

WAC 173-165-100 Compliance and enforcement. (1) Ecology is authorized to take action under this rule to examine, certify, investigate, and enforce this rule against certified water right examiners and CWRE applicants. However:

(a) Certified water right examiners are hired and paid by water right permit or change authorization holders, and are not ecology employees.

(b) Ecology is not responsible for the direct supervision of a certified water right examiner.

(c) Ecology is not responsible for the contractual relationship between certified water right examiners and their clients.

(2) Nothing in this chapter is intended to prevent ecology from taking immediate action if it is critical to the safety of the public, agency staff, and others; or is critical to the protection of the water resource as otherwise authorized by law.

(3) Client complaints, issues of poor performance, and any indications of malfeasance should be referred to the CWRE coordinator. The CWRE coordinator may work with regional permitting staff and program management to determine what further action, if any, is appropriate, such as:

(a) Meeting with the certified water right examiner to discuss concerns and possible options for dealing with the problem.

(b) Providing technical assistance.

(c) Issuing a verbal or written warning.

(d) Consulting with an assistant attorney general.

(e) Presenting issues to agency senior management.

(f) Filing a police report.

(g) Performing a preliminary or full compliance investigation (see subsection (4) of this section).

(h) Convening the CWRE investigative committee as defined in WAC 173-165-020.

(i) Taking other steps as appropriate for the complaint.

(4) Ecology or the CWRE investigative committee may perform a general, preliminary, or full compliance investigation to ensure that the public is being competently served, or in response to client complaints, indications of poor performance, or when ecology suspects malfeasance.

(a) Ecology may use general compliance investigations to assess elements of the CWRE program, or the program as a whole.

(b) Ecology may use preliminary investigations to determine whether a situation warrants any action or a full investigation.

(c) Ecology will use full investigations primarily when circumstances are uncertain but indicate a potential need for suspending or revoking a certified water right examiner's certification.

(5) When ecology or the CWRE investigative committee does a full compliance investigation of a certified water right examiner, except when doing so could compromise the investigation or potential prosecution, they will notify the certified water right examiner in writing:

(a) That the investigation is taking place, when the investigation is begun; and

(b) Of the results of the investigation, when the investigation is complete.

Informal actions.

(6) Ecology will use informal methods, which are not appealable, to pursue compliance with RCW 90.03.665 and this chapter, and to en-

sure the public is competently served. Informal methods include, but are not limited to:

- (a) Spot-checking the work of certified water right examiners.
- (b) Surveying or interviewing current and past clients.
- (c) Providing technical assistance or training.
- (d) Issuing verbal or written warnings, such as to advise on poor performance, give notice of one or more customer complaints, or to request actions to prevent violations before they occur (RCW 90.03.605 (1)(b)).

Formal actions.

(7) RCW 90.03.665(4) authorizes ecology to suspend or revoke the certification of a certified water right examiner based on poor performance, excessive complaints from their clients, or malfeasance. For the purposes of this chapter:

(a) **"Poor performance"** means work products or work behaviors that fail to meet accepted standards of professional behavior and performance, such as:

(i) Repeated submittal of incomplete, inaccurate, insufficiently detailed, or otherwise unacceptable proof reports of examination.

(ii) Failure to abide by the CWRE rules of professional performance (WAC 173-165-080 (1)(c)) or to meet statutory requirements.

(b) **"Excessive complaints"** means complaints that go beyond what is normal and reasonable. If ecology receives two or more complaints for an individual certified water right examiner in any twelve-month period, in determining whether complaints are excessive, ecology may consider the nature of the complaints, as well as the number of complaints relative to the number of proof examinations the certified water right examiner has completed in the same period.

(c) **"Malfeasance"** means wrongdoing or misconduct, such as an act that gives rise to civil liability for damages arising out of professional conduct; or that is harmful or contrary to law; or that is a violation of professional standards or ethical rules; or an act in violation of the public trust.

(8) Ecology will determine whether to suspend or revoke a CWRE certification.

(a) The CWRE coordinator or designee will discuss the recommendation, including the results of any investigation made, with program management.

(b) To suspend or revoke a CWRE certification, ecology will issue an administrative order. An order is a formal requirement to correct or prevent a documented violation and is an appealable action.

(i) Orders are issued by certified mail to the certified water right examiner's address on record or delivered in person.

(ii) The suspension or revocation is effective as of the date of formal notification to the certified water right examiner.

(c) Ecology is ultimately responsible for the content of the order to suspend or revoke a CWRE certification.

(9) Suspension is intended for the certified water right examiner to improve poor performance, resolve client complaints, or to acquire additional training; or ecology may suspend a certified water right examiner as a temporary measure during a compliance investigation.

(a) Suspension is for a period not to exceed one year.

(b) The suspension order shall state the terms for reinstatement of the certification, including the length of time to fulfill the requirements of the suspension before ecology will revoke the CWRE certification for failure to meet the terms of the suspension.

(c) Ecology may enter into a probation agreement with a suspended certified water right examiner that would allow him/her to continue to perform some or all CWRE services during her/his period of suspension.

(i) A probation agreement will be the equivalent of a conditional certification.

(ii) The probation agreement will identify the following:

(A) The conditions for and limitations of CWRE services that the certified water right examiner may perform.

(B) Any requirements for the certified water right examiner to fulfill the agreement, such as additional continuing education of a specific subject.

(C) Any requirements for retesting.

(D) Any other elements specific to the case.

(iii) Any probation agreement will be signed by the certified water right examiner and ecology program manager or designee.

(d) Certified water right examiners may renew their CWRE certification during the period of suspension, if they are in compliance with the suspension order and the conditions of any probation agreement, and meet the conditions of renewal under WAC 173-165-080(4). If the certified water right examiner under suspension does not maintain his/her certification according to the renewal deadlines identified in WAC 173-165-080(4), ecology may revoke the certification as described in subsection (10) of this section.

(e) The certified water right examiner under suspension must abide by the terms of the suspension order and any probation agreement, and satisfy all remedial requirements, in addition to any statutory requirements, or ecology may revoke the certification as described in subsection (10) of this section.

(10) A revoked CWRE certification cannot be renewed.

(a) When a CWRE certification is revoked, to become recertified, the person:

(i) Must wait at least five years before ecology may accept her/his reapplication.

(ii) Must reapply, retest, and be recertified, as well as pay all associated fees.

(b) Even after the five years ((a)(i) of this subsection) have passed, ecology may choose to reject the application of a person whose certification has been revoked regardless of whether the applicant otherwise meets minimum qualifications (WAC 173-165-060 (5)(c)).

(11) Ecology may immediately revoke the certification of a certified water right examiner found liable or convicted for malfeasance in a court of law.

[Statutory Authority: RCW 90.03.665(11), 43.27A.090(11), and 43.21A.064(9). WSR 12-24-031 (Order 11-03), § 173-165-100, filed 11/28/12, effective 12/29/12.]