

## CHAPTER 391

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**HEALTH AND ENVIRONMENT**

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## SENATE BILL 13-150

BY SENATOR(S) Harvey, Schwartz, Jones, Nicholson;  
also REPRESENTATIVE(S) May, Fields, Fischer, Hullinghorst, Mitsch Bush, Pabon, Ryden, Vigil.

**AN ACT**

**CONCERNING THE CONTINUATION OF THE WATER AND WASTEWATER FACILITY OPERATORS CERTIFICATION BOARD, AND, IN CONNECTION THEREWITH, IMPLEMENTING THE RECOMMENDATIONS OF THE 2012 SUNSET REPORT BY THE DEPARTMENT OF REGULATORY AGENCIES.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** In Colorado Revised Statutes, 24-34-104, **amend** (44) introductory portion and (51.5) introductory portion; **repeal** (44) (j); and **add** (51.5) (d) as follows:

**24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment.** (44) The following agencies, functions, or both, ~~shall~~ terminate on July 1, 2013:

(j) ~~The water and wastewater facility operators certification board, created by section 25-9-103, C.R.S.;~~

(51.5) The following agencies, functions, or both, ~~shall~~ terminate on September 1, 2020:

(d) THE WATER AND WASTEWATER FACILITY OPERATORS CERTIFICATION BOARD, CREATED BY SECTION 25-9-103, C.R.S.;

**SECTION 2.** In Colorado Revised Statutes, 25-9-103, **amend** (4) as follows:

**25-9-103. Water and wastewater facility operators certification board - composition - repeal of article.** (4) This article is repealed, effective July 1, 2013 ~~SEPTEMBER 1, 2020~~. Prior to ~~such~~ THE repeal, the water and wastewater facility

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

operators certification board shall be reviewed as provided for in section 24-34-104, C.R.S.

**SECTION 3.** In Colorado Revised Statutes, 25-9-103, **amend** (1) introductory portion and (1) (f) as follows:

**25-9-103. Water and wastewater facility operators certification board - composition - repeal of article.** (1) There is hereby created the water and wastewater facility operators certification board, which ~~shall constitute~~ CONSTITUTES a section of the division of administration of the department and ~~shall consist~~ CONSISTS of the following ten members:

(f) A representative ~~from the Colorado rural water association~~ OF WATER OR WASTEWATER FACILITIES SERVING RURAL AREAS; and

**SECTION 4.** In Colorado Revised Statutes, **amend** 25-9-104 as follows:

**25-9-104. Duties of board - rules.** (1) (a) The board shall elect a chair and secretary each year and shall establish rules in accordance with article 4 of title 24, C.R.S., setting forth the requirements governing certification for water and wastewater facility operators, including:

(I) Application for certification;

(II) Admission to the examinations;

(III) Setting and coordination of examination schedules;

(IV) Recording and issuing of certificates for the class of operator for which the applicant is found to be qualified;

(V) Renewal of certificates;

(VI) Issuance of certificates based on reciprocity;

(VII) Minimum standards of operator performance; and

(VIII) Standards for the accreditation of training programs. ~~The board may select and appoint one or more independent nonprofit corporations to carry out the administration of the program and examinations, including, but not limited to, maintaining records of certified operators; notifying operators of expiration of certification; providing information on accredited training requirements; preparing and furnishing the examination material; collecting fees as set forth in section 25-9-108; setting the times, dates, and places for holding examinations, one of which shall be given at least annually, in accordance with rules of the board; grading examination papers; evaluating work experience of applicants; evaluating continuing training achievements for renewal of certification; and evaluating requests for reciprocity. The board shall ensure that an office is maintained for contact with operators and employers. The board shall also ensure, through the use of subject matter experts, that all certification examinations test for information that is relevant to the knowledge that is necessary to operate the level of facility for~~

~~which certification is sought. The board may adopt such rules in accordance with article 4 of title 24, C.R.S., as are necessary to ensure the proper administration of the program and shall enter into contracts with any nonprofit corporation selected or appointed by the board to ensure that each nonprofit corporation receives applications and fees, conducts such examinations as may be directed by the board, records the results thereof, notifies applicants of results, recommends issuance of certificates, provides feedback to examinees upon request following each examination, and prepares and distributes an annual report. With the permission of the board, a nonprofit corporation contracted with by the board may enter into subsidiary agreements with other nonprofit corporations, educational institutions, and for-profit corporations to carry out the duties assigned by the board; except that any such subsidiary agreements shall be subject to prior approval by the board. The board shall be responsible for and shall retain the final authority for all actions and decisions carried out on behalf of the board by any such nonprofit corporation, educational institution, or for-profit corporation. Such authority shall include, but shall not be limited to, the authority to modify, suspend, or reverse any action or decision of any nonprofit corporation, educational institution, or for-profit corporation.~~

~~(b) In order to qualify for consideration to administer the duties set forth in this section, a nonprofit corporation must have expertise in training and testing procedures, as well as demonstrated knowledge of water and wastewater treatment, collection, and distribution systems.~~

(2) (a) The board may promote and assist in regular training schools and programs designed to aid applicants and other interested persons to acquire the necessary knowledge to meet the certification requirements of this article.

