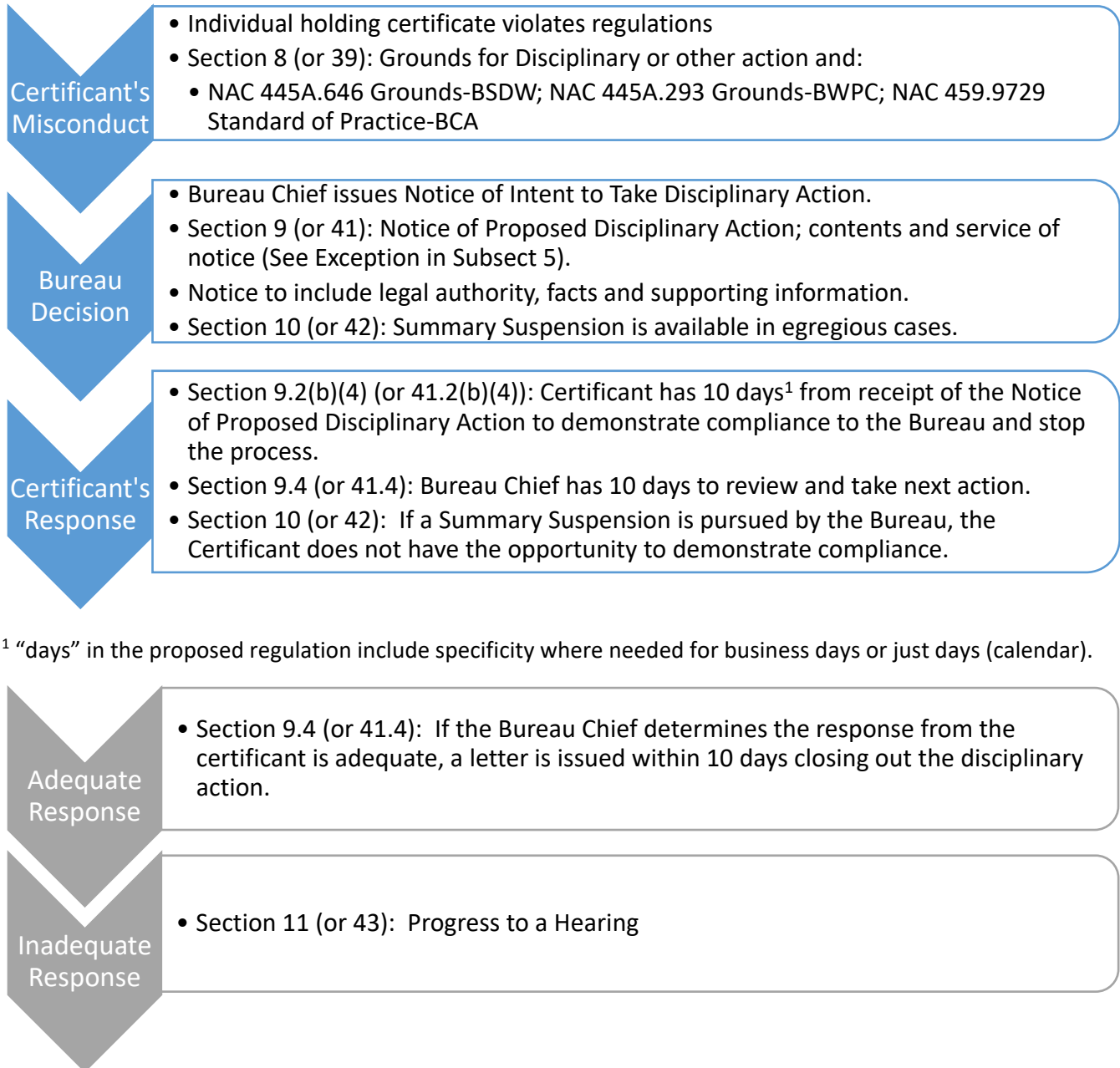


R126-19: Certification Programs, Enforcement & Appeal Process

Flow of Events & Decisions

Initial Section numbers refer to the portion of the petition pertaining to NAC 445A for Drinking Water and Wastewater Operators; those in (parens) pertain to NAC 459 for Certified Environmental Managers, Underground Tank Handlers and Underground Tank Testers.

