



DISCIPLINARY ACTION CRITERIA
SSPC QP1, QP2, QP3, QP6, QP8, QP9 & QS1

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
I. Introduction	3
II. Critical Faults Triggering Disciplinary Action	3
III. Administrative Procedures	5
IV. Triggers for Disciplinary Actions	6
V. Process for Discipline	6
VI. Process for Arbitration	7
VII. Table of Disciplinary Actions	10
VIII. Enforcement	11
IX. Special Notes	12
X. Watch List Clause	13
XI. Fatalities	15
Appendix A: Left Intentionally Blank	17
Appendix B: Job Performance Evaluation Form	18
Appendix C: Sample Cover Letter	21

QP 1, 2, 3, 6, 8, 9 & QS1 DISCIPLINARY ACTION CRITERIA PAINTING CONTRACTOR CERTIFICATION PROGRAM

I. Introduction

A. Background

At a meeting on March 12, 1996, the Painting Contractor Certification Program (PCCP) Advisory Committee voted to set up a Task Group to draft new Disciplinary Action Criteria (DAC) for certified contractors and procedures for administering disciplinary actions. The committee members felt that new and more stringent Disciplinary Action Criteria and administrative procedures were needed to supplement the annual and unannounced technical audits used prior to the DAC as the sole method for determining whether a contractor obtains and retains certification status.

The Disciplinary Action Criteria and administrative procedures are intended to strengthen the reputation of the PCCP and thus make certification more valuable. Contractors 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 procedures and rules for: issuing warnings to certified contractors; putting firms on probation; conducting special unannounced audits; suspending, revoking, or denying certification of contractors 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 contractors for critical faults incurred under the SSPC Contractor Certification Program. This procedure is used by SSPC when a critical fault is suspected. It is also used by contractors to respond to and 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 contractor activities, which violate the requirements of the DAC. Critical faults are classified as serious, very serious, severe, and very severe.

A. Types of Critical Faults

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

a. Safety

A pattern of substantiated, reliable, unsolicited reports (e.g., published accounts) of safety violations. A pattern is defined, in this instance, as three separate instances in an 18-month period.

b. Environmental

A pattern of substantiated, reliable, unsolicited reports (e.g., published accounts) of environmental compliance violations. A pattern is defined, in this instance, as three separate instances in an 18-month period.

c. Quality of Work/Service

Failure to meet overall project work schedule in the absence of mitigating circumstances, as documented by facility owner or representative.

2. Very Serious -A very serious fault can result from the following events:

- a Safety
Workers Compensation Experience Modification Interstate Rate (EMR) averaged over a three-year period exceeding 1.10, or a single change in EMR exceeding 1.25 during the same period.
- b Environmental
Affirmed violations of EPA or state or municipal authority regulations for releases or spills.
- c Quality of Work
Poor quality coating and related work, as documented by facility owner or representative.

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

- a Safety
A pattern of OSHA citations for serious or willful violations. A “pattern” is defined in this instance as affirmed serious, repeat, or willful violations as a result of three separate, unrelated (see note below) inspections over an 18 month period; or any two affirmed willful violations during an 18 month period.

Note: If a contractor is cited for repeat or willful violations on the same project, citations are considered (by SSPC) to be “unrelated” if the inspection that reveals such violations was conducted on the same job site at least two months after the contractor received written notification of the results from the previous inspection. Citations for compliance violations at other job sites are also considered to be “unrelated.” Further, to qualify for a pattern, any affirmed, settled or agreed upon serious or repeat violations must be ≥ \$10,000 (USD) in fines paid per inspection.

An affirmed willful OSHA (or an equivalent authority outside the US) violation, resulting from a work site incident.

- b Environmental
Affirmed environmental violations that expose employees or the public to significant hazards in conjunction with work done on a specific project. An example would include but not be limited to the illegal disposal or storage of hazardous materials.
- c Quality of Work/Service
Deliberate violations of specification or contract requirements, as documented by facility owner or representative. Documentation may include but is not limited to official correspondence; third party reports; photographs or video; audit reports; inspection reports; performance evaluations; non-conformance reports; and judgements.
- d A pattern of substantiated, reliable reports (e.g., failure analysis reports) of quality/service violations. A pattern is defined, in this instance, as three separate instances in an 18-month period.

4. Very Severe - A very severe fault can result from the following events

- a Ethical Practice
Criminal conviction of the owner, officers, directors or managing agents of the contracting firm or affiliated corporation, company or entity for any felony in connection with operation of the firm or in connection with surface preparation and/or coating application operations, whether the conviction arises by a finding of guilty by a judge or jury, plea of guilty or plea of nolo contendere.
- b Criminal conviction of the contracting firm or corporation or affiliated corporation, company or entity in connection with surface preparation and coating application operations, whether the conviction arises by a finding of guilty by a judge or jury, a plea of guilty, or a plea of nolo contendere.

