



DISCIPLINARY ACTION CRITERIA (DAC) FOR CERTIFIED INDIVIDUALS (PCS, BCI, PCI, NBPI AND CCI)

I. Introduction

A. Background

At a meeting in January 2008, the Individual Certification Task Group (ICTG) voted to adopt Disciplinary Action Criteria (DAC) for Individual Certification Programs and establish procedures for administering disciplinary actions. The Disciplinary Action Criteria and administrative procedures are intended to strengthen the reputation of the Certified Individual and thus make certification more valuable.

Individuals who maintain certification standards benefit from the increased recognition and opportunities that come with being part of a program with high standards.

The Disciplinary Action Criteria and administrative procedures establish the processes and rules for: issuing warnings to certified individuals; putting certified individuals on probation; suspending, revoking, or denying certification of individuals about whom critical faults in safety, environmental compliance, quality/service, or ethical practice have been reported and verified.

B. Scope and Use

This procedure defines the process for disciplining certified individuals for critical faults incurred under SSPC's PCS, BCI, PCI, and CCI Programs. This procedure is used by SSPC when a critical fault is suspected. It is also used by certified individuals to respond to and to appeal disciplinary actions assessed by SSPC.

The procedure includes the following topics:

- Definitions of critical faults and disciplinary actions
- Steps in the process
- Enforcement
- Notes

II. Definitions of Critical Faults

General

Critical faults are actions associated with certified individual's activities including, but not limited to specifications, work plans and job-specific actions, which willfully violate the requirements of the DAC. Critical faults are classified as 1) Serious, and 2) Severe

TYPES OF CRITICAL FAULTS:

1. Serious - A serious fault can result from the following events:

1-a Safety

Documented disregard for personal safety. Documented disregard or lack of notification of workers in danger. (ex. Receipt of an OSHA violation or citation through the fault of an individual)

1-b Environmental

Documented disregard of environmental impact. (ex. Receipt of a DEP or EPA violation or citation)

1-c Quality of Work/Service

Failure to accurately document conditions observed on site. Lack of a program or process or failure to check the accuracy of equipment used to verify observed conditions.

1-d Ethics

Failure to maintain confidentiality of a client or customer. Failure to work within the bounds of one's authority, training and/or experience. Failure to disclose any conflicts of interest. Willfull or intentional misuse (including willful omission) of industry standards.

2. Severe - A severe fault can result from the following events:

2-a Criminal conviction of a certified individual for any felony in connection with any contracted project, whether the conviction arises by a finding of guilty by a judge or jury, plea of guilty or plea of nolo contendere.

2-b Illegal business practices of a certified Individual, such as, but not limited to, systematic violation of labor or tax laws.

2-c Fraud, as documented.

2-d Altering any reports, documents, or test results on a project, as documented by facility owner or contractor or representative or qualifying agency.

2-e Misrepresentation of information required for certification, as documented by qualifying agency.

2-f Accepting favors or gifts from any sources related to the work.

2-g Other: Two serious faults in a twelve month period. The twelve month mark begins when the first violation took place.

III. Definitions of Disciplinary Actions

A disciplinary action is one taken as a result of confirmation of critical faults under the process described in V. below. The four types of disciplinary action are 1) Warning, 2) Probation, 3) Suspension, and 4) Revocation. They are described as follows:

1) Warning – The certified individual is notified that critical faults have been reported and have been verified and that additional reports will trigger further disciplinary action. A warning remains in effect for one year, unless probation, suspension, or revocation of certification supersedes.

2) Probation – The certified individual is notified that multiple critical faults have been reported and have been verified.

3) Suspension – The certified individual is notified that, based on the SSPC administrator’s verification of reported critical faults, the individual certification will be suspended for a minimum of six months. To be reinstated, the certified individual will have to, pay a reinstatement fee equivalent to an initial application administrative fee. If the individual’s certification term runs out during the suspension period, the certified individual must reapply for initial certification after the end of the suspension period and pay the required initial application as a reinstatement fee.