(b) THE BOARD SHALL ENSURE THAT AN OFFICE IS MAINTAINED FOR CONTACT WITH OPERATORS AND EMPLOYERS.

(c) THE BOARD SHALL ENSURE, THROUGH THE USE OF SUBJECT MATTER EXPERTS, THAT ALL CERTIFICATION EXAMINATIONS TEST FOR INFORMATION THAT IS RELEVANT TO THE KNOWLEDGE THAT IS NECESSARY TO OPERATE THE LEVEL OF FACILITY FOR WHICH CERTIFICATION IS SOUGHT.

(3) (a) The board shall establish classes of:

- (I) ~~Certified~~ Water treatment facility operators;
- (II) ~~classes of~~ Domestic wastewater treatment facility operators;
- (III) ~~classes of~~ Industrial wastewater treatment facility operators;
- (IV) ~~classes of~~ Water distribution system operators;
- (V) ~~classes of~~ Wastewater collection system operators;
- (VI) ~~classes of~~ Operators for small systems; and
- (VII) ~~classes of~~ Other persons who require and qualify for multiple certifications.

(b) In establishing each classification, the board shall differentiate the various levels of complexity to be encountered in water and wastewater facility operation and the appropriate qualifications for certification for each class. The board shall set minimum education, experience, examination, and ongoing training requirements for each class.

(4) EXCEPT AS PROVIDED IN SECTION 25-9-104.4, the board shall ~~maintain for~~ ESTABLISH FOR each water and wastewater facility a minimum class of certified operators required for its supervision. ~~except that the board may exempt certain industrial wastewater treatment facilities or classes of facilities from the requirement to operate under the supervision of a certified operator, based upon a determination that such an exemption is not inconsistent with the goal of assuring adequate operation of water and wastewater facilities to protect public health and the environment. In determining whether to provide such an exemption, the board may consider criteria including, but not limited to:~~

~~(a) Discharges of limited duration;~~

~~(b) The sensitivity of the receiving waters;~~

~~(c) The level of toxic pollutants in the discharge; and~~

~~(d) Situations where chemical, mechanical, or biological treatment techniques are not required to meet permit limits, including, but not limited to, sedimentation ponds at mining operations for construction materials, as that term is defined in section 34-32.5-103 (3), C.R.S.~~

(5) (a) The board shall establish a procedure whereby any decision of the board, the division, or ~~any organization performing duties on behalf of the division~~ NONPROFIT CORPORATION CONTRACTING WITH THE BOARD can be ~~subject to appeal~~ APPEALED to the board.

(b) THE BOARD MAY ADOPT RULES AS NECESSARY TO ENSURE THE PROPER ADMINISTRATION OF THE PROGRAM.

(c) THE BOARD MAY PROMULGATE RULES TO ALLOW THE DIVISION TO IMMEDIATELY SUSPEND OR REVOKE A CERTIFICATION IF IMMEDIATE ACTION IS NECESSARY TO PROTECT THE PUBLIC HEALTH OR ENVIRONMENT.

(6) The board ~~shall~~ MAY exercise ~~such~~ other powers and duties as ~~are deemed~~ necessary within the scope of this article. The board ~~in accordance with the "State Administrative Procedure Act", article 4 of title 24, C.R.S., shall~~ PROMULGATE RULES TO establish criteria for the discipline or reprimand of any water or wastewater facility operator and for the suspension or revocation of the certification of ~~any such~~ AN operator. ~~Such~~ THE criteria ~~shall~~ MUST include: ~~but shall not be limited to:~~

(a) Willfully or negligently violating, causing, or allowing the violation of rules promulgated ~~pursuant to~~ UNDER this article or failing to comply with ~~the provisions of~~ this article;

(b) Submitting false or misleading information on any document provided to the department, the board, or any organization acting on behalf of the board;

(c) Using fraud or deception in the course of employment as an operator;

(d) Failing to conform with minimum standards in the performance of an operator's duties; and

(e) Engaging in dishonest conduct during an examination.

~~(6.5) The division shall have the primary responsibility for the investigation of instances of possible misconduct by water and wastewater facility operators and shall report the results of any investigation to the board and make recommendations regarding appropriate disciplinary action to the board. The board may promulgate rules in accordance with article 4 of title 24, C.R.S., to allow the division to immediately suspend or revoke certifications where such immediate action is necessary to protect the public health or environment.~~

~~(7) Members of the board shall serve without compensation but shall be reimbursed~~ ARE ENTITLED TO REIMBURSEMENT for their necessary expenses.