- c Illegal business practices of the contracting firm or corporation or affiliated corporation, company or entity, such as, but not limited to, falsification of certified payroll, or systematic violation of labor or tax laws.
- d A pattern (three separate instances in a 12 month period) of substantiated, reliable, unsolicited reports of ethical practice violations by any representative of the firm's management on a project (e.g., company officer, production supervisor, foreman, superintendent, quality control representative, or safety representative).
- e Fraud, as documented
- f Altering any reports, documents, or test results on a project, as documented by facility owner or representative or qualifying agency
- g Misrepresentation of information required for certification, as documented by qualifying agency.

Note: For purposes of this document, affiliated company is defined as: "A company, corporation, partnership, joint venture, or other business entity operating under a different name than the certified firm, which performs surface preparation or coating application or administrative and other support functions for the certified company; and in which an officer, director, owner, partner or stockholder of the certified firm, a previously certified firm disciplined by SSPC, or the certified firm itself, exercises directly or indirectly (such as through family members) any significant degree of ownership, management or control."

- h Other
Two severe faults in a one year period.

III. Definitions of Disciplinary Actions

Important Note - Disciplinary actions taken by SSPC against a certified contractor affect all QP certifications held by the contractor. For example, if a contractor is QP1, QP2 and QS1 certified, a revocation of certification based on an affirmed disciplinary action, will result in the revocation of all 3 QP certifications.

Warning - The contractor is notified that critical faults have been reported and have been verified and that additional reports will trigger further disciplinary action. A contractor issued a warning may be subject to one or more unannounced audits at any time after the warning has been made. The first unannounced audit will be done at the contractor's expense. Subsequent unannounced audits during the warning period will be done solely at SSPC's expense. Refusal to submit to an audit or refusal to cooperate with an auditor during any unannounced audit, or refusal to pay expenses, will result in a six-month suspension from the program. If SSPC chooses to conduct an audit, and the audit is passed, a warning may be removed. Otherwise, a warning remains in effect for one year, unless probation, suspension, or revocation of certification supersedes.

Probation - The contractor is notified that multiple critical faults have been reported and have been verified. A contractor put on probation is subject to a mandatory unannounced audit, done at the contractor's expense. If SSPC chooses to audit more than one site, SSPC will bear the cost of additional site audits. Probation ends when the contractor passes the unannounced audit(s). If a contractor is on Probation and fails the unannounced audit, the contractor will immediately be suspended until it can pass a QP 1/QP 3 audit with two or less deficiencies on critical items and/or a QP-2 audit with less than four (4) minor CAR's. The contractor cannot appeal the audit. If the suspension lasts six months, the contractor will have to follow the procedures for reinstatement in "Suspension" below.

NOTE: "Audits" for contractors under "warning" or "probation" are not necessarily limited to audits to certification evaluation checklists items. A mandatory disciplinary related audit can also be in the form of a "special" audit to review business practices or other activities not related directly to the certification audit checklist.

Suspension - The contractor is notified that, based on the SSPC administrator's verification of reported critical faults, its certification will be suspended for a minimum of six months. To be reinstated, the contractor will have to submit a maintenance application and successfully complete an unannounced audit

at the contractor's expense, as well as pay a reinstatement fee equivalent to an initial application administrative fee. If the contractor's certification term runs out during the suspension period, the contractor must reapply for initial certification after the end of the suspension period, pay the required initial application and audit fees as well as reinstatement fee, and submit to an unannounced job site audit during the initial evaluation.

Revocation - The contractor is notified that, based on the SSPC administrator's verification of reported critical faults, its certification will be revoked for a minimum of two years. To be reinstated, the contractor will have to submit an initial application, pass an unannounced audit at the contractor's expense, and pay a reinstatement fee equivalent to the annual administrative fee in addition to the regular initial application fee. The contractor may submit the initial application 45 days prior to the end of the revocation period. Once reinstated, the contractor will be issued certification with the stipulation that the firm will have to pass a follow-up unannounced audit, at the contractor's expense, within the first year of reinstatement, but prior to any planned audit to retain certification status.