Finding of Grounds and Issuance of Notice of Intent



Progression to a Hearing

Hearing Notice

- Section 11 (or 43): If the Division (i.e. Bureau Chief) determines that the Certificant's response does not adequately demonstrate full compliance (or the Certificant is not entitled to a response period), then a Notice of Hearing is issued by the Division.
- Notice includes the hearing date, time, location and other required information.

Hearing

- Section 11 (or 43): The Hearing shall be held between 30-60 days of the date of the hearing notice.
- Section 10 (or 42): A hearing for summary suspension must be held within 45 days of the date of suspension.
- See "*Hearing Flow and Timelines*" sheet for Hearing process.

NDEP Decision

- Section 20 (or 52): The Administrator receives the Hearing Officer recommendation within 30 days and issues a decision within 45 days of the hearing date.
- Decision includes findings of fact and conclusions of law.
- Section 26, 28 or 40: The Administrator may: revoke, suspend, place on probation, or take other such action as appropriate
- Section 20.3 (or 52.3): Decision is final 30 days after the date of service unless appealed within 10 days.

After...

- Section 23 (or 55): If the decision of the Administrator results in suspension or revocation, the certificant shall provide notice to their employer of the revocation or suspension and the date it becomes effective. They may still lawfully practice until that date.

Also...

- Section 26.5, 27.5 or 40.2: Disciplinary action taken by the Administrator through this process is separate from, and potentially in addition to, civil or criminal formal enforcement proceedings provide by other statutes or regulations.

Hearing Flow and Timelines

Hearing Officer

- Section 12 (or 44): The Administrator of NDEP appoints a hearing officer for the proceeding.
- The hearing officer is preferably outside NDEP but within DCNR.

NDEP Exhibits & Witnesses

- Section 11 (or 43): NDEP states authority and facts, sends exhibits and a list of witnesses with the Hearing Notice .
- Copies of documents listed as exhibits are attached to the Notice.

Certificant Exhibits & Witnesses

- Section 13 (or 45): The certificant shall provide NDEP with witnesses and exhibits at least 5 days before the hearing.
- The hearing officer can exclude any untimely information

Motions

- Section 14 (or 46): All pre-hearing motions shall be filed with the hearing officer at least 10 business days prior to the hearing
- Responses to pre-hearing motions shall be filed with the hearing officer within 7 business days after receipt of the motion. (i.e. by 3 days before the hearing)
- In certain circumstances, the respondent may move for confidential handling of the hearing.

Briefs

- Section 15 (or 47): The hearing officer has the authority to order the parties to file briefs.
- Sections 16-18 (or 48-50): Provision for miscellaneous procedural items.

Order of Proceeding

- Section 19 (or 51): The noticed hearing shall proceed as detailed in this section
 - i.e. order of testimony, cross-examination, rebuttal, etc.
- Section 20 (or 52): Hearing Officer prepares a written recommendation for the NDEP Administrator within 30 days.

NDEP Decision

- Return to "Progression to a Hearing" flow sheet at "NDEP Decision".

Appeal to SEC

SEC Appeal

- Section 21 (or 53) : The Notice of Appeal and request for hearing must be filed within 10 days and include particularity on each point of law or fact in question.
- The appellant shall identify the parts of the record before the hearing officer that are relevant and state arguments in support of appeal intending to be presented to the Commission.
- The opposing party may file a response within 15 days

SEC Hearing

- Section 22 (or 54): Oral argument before the SEC will be scheduled within 60 days of receipt of the request for appeal (unless parties agree to waive for good cause).
- Oral arguments are limited to 15 minutes.
- The SEC can affirm, reverse or modify the decision of the Administrator, or remand to the Administrator.
- The decision of the SEC can be subject to Judicial Review

After...

- Section 23 (or 55): If the decision of the SEC results in suspension or revocation, the certificant shall provide notice to their employer of the revocation or suspension and the date it becomes effective. They may still lawfully practice until that date.