

**Board of Examiners of Water Well Construction and Pump Installation  
Contractors**

**RULES AND REGULATIONS FOR ADMINISTRATION OF LICENSING, FINANCIAL  
RESPONSIBILITY, CONTINUING EDUCATION, AND REMEDIAL ACTION FOR WELL  
CONSTRUCTION AND PUMP INSTALLATION CONTRACTORS**

2 CCR 402-14

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**HISTORY**

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**ANNOTATIONS**

Rule 5.3, adopted or amended on or after November 1, 2003 and before November 1, 2004,  
was not extended by Senate Bill 05-183 and therefore expired May 15, 2005

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**ADMINISTRATION RULES**  
**TABLE OF CONTENTS**

RULE 1	TITLE.....	2
RULE 2	AUTHORITY .....	2
RULE 3	SCOPE AND PURPOSE OF THE RULES .....	2
RULE 4	DEFINITIONS .....	3
RULE 5	GENERAL RULES .....	7
RULE 6	LICENSING AND LICENSE RENEWAL.....	9
RULE 7	FINANCIAL RESPONSIBILITY .....	14
RULE 8	CONTINUING EDUCATION.....	16
RULE 9	REMEDIAL AND DISCIPLINARY ACTION.....	18
RULE 10	PETITIONS FOR DECLARATORY ORDERS.....	20
RULE 11	SEVERABILITY .....	22
RULE 12	REVISIONS .....	22
RULE 13	EFFECTIVE DATE.....	23
RULE 14	STATEMENT OF BASIS AND PURPOSE .....	23

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Division of Water Resources

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**RULE 1 TITLE**

- 1.1 The title of these rules and regulations is "Rules and Regulations For Administration Of Licensing, Financial Responsibility, Continuing Education And Remedial Action For Well Construction And Pump Installation Contractors". The short title for these rules and regulations is "BOE Administration Rules," and they may be referred to herein collectively as the "Rules" or individually as a "Rule."

**RULE 2 AUTHORITY**

- 2.1 These Rules are promulgated pursuant to the authority granted to the State Board of Examiners of Water Well Construction and Pump Installation Contractors ("Board" or "Board of Examiners") in section 37-91-104(1)(c), C.R.S. (2017), that authorizes the Board to adopt and revise rules, not inconsistent with law, as may be necessary to effectuate the provisions of Article 91 of Title 37, C.R.S. (2017).
- 2.2 These Rules also provide for alternatives to surety bonds needed to obtain a license pursuant to sections 11-35-101(2) and 101.5(2), C.R.S. (2017).

**RULE 3 SCOPE AND PURPOSE OF THE RULES**

- 3.1 These Rules apply to licensing and license renewal, bonds and other forms of financial responsibility, continuing education requirements, and remedial and disciplinary actions of the Board.
- 3.2 These Rules further define the requirements for obtaining and keeping a license or a special license to be a well construction contractor and/or pump installation contractor. These Rules also address evidence of financial responsibility by contractors as required by section 37-91-107, C.R.S. (2017), the resolution of claims against such evidence of financial responsibility, and the conditions for the release of funds from such evidence of financial responsibility when a contractor uses an alternative to a compliance bond.
- 3.3 The purpose of these Rules is:
- 3.3.1 To enable the Board to implement the provisions of Article 91 of Title 37;

- 3.3.2 To set standards and procedures for the licensing of well construction and pump installation contractors, for the issuance of special licenses, and for the filing and maintaining evidence of financial responsibility by such licensed contractors;
- 3.3.3 To establish a process for the renewal of licenses for water well construction and/or pump installation, and for the renewal of special licenses;
- 3.3.4 To set standards for continuing education and to provide a process for acquiring, completing, and reporting continuing education requirements; and
- 3.3.5 To establish a procedure for implementing the Board's authority to require nondestructive investigations, to require remedial action to correct well construction, pump installation, and/or cistern installation deficiencies, and to impose and collect fines for violations of Article 91 of Title 37, these Rules, and/or the Water Well Construction Rules, 2 CCR 402-2 (2016).

#### **RULE 4      DEFINITIONS**

- 4.1 Statutory Definitions - Certain terms used in these Rules have the identical meaning as provided in section 37-91-102, C.R.S. (2017), as quoted and cited in Rule 4.2.
- 4.2 Specific Definitions - Unless expressly stated otherwise, the following terms when used in these Rules have the meaning indicated in this Rule. Words in the singular include the plural. Words used in the masculine gender include the feminine and neuter.
  - 4.2.1 "Abandonment" means, for the purpose of these Rules, the physical activity of properly plugging and sealing a well. The term, as used in these Rules, does not infer the abandonment of any vested or decreed right to use water.
  - 4.2.2 "Accredited program" (or accredited course) means a program, course, seminar, conference, or other regimen of instruction approved by the Board for the purpose of providing continuing education training.
  - 4.2.3 "Board" means the state board of examiners of water well construction and pump installation contractors created by section 37-91-103. § 37-91-102(3), C.R.S. (2017).
  - 4.2.4 "Board Staff" or "Staff" means employees of the Division of Water Resources who assist the Board of Examiners in implementing its statutory authority.
  - 4.2.5 "Certificate of Completion" means a form, prescribed by the Board, which a licensee must submit to the Board annually to indicate his/her completed hours of continuing education training.

- 4.2.6 "Construction of wells" means any act undertaken at the well site for the establishment or modification of a well, including, without limitation, the location of the well and the excavation or fracturing thereof but not including surveying or other acts preparatory thereto, site preparation and modification or site modification, or the installation of pumping equipment. § 37-91-102(4), C.R.S. (2017).
- 4.2.7 "Continuing Education (CE) Committee" means a group formed for the purpose of evaluation of continuing education courses and appropriate hours accredited for each course and professional activity. The CE Committee will consist of a designee from the Colorado Water Well Contractors Association, a member of the Board, and a member of Board Staff. The CE Committee must make decisions by consensus.
- 4.2.8 "Contracting" means undertaking, or offering, bartering, or bargaining to construct a well, install pumping equipment, or install a cistern connected to a water well supply system by any person, firm, corporation, partnership, association or other organization, for another.
- 4.2.9 "Directly employed" means engaged in employment where the employer is responsible for and directly controls the performance of the employee, and, where applicable, the employee is covered by workers' compensation and unemployment compensation. "Directly employed" does not refer to independent contractors or subcontractors. § 37-91-102(4.7), C.R.S. (2017).
- 4.2.10 "Eight (8) hours" means the annual cumulative period of approved continuing education instruction required for license renewal.
- 4.2.10.1 For purposes of these Rules, one (1) hour of continuing education will be awarded for attendance during each period of instruction at an accredited continuing education training program, class, course, seminar, or conference consisting of at least fifty (50) minutes of instruction during each clock hour (60 minutes). However, the Board, at its discretion, may accredit certain continuing education training for less or more credit if it deems the material offered or discussed warrants awarding less or more hours (e.g., a one-day seminar might be accredited only 4 or 6 hours and preparing to instruct a one-hour course may result in more than one credit hour).
- 4.2.11 "Installation of pumping equipment" means the selection, placement, and preparation for operation of pumping equipment, including all construction involved in entering the well and establishing well seals and safeguards to protect groundwater from contamination. § 37-91-102(8), C.R.S. (2017).

- 4.2.12 "License" means the document issued by the board to qualified persons making application therefor, pursuant to section 37-91-105, authorizing such persons to engage in one or more methods of well construction or pump installation or any combination of such methods. § 37-91-102(10), C.R.S. (2017).
- 4.2.13 "Maintenance" (or well maintenance) as used in these Rules, means an action performed by the owner of a well to preserve the safeguards built into and installed on the well to prevent contamination from entering the well, to protect the groundwater from pollution, and to protect the public health. Maintenance includes, but is not limited to, preserving the well cap and seal and ensuring that it is securely fastened to the well casing, preventing physical damage to the well that could compromise the integrity of the well casing and/or grout seal, and ensuring that the pitless adapter remains watertight and that backflow devices remain in proper working order.
- 4.2.14 "Nondestructive investigation" means a process of well examination and inspection that does not disturb or diminish the integrity of the construction of the well. Nondestructive investigation methods include, but are not limited to, geophysical logging, down-hole video, pump testing, water sampling, and other down-hole measurements.
- 4.2.15 "Person" means an individual, a partnership, a corporation, a municipality, the state, the United States, or any other legal entity, public or private. § 37-91-102(11.5), C.R.S. (2017).
- 4.2.16 "Private driller" means any individual, corporation, partnership, association, political subdivision, or public agency that uses equipment owned by it to dig, drill, redrill, case, recase, deepen, or excavate a well entirely for its own use upon property owned by it. § 37-91-102(12), C.R.S. (2017).
- 4.2.17 "Private pump installer" means any individual, corporation, partnership, association, political subdivision, or public agency that uses equipment owned by it to install pumping equipment on a well entirely for its own use on property owned by it. § 37-91-102(12.5), C.R.S. (2017).
- 4.2.18 "Pumping equipment" means any pump or related equipment used or intended for use in withdrawing or obtaining groundwater, including, but not limited to, well seals, pitless adapters, and other safeguards to protect the groundwater from contamination and any waterlines up to and including the pressure tank and any coupling appurtenant thereto. § 37-91-102(13), C.R.S. (2017).