IV. Triggers for Disciplinary Actions

Critical faults in safety, environmental compliance, quality/service, or ethical practice will trigger disciplinary action. "Very 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. And 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
Serious	Warning
Very Serious	Probation
Severe	Suspension
Very Severe	Revocation

V. Process for Discipline

This section delineates the steps for the discipline process, beginning with first receipt of information by SSPC to resolution. Not every step is required for every contractor 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, SSPC receives information or allegations that a certified contractor 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. Allegations without adequate information will be disregarded.
- B. SSPC conducts a preliminary inquiry
SSPC will attempt to confirm the accuracy of the information. If the allegation cannot be substantiated, it will be disregarded.
- C. SSPC notifies the contractor of suspected critical faults and the violation of the DAC
If SSPC substantiates the allegation, the contractor will be notified in writing that a critical fault has occurred and that SSPC has issued a disciplinary action under the DAC.
- D. Contractor right to appeal impending action
Once the contractor has been notified, the contractor 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.

- F. SSPC affirms the information and that the violation exists
SSPC will evaluate the appeal within 30 days of its receipt.
- G. Contractor requests informal conference
If SSPC rejects the first appeal, the contractor 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 contractor may present additional evidence supporting its appeal.
- H. SSPC responds to informal conference
SSPC may find in favor of the contractor or deny the contractor's appeal. SSPC will make every effort to render a decision within 30 calendar days after the informal conference.
- I. Arbitration
If the foregoing steps fail to resolve the dispute, a mutually agreed upon arbitration panel, consisting of three persons with expertise in the protective coatings industry (one person chosen by the contractor, one by SSPC, and one agreed upon by both parties) will convene to hear evidence according to "Procedures for Arbitration under the SSPC PCCP DAC Program" and render a final decision. Both parties must agree to selection of panel members within 15 working days after denial of appeal. The arbitration panel must convene to render a decision by simple majority no later than 15 working days after selection. If the arbitration panel finds for the contractor 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 contractor and SSPC. If the panel finds in favor of SSPC, the contractor will be responsible for payment of all fees and expenses.

VI. Process for Arbitration

A. Initiation of Panel

If SSPC and the contractor have failed to resolve the dispute through the normal appeals process, SSPC will establish an arbitration panel per V. I. 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 contractor, 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 a contractor fails to cooperate with SSPC in this process, its certificates may be immediately revoked.

D. Date, Time, and Place of Hearing

SSPC, in consultation with the contractor, 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 selection. 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 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 working 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 contractor 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 contractor 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. SSPC shall present evidence to support its finding of a violation or violations of the DAC. The contractor shall then present evidence supporting its defense. 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 10 working days after the hearing. As set forth in the DAC, part VI, page 12, item 4, "If the arbitration panel finds for the contractor, the cost of all fees and expenses associated with convening the arbitration panel will be shared equally by the contractor and SSPC. If not, the contractor 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 contractor'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. The certifying agency and contractor 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 contractor's application or continued eligibility for certification with the certifying agency or any of its parents, subsidiaries and/or affiliated companies. The certifying agent and the contractor 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. The certifying agency and the contractor 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 and admitted and stipulated to irrevocably and completely change and transfer the former place where the parties' rights will be finally determined. The certifying agency and contractor 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.

The certifying agency and contractor 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. The certifying agency and the contractor expressly agree and understand that the procedures set forth shall be the final decision of the certifying agency 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.

VII. Table of Disciplinary Actions

The table below is a guide for Critical Faults and the associated Disciplinary Actions. In this table, the disciplinary actions are listed from left to right in order of increasing severity. The critical faults are listed from top to bottom in order of increasing severity. Please note that, for economy of space, this table contains an abbreviated description of each critical fault. The full description in the text will be used by SSPC for assessment of disciplinary action.

It is recognized that more than one critical fault may be reported at one time, thus the entries in this table show both the number of reports and the total number of critical faults that will trigger each disciplinary action.

It is also recognized that critical faults of different severity may be reported one at a time. If a contractor is reported for two or more critical faults, the higher severity fault(s) will take precedence in determining disciplinary action.

CRITICAL FAULTS (found in section II.A of the DAC)	DISCIPLINARY ACTION TABLE			
	WARNING (IV.A)	PROBATION (IV.B)	SUSPEND (IV.C)	REVOKE (IV.D)
SERIOUS * A pattern of reports of safety violations * A pattern of reports of environmental compliance violations * Failure to meet overall project work schedule	2 Reports/ 3 Critical Faults	2 Reports/ 6 Critical Faults	2 Reports/ 9 Critical Faults	N/A
VERY SERIOUS * Worker Compensation Experience Modification Rate (EMR) exceed limit * A citation issued by EPA or other authority for releases or spills * Poor Quality Work	2 Reports/ 2 Critical Faults	2 Reports/ 3 Critical Faults	2 Reports/ 4 Critical Faults	2 Reports/ 6 Critical Faults
SEVERE * * A pattern of OSHA citations for serious or willful violations * A citation for willful violation issued by OSHA or other authority outside the US, as a result of a work incident * Citations issued for serious environmental violations * Deliberate violations of specification requirements * A pattern of reports of quality/service violations	N/A	N/A	1 Report/ 1 Critical Fault	2 Reports/ 2 Critical Faults
VERY SEVERE * Criminal conviction of the contracting firm's owner, officers, directors or managing agent for a felony related surface preparation and coating operations * Criminal conviction of the painting firm or corp. or affiliated corp., company or entity in connection with surface preparation and coating application operations, whether the conviction arises by a finding of guilty by a judge or jury, a plea of guilty, * Illegal business practices * A pattern of reports of ethical practice violations * Fraud * Altering any reports, documents, or test results on a project * Misrepresentation of information required for certification * Two severe faults in a one year period	N/A	N/A	N/A	1 Report/ 1 Critical Fault
MULTIPLE DISCIPLINARY ACTIONS ISSUED		2 WARNINGS in 1 YEAR	2 PROBATIONS in 1 YEAR	3 PROBATIONS in 1 YEAR (or) 2 SUSPENSIONS IN 1 YEAR

