



~~November 4, 2019 February 2, 2020~~, **May 3, 2021**

BOE POLICY 2019-2 AMENDED MAY 3, 2021

INVESTIGATION OF VIOLATIONS AND NEGOTIATION OF STIPULATED SETTLEMENTS

Background

Article 91 of title 37, Colorado Revised Statutes, establishes the authority of the Board of Examiners (Board) to order remedial actions to correct a deficiency in well construction or pump installation, to suspend or revoke a license, and to issue fines between \$50 and \$1,000 dollars per violation. This policy describes the process for Staff to investigate violations of statute and the Board's rules that may warrant action by the Board and to negotiate stipulated settlements, as previously described in BOE Policy 2004-2A (Revoked 8/2/2019). This Policy does not address the process for formal complaints filed with the Board by Staff or other persons that initiate a hearing before the Board, or allegations against unlicensed contractors.

Policy

In order to address alleged violations of statute or the Board's rules, the Board relies on its Staff to investigate alleged violations and negotiate stipulated settlements with licensed contractors, authorized individuals, and private drillers and pump installers.

Staff may learn of potential violations through its own investigations (e.g., well inspections and review of well construction reports) or through information provided by third parties. When Staff has reason to believe a person may have violated statute or the Board's rules, Staff will send an Allegation Letter to that person. The letter will describe the nature of the allegations and identify specific statutes and/or rules that may have been violated. The letter will give the recipient the opportunity to respond to the allegations and provide additional information.

After Staff has received the response or the deadline for the response has passed, Staff will decide whether to proceed with the allegations. If Staff decides not to proceed with the allegations, it will inform the Board of that result and its reasoning and close the file on the allegations. If Staff does decide to proceed, the next step typically will be to offer a stipulated settlement to the person accused of the violation.

For violations other than reporting violations, Staff will summarize the allegation for the Board at its next regularly scheduled meeting. The Board will consider the allegations and may direct Staff to offer a stipulated settlement including appropriate terms as determined by the Board using the [Stipulated Settlement Guide](#) (enclosed) as a guide.



For reporting violations (i.e., late reports, or failure to submit/withheld reports) **and failure to provide advance notification violations**, Staff will offer a stipulated settlement to the person accused of the violation pursuant to the Stipulated Settlement Guide without prior Board direction. Staff, however, may ask for specific direction from the Board on these violations when appropriate.

The Stipulated Settlement Guide will be used by the Board to provide a basis for offering terms of a stipulated settlement. As described in the Stipulated Settlement Guide, repeat violations of a statute or Board rule within a four-year period based on the date of settlement or order of the Board following a hearing will result in increased penalties for subsequent violations. The penalties described in the Stipulated Settlement Guide are to be used as guidelines only, and the Board may choose to offer settlement terms other than those described in the Stipulated Settlement Guide depending on the specific facts of a particular allegation. The Stipulated Settlement Guide is not meant to address every potential violation. As directed by the Board, the stipulated settlement offer may also include required remedial actions to correct deficiencies in well construction, including repair or abandonment of the well or non-destructive investigations.

Although acceptance of a Stipulated Settlement by the person accused of the violation is a final resolution of the particular alleged violations, it does not preclude the Board from taking further actions on any other violation of statute or Board rules not specifically described in the stipulated settlement. The person accused of the violation is not required to accept the terms of the stipulated settlement offer, and is entitled to a hearing before the Board on the allegations if the stipulated settlement offer is rejected. If any allegation proceeds to a hearing before the Board and the Board determines that a violation has occurred, the Board may impose fines different from those offered in the stipulated settlement or outlined in the Stipulated Settlement Guide.

An offer of stipulated settlement is not required, and some violations may warrant the initiation of a hearing on the allegation (particularly when revocation or suspension of a license may be appropriate), civil actions in the district courts, or criminal sanctions.

Approval

This policy can only be modified or revoked in writing by the Board of Examiners of Water Well Construction and Pump Installation Contractors.

Approved May 3, 2021



Keith Branstetter, Chairperson
Board of Examiners of Water Well Construction
and Pump Installation Contractors

Enclosure: [Stipulated Settlement Guide](#) ~~November 4, 2019 February 3, 2020~~

Policy History: First Approved: November 4, 2019

Amended - Stipulated Settlement Guide only: February 3, 2020

Amended to allow Staff to offer Stipulated Settlements Failure to Provide Advance Notice without prior Board direction

<u>Stipulated Settlement Guide</u>				February 3, 2020	
The settlement guide presented below provides a general range for penalties for common violations. The Board or Board Staff, at their discretion, may modify the amount or waive any penalty depending upon the specific circumstances of the violation. Application fees are not penalties.					
REPORTING VIOLATIONS					
Not automatically compounded based on repeat violations					
LATE REPORT				\$200	
(60 days to 6 months after construction or permit expiration date)					
FAILURE TO SUBMIT A REPORT OR WITHHELD REPORTS				\$500	
(More than 6 months after the date required by Rule 17)					
(Penalty will be reduced to \$400 if the report is produced along with the stipulated settlement)					
(Penalty will be waived for all reports that should have been submitted prior to November 4, 2017)					
PERMIT COMPLIANCE VIOLATIONS					
Repeat violations will be calculated as the product of the violation penalty times the number of same (or similar) violations within a four year period (\$1,000 max)					
FAILURE TO PROVIDE ADVANCE NOTIFICATION (NOT AUTOMATICALLY COMPOUNDED)				\$50	
WELL CONSTRUCTION, DEEPENING, OR PUMP INSTALLATION WITHOUT A VALID WELL PERMIT				\$400	
KNOWINGLY CONSTRUCTING, DEEPENING OR INSTALLING A PUMP IN A WELL WITHOUT A VALID WELL PERMIT				\$1,000	
WELL CONSTRUCTED TO WITHDRAW FROM AN UNAUTHORIZED INTERVAL				\$400	
WELL CONSTRUCTED TO WITHDRAW FROM MORE THAN ONE AQUIFER				\$500	
PUMP EXCEEDS PERMITTED RATE				\$400	

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CONSTRUCTION VIOLATIONS					
Repeat violations will be calculated as the product of the violation penalty times the number of same (or similar) violations within a four year period (\$1,000 max)					
INSUFFICIENT ANNULAR SPACE FOR GROUT				\$400	
INSUFFICIENT GROUT INTERVAL				\$400	
INSUFFICIENT DEPTH OF STEEL CASING				\$500	
USE OF UNAPPROVED GROUT MATERIAL IN REQUIRED GROUT INTERVAL				\$400	
FAILURE TO OBTAIN A VARIANCE APPROVAL PRIOR TO CONSTRUCTION				\$400	
OTHER STATUTE OR RULE VIOLATIONS					
Repeat violations will be calculated as the product of the violation penalty times the number of same (or similar) violations within a four year period (\$1,000 max)					
IMPROPER ABANDONMENT OF A WELL				\$500	
ALLOW THE UNAUTHORIZED USE OF A LICENSE				\$1,000	
DELIBERATE OBSTRUCTION OF THE WELL INSPECTION PROCESS				\$500	