- 4.2.18.1 "Pumping equipment" also includes cisterns or other water storage tanks connected to a water well supply system between the wellhead and the pressure tank or downstream of the wellhead if no pressure tank is utilized.
- 4.2.19 "Pump installation contractor" means any person licensed to install, remove, modify, or repair pumping equipment for compensation. § 37-91-102(14).
- 4.2.20 "Repair" means any change, replacement, or other alteration of any well or pumping equipment which requires a breaking or opening of the well seal or any waterlines up to and including the pressure tank and any coupling appurtenant thereto. § 37-91-102(15), C.R.S. (2017).
- 4.2.21 "Special license" means a license granted by the Board to an individual who demonstrates knowledge, experience, and competence in the performance of a specific task related to well construction or pump installation (e.g., installation of pitless adapters and water lines, vault installation, cistern installation, formation fracturing, monitoring well construction, and other specialized tasks).
- 4.2.22 "Supervision" means personal and continuous on-the-site direction by a licensed well construction contractor or licensed pump installation contractor, unless the licensed contractor has applied for and received from the board an exemption from continuous on-the-site direction for a specific task. § 37-91-102(15.5), C.R.S. (2017).
- 4.2.23 "Well" as used in these Rules means any test hole or other excavation that is drilled, cored, bored, washed, fractured, driven, dug, jetted, or otherwise constructed for the purpose of location, monitoring, dewatering, observation, diversion, artificial recharge, or acquisition of groundwater for beneficial use or for conducting pumping equipment or aquifer tests. § 37-91-102(16)(a), C.R.S. (2017).
- 4.2.23.1 "Well" does not include an excavation made for the purpose of obtaining or prospecting for minerals or those wells subject to the jurisdiction of the oil and gas conservation commission, as provided in article 60 of title 34, C.R.S., or those wells subject to the jurisdiction of the office of mined land reclamation, as provided in article 33 of title 34, C.R.S. § 37-91-102(16)(b)(l), C.R.S. (2017).

- 4.2.23.2 "Well" does not include a naturally flowing spring or springs where the natural spring discharge is captured or concentrated by installation of a near-surface structure or device less than ten feet in depth located at or within fifty feet of the spring or springs' natural discharge point and the water is conveyed directly by gravity flow or into a separate sump or storage, if the owner obtains a water right for such structure or device as a spring pursuant to article 92 of title 37. § 37-91-102(16)(b)(II), C.R.S. (2017).
- 4.2.24 "Well construction contractor" means any person licensed pursuant to article 91 of title 37, C.R.S., and responsible for the construction, test-pumping, or development of wells, either by contract or for hire or for any consideration whatsoever. § 37-91-102(17), C.R.S. (2017).
- 4.2.25 "Well owner" means any person, or his/her agent, who holds the title or other property rights in or to a well.
- 4.3 Other Definitions - All other words used herein are given their usual, customary, and accepted meaning. Terms not defined in this Rule that are defined in the statutes, the Water Well Construction Rules (2 CCR 402-2), or in rules of the State Engineer must use the meaning given therein. All words of a technical nature specific to the water well industry are given the meaning generally accepted in said industry.

## **RULE 5 GENERAL RULES**

### **5.1 License Number -**

- 5.1.1 Any well drilling rig, monitoring and observation hole rig, pump installation rig, or formation fracturing rig owned, leased or operated by any well construction contractor, pump installation contractor, or person having a special license must be registered with the Board. The rig must have prominently displayed thereon the contractor's license number in letters at least two inches in height and other comparable dimension; for example: "Lic. 1234". Each rig must contain a copy of the current Water Well Construction Rules (2 CCR 402-2).
- 5.1.2 The Board may re-issue or transfer a retired license number at its discretion. Re-issuance or transfer of a retired license number can occur under the following circumstances:
- a. The license number must have been retired for at least one (1) year from the date that the license lapsed;



- b. The person seeking the number must be a direct relative of the person who last held the license, or must be or have been a key individual within the company or corporation operated by the person who last held the license; and either,
  - c. The person requesting the number must provide an affidavit, signed by the person who previously held the license, that affirms:
    - 1. the former contractor has relinquished his/her license and does not intend to seek renewal or re-issuance of his/her license under the subject number,
    - 2. that the former contractor has no objection to the re-issuance of the number, and
    - 3. that the former contractor has, to the best of his/her knowledge, submitted to the Division of Water Resources all work reports required for work performed under his/her license.
- or,
- d. In the case of a former contractor who is deceased, the person requesting the license number must submit a signed affidavit:
    - 1. affirming that the former contractor is deceased,
    - 2. explaining his/her relationship with the former contractor,and
    - 3. stating to the best of his/her knowledge, all work reports for work performed under the former contractor's license have been submitted to the Division of Water Resources.

5.2 Advertisement - All advertisements for services offered by licensed contractors, including internet pages, social media, vehicles, mobile equipment, billboards, business cards, advertising in newspapers, telephone directories, and trade journals, must state the contractor's license number. Standard listings consisting of the company name, address, and phone number such as in phone books, chamber of commerce business listings, data aggregator websites, and similar community publications are not considered advertisements, unless the listing mentions services not licensed to be performed by the company placing such advertisement. Any advertisement for services for which the company or individual is not licensed is a violation of section 37-91-111, C.R.S. (2017).

- 5.3 License Application and Renewal Fee - When applying for a new license, the applicant must pay the application fee required in section 37-91-107, at the time the application is requested. Thereafter, the fee to renew a license must be remitted with the renewal application and the associated documents required to maintain the license.

## **RULE 6 LICENSING AND LICENSE RENEWAL**

- 6.1 License Required - Every individual, before engaging in the business of contracting for and performing either the construction and/or the repair of wells, the installation and/or repair of pumping equipment, or the installation and/or repair of cisterns connected to water well supply systems, must obtain a license for one or more methods of well construction or pump installation from the Board. Individuals who use special equipment or perform limited procedures in well construction, pump installation, or cistern installation must obtain a special license from the Board prior to engaging in such specialized services.
- 6.1.1 The licensee must submit to the Board, at the time of licensing and license renewal, an email address to be used as the primary contact email address for the licensee.
- 6.1.2 The licensee must inform the Board within thirty (30) days of any change in business mailing address, email address, telephone number, or business name.
- 6.1.3 The licensee must submit to the Board at the time of licensing and license renewal, on a form prescribed by the Board, a list of employees directly employed by the licensee who perform well construction, pump installation, and/or cistern installation under the license. The list must include a description of the areas of proficiency in well construction work or pump installation work for each listed employee.
- 6.1.3.1 Between license renewals, the licensee must maintain and update the information described in Rule 6.1.3, including providing changes in personnel.
- 6.1.3.2 At the time of license renewal, the licensee must catalog and provide to the Board any continuing education or training each employee listed under Rule 6.1.3 received throughout the duration of the license period.
- 6.1.4 A license issued by the Board authorizes a person to contract for well construction or pump installation services as specified on the license. A license does not authorize any advertisement for, contracting for, or performing other services for which the contractor is not licensed.