NOTE: "Report" = critical faults reported and verified, which have occurred on or in relation to a specific project.

VIII. Enforcement

A. General

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

B. Notification About Contractors

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

1. **Warning** - Issued to a certified contractor
 - a. Contractor
 - b. SSPC Administration
 - c. SSPC Auditors

2. **Probation** - Issued to a certified contractor
 - a. Contractor
 - b. SSPC Administration
 - c. SSPC Auditors
 - d. SSPC BOG, PCCP Advisory Committee Chair
 - e. General announcement in JPCL and SSPC Online (web site),
without the contractor's name--to show action is being taken.
3. **Suspension** - Issued to a certified contractor
 - a. Contractor
 - b. SSPC Administration
 - c. SSPC Auditors
 - d. "Active" facility owners, i.e., those known by SSPC to be currently engaged in working with the contractor
 - e. SSPC BOG, PCCP Advisory Committee Chair
 - f. JPCL and SSPC Online (web site), identifying contractor.
4. **Revocation** - Issued to a certified contractor
 - a. Contractor
 - b. SSPC Administration
 - c. SSPC Auditors
 - d. "Active" facility owners, i.e., those known by SSPC to be currently engaged in working with the contractor
 - e. SSPC BOG
 - f. JPCL and SSPC Online (web site), identifying contractor.

C. Notification to Owners

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

D. SSPC Review of Performance Evaluation Forms

1. SSPC program staff will review the job performance evaluation forms to determine if any critical faults are being reported.
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 contractor must have occurred during the contracting firm's 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.

IX. Special Notes

- A. Job Notifications (field projects)
1. Discovery that a contractor has not submitted a required job notification results in a letter of warning and a minor audit deficiency if discovered during the course of an audit.
 2. Second omission after issuance of a warning or audit deficiency results in probation and issuance of a major or critical item deficiency.
 3. Third omission after issuance of probation results in an automatic 6 month suspension.
 4. Failure to submit a required job notification after a suspension results in revocation for two years at which time contractor must reapply for certification.
- Note: Discovery by SSPC of more than one omission at one time counts as one infraction, for the purposes of this rule.
- Automated Job Notification Form:
<http://www.sspc.org/forms/jobnotification/index.ncl>
- B. All fees and expenses due SSPC as a result of a disciplinary action must be paid by the contracting firm within 30 days of notification. SSPC reserves the right to suspend a firm's certification for non-payment of fees and expenses.
- C. In the event the certified contractor's business is, in whole or in part, sold, leased, transferred or taken over by sale, transfer, lease, assignment, receivership or bankruptcy proceeding, any disciplinary actions (warning, probation, suspension or revocation) issued will be transferred to the new business. The intent is to prevent a contracting company from changing its name, reorganizing or otherwise changing to avoid consequences of disciplinary actions assessed.
- D. For initial certification applicants, reported and verified critical faults will be used to determine denial of application for certification, or conditions upon which a contractor can become certified if all other requirements are met.
- E. Certified contractors and applicants are required to submit to SSPC copies of all citations issued to their firm by regulatory agencies for non-compliance with regulations during any stage of a project relating to coating operations. Coating operations include but are not limited to: mobilization and demobilization and clearance operations; rigging, tearing down or moving containment structures or scaffolding and fall protection or fall arrest systems; defect repair, pre-cleaning, surface preparation operations and coating application; and follow up documentation (e.g., settlement agreements; review commission, review panel or legal decisions). Failure to do so can result in assessment of disciplinary action for "misrepresentation of information required for certification."
- F. Criminal conviction of the owner, officers, directors or managing agents of a certified contractor for a felony in connection with operation of the firm or in connection with surface preparation and coating operations being performed under the name of another, as a corporation, a company, partnership or any other business entity, including a joint venture where the owner, officer, director, etc., exercises directly or indirectly any significant degree of ownership, management or control, renders the certified firm subject to disciplinary action under the DAC.
- G. Any representative of the management, including but not limited to an officer, director, superintendent, quality control supervisor, safety director, general manager, or stockholder, or any person who exercises directly or indirectly, including through family members, any degree of ownership, management or control of a contracting or affiliated firm disciplined by SSPC under the DAC, who forms or purchases a new company or who exercises any management or control of a new, existing, or purchased company, or who exercises any degree of ownership of a new, existing, or purchased company, renders the new, existing, or purchased company ineligible for certification while any suspension or revocation of the disciplined company the person was associated with, is in effect. The intent is to ensure that management, representatives or individuals associated with the disciplined firm cannot form or purchase a new company, or exercise any control over an existing company (such as through family members) to avoid disciplinary action.