4) Revocation – The certified individual is notified that, based on the SSPC administrator’s verification of reported critical faults, the individual certification will be revoked for a minimum of two years. To be reinstated, the certified individual will have to submit an initial application and pay a reinstatement fee equivalent to the annual administrative fee in addition to the regular initial application fee. The certified individual may submit the initial application 45 days prior to the end of the revocation period.

IV. Triggers for Disciplinary Actions

Critical faults will trigger disciplinary action. Severe,” critical faults will, in general, trigger the harshest disciplinary actions, whereas “Serious,” faults will trigger milder disciplinary actions. However, the impact of reported critical faults is cumulative, i.e., if many “Serious” faults are reported, this will also trigger harsh disciplinary action. If more than one mild disciplinary action is issued in a given time period (e.g., a year), this will trigger harsher disciplinary actions.

Type of Critical Fault Disciplinary Action:

A) Serious: Warning/Probation

B) Severe: Suspension/Revocation

V. Process for Discipline

This section delineates the steps for the discipline process, beginning with first receipt of information by SSPC through resolution. Not every step is required for every certified individual undergoing the discipline process. The sequence of steps is as follows:

A. SSPC receives the initial information or allegation from public documents, phone calls, written information, or other means of communication, or SSPC receives information or allegations that a certified individual is violating the Disciplinary Action Criteria. This information will be accepted from anonymous sources. The allegation must be supported with enough information in order for SSPC to conduct a preliminary inquiry.

B. SSPC conducts a preliminary inquiry:

As part of the preliminary investigation, a certified individual will be given an opportunity to respond to the allegations.

C. SSPC notifies the certified individual of suspected critical faults and the violation of the DAC. If SSPC substantiates the allegation, the certified individual will be notified in writing that a critical fault has occurred and that SSPC has issued a disciplinary action under the DAC.

D. Certified individual's right to appeal impending action:

Once the certified individual has been notified, the certified individual may appeal the decision or action of SSPC. Within 10 working days of official notification of an impending disciplinary action, submit evidence (e.g., settlement documentation; affidavits) to SSPC showing that reported critical faults are incorrect. Failure to appeal within the 10 working day period will result in automatic issuance of the pending disciplinary action.

E. SSPC affirms the information and that the violation exists:

SSPC will evaluate the appeal within 30 days of its receipt.

F. Certified individual requests informal conference:

If SSPC rejects the first appeal, the certified individual has the right to request an informal conference with SSPC at SSPC headquarters, within 15 working days of notification of rejection. At this conference, the certified individual may present additional evidence supporting the appeal.

G. SSPC responds to informal conference:

SSPC may find in favor of the certified individual or deny the appeal. SSPC will make every effort to render a decision within 30 calendar days after the informal conference.

H. Arbitration:

If the foregoing steps fail to resolve the dispute, the individual has 10 calendar days to request arbitration with a mutually agreed upon arbitration panel consisting of three persons with expertise in the protective coatings industry (one person chosen by the certified individual, one by SSPC, and one agreed upon by both parties) will convene to hear evidence according to "Procedures for Arbitration under the SSPC Certified Individual DAC Program" and render a final decision. Both parties must agree to selection of panel members within 15 working days after denial of appeal. If the two party arbitrators cannot agree on the selection of a neutral arbitrator, the neutral arbitrator will be selected according to the procedures of the American Arbitration Association. The arbitration panel must convene to render a decision by simple majority no later than 45 working days after selection. If the arbitration panel finds for SSPC or makes a decision that does not find in favor of either side, i.e., a compromise decision, the cost of all fees and expenses associated with convening the arbitration panel will be shared equally by the certified individual and SSPC. If the panel finds in favor of the certified individual, SSPC will be responsible for payment of all fees and expenses.

VI. Process for Arbitration

A. Initiation of Panel

If SSPC and the certified individual have failed to resolve the dispute through the normal appeals process, SSPC will establish an arbitration panel per V.H. of the DAC.