- 6.1.5 The Board will not recognize as lawful any operating agreements, business agreements, or any other contractual agreements between a licensed contractor and any individuals not licensed by the Board, where such an agreement purports to authorize the unlicensed individual to construct water wells or install pumping equipment under the license of the licensed individual. An unlicensed individual may construct water wells and install pumping equipment only if that individual is a private driller, is directly employed by a licensed contractor, or is supervised continuously on-the-site by a licensed contractor, as those terms are defined in section 37-91-102, C.R.S. Supervision means personal and continuous on-the-site direction by a licensed well construction contractor or licensed pump installation contractor, unless the licensed contractor has applied for and received from the board an exemption from continuous on-the-site direction for a specific task. § 37-91-102(15.5)
- 6.2 Water Well Construction Licenses - The Board designates the following types of licenses for methods of water well construction:
- a. air rotary construction
  - b. mud rotary construction
  - c. reverse rotary construction
  - d. cable tool construction
- 6.2.1 A contractor licensed in one or more designated methods of water well construction will also be authorized, without examination, to construct, or have constructed by a person directly employed by him/her, or to supervise the construction of gallery wells and infiltration galleries. The contractor is required to comply with all applicable standards for such construction stated on the well permit, must have the construction plan approved per Board construction variance, must adhere to applicable rules and regulations, and is responsible for filing all work reports for such work performed under his/her license.
- 6.3 Pump Installation Licenses - The Board designates the following types of licenses for the installation of pumping equipment in water wells:
- a. pumps producing less than or equal to 100 gallons per minute; and
  - b. pumps producing more than 100 gallons per minute and line shaft turbine pumps (vertical turbine pumps).

- 6.3.1 A contractor licensed for the installation of pumping equipment in water wells will also be authorized, without examination, to install, or have installed by a person directly employed by him/her, or to supervise the installation of cisterns connected to water well supply systems. The contractor is required to comply with all applicable standards for such installation, must adhere to applicable rules, and is responsible for filing all work reports for such work performed under his/her license.
- 6.4 License Application - An applicant for a well construction or pump installation contractor's license must specify to the Board the methods of well construction or pump installation for which the applicant is seeking a license. Once licensed in one of the above methods of water well construction, an applicant is eligible without further experience to take an examination for another listed method of well construction. Once licensed in one of the above categories of pump installation, an applicant is eligible without further experience to take an examination for another listed category of pump installation.
- 6.4.1 An applicant must demonstrate, to the satisfaction of the Board, two (2) years' active experience in the type of well construction work or pump installation work for which the applicant is applying to be licensed. The two (2) years' active experience means at least twenty-four (24) months of on-site, hands-on activities that directly result in the construction of a well or installation of pumping equipment. Work experience should result in the ability to solve well construction or pump installation problems, and to demonstrate knowledge of and ability to operate well construction or pump installation equipment. Applicable military experience in well construction or pump installation work may apply toward the required experience.
- 6.4.2 The applicant will be required to provide evidence of such experience and employment verification and may be required to provide information on the number of wells constructed or pumps installed, a detailed description of the work performed related to well construction or pump installation, and any problems encountered and solutions developed during well construction or pump installation. The Board may consider the listing of the applicant as an employee of a licensee under Rule 6.1.3 as evidence of the required experience.

- 6.4.3 Pursuant to section 37-91-105(2)(d)(III), C.R.S. (2017), the Board may accept education in an accredited program for a portion of the required experience. The Board may also accept related subject matter education and training for a portion of the required experience. Such training or education must be completed satisfactorily with a grade point average of 2.0 of a possible 4.0, or above, from a Board-approved educational program, curriculum, school, or institution. The amount of credit for education may not exceed one (1) year of experience. Generally, the satisfactory completion of four (4) full semesters or an equivalent thereof, will count as one (1) year of experience.
- 6.4.4 An applicant who has not received a license within two (2) years of initial submittal of the application must reapply.
- 6.5 Special License - The Board may issue a special license for well construction or pump installation methods other than those listed in Rules 6.2 and 6.3 or to perform specialized work on wells. Such license will specify the limited work allowed to be performed (e.g., monitoring well or hole construction, infiltration gallery or gallery-type well construction, installation of cylinder pumps, formation fracturing, cistern installation, etc.).
- 6.5.1 The applicant must make written application specifying the type of special license requested and identifying the type of equipment and installation methods to be used. Based thereon, the Board will administer an examination it deems necessary for the issuance of such license.
- 6.5.2 A special license holder will be limited to the methods of well construction, pump installation, cistern installation, or use of special equipment and procedures as stated on the license.
- 6.5.3 A special licensee will not be entitled to take an examination for another method of well construction or type of pump installation without meeting the statutory requirements for such license and having experience in such method as required by the statutes and Rules for initial licensing.
- 6.5.4 A special license holder must comply with all statutory requirements and applicable provisions of the Water Well Construction Rules (2 CCR 402-2) and these Rules.

- 6.6 Examination - An applicant for a license must demonstrate professional competence by passing the written and oral examinations prescribed by the Board. The written examination(s) will test an applicant's technical knowledge of drilling and/or pump installation methods and knowledge of applicable state laws concerning the construction of wells or the installation of pumping equipment, or both, and rules promulgated in connection therewith.
- 6.6.1 Test results from examinations conducted by or recognized by the Board are valid for a period of two (2) years from the date of examination.
- 6.7 Private Driller and Private Pump Installer - The statutes provide an exemption from licensing provisions for a "private driller" (section 37-91-102(12)) and "private pump installer" (section 37-91-102(12.5)).
- 6.7.1 Work conducted by a private driller and/or private pump installer must comply with all applicable statutory provisions of Article 91 of Title 37, the requirements of the Water Well Construction Rules (2 CCR 402-2), and all other applicable federal, state, and local regulations.
- 6.8 License renewal - Licensed contractors must renew their license annually or may elect to renew at two or three-year intervals. The license renewal fee for a license issued for a two-year period will be twice the annual fee amount. The license renewal fee for a license issued for a three-year period will be three times the annual fee amount. All renewal fees must be paid at the time of license renewal for the duration of the license.
- 6.8.1 For license renewal, the period of financial responsibility, as described in Rule 7, must be maintained for the duration of renewal of the license.
- 6.8.2 Regardless of the renewal period of a license, a Certificate of Completion (see Rule 4.2.5) for continuing education must be filed with the Board by January 15 of each year. If a contractor fails to fulfill the continuing education training requirement and to submit a Certificate of Completion by January 15 of each year, the license will lapse on February 1.

6.8.2.1 A license that is lapsed for failure to fulfill the continuing education training requirement and to file a Certificate of Completion by January 15 will remain lapsed until:

(1) the licensee has fulfilled the continuing education requirement, submitted the Certificate of Completion and has paid a reinstatement fee; and

(2) the Board determines that the contractor has fulfilled his/her continuing education training requirement, submitted the Certificate of Completion and paid a reinstatement fee, and the Board has notified the contractor in writing that the license is reinstated. Continuing education completed for the reinstatement of a lapsed license cannot be applied toward the continuing education requirement for the next license renewal period

## **RULE 7 FINANCIAL RESPONSIBILITY**

7.1 Evidence of Financial Responsibility Required - Prior to the initial issuance or renewal of any license, the applicant or licensee must file with the Board, on a form provided by the Board, evidence of financial responsibility by means of a corporate surety bond or alternative funds as provided for by section 37-91-107. The license automatically lapses if the bond is cancelled or terminated, or if the alternative funds are less than the required amount.

7.2 Corporate Surety Bonds - The bond must specifically cover the licensee's compliance with applicable laws and regulations governing the activities for which the individual is licensed. The bond and any subsequent renewal certificate must specifically identify the individual covered by that bond and also state the type of license or licenses held by the individual.

7.2.1 Each licensee must file and maintain with the Board evidence of financial responsibility, in the form of a savings account, deposit, or certificate of deposit, in the amount of twenty thousand dollars (\$20,000), meeting the requirements of section 11-35-101, C.R.S. (2017), or an irrevocable letter of credit for the amount of twenty thousand dollars (\$20,000), meeting the requirements of section 11-35-101.5, C.R.S. (2017), or must file and maintain with the Board an approved compliance bond with a corporate surety authorized to do business in the state of Colorado, in the amount of twenty thousand dollars (\$20,000), for the use and benefit of any person or the state of Colorado suffering loss or damage, conditioned that such licensee will comply with the laws of the state of Colorado in engaging in the business for which he or she receives a license and the rules of the Board promulgated in the regulation of such business.