X. Watch List Clause

A. Purpose of the “Watch List” Clause

The “Watch List” allows the SSPC contractor certification program administrator (PA) to flag actions of SSPC certified or introductory qualified contractors that could result in eventual disciplinary penalties if such actions are later affirmed as a violation of the DAC. The Watch List is intended to be a precursory step before the initial warning phase of the Disciplinary Action process. The DAC is a more formal procedure. The Watch List is also intended to notify the executive management of the contracting firm of a reported allegation or incident so the contractor can take preventive action to get to the root cause of the event and avoid reoccurrence leading to disciplinary action.

If the contractor’s executive management fails to respond to the “Watch List” notification within thirty (30) calendar days of the date of the notification, the contractor’s certification will be suspended for a minimum of 6 months. Failure to comply with ongoing requests for information in a timely manner as a result of an investigation or watch list action shall also result in a suspension of a minimum of 6 months. Reinstatement of certification after such a suspension would be contingent upon receiving cooperation from the firm on the Watch List.

The names of the firms/companies placed on the Watch List is treated as confidential and is for SSPC staff use only. Being placed on the Watch List does not automatically result in any disciplinary action.

B. Criteria for Placement on the Watch List

The following is a list of reported actions that will trigger an SSPC investigation to determine whether a contractor reaches the threshold for a “Watch List” notification:

- Violation of worker safety and health or environmental regulations as alleged in a newspaper article or through other media outlets. Written complaint (not verbal) from a Facility Owner or authorized representative, who has specified QP Certification in its project specifications, documenting substandard work performance or contract violations
- Serious injury of an employee or other worker under the certified entities direction as a result of an alleged violation of worker safety and health regulations issued by OSHA or equivalent agency. Note: Fatalities are covered separately under section XI.
- An established pattern of “alleged” Repeat, Serious or Willful OSHA (or equivalent agency) worker safety and health violations as described in the DAC Section II, Critical Faults
- Arrest of a person in Management; including but not limited to the President, Vice President, CEO, COO, Safety Director, or Quality Control Supervisor, for alleged civil or criminal charges in connection with a work related incident or action
- Allegations of fraud involving an individual in Management or an owner of the entity.
- Allegations of violations of wage, hourly or other regulations regarding payment of lawful wages, benefits, payroll taxes, etc..
- Allegations of tax evasion or avoidance
- Reports of insolvency (e.g., failure to meet payroll or pay payroll taxes; failure to pay material and equipment suppliers)
- Illegal business practices.

Note: SSPC will only consider documented or otherwise substantiated reports as a trigger for a Watch List investigation.

C. Steps in the Process

1. SSPC receives a report that qualifies for an investigation.
2. SSPC confirms that the report is accurate and that the action or incident is connected to a currently certified SSPC Contractor or currently certified Shop or affiliated entity.

3. SSPC notifies the President/CEO of the Certified Contracting Company or Shop of the report via written correspondence. The letter will include specifics in regard to the source and content of the report. The letter will also ask the company executive to confirm the credibility of the report and add any factual details or extenuating circumstances not contained in the report. The letter will also ask the executive how the company is addressing concerns described in the report, assuming the report has been confirmed.
4. The President/CEO will have thirty (30) days from notification to respond in writing to the SSPC Program Administrator. If the contractor acknowledges that the action cited in the report is accurate, the contractor must tell SSPC what corrective actions they are taking to remedy the problem. The corrective action plan must be accepted by SSPC as a factual and appropriate response to the action/problem.
5. If the written response from the contractor confirms the report and describes appropriate corrective actions to be taken, SSPC will notify the contractor in writing that the response has been received and accepted and that the company will be on the "Watch List," for one (1) year.*
6. SSPC will place a contractor on the Watch List if and only if credible information is received and confirmed that the contractor may not be meeting SSPC contractor certification standards. No disciplinary action is taken unless allegations are affirmed.

