually required either because of the sensitivity of the receiving waters, the nature of the effluent, or the complexity of the treatment required in order to meet effluent limitations. The Board has reserved to itself the authority to grant a class 2 classification to such facilities. The Board has provided that such facilities may submit a request for reclassification to the Board. This request shall include a demonstration that the facility's operations meet the applicable considerations of section 25-9-104(4), C.R.S.; that effluent limitations can be met utilizing only passive treatment; and that the facility is under the supervision of an environmental professional as defined in subsection 100.2(12) of this regulation. The Board will forward the material submitted with the request to the Division for evaluation and recommendation. The Board will approve or deny such requests at an adjudicatory hearing at a regular Board meeting.

The Board recognizes that there are certain general industrial permits that authorize discharges from types of activities which are inherently more complex than those described in section 100.6.1(b)(ii) above. It is the Board's intention that facilities discharging under the authority of general permits other than those listed in subsection 100.6.1(b)(ii) should follow the reclassification procedure outlined for facilities holding individual industrial discharge permits.

Conditions Applicable to Subsections 100.6.1(b)(2) and 100.6.1(b)(iii). In order to ensure that facilities meet the requirements for class 2 classification on a continuing basis, the Board has provided that each facility classified as a class 2 facility under subsection 100.6.1(b)(ii) or subsection 100.6.1(b)(iii) shall submit an annual certification confirming that the conditions under which its classification was granted are still being met.

The Board may reclassify a class 2 facility to class 1 if that facility fails to meet the requirements of its discharge permit or if the facility's operational practices result in a direct, negative impact on the public health or the environment.