- 7.2.3 A claim against a corporate surety bond must be made in writing to the issuer of the bond, and a copy of the claim must be submitted to the Board.
- 7.2.4 The licensee must notify the Board of any change in the amount or status of a bond. The licensee must notify the Board of any cancellation or change at least thirty (30) days prior to the effective date of such cancellation or change.
- 7.3 Alternative Funds - The requirement for financial responsibility may be satisfied by a savings account, deposit, or a certificate of deposit or an irrevocable letter of credit meeting the requirements of sections 11-35-101.5 and 37-91-107. Irrevocable letters of credit must be completed on a form available from the Board. The name and types of licenses held by the individual under the alternative funds must be provided to the Board when first submitted and thereafter with the application for license renewal. These funds must specifically cover the licensee's compliance with applicable laws and regulations governing the activities for which the individual is licensed.
- 7.3.1 Alternative funds must be assigned to the Board for the use of any person or the State of Colorado suffering loss or damage, consistent with proper findings of the Board.
- 7.3.2 The licensee is responsible for paying all costs incurred from the maintenance or administration of alternative funds. Any costs incurred by the Board from the payment of claims, negotiation or litigation of claims, and court action taken in connection with such funds must be paid by the licensee. These costs may be taken from the fund if sufficient funds remain after satisfying claims. Otherwise, the Board may take other action to collect these costs.
- 7.3.3 A claim against an alternative fund must be initiated by certified mail to the contractor and by filing a copy with the Board. The Board will not make payments from or release the alternative fund until it receives either a written and notarized agreement between the parties resolving the claim or a court order directing the Board to make a payment from the fund.
- 7.4 Period of Liability - The period of liability of a bond is two (2) years after the submission of the last accepted work report. The period of liability for alternative funds provided as evidence of financial responsibility is two (2) years after the expiration, surrender, revocation, or suspension of the license. In the event the alternative funds are replaced by a bond, the period of liability, during which time the alternative funds will be held by the Board, will be two (2) years from the date the new form of financial responsibility becomes effective.



- 7.4.1 When there is an outstanding claim, the bond or alternative funds must not be released until such claim is finally resolved. Notwithstanding the two-year liability period for alternative funds, when there is a claim initiated, but not resolved, prior to the end of the two-year period, the Board will hold the alternative funds until such claim is resolved.

## **RULE 8 CONTINUING EDUCATION**

- 8.1 Every contractor who is licensed by the Board to contract for the construction of water wells and/or for the installation of pumping equipment and cisterns, or who holds a special license from the Board must complete, annually:

- a. eight (8) hours of continuing education training at programs or courses accredited by the Board.
- b. the Board, in conjunction with the CE Committee, will determine through policy the number of hours of approved continuing education that can be obtained by internet or online participation.
- c. no more than three (3) out the eight (8) hours of approved continuing education can be obtained from safety, CPR, First Aid, or other safety-related training.
- d. Due to significant limitations on the ability of people to meet in person due to the COVID-19 pandemic, all hours of accredited continuing education taken by internet or online participation from January 1, 2020 through January 31, 2021, may be used to obtain the required hours of continuing education. This Rule 8.1d. is repealed effective February 1, 2021, unless further extended by emergency or permanent rule.

- 8.1.1 Each contractor must obtain all eight (8) hours of continuing education between January 1st and December 31st of each calendar year in order to maintain or renew a license. No carryover hours are allowed. A contractor can accumulate continuing education credits prior to licensure by attending accredited courses in the same calendar year the license is issued.

- 8.2 Program or Course Accreditation - The Board, in conjunction with the CE Committee, designates the following general criteria for evaluating a continuing education training program or course for accreditation:

- 8.2.1 A program or course will be directly associated with the water well industry or will provide information or training that serves to enhance a licensee's knowledge of and ability to perform well construction and/or pump installation that protects the public health and the groundwater resource.

- 8.2.2 A program or course may be peripheral to the actual activity of constructing a water well or installing pumping equipment, but must be related to the business of contracting for such services (e.g., a water law seminar or a course on hydrogeology, engineering, or contracts).
- 8.2.3 A program or course must be sponsored by or offered and administered by or on behalf of a professional organization, recognized institution, or qualified industry business or association.
- 8.2.4 Instruction or presentation must be conducted by individuals qualified in the program or course topic.
- 8.2.5 A program or course sponsor must demonstrate a means of documenting and maintaining records of attendance at the program or course.
- 8.2.6 The Board, in conjunction with the CE Committee, will evaluate the program or course content to determine if the program or course meets criteria for accreditation.
- 8.2.7 The Board, in conjunction with the CE Committee, will determine the number of hours eligible for continuing education training credit at the time of program or course accreditation.
- 8.2.8 Once a program or course has received accreditation, the sponsor must notify the Board or the CE Committee if there is any substantial modification of the program or course to ensure continued accreditation. Based on the information provided by the sponsor, the Board, in conjunction with the CE Committee, will modify the number of hours accordingly, if necessary.
- 8.2.9 The CE Committee will not consider post-attendance requests for continuing education course accreditation.
- 8.2.10 Continuing education credit will be awarded for preparing and presenting a continuing education course.
- 8.2.10.1 Each presenting contractor will be awarded one (1) hour of additional continuing education credit for the original preparation of the course.
- 8.2.10.2 Each contractor (Rule 8.2.4) presenting a continuing education course will qualify for the same number of continuing education credits the Board determines eligible for the program or course (Rule 8.2.7). If the course is a part of a conference, the credit hours will be determined by the length of the presentation.

- 8.2.10.3 The presenting contractor may only receive continuing education credit once per year even if the course is presented multiple times in a year.
- 8.3 Reporting - It is the responsibility of every licensee to submit annually a Certificate of Completion of continuing education training to the Board for license renewal or to maintain a license. The licensee is responsible for maintaining records of his/her attendance at accredited continuing education training and must provide the records to the Board upon request.
- 8.3.1 Certificates of Completion must be submitted on a form prescribed by the Board.
- 8.3.2 The Certificate of Completion form must be submitted to the Board no later than January 15 of each year to assure timely processing of license renewal or to maintain a license. The license(s) of a licensee who fails to submit a Certificate of Completion for license renewal or to maintain the license by January 15 of each year will lapse on February 1 (see Rule 6.8.2).

## **RULE 9 REMEDIAL AND DISCIPLINARY ACTION**

- 9.1 To carry out the provisions of Article 91 of Title 37 and its obligation to protect the health and welfare of the people of the State of Colorado and its water resources, the Board is vested with the statutory authority to impose fines, issue orders, and suspend, deny, or revoke licenses (see sections 37-91-104(1)(I) & 37-91-108 & 109(1), C.R.S. (2017)).
- 9.2 Remedial Action - The Board may order remedial action when the condition of a well renders the structure a potential hazard to the public health or the groundwater resources of the state. Such actions are intended to correct a well defect or deficiency, as required by sections 37-91-104 & 37-91-110, C.R.S. (2017). The Board may assess a penalty and require remedial actions, including, but not limited to, nondestructive investigation, abandonment, repair, drilling, re-drilling, casing, re-casing, deepening, and excavation of wells.
- 9.3 Nondestructive Investigation - In order to protect the public health and the groundwater resources of the state, the Board may order a licensed contractor, private driller, private pump installer, or owner of a well to conduct, or to arrange to have conducted, a non-destructive investigation of a well. Such investigations may include, but are not limited to, pumping tests, photographs, down-hole video, water quality/chemistry analysis, geophysical and/or sonic/cement bond logs, and sounding (depth) measurements.

- 9.3.1 The Board may issue an order for a nondestructive investigation of a well based on evidence that a well is not properly constructed or maintained, such that it is a potential hazard to the public health and/or the groundwater resource.
- 9.3.2 An order of the Board for nondestructive investigation must be complied with in accordance with the terms, conditions, and time period(s) specified in the order. The results and all associated data and information obtained during an investigation must be submitted to the Board as directed in the order. Noncompliance with any of the specified terms, conditions, and/or time period(s) of a Board's order will be a violation of these Rules and subject to disciplinary action and/or penalties.
- 9.3.3 The removal and reinstallation of pumping equipment, when necessary to conduct a nondestructive investigation, must be performed only by a licensed pump installation contractor, or private pump installer in accordance with sections 37-91-102(12.5) and 106(3).
- 9.3.4 Any person ordered by the Board to conduct a nondestructive investigation must pay all associated costs, unless otherwise stipulated to by the parties.
- 9.4 Abandonment, Repair, Drilling, Re-drilling, Casing, Re-casing, Deepening, and Excavation - In order to protect the public health and the groundwater resources of the state, the Board may order a licensed contractor to remedy a construction defect or deficiency, or to perform or arrange to perform abandonment, repair, drilling, re-drilling, casing, re-casing, deepening, or excavation of any well constructed by or under the direction or supervision of the contractor. The Board may also order any private driller or owner of a well to have a well abandoned, repaired, re-drilling, cased, re-cased, deepened, or excavated to correct a noncompliant condition, or to remedy a construction or maintenance defect or deficiency.
- 9.4.1 The Board may issue an order to abandon, repair, drill, re-drill, case, re-case, deepen, or excavate a well, or to correct a noncompliant condition, or to remedy a construction or maintenance defect or deficiency. The order must be based on evidence that a well is not properly constructed or maintained such that it is a potential hazard to the public health and/or the groundwater resource.
- 9.4.2 An order of the Board requiring abandonment, repair, drilling, re-drilling, casing, re-casing, deepening, or excavation of a well; or any correction of a noncompliant condition, or construction or maintenance defect, or deficiency, must be complied with in accordance with the terms, conditions, and time period specified in the order. Noncompliance with any of the specified terms, conditions, and/or time period of a Board's order will be a violation of these Rules and subject to disciplinary action and/or penalties.