(8) The board ~~shall~~ MAY exercise its powers and perform its duties and functions as if it were transferred to the department by a **type 1** transfer under the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

**SECTION 5.** In Colorado Revised Statutes, **add** 25-9-104.2, 25-9-104.3, and 25-9-104.4 as follows:

**25-9-104.2. Contracting - rules.** (1) THE BOARD MAY SELECT AND APPOINT ONE OR MORE INDEPENDENT NONPROFIT CORPORATIONS TO CARRY OUT THE ADMINISTRATION OF THE PROGRAM AND EXAMINATIONS. THE BOARD MAY PROMULGATE A RULE ESTABLISHING THE SCOPE AND STANDARDS OF THE INDEPENDENT NONPROFIT CORPORATION'S DUTIES. THE CONTRACT MUST SPECIFICALLY ADDRESS EACH DUTY OR FUNCTION REQUIRED BY LAW.

(2) TO QUALIFY FOR CONSIDERATION TO ADMINISTER THE DUTIES OF THIS SECTION, A NONPROFIT CORPORATION MUST HAVE EXPERTISE IN TRAINING AND TESTING PROCEDURES AS WELL AS DEMONSTRATED KNOWLEDGE OF WATER AND WASTEWATER TREATMENT, COLLECTION, AND DISTRIBUTION SYSTEMS.

(3) WITH THE PRIOR APPROVAL OF THE BOARD FOR EACH AGREEMENT, A NONPROFIT CORPORATION CONTRACTED BY THE BOARD MAY ENTER INTO SUBSIDIARY AGREEMENTS WITH OTHER NONPROFIT CORPORATIONS, EDUCATIONAL INSTITUTIONS, AND FOR-PROFIT CORPORATIONS TO CARRY OUT THE DUTIES ASSIGNED BY THE BOARD.

(4) THE BOARD IS RESPONSIBLE FOR AND RETAINS THE FINAL AUTHORITY FOR ALL ACTIONS AND DECISIONS CARRIED OUT ON BEHALF OF THE BOARD BY A NONPROFIT CORPORATION, EDUCATIONAL INSTITUTION, OR FOR-PROFIT CORPORATION. THE BOARD MAY MODIFY, SUSPEND, OR REVERSE ANY ACTION OR DECISION OF ANY NONPROFIT CORPORATION, EDUCATIONAL INSTITUTION, OR FOR-PROFIT

CORPORATION.

**25-9-104.3. Duties of the division - investigations.** THE DIVISION SHALL INVESTIGATE INSTANCES OF POSSIBLE MISCONDUCT BY WATER AND WASTEWATER FACILITY OPERATORS, REPORT THE RESULTS OF ANY INVESTIGATION TO THE BOARD, AND MAKE RECOMMENDATIONS REGARDING APPROPRIATE DISCIPLINARY ACTION TO THE BOARD.

**25-9-104.4. Exemptions.** (1) THE BOARD MAY EXEMPT WASTEWATER FACILITIES OR CLASSES OF FACILITIES FROM THE REQUIREMENT TO OPERATE UNDER THE SUPERVISION OF A CERTIFIED OPERATOR IF THE EXEMPTION DOES NOT ENDANGER THE PUBLIC HEALTH OR THE ENVIRONMENT. IN DETERMINING WHETHER TO PROVIDE SUCH AN EXEMPTION, THE BOARD MAY CONSIDER THE FOLLOWING CRITERIA:

- (a) DISCHARGES OF LIMITED DURATION;
- (b) THE SENSITIVITY OF THE RECEIVING WATERS;
- (c) THE LEVEL OF TOXIC POLLUTANTS IN THE DISCHARGE; AND
- (d) SITUATIONS WHERE CHEMICAL, MECHANICAL, OR BIOLOGICAL TREATMENT TECHNIQUES ARE NOT REQUIRED TO MEET PERMIT LIMITS, INCLUDING SEDIMENTATION PONDS AT MINING OPERATIONS FOR CONSTRUCTION MATERIALS, AS DEFINED BY SECTION 34-32.5-103 (3), C.R.S.

(2) THE BOARD MAY EXEMPT WATER FACILITIES OR CLASSES OF FACILITIES FROM THE REQUIREMENT TO OPERATE UNDER THE SUPERVISION OF A CERTIFIED OPERATOR IF THE EXEMPTION DOES NOT ENDANGER PUBLIC HEALTH OR THE ENVIRONMENT. IN DETERMINING WHETHER TO PROVIDE SUCH AN EXEMPTION, THE BOARD MAY CONSIDER:

- (a) THE CLASSIFICATION OF THE FACILITY AS PUBLIC OR NONPUBLIC UNDER THE COLORADO PRIMARY DRINKING WATER REGULATION;
- (b) THE APPLICABILITY OF THE COLORADO PRIMARY DRINKING WATER REGULATION TO THE FACILITY OR CLASS OF FACILITIES; AND
- (c) A DISTRIBUTION SYSTEM HAVING A MINIMAL NUMBER OF CONNECTIONS.

**SECTION 6. Effective date.** This act takes effect July 1, 2013.

**SECTION 7. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 5, 2013