After placing contractors on the Watch List, SSPC reserves the right to:

- 1). Further investigate to determine if other similar incidents have been reported and a pattern exists.
- 2). Conduct a special unannounced audit at the contractor's expense, in addition to any regularly scheduled audit, if the confirmed report is related to an operational matter.

D. Removal from the Watch List

Companies will be removed from the Watch List after one (1) year if:

1. no further reports are received concerning the contractor.*
2. the contractor is issued formal disciplinary action as a result of affirmation of a DAC critical fault.
3. the contractor is cleared of alleged violations (e.g., violations are downgraded; formal charges are dropped; the contractor or key management/owners are found not guilty of charges or violations upon completion of any formal due process or other disciplinary arbitration or alternate dispute resolution, etc.).

* *Special Note:* Placement on the Watch List can exceed one year in cases where allegations of wrongdoing are pending legal action or other form of recognized due process such as arbitration or alternate dispute resolution.

XI. Fatalities

A. Notification Requirements:

Certified contractors are required to notify the SSPC Certification Manager or Program Administrator in writing, within five (5) calendar days of occurrence, of each and every instance of a fatal incident in connection with one of its painting projects. The notification must include, at a minimum: date of notification and method used to send to SSPC; name of deceased person(s); circumstances of the incident; date and location of the incident; and contact information of the facility owner of the work site. It is the contractor's obligation to confirm with the Certification Manager or Program Administrator and document that SSPC received the notification.

B. Exemptions:

Contractors can request exemption from discipline by submitting documentation supporting its contention that the incident was caused by:

- 1) Acts of Terrorism
- 2) Criminal acts by an employee or outsider
- 3) Acts of God
- 4) Third parties not under the contractor's control
- 5) An off-site vehicular accident
- 6) Unforeseen circumstances, such as a pre-existing health condition not induced by the workplace (painting project), as confirmed by an official investigation by OSHA or a law enforcement agency or Coroner
- 7) A plant operation or other operation that could not be directly controlled by the contractor
- 8) Other circumstances deemed acceptable by SSPC after its review of the circumstances of the fatality.

An independent board of three PCCP certified contractors will be consulted to determine if the fatality was not caused by simple negligence, or gross negligence, a deviation from an equipment manufacturer's operating procedures, or a violation of a Federal, State, or local safety regulation.

C. Procedures after filing notification:

Upon receiving notification from a QP certified contractor of its first reportable, non-exempt incident resulting in one or more fatalities in connection with a painting project, SSPC will place the certified contractor on the SSPC DAC Watch List for a minimum period of one (1) year.

Reportable incidents include fatal accidents involving an employee or worker under the contractor's supervision; or the death of a bystander, such as a member of the public; a person with another trade; or someone at or near the jobsite representing any other type of organization.

1. Corrective Action Plan (CAP)

The contractor shall develop a Corrective Action Plan (CAP) in response to this first incident and submit it to SSPC for its review within sixty (60) calendar days of any death(s) resulting from an incident. The CAP shall fully describe the incident, including the events that led to the incident.

If the contractor contends that the cause of the fatality was NOT due to gross negligence or deliberate disregard (see below) the contractor is obligated to explain its reasons for such and provide supporting evidence.

The contractor must also explain in the CAP any contributing factors that were related to the fatality.

In addition to developing the CAP, the contractor must agree to obtain an independent review of its CAP by a certified safety professional (CSP) experienced in industrial painting operations and subsequently revise its Environmental, Health and Safety (EHS) policies, procedures, and work practices as recommended by the CSP in an effort to mitigate future incidents

The CAP must be approved in writing by the President or Chief Executive Officer or Principal owner and the contractor's Safety Manager/Officer.

Upon internal approval of the CAP, the contractor is to submit it to the SSPC Certification Manager, along with the accompanying documentation that verifies the independent safety professional's review. Any changes made to

company policies, procedures, and work practices must also be included and clearly identified.

All non-public information reported in the CAP or otherwise requested by SSPC will be treated as confidential within appropriate laws, rules, and regulations.

2. Subsequent Incidents

In the event that the contractor (or affiliated company) has a second reportable incident in connection with any of its painting projects in the 5-year period following the first reported incident, SSPC will suspend the contractor's certification for a period of twelve (12) months.

In the event the contractor (or affiliated company) has an additional (e.g. third, fourth, etc.) reportable incident in connection with any painting project in a 10-year period following the first reportable incident, SSPC will revoke the contractor's certification for a period of twenty-four (24) months.

