



DWR-G-01-04132018

Revocation of Certification as a Qualified Hydrologic Professional

DISCLAIMER: This document is guidance only and does not create legal rights or obligations. Agency decisions in any particular case will be made applying applicable laws and regulations to the specific facts.

1) EFFECTIVE DATE: MAY 17, 2018

2) SIGNATURES:


Jennifer Dodd, Division Director DWR


Stephanie A. Durman, Drafter / Preparer

3) GUIDANCE

The Tennessee Department of Environment and Conservation's Division of Water Resources ("DWR") may revoke the certification of a Qualified Hydrologic Professional ("QHP") for cause as defined by Tenn. Comp. R. & Regs. 0400-40-17-.03(2). The revocation process is governed by Tenn. Code Ann. § 4-5-320 and Tenn. Comp. R. & Regs. 0400-40-17-.03(2).

a. Bases for Revocation

DWR may revoke QHP certifications for cause as follows:

During the term of a certificate, the department may revoke the certification of any qualified hydrologic professional if it is determined that there is cause. Cause for decertification includes, but is not limited to, failure to timely and successfully complete any required refresher courses, submission to the department of materially false information, or repeated submission of reports in support of hydrologic determinations that contain significant failures to exercise the skills of a certified hydrologic professional in accordance with these rules and the Guidance for Making Hydrologic Determinations (Guidance) which contains the instructions and examples for proper application of these rules to situations in the field that has been developed pursuant to § 69-3-107(25)....

Tenn. Comp. R. & Regs. 0400-40-17-.03(2).

The QHP certification rules require one refresher course per three-year certification cycle and require documentation of successful completion to be submitted with the renewal



DWR-G-01-04132018

Revocation of Certification as a Qualified Hydrologic Professional

application. Tenn. Comp. R. & Regs. 0400-40-.03(1). If the application does not include this documentation, then the QHP certificate cannot be renewed. *Id.*

A QHP certification can also be revoked due to submission of materially false information. This provision can be invoked even with a single error if it is sufficiently significant. The QHP need not actually know the submitted information is incorrect. Rather, a QHP certification may be revoked on this basis if information or data submitted to DWR are incorrect and the error affects, or could affect, the outcome. This could include incorrect information about the QHP's qualifications submitted with the application for certification.

A QHP certification can also be revoked due to repeated submission of hydrologic determination ("HD") reports "that contain significant failures to exercise the skills of a certified hydrologic professional." Signification failures include, but are not limited to:

- mistakes interpreting field data per the HD rule and guidance document;
- failure to look for obligate lotic organisms;
- not attempting to identify macroinvertebrates that are collected, or continually misidentifying their genus;
- failure to review precipitation data; or
- repeated failure to correctly complete the required forms necessitating multiple requests for additional information or clarification.

DWR could also revoke QHP certification based on other matters related to the quality of the HD reports or the relevant qualifications of the QHP.

b. Procedures for Revocation

Tennessee provides a number of procedural safeguards to ensure due process for QHP revocations. The Uniform Administrative Procedures Act ("UAPA") requires DWR to give "notice by mail to the licensee of facts or conduct that warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license." Tenn. Code Ann. § 4-5-320(c). The QHP certification rules establish additional procedures for revocation:

(2)...Such revocation shall be sent to the hydrologic professional by certified mail. An appeal of a revocation will be heard by the board as a contested case under the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301 et seq. A revocation by the Commissioner or by an order of the board will not become effective until the applicable period for filing an appeal from such action has passed without the filing of an appeal.

(3) If a person's certification as a qualified hydrologic professional is revoked by the department, the person may appeal the revocation by filing a petition



DWR-G-01-04132018

Revocation of Certification as a Qualified Hydrologic Professional

stating the reasons for disagreeing with the revocation with the board within 30 days of the date of receipt of the revocation.

Tenn. Comp. R. & Regs. 0400-40-17-.03.

If DWR determines that it may be necessary to revoke a QHP certification, it will provide written notice and an opportunity for a meeting to demonstrate compliance. In most cases, this notice would follow one or more pieces of written correspondence with the QHP concerning the underlying matter. The opportunity to show compliance is informal, although Department attorneys may participate and the QHP may also choose to bring an attorney.

If the show compliance meeting does not resolve the matter, or if the QHP waives their right to that meeting, then DWR will issue an order of revocation. The order would set out the facts and law supporting the proposed revocation and include a notice of rights regarding the appeal process. If no appeal is filed within 30 days, then the revocation becomes final. Filing of a timely appeal initiates a formal contested case proceeding, assignment of an administrative law judge, and setting of a formal adjudicative hearing. The revocation would not be effective until there has been a final determination by the Board of Water Quality, Oil, and Gas.

Revision Number	Date	Brief Summary of Change
0	5-17-18	Initial issuance of the guidance