- 9.4.3 The abandonment, repair, drilling, re-drilling, casing, re-casing, deepening, or excavation of any well must be performed only by a licensed well construction contractor or private driller in accordance with sections 37-91-102(12) and 106(3).
- 9.4.4 Any person ordered by the Board to abandon, repair, drill, re-drill, case, re-case, deepen, or excavate a well must pay all associated costs, unless otherwise stipulated to by the parties.
- 9.5 Disciplinary Action and Penalties - The Board may withhold, suspend, or revoke a license and may impose fines of not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000) for each violation of Articles 90 and 91 of Title 37, and the Board's rules promulgated pursuant to Article 91, Title 37. § 37-91-108(5), C.R.S. A disciplinary action and/or penalty will be imposed only after proper notice and a hearing before the Board.
- 9.5.1 The Board may accept stipulated settlements that include monetary penalties based upon a fine schedule established by the Board.
- 9.5.2 All terms, conditions, and time periods specified in the Board's order to withhold, suspend, or revoke a contractor's license and/or for the assessment of a fine must be complied with within the time frame stated in the order. Noncompliance with any of the specified terms, conditions, and/or time period of a Board's order will be a violation of these Rules and subject to further disciplinary action and penalties.

## **RULE 10 PETITIONS FOR DECLARATORY ORDERS**

- 10.1 General - Pursuant to section 24-4-105(11), C.R.S., this Rule provides procedures for the Board's entertaining of petitions for declaratory orders to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the agency. The order disposing of the petition constitutes agency action subject to judicial review. The Board retains the right to determine, in its sound discretion, whether to entertain any such petition submitted pursuant to this Rule. See § 24-4-105(11), C.R.S.
- 10.2 Petition for Statement of Position - Any person may petition the Board Staff for a statement of position concerning the applicability to the petitioner of any provision of these BOE Administrative Rules, or any regulation of the Board. The Board Staff shall respond with a written statement of position within 30 days of receiving a proper petition.
- 10.3 Petition for Declaratory Order - Any person who has properly petitioned for a statement of position, and who is dissatisfied with the statement of position, or who has not received a response within 30 days of the petition, may petition the Board

for a declaratory order pursuant to section 24-4-105(11), C.R.S. Such petition must be submitted to Board Staff within 30 days of the date of the written statement of position. A petition for declaratory order must include the following:

- a. The name and address of the petitioner.
- b. Whether the petitioner holds an active license issued by the Board.
- c. Whether the petitioner is involved in any pending administrative hearings with the Board.
- d. The language of the statute, rule, or order of the Board to which the petition relates.
- e. A concise statement of all facts necessary to show the nature of the controversy or the uncertainty as to the applicability of the statute, rule, or order of the Board to which the petition relates.
- f. A concise statement of the legal authorities, if any, and other reasons or authorities upon which the petitioner relies.
- g. A concise statement of the declaratory order sought by the petitioner.

10.4 Board's Exercise of Its Discretion to Entertain a Petition - The Board will determine, in its discretion and with no prior notice to the petitioner, whether to entertain any petition. If the Board decides it will not entertain a petition, it shall promptly notify the petitioner in writing of its decision and the reasons for that decision. Any of the following grounds are sufficient reason to refuse to entertain a petition:

- a. The petitioner failed to properly petition the Board Staff for a statement of position, or if a statement of position was issued, the petition for declaratory order was filed with the Board more than 30 days after the statement of position was issued.
- b. A ruling on the petition will neither terminate the controversy nor remove uncertainties concerning the applicability to the petitioner of the statute, rule, or order in question.
- c. The petition involves a subject, question, or issue that is currently involved in a pending hearing before the Board or the State Engineer's Office, or that is involved in an on-going investigation conducted by the Board, or that is involved in a written complaint previously filed in any state court or with the State Engineer's Office.
- d. The petition seeks an order on a moot or hypothetical question.

- e. The petitioner has some other adequate legal remedy, other than an action for declaratory relief pursuant to C.R.C.P. 57, that will terminate the controversy or remove any uncertainty concerning applicability of the statute, rule, or order.
- 10.5 If the Board Entertains a Petition - If the Board determines that it will entertain the petition for declaratory order, it must notify the petitioner within 30 days of making such determination, and the following procedures will apply:
- a. The Board may expedite the hearing, so long as the interests of the petitioner will not be substantially prejudiced thereby, by ruling on the basis of the facts and legal authority presented in the petition, or by requesting the petitioner or the Board Staff to submit additional evidence and legal arguments in writing.
  - b. In the event the Board determines that an evidentiary hearing or legal argument is necessary to a ruling on the petition, a hearing must be conducted in accordance with the state Administrative Procedures Act. The petitioner will be identified as Respondent.
  - c. The parties to any proceeding pursuant to this rule shall be the petitioner/Respondent and the Board Staff. Any other interested person may seek leave of the Board to intervene in the proceeding, and such leave may be granted if the Board determines that such intervention will make unnecessary a separate petition for declaratory order by the interested person.
  - d. The declaratory order shall constitute a Final Agency Action subject to judicial review pursuant to section 24-4-106, C.R.S.
- 10.6 Records of Petitions and Declaratory Orders - Files of all petitions, requests, statements of position, and declaratory orders will be maintained by the Board. Such files will be available for public inspection, except for any material required by law to be kept confidential. The Board will post a copy of all statements of position and declaratory orders constituting Final Agency Action on the Board's web site.

## **RULE 11 SEVERABILITY**

If any portion of these Rules is found to be invalid, the remaining portion of the Rules will remain in force and unaffected.

## **RULE 12 REVISIONS**

The Board may revise these Rules in accordance with section 24-4-103, C.R.S. (2017).

**RULE 13      EFFECTIVE DATE**

These Rules will become effective January 1, 2018.

**RULE 14      STATEMENT OF BASIS AND PURPOSE**

The Statement of Basis and Purpose for these Rules is incorporated herein by this reference.



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## STATEMENT OF BASIS AND PURPOSE

### RULES AND REGULATIONS FOR ADMINISTRATION OF LICENSING, FINANCIAL RESPONSIBILITY, CONTINUING EDUCATION AND REMEDIAL ACTION FOR WELL CONSTRUCTION AND PUMP INSTALLATION CONTRACTORS

#### 2 CCR 402-14

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This Statement of Basis and Purpose describes the basis and purpose of each rule and modifications to the “Rules and Regulations For Administration Of Licensing, Financial Responsibility, Continuing Education And Remedial Action For Well Construction And Pump Installation Contractors” (“BOE Administration Rules” or “Rules”).

The specific statutory authority for the promulgation and modifications to the BOE Administration Rules is found under section 37-91-104(1)(c), C.R.S. (2017), which provides that the Board of Examiners of Water Well Construction and Pump Installation Contractors (“Board” or “BOE”) shall, “Adopt, and from time to time revise, such rules, not inconsistent with law, as may be necessary to effectuate the provisions of this article, all such rules to be adopted in accordance with article 4 of title 24, C.R.S.” Where appropriate, additional statutory authority for specific rules is identified.

#### **RULE 1      TITLE**

The BOE Administration Rules are titled to reflect the implementation of administrative and quasi-judicial responsibilities of the Board as authorized in Article 91 of Title 37 of the Colorado Revised Statutes, (2017). The phrase “for Well Construction and Pump Installation Contractors” was added to the title to clarify the scope of the Rules.

#### **RULE 2      AUTHORITY**

This Rule cites 37-91-104(1)(c), C.R.S. (2017) as the specific statutory authority for the Board to promulgate and revise the BOE Administration Rules, and related statutory provisions providing for alternatives to surety bonds needed to obtain a license.

#### **RULE 3      SCOPE AND PURPOSE OF THE RULES**

This Rule expresses the scope and purpose of the BOE Administration Rules. The BOE Administration Rules apply to licensing and license renewal, bonds and other forms of financial responsibility, continuing education requirements, and remedial and disciplinary actions of the Board. The Rules define the requirements for obtaining and keeping a license or a special license to be a well construction contractor and/or pump installation

contractor.