B. Composition of Panel

The panel will consist of three persons with expertise in the protective coatings industry (one person chosen by the certified individual, one by SSPC, and one agreed upon by both parties). They will convene to hear evidence and render a final binding decision. Both parties shall agree to the selection of panel members within 15 working days after denial of appeal. Upon selection, panel members must declare in writing to SSPC, at least 10 days before the hearing, that there are no circumstances likely to

affect their impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past relationship with the parties or their representatives. Persons who are employees of either of the parties, family members or under contract to either of the parties in dispute are ineligible to serve on the panel.

C. Cooperation

As is the case in other aspects of the program, if the certified individual fails to cooperate with SSPC in this process, their certification may be immediately revoked.

D. Date, Time, and Place of Hearing

SSPC, in consultation with the certified individual, will decide the date, time, and place for the hearing or conference. SSPC will notify all parties at least 10 working days in advance of the hearing unless otherwise agreed to by both parties. As a general rule, the arbitration panel will convene at the SSPC office in Pittsburgh, PA unless a change in venue is approved by SSPC. Unless a delay is agreed to by both parties, the arbitration panel shall convene no later than 15 working days after election. Once a date is determined, neither party may reschedule unless an emergency arises with one of the panel members. SSPC will be the final decision authority on all items relating to the hearing.

E. Participation

1. Representation

Each party shall designate an official representative authorized to present the party's interest. Either party may also be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party of the name and address of the representative/counsel at least five (5) working days prior to the date set for the hearing. When one party decides to have counsel and the other party's counsel is unavailable, this will constitute grounds for postponement of the hearing. Postponement may be invoked by either party if someone other than the appointed representative appears at the hearing without prior approval by SSPC.

2. Witnesses

Either party may designate up to two witnesses to present information. The party shall notify the other party at least five (5) business days prior to the hearing date regarding the name, affiliation and purpose of the witness.

F. Record of Proceedings

SSPC will provide a person, not involved in the hearing, to record the proceedings. If the contractor requests a professional stenographic record, the certified individual will pay the cost of that service and the production of that record. If the transcript is agreed by the parties to be the official record of the proceeding, it must be produced no later than 30 calendar days after the hearing.

G. Evidence

To expedite the hearing, SSPC will send the panel members all correspondence relevant to the case. This will be done no later than five (5) calendar days before the hearing. The certified individual will also be given a copy of the material presented to the panel. If a piece of material is determined to be missing, it will be immediately sent to the panel by the most expeditious manner. The panel may request offers of proof and may reject items deemed to be unreliable, unnecessary or of slight value to the determination of the case. Exhibits may be offered by either party but they must be relevant to the case being heard, as determined by the Panel President.

H. Order of Proceedings

The person agreed upon by both parties shall be designated to be the president of the panel. That person shall facilitate the proceedings with a view toward expediting the resolution of the dispute. The standard order of the proceedings is as follows:

- 1) SSPC shall present evidence to support its finding of a violation or violations of the DAC.
- 2) The certified individual shall then present evidence supporting its defense.
- 3) The arbitration panel may hear witnesses for each party. If there are witnesses, they shall submit to questions or other examination from the panel.

The panel has the discretion to vary this procedure but must ensure that each party has been afforded a full and equal opportunity to be heard. In order to expedite the proceedings, the president of the panel may control the order of the proceedings and direct the parties to focus the presentation of their case on the issues at hand.

I. Communication

There shall be no direct communication between the parties and the panel concerning the dispute prior to the hearing unless agreed upon in advance by both parties, in writing.

J. Closing

When satisfied that the presentation of both parties is complete, the president of the panel shall declare the hearing closed. The panel shall render a binding decision by simple majority as soon as possible, preferably that day, but no later than ten (10) business days after the hearing. As set forth in the DAC, "If the arbitration panel finds for the certified individual, the cost of all fees and expenses associated with convening the arbitration panel will be shared equally by the certified individual and SSPC. If not, the certified individual will be responsible for payment of all fees and expenses."

K. Decisions

All decisions of the panel shall be by majority. The panel may find in favor of the certified individual's position; in favor of SSPC's position; or the panel may also decide an alternative action that, in its opinion, maintains the integrity of the program and is fair to all parties. The panel may not render a disciplinary action that exceeds those published in the table in the DAC.