Gross Negligence or Deliberate Disregard

After SSPC reviews all available evidence and determines that the owners or management at any level of the contracting firm acted with gross negligence or deliberate disregard for applicable safety regulations and equipment supplier safe operating procedures and such action subsequently contributed to, or caused, one or more fatalities, SSPC will revoke the contractor's QP certification for a minimum period of thirty-six (36) months. This action will be taken regardless of the other requirements of this special provision.

Important Notes:

- (1) Owners or managers or controlling shareholders of the contracting firm disciplined by SSPC under the "fatalities" special provision are prohibited from starting or financing or owning a different painting contracting firm for the purpose of obtaining QP certification until after the penalty period is completed. In the event the disciplined contractor or controlling shareholders start, finance, or own or control a different firm after the penalty period is completed, those reported fatal incidents will carry forward with the new or different contracting firm.
- (2) Contracting firms or affiliated companies applying for QP certification that have suffered or caused a reportable incident in connection with any painting project prior to applying for QP certification are ineligible for QP certification until the equivalent penalty period has elapsed.
- (3) Multiple fatalities occurring as a result of one incident are considered "one" fatality for the purposes of this special provision

Failure to Notify:

- Failure to notify the SSPC Certification Manager or QP Program Administrator of a fatality in writing within five (5) calendar days of occurrence results in a Warning
- Failure to notify the SSPC Certification Manager or QP Program Administrator in writing within 14 calendar days results in Probation
- Failure to notify the SSPC Certification Manager or QP Program Administrator in writing within 30 calendar days results in an automatic one (1) Year Suspension

The actions stated above under "Failure to Notify" are taken independently of any assessed disciplinary actions taken in accordance with the DAC Critical Faults detailed herein.

Appeal:

Any contractor to whom the fatalities provision applies has the right to appeal the issuance of any disciplinary action. The contractor must provide documented proof by an independent authority (e.g. coroner; OSHA; law enforcement agency) that the fatality was not the result of a work-related incident in connection with any painting project or is exempt as covered above.

If the contractor's appeal is successful, the contractor will not be penalized under this provision of the DAC.

SSPC CERTIFIED CONTRACTOR PERFORMANCE EVALUATION FORM

Please evaluate the contractor for your project only:

Project No. _____ Dates on Site _____ through _____

Name of Contractor _____

Contractor Representative on Job _____

I. Safety

- | | | |
|--|--------------------------------------|---------------------------------|
| • Contractor meets safety requirements of OSHA or other public agencies and has good safety practices without constant owner reminder. | Yes <input type="checkbox"/> | Unsure <input type="checkbox"/> |
| | Usually <input type="checkbox"/> | Describe: _____ |
| | Usually Not <input type="checkbox"/> | _____ |
| | No <input type="checkbox"/> | _____ |
| • Contractor has had a single change in EMR exceeding 1.25 or has 3-year average EMR >1.10 (EMR issued by their insurance company). | Yes <input type="checkbox"/> | Unsure <input type="checkbox"/> |
| | Usually <input type="checkbox"/> | Describe: _____ |
| | Usually Not <input type="checkbox"/> | _____ |
| | No <input type="checkbox"/> | _____ |
| • Reports have been issued by public agencies on safety violations of the contractor. If yes, explain. | Yes <input type="checkbox"/> | Unsure <input type="checkbox"/> |
| | Usually <input type="checkbox"/> | Describe: _____ |
| | Usually Not <input type="checkbox"/> | _____ |
| | No <input type="checkbox"/> | _____ |
| • Contractor has received a citation for a serious or willful violation from OSHA or from an equivalent authority outside the US as a result of a work incident. If yes, explain | Yes <input type="checkbox"/> | Unsure <input type="checkbox"/> |
| | Usually <input type="checkbox"/> | Describe: _____ |
| | Usually Not <input type="checkbox"/> | _____ |
| | No <input type="checkbox"/> | _____ |
| • Contractor has to be informed by the owner of potential safety hazards/ violations | Yes <input type="checkbox"/> | Unsure <input type="checkbox"/> |
| | Usually <input type="checkbox"/> | Describe: _____ |
| | Usually Not <input type="checkbox"/> | _____ |
| | No <input type="checkbox"/> | _____ |