The Rules also address evidence of financial responsibility by contractors as required by section 37-91-107, C.R.S. (2017), the resolution of claims against such evidence of financial responsibility, and the conditions for the release of funds from such evidence of financial responsibility when a contractor uses an alternative to a compliance bond. The purpose of the Rules is to enable to Board to implement the provisions of Article 91 of Title 37, including to set standards for licensing and license renewals, evidence of financial responsibility, and continuing education requirements, and to establish a procedure for remedial and disciplinary actions.

Previous Rule 3.3.2 was removed to comply with Senate Bill 05-161, which eliminated the examination requirement for private drillers and private pump installers (§37-91-106(3), C.R.S. (2017))”.

## **RULE 4        DEFINITIONS**

This Rule defines terms used in the BOE Administration Rules. Certain terms defined in statute, section 37-91-102, C.R.S. (2017), have identical meanings in Rule 4.2, and are restated verbatim. Many of the added definitions are simply adding the statutory definition. This Rule also defines additional terms to ensure that their meanings and usage are clearly understood.

The definition of “Authorized Individual” was removed because the term was not used in the Rules.

A definition for “Board Staff” was added to clarify the term, especially in regard to the process for petitions for declaratory orders added under Rule 10.

A definition for “Continuing Education (CE) Committee” was added to specify the composition of the committee who, in conjunction with the Board, would evaluate continuing education programs or courses for accreditation under Rule 8. Section 37-91-108(6), C.R.S. (2017), provides that “The board shall...develop a continuing education program in conjunction with the Colorado Water Well Contractors Association or any analogous or successor organization.”

Rule 4.2.18.1 was added to clarify that the definition of “Pumping Equipment” also includes certain cisterns or other water storage tanks. Section 37-91-109(2), C.R.S. (2017), provides that, “Only a licensed pump installation contractor may install a cistern or other water storage tank between the wellhead and the pressure tank or downstream of the wellhead if no pressure tank is utilized.”

The definition of “Two Years’ Experience” was removed because the requirement of two years of experience in order to be licensed is adequately described under Rule 6.4.1.

**RULE 5      GENERAL RULES**

The statutory authority for this Rule is found under sections 37-91-104(1), 105(1), 107, and 111(1)(b), C.R.S. (2017).

Rule 5.1.1 requires the registration of certain rigs with the Board and the display of the contractor's license number on the rig. The Rule provides field personnel and the public the means to identify the licensee responsible for work being conducted using the equipment. The Rule was modified to require that each rig contain a copy of the Water Well Construction Rules. This will ensure the personnel on site have the ability to refer to the Rules if the licensed contractor is not on site. This Rule assists the Board's staff and State Engineer personnel in enforcing the licensing provisions of Article 91 of Title 37 and these Rules.

Rule 5.1.2 was added to outline the process for the reissuance or transfer of a retired license number. The Board determined that record maintenance, bond issuance, or contractor identification will not be adversely impacted if retired license numbers are reused. The Rule is adapted from BOE Policy 2000-2. Under section 37-91-104(1)(e), C.R.S. (2017), the Board has general authority regarding well construction and pump installation licenses.

Rule 5.2 establishes a requirement for inclusion of the contractor's license number when advertising to provide services, and differentiates between media sources considered to be utilized for advertising and those that are not. The Rule was modified to clarify that social media would be considered an advertisement, while data aggregator websites would not. The Rule also makes clear that it is a violation of section 37-91-111, C.R.S. (2017), to advertise to perform well construction or pump installation services for which a contractor is not licensed. This Rule is developed to assist the Board and its staff in enforcing the licensing provisions of Article 91 of Title 37 and to identify persons who may be illegally performing well construction and/or pump installation services without a license.

Rule 5.3 specifies when license application and renewal fees are due. To ensure that staff time is adequately compensated for processing and sending out the license application and renewal forms, the Board has determined that the new license application fee must be submitted at the time the application is requested, and that that renewal fee must be submitted with the renewal application.

**RULE 6      LICENSING AND LICENSE RENEWAL**

The statutory authority for this Rule is found under sections 37-91-104(1), 105, 106, 107, and 110(2), C.R.S. (2017).

Rule 6.1 implements the provisions of section 37-91-105, C.R.S. (2017), that require obtaining a license from the Board prior to contracting for the construction of water wells and/or the installation of pumping equipment or cisterns.

The Rule also provides for obtaining a special license when a person intends to conduct specialized services attendant to the construction, repair, modification, or enhancement of a well or to the installation of pumping equipment installed in a water well.

Rules 6.1.1 and 6.1.2 require the contractor to submit his or her contact information to the Board. These Rules were modified to require a primary email address for each licensed contractor, as most of the correspondence from the Division of Water Resources or the Board will be sent via email.

Rule 6.1.3 requires the licensee to identify employees who conduct work under the authority of the contractor's license. The Rule was adopted to enable the Board and its staff to keep accurate records regarding drillers and/or pump installers who are directly employed by the licensed contractor and who perform services under the license. Such records are helpful to determine if work performed by an unlicensed person was legally conducted under the authority of a contractor's license and as verification of two years' experience for a license application. The Rule was modified to include a requirement that the licensee also submit the areas of proficiency of the listed employees. Rules 6.1.3.1 and 6.1.3.2 were also added to effectuate this Rule change. Under section 37-91-110(2), C.R.S. (2017), the Board has the authority to require the filing of information and reports relating to the construction or abandonment of wells and the installation of pumping equipment whenever it may deem such action to be necessary and to enact rules necessary to ensure the proper construction or abandonment of wells and the proper installation of pumping equipment. Under section 37-91-104(1)(c) and (e), C.R.S. (2017), the Board also has general authority to promulgate rules necessary to effectuate the provisions of Article 91, Title 37, which include requirements for license approval and renewal.

Rule 6.1.3.1 was added to direct the licensee to maintain a list of employees and the employees' areas of proficiency. This "real-time" list will help Division of Water Resources field personnel identify who is employed by a licensed contractor and will help determine if there are any illicit contractual relationships.

Rule 6.1.3.2 was added to supply information to the Board of Examiners regarding the continuing education of individuals conducting well construction or pump installation under a license. Field training or in-shop training given by the licensed contractor can be catalogued per this rule.

Rule 6.1.4 specifies the extent and limit of a contractor's license and clearly states that a license does not authorize advertising for, contracting to provide, or performance of services other than those specifically stated on the license. This Rule intends to eliminate an inappropriate practice of advertising and contracting to provide a service for which a person is not licensed and then subsequently subcontracting the service to another licensed contractor. Such practice effectively severs the direct contact and interaction between a well owner and the licensed contractor who is ultimately responsible for the work and compliance with established minimum construction standards.

Rule 6.1.5 was added to clarify that agreements that purportedly authorize unlicensed individuals to construct water wells or install pumping equipment under the license of another are prohibited. The Rule also states the limited exceptions under statute where an unlicensed individual can legally construct a well or install pumping equipment.

Section 37-91-111, C.R.S. (2017), makes it unlawful for a person to construct water wells or install pumping equipment without a Board-issued license, unless one of three exceptions apply: 1) the person is a "private driller" (as defined under section 102(12)); 2) the person is "directly employed" (as defined under section 102(4.7)) by a licensed contractor; or 3) the person is under the "supervision" (as defined under section 102(15.5)) of a licensed contractor. An individual who forms a contractual business relationship with a licensed contractor is not "directly employed" by that licensed individual. An unlicensed individual who is not directly employed by a licensed contractor is allowed to work on water wells or pumps only if the licensed contractor personally and continuously directs the on-site work by the unlicensed individual. The Rule was adapted from BOE Policy 2015-1.

Rule 6.2 defines four different types of licenses for water well construction. Section 37-91-105, C.R.S. (2017), authorizes the Board to examine for and grant licenses for different methods of well construction. The types of methods of well construction represent the common methods now used in Colorado to construct water wells. These construction methods are recognized and tested for by the National Ground Water Association (NGWA), an organization representing the industry throughout the United States and internationally. This uniformity with the NGWA tests allows the Board to use the NGWA tests in its license examination procedures.

Rule 6.2.1 was added to clarify that licensed water well construction contractors can install gallery wells/infiltration galleries without additional examinations or a special license. The Rule is adapted from BOE Policy 2000-3. Section 37-91-105, C.R.S. (2017), authorizes the Board to examine for and grant licenses for different methods of well construction. Gallery wells/infiltration galleries are not included within any of the Board's designated methods of well construction. However, all contractors licensed in one or more of the designated methods of well construction are expected to be familiar with the standard for materials required for well construction, the precautions that must be taken to reduce the potential for contamination of near-surface sources of water, and the necessity of proper disinfection of the well after its construction. Accordingly, a well construction contractor who has the qualifications necessary to be licensed under any of the designated methods will also be qualified to construct gallery-type wells and spring wells.