L. Dispute Resolution

The panel shall be the sole and exclusive decision – maker concerning the existence, nature and extent of its jurisdiction over any issue. SSPC and the certified individual mutually agree that the procedures set forth herein shall be the sole and exclusive remedies, procedures or due process available for resolving and settling each, any and all claims, between them, including, but not limited to disputes and controversies related in any way to the certified individual's application or continued eligibility for certification with SSPC.

SSPC and the certified individual shall use this dispute resolution procedure exclusively for all claims, and controversies whether arising under or based on the constitution, statutes, ordinances, regulations, rules, orders or common law of the United States or any state or any political subdivision relating to certification.

SSPC and the certified individual mutually agree that the decisions reached in accordance with the procedures set forth above shall be final and binding on all parties and that the parties hereby waive any and all rights to the contrary, including any right to trial by jury, judicial appeal, or the right to proceed in any civil court of law and, any such rights are hereby expressly waived.

This agreement is specifically intended, understood, admitted and stipulated to irrevocably and completely change and transfer the former place where the parties' rights will be finally determined. SSPC and the certified individual hereby expressly waive any and all rights to proceed in a court of law with respect to any issues subject to the jurisdiction of the panel and expressly waive any right to appeal any decision of the panel in the court of law.

SSPC and the certified individual acknowledge that they have had sufficient time to review and consider signing this agreement. It is clearly understood that this is a legal document and that any questions or concerns about it should be referred to appropriate legal counsel. The parties specifically intend that all provisions of this procedure and any decision of the panel shall be binding on the heirs, spouses, representatives, attorneys, successors and assigns of the parties hereto. SSPC and the certified individual expressly agree and understand that the procedures set forth shall be the final decision of SSPC with respect to the awarding or continuation of any certification by SSPC, and that SSPC shall make any and all final determinations with respect to any and all issues related to certification by SSPC, subject only to the procedures set forth herein.

VIII. Enforcement

A. General

The disciplinary action will become effective within two business days of the formal notification to the certified individual of the resolution.

B. Notification About Certified Individuals

Listed under each type of disciplinary action are the notifications that SSPC will issue following that disciplinary action:

B-1. **Warning** - Issued to a Certified Individual

- a. Certified Individual
- b. SSPC Administration
- c. SSPC Verification Team

B-2. **Probation** - Issued to a Certified Individual

- a. Certified Individual
- b. SSPC Administration
- c. SSPC Verification Team
- d. SSPC BOG, PCS Individual Certification Task Group Chair
- e. General announcement in JPCL and SSPC Online (web site) without the individual's name--to show action is being taken.

B-3. **Suspension** - Issued to a Certified Individual

- a. Certified Individual
- b. SSPC Administration
- c. SSPC Verification Team
- d. "Active" facility owners, i.e., those known by SSPC to be currently engaged in working with the individual.
- e. SSPC BOG, PCS Individual Certification Task Group Chair
- f. JPCL and SSPC Online (web site), identifying the individual.

B-4. **Revocation** - Issued to a Certified Individual

- a. Certified Individual
- b. SSPC Administration
- c. SSPC Verification Team
- d. "Active" facility owners, i.e., those known by SSPC to be currently engaged in working with the individual.
- e. SSPC BOG
- f. JPCL and SSPC Online (web site), identifying the individual.

C. Notification to Owners

SSPC will notify designated owner representatives listed on the job notification form that the owner has selected an SSPC Certified Individual for their projects and request that the representative respond to the enclosed performance evaluation form (Appendix B).

D. SSPC Review of Performance Evaluation Forms

D-1. SSPC program staff will review the job performance evaluation forms to determine if any critical faults are being reported.

D-2. Program staff will review unsolicited or published reports to determine if they contain any critical faults.

Note: For SSPC to issue disciplinary action, a critical fault attributed to a certified individual must have occurred during their certification term. For initial applicants, critical faults occurring up to 24 months prior to submittal of their application for certification will be considered in determining application status or certification status. SSPC reserves the right to issue disciplinary action for faults that have occurred, but are discovered at a later date. SSPC staff will verify the validity of each reported critical fault.