II. Environmental Compliance

- | | | |
|--|--------------------------------------|---------------------------------|
| • Contractor meets environmental compliance requirements, follows lead, health and safety plan, and containment plan. | Yes <input type="checkbox"/> | Unsure <input type="checkbox"/> |
| | Usually <input type="checkbox"/> | Describe: _____ |
| | Usually Not <input type="checkbox"/> | _____ |
| | No <input type="checkbox"/> | _____ |
| • Contractor has received a citation from EPA or other environmental agency If yes, explain. | Yes <input type="checkbox"/> | Unsure <input type="checkbox"/> |
| | Usually <input type="checkbox"/> | Describe: _____ |
| | Usually Not <input type="checkbox"/> | _____ |
| | No <input type="checkbox"/> | _____ |
| • Contractor has received a citation for a serious environmental violation, such as illegal disposal of hazardous materials. If yes, explain | Yes <input type="checkbox"/> | Unsure <input type="checkbox"/> |
| | Usually <input type="checkbox"/> | Describe: _____ |
| | Usually Not <input type="checkbox"/> | _____ |
| | No <input type="checkbox"/> | _____ |
| • Contractor is frequently advised by the owner of potential violations and requests for adjustments in field operations in order to comply with requirements/regulations. | Yes <input type="checkbox"/> | Unsure <input type="checkbox"/> |
| | Usually <input type="checkbox"/> | Describe: _____ |
| | Usually Not <input type="checkbox"/> | _____ |
| | No <input type="checkbox"/> | _____ |

III. Quality of Work/Service

<ul style="list-style-type: none"> Contractor meets quality/service requirements by complying with specs and good painting practices without constant reminder by the owner. 	Yes <input type="checkbox"/> Usually <input type="checkbox"/> Usually Not <input type="checkbox"/> No <input type="checkbox"/>	Unsure <input type="checkbox"/> Describe: _____ _____ _____
<ul style="list-style-type: none"> Contractor has deliberately violated specification requirements. 	Yes <input type="checkbox"/> Usually <input type="checkbox"/> Usually Not <input type="checkbox"/> No <input type="checkbox"/>	Unsure <input type="checkbox"/> Describe: _____ _____ _____
<ul style="list-style-type: none"> Contractor's work is of poor quality. 	Yes <input type="checkbox"/> Usually <input type="checkbox"/> Usually Not <input type="checkbox"/> No <input type="checkbox"/>	Unsure <input type="checkbox"/> Describe: _____ _____ _____
<ul style="list-style-type: none"> Contractor demonstrates ability to manage work force and communicates with owner when necessary. 	Yes <input type="checkbox"/> Usually <input type="checkbox"/> Usually Not <input type="checkbox"/> No <input type="checkbox"/>	Unsure <input type="checkbox"/> Describe: _____ _____ _____
<ul style="list-style-type: none"> Contractor meets overall project work schedule and has necessary manpower and equipment to perform the work. 	Yes <input type="checkbox"/> Usually <input type="checkbox"/> Usually <input type="checkbox"/> No <input type="checkbox"/>	Unsure <input type="checkbox"/> Describe: _____ _____ _____
<ul style="list-style-type: none"> Reports have been issued of quality/service violations by the contractor. 	Yes <input type="checkbox"/> Usually <input type="checkbox"/> Usually Not <input type="checkbox"/> No <input type="checkbox"/>	Unsure <input type="checkbox"/> Describe: _____ _____ _____
<ul style="list-style-type: none"> Contractor's work requires close inspection to insure acceptable performance. 	Yes <input type="checkbox"/> Usually <input type="checkbox"/> Usually Not <input type="checkbox"/> No <input type="checkbox"/>	Unsure <input type="checkbox"/> Describe: _____ _____ _____
<ul style="list-style-type: none"> Contractor has satisfactory quality assurance records. 	Yes <input type="checkbox"/> Usually <input type="checkbox"/> Usually Not <input type="checkbox"/> No <input type="checkbox"/>	Unsure <input type="checkbox"/> Describe: _____ _____ _____

IV. Ethical Practice

<ul style="list-style-type: none"> Contractor meets ethical practice requirements. 	Yes <input type="checkbox"/> Usually <input type="checkbox"/> Usually Not <input type="checkbox"/> No <input type="checkbox"/>	Unsure <input type="checkbox"/> Describe: _____ _____ _____
<ul style="list-style-type: none"> Contractor has committed fraud. 	Yes <input type="checkbox"/> Usually <input type="checkbox"/> Usually Not <input type="checkbox"/> No <input type="checkbox"/>	Unsure <input type="checkbox"/> Describe: _____ _____ _____

Dear Facility Owner/Specifier/General Contractor:

SSPC wishes to congratulate you on selecting an SSPC Certified Contractor for your coatings project. The certification program has been designed to provide the owner/specifier or general contractor with confidence that the contractor selected meets SSPC's standards for quality, service, safety, and ethical practice.

In order to maintain the program's high standards, we have established a system to constantly evaluate the performance of SSPC Certified Contractors. As part of this effort, we have attached an evaluation form in which we ask you to assess the contractor's performance related to what we consider potential "critical performance criteria." We ask that you be fair and objective when answering each question. SSPC will take the utmost care to treat your response as confidential and will follow up where necessary.

Thank you for your cooperation and interest in the Painting Contractor Certification Program. We welcome any comments you have on our program.