Rule 6.3 uses the same two types of licenses for installation of pumping equipment as those used in the examinations administered by the NGWA. The categories are based on the rate (in gallons per minute) that water can be produced by a pumping system. A license for the installation of line shaft turbine pumps can be obtained by successfully completing the NGWA test that includes those types of pumps and by meeting the additional requirements for licensing set forth in statute and established the Board.

Rule 6.3.1 was added to clarify that a pump installation contractor is qualified to install cisterns connected to water well supply systems. Section 37-91-109(2), C.R.S. (2017), requires a pump installation license to install these cisterns.

Rule 6.4 explains the license application process as authorized by section 37-91-105, C.R.S. (2017).

Rule 6.4.1 clarifies that the requirement of at least two years of experience in the type of well construction or pump installation work for which an applicant has applied for a license means actual construction of wells or installation of pumping equipment by operating a well drilling or pump installation rig and performance of other tasks related to well construction or pump installation. Section 37-91-105(2)(d), C.R.S. (2017), requires that an applicant for a well construction or pump installation license have two years' experience in the type of well construction work or pump installation work for which the applicant is initially applying for a license. The Rule was modified to clarify the two years' experience requirement and that experience installing pumping equipment or constructing water wells in the military can be considered active experience.

Rule 6.4.2 identifies the type of information the Board may request as documentation of the required experience. Such information is often needed to verify and more fully evaluate an applicant's experience in the specific method of well construction or pump installation for which the person is requesting a license. The Rule was modified to specify that information provided under Rule 6.1.3, which provides a mechanism for an individual to track active experience and requires the licensed contractor to document such experience of his/her employees, can be considered by the Board as active experience.

Rule 6.4.3 implements section 37-91-105(2)(d)(III), C.R.S. (2017), which authorizes the Board to accept completion of approved educational programs as a portion of the two years of experience in well construction and/or pump installation required for applicants to obtain a license. The Rule sets forth conditions under which the Board may accept the educational experience as a substitute for a portion of the required work experience.

Rule 6.4.4 establishes a two-year period of time in which an applicant must complete the application and examination process for obtaining a license.

Rule 6.5 and its subsections set forth the procedures and conditions for obtaining a special license, as authorized by section 37-91-105(2.5), C.R.S. (2017). Special licenses are granted for the use of special equipment or limited procedures in well construction or pump installation. An applicant for a special license must meet the requirements of section 37-91-105(2), C.R.S. (2017). Due to the limited nature of a special license, if a special licensee applies for a well construction or pump installation license, the applicant must demonstrate two years of experience in the method of well construction or pump installation for which that person is applying for a license. A licensed contractor does not need to obtain a special license for work that falls within the scope of the general well construction or pump

installation license issued by the Board. A special license limits the scope of work of the licensee to the specific task or tasks stated on the license.

Rule 6.6 implements the exam requirements of section 37-91-105(5), C.R.S. (2017), to ensure that licensed contractors possess adequate knowledge of the technical aspects of well construction and/or pump installation and of the laws and rules that apply to well construction and/or pump installation.

Rule 6.6.1 limits the validity of exam results to two years. This ensures that an applicant completes the licensing process within two years, and therefore that a newly licensed contractor possesses knowledge of current technology, laws, and rules.

Rules 6.7.1 and 6.7.2 were removed to comply with Senate Bill 05-161, which eliminated the examination requirement for private drillers and private pump installers. Section 37-91-106(3), C.R.S. (2017), now reads, "Private drillers and private pump installers are exempt from all license requirements under this article; except that such entities shall be required to comply with minimum construction standards as required by section 37-91-110 and the rules of the board."

Rule 6.7.1 (previously Rule 6.7.3) directs that all work performed by a private driller and private pump installer must comply with the standards of the Water Well Construction Rules and all other applicable regulations.

Rule 6.8 addresses license renewal and implements section 37-91-107(4), C.R.S. (2017), authorizing the Board to renew a contractor's license for a period of up to three years. The Rule specifies the fee requirement is commensurate with the duration of the license renewal period.

Rule 6.8.1 directs that the period of the bond or other financial responsibility is the same as the period of license renewal.

Rule 6.8.2 implements the provisions of section 37-91-105(7), C.R.S. (2017), which require each licensed contractor to complete eight hours of approved continuing education training during each calendar year in order to renew a license. The Rule provides for submittal of a "certificate of completion" to the Board affirming that the continuing education requirement has been fulfilled. The Rule specifies that the deadline for submitting the certificate is January 15 of each year and explains that the license of a contractor who fails to submit the certification annually will lapse regardless of the duration for which the license was renewed. January 15 is used as the annual deadline in order to provide sufficient time for renewal processing prior to the license lapse date of February 1.

Rule 6.8.2.1 explains the procedure for reinstatement of a license that is lapsed pursuant to section 37-91-107(4), C.R.S. (2017), because a contractor has failed to fulfill the continuing education training requirement or to file the required certificate of completion. The Rule provides for payment of a reinstatement fee, which is currently set by statute in

the amount of \$100. The Rule specifies that any continuing education training acquired after the fifteenth of January used to fulfill the previous year's obligation cannot be applied to the eight-hour requirement for the current calendar year.

## **RULE 7 FINANCIAL RESPONSIBILITY**

The statutory authority for this Rule is found under sections 11-35-101 and 101.5 and 37-91-107, C.R.S. (2017).

Rule 7 clarifies how a contractor may fulfill the financial responsibility requirement and how to file a claim against a bond or alternative funds. Section 37-91-107, C.R.S. (2017) requires a licensee to provide evidence of financial responsibility in the form of an approved compliance bond with a corporate surety authorized to do business in the state of Colorado, or in the form of alternative funds such as a savings account, deposit, certificate of deposit, or irrevocable letter of credit. A contractor's failure to maintain the statutorily required amount of financial responsibility will result in the lapse of that contractor's license.

Rule 7.2 describes the required coverage of a corporate surety bond and the information that must be listed on the bond. The bond must be a compliance bond that covers the licensee's compliance with all applicable laws and regulations that apply to the activity authorized by the license, including the Water Well Construction Rules and these Rules. Rule 7.2.3 addresses filing a claim against a bond, and Rule 7.2.4 charges the contractor with responsibility for notifying the Board of any change in or cancellation of a bond. Rule 7.2.1 was modified to raise in-state bonds to \$20,000 in order to account for inflation and the rising costs of materials and labor. The Board is authorized under section 37-91-107(3.7), C.R.S. (2017), to increase the required bond amounts higher than the statutory minimums if such an increase becomes necessary to further the purposes of Article 91 of Title 37.

Rules 7.3 and 7.3.1 explain how a contractor may fulfill the requirement of financial responsibility through alternative funds. Rule 7.3.2 imposes responsibility on the contractor for costs incurred by the Board in maintaining and administering such funds, including the costs of negotiation or litigation of claims. Rule 7.3.3 addresses filing a claim against alternative funds and sets forth the conditions under which the Board will make payments from the alternative funds. The Board will not release any alternative funds without a written and notarized agreement of the parties that the Board may do so in a specified amount, or a court order directing the Board to pay a party a specified amount from the alternative funds.

Rule 7.4 establishes periods of liability of both bonds and alternative funds. The two-year periods are based upon the time limitations for initiating a hearing on a complaint as set forth in Section 37-91-108, C.R.S. (2017). Because a complaint may have been filed before the date the liability period ends, but not yet resolved by that date, this Rule authorizes the Board to retain the alternative funds until the complaint is resolved.



**RULE 8 CONTINUING EDUCATION**

The statutory authority for this Rule is found under sections 37-91-104(1), 105(7), and 107(6), C.R.S. (2017).

Rule 8.1 implements the continuing education requirement established in section 37-91-105(7), C.R.S. (2017). Eight hours of approved continuing education training must be obtained during each calendar year for license renewal. The Rule was modified to incorporate BOE Policy 2005-1, which limits the annual number of continuing education hours that can be obtained by internet or online participation and from safety, CPR, First Aid, or other safety-related training. This Rule encourages diversity in the areas of continuing education and limits the redundancy of safety-related training.

The COVID-19 pandemic and resulting social distancing restrictions have made it unsafe and impractical for licensed contractors to attend CE classes in-person, and for the foreseeable future CE classes are limited to those that can be taken by online or internet participation. The Board initially adopted, on an emergency basis, rule amendments to allow licensed contractors to obtain all required hours of continuing education by internet or online participation.

The purpose of the permanent amendment to Rule 8.1.b is to continue to allow licensed contractors to fulfill their CE requirements through internet and online participation while the COVID-19 pandemic restricts the ability of people to gather in-person. Continued online or internet participation will reduce licensed contractors' exposure to COVID-19 and allow them to stay in compliance with any restrictions limiting in-person gatherings. Specifically, the amended rule authorizes the Board, in conjunction with the CE Committee, to determine through Board policy the required hours of approved CE that can be obtained by online or internet participation. Allowing the Board to make this determination through policy will give the Board flexibility in the future to assess whether in-person attendance has once again become feasible.

The Board anticipates adopting a policy at its regularly scheduled February 1, 2021 meeting determining that all CE hours can be obtained by internet or online participation as authorized under the amended Rule 8.1.b. Until the Board adopts its policy, the purpose of Rule 8.1.d is to provide clarity and security to licensed contractors that accredited online CE will be acceptable through January 31, 2021. This will allow the CE Committee, who will gain a new member in early January, and the Board to develop a policy pursuant to Rule 8.1.b.

Rule 8.1.1 was modified to incorporate BOE Policies 2007-1 and 2009-1 to provide consistency in evaluating the fulfillment of the continuing education requirement. The Rule specifies that only training obtained during the applicable calendar year is eligible for the continuing education obligation for license renewal, and that training in excess of the required eight hours cannot be applied to the obligation for the following year.

Rule 8.2 and its subsections establish criteria for accreditation of training courses and programs in accordance with section 37-91-107(6), C.R.S. (2017). The Rule was modified to incorporate BOE Policy 2004-1 so that the Board will establish such accreditation in conjunction with the CE Committee, as defined under Rule 4.2.7, whose membership includes a designee from the Colorado Water Well Contractors Association. Subsections of Rule 8.2 designate general criteria for evaluating a continuing education training program or course for accreditation, provide standards for program or course sponsorship and instruction, and require the documentation of attendance. The subsections also provide for the determination of the number of eligible hours for an accredited course or program and a means of modifying the number of hours when necessary.

Rule 8.2.9 was added to specify that the CE Committee will not consider post-attendance requests for continuing education course accreditation. This Rule incorporates BOE Policy 2008-1. The purpose for the rule is so that prior approval of courses can be noticed and posted so that other contractors can attend, sponsor documentation and maintenance of attendance records can be demonstrated, and the Board can function more efficiently in evaluating continuing education accreditation requests.

Rule 8.2.10 and its subsections were added to establish a process for awarding continuing education credit for preparing and presenting a continuing education course. The Rule incorporates BOE Policy 2007-2. The provides for consistency in evaluating fulfillment of continuing education requirements.

Rule 8.3 addresses the Certificate of Completion required by section 37-91-107(4), C.R.S. (2017), and the contractor's responsibility to maintain records of attendance at accredited continuing education training that is reported on the certificate. The Rule and its subsections implement the statutory requirement for annual submittal of the Certificate of Completion, specify the certificate will consist of a form prescribed by the Board, and advise that failure to submit the certificate by the fifteenth of January of each year for license renewal will result in lapse of the license.

## **RULE 9        REMEDIAL AND DISCIPLINARY ACTION**

The statutory authority for this Rule is found under sections 37-91-104(1), 108, and 109, C.R.S. (2017).

Rule 9.1 references the statutes vesting the Board with authority to carry out its obligation to protect the public health and the groundwater resources of the state by ordering remedial action and/or the imposition of a disciplinary actions.

Rule 9.2 provides for the issuance of an order by the Board assessing penalties or requiring the correction of a defective well that poses a hazard to the public health or the groundwater resource. Such defects may occur by failure to employ approved materials to construct a well or install pumping equipment, or as a deficiency in the application of materials resulting in failure to meet minimum standards. Rule 9.2 was modified to remove

the reference to a notice and hearing process before issuing such orders. To the extent notice and hearing is required impose a penalty, such a process is already stated in Rule 9.5.

Rule 9.3 implements a portion of sections 37-91-104(l)(1) and 108(4), C.R.S. (2017), which authorizes the Board to require a nondestructive investigation of a well be conducted by a contractor, private driller/private pump installer, or well owner. The Rule gives examples of the types of nondestructive techniques the Board may require. Rule 9.3 and subsection 9.3.1 were modified to remove a notice and hearing process before issuing an order for nondestructive investigation. Such a process is not required by statute, and interferes with the Board's ability to correct violations of statutes and the Board's rules, and to protect public health and the groundwater resource.

Rule 9.3.1 provides that the Board may order a nondestructive investigation of a well based on evidence that a well is not properly constructed or maintained.

Rule 9.3.2 specifies that all work to complete a nondestructive investigation must be conducted in accordance with the terms and conditions of the order, including the submission of the results of the investigation. The Rule provides that noncompliance with terms and conditions of an order, or failure to fulfill the requirements of an order to conduct a nondestructive investigation, is considered to be a violation of these Rules. The purpose of the Rule is to enable the Board to pursue compliance with its order.

Rule 9.3.3 specifies that, in accordance with statutory requirements, only a licensed pump installation contractor or private pump installer can remove and reinstall pumping equipment when performing a nondestructive investigation.

Rule 9.3.4 requires the person ordered to conduct the nondestructive investigation pay all associated costs.

Rule 9.4 states the authority of the Board provided under section 37-91-108(4), C.R.S. (2017), to require abandonment, repair, drilling, re-drilling, casing, re-casing, deepening, or excavation of a well to protect public health or the groundwater resource.

Rule 9.4.1 explains that such an order of the Board must be based on evidence that a well is not properly constructed or maintained such that it is a potential hazard to the public health and/or the groundwater resource. Rule 9.4.1 was modified to remove a notice and hearing process before issuing such an order. Such a process is not required by statute, and interferes with the Board's ability to correct violations of statutes and the Board's rules, and to protect public health and the groundwater resource.

Rule 9.4.2 specifies that all work to perform a corrective action must be performed in accordance with the terms and conditions of the order. The Rule provides that noncompliance with terms and conditions of an order, or failure to fulfill the requirements

of an order, is considered to be a violation of these Rules. The purpose of the Rule is to enable the Board to pursue compliance with its order.

Rule 9.4.3 specifies that, in accordance with statutory requirements, only a licensed water well construction contractor or private driller can perform corrective actions that include abandonment, repair, drilling, re-drilling, casing, re-casing, deepening, or excavation of a well.

Rule 9.4.4 addresses assignment of responsibility for costs associated with performing a corrective action. The purpose of the Rule is to provide the Board some flexibility when assigning responsibility for such costs.

Rule 9.5 and its subsections implement the Board's authority to take disciplinary action by withholding, suspending, or revoking a contractor's license and imposing fines as provided in section 37-91-108. Such disciplinary actions may only be invoked after proper notice and hearing.

Rule 9.5.1 allows the Board to accept a stipulated settlement that includes a provision for payment of a fine and provides for the establishment of a fine schedule to assist the Board in maintaining consistency in the imposition of fines.

Rule 9.5.2 specifies that all provisions of an order for disciplinary action must be complied with in accordance with the terms and conditions of the order. The Rule provides that noncompliance with terms and conditions of an order, or failure to fulfill the requirements of an order, is considered to be a violation of the BOE Administration Rules. The purpose of the Rule is to enable the Board to pursue compliance with its orders.

**RULE 10 PETITIONS FOR DECLARATORY ORDERS**

The statutory authority for this rule is found in section 24-4-105(11), C.R.S. (2017). Rule 10 was added to comply with the requirement of this statute and provide procedures for entertaining, in the Board's discretion, any petitions for declaratory orders to terminate controversies or to remove uncertainties as to the applicability to the petitioners of any statutory provision or of any rule or order of the agency.

**RULE 11 SEVERABILITY**

The purpose of this Rule is to clarify that each rule is independent of the others, so that if any one Rule is found to be invalid, the remainder will remain in effect.

**RULE 12 REVISIONS**

This Rule recognizes the ability of the Board to make any required changes, subject to the requirements of the State Administrative Procedure Act.

**RULE 13 EFFECTIVE DATE**

The Rules will be effective January 1, 2018 and will be in full force and effect for the 2018 calendar year licensing renewal. If any contractor is in the middle of an extended license period, the contractor must update their financial responsibility under these Rules or the license will lapse.