

Complaint Process and Procedure

1. Authority

1.1 The authority of the Board of Examiners of Water Well Construction and Pump Installation Contractors (“Board of Examiners”; “Board”) to address and resolve complaints regarding licensed water well construction and pump installation contractors (“contractors”) is set forth in Title 37, Article 91 of Colorado Revised Statutes. The following paragraphs describe the general procedure employed by the Board of Examiners and its staff for accepting, evaluating, investigating, and addressing complaints against licensed well construction and pump installation contractors. The following also describes the procedures for resolving complaints regarding contractors engaged in the construction of water wells and/or pump installation without being licensed by the Board.

2. General

2.1 Complaints against licensed contractors may be filed with the Board by anyone who alleges that a contractor has not complied with the provisions of Article 91 of Title 37, C.R.S. (“Statutes”), or the Water Well Construction Rules, 2 CCR 402-2 (“Rules”). Complaints are generally received from well owners, interested individuals, other licensed contractors, Water Division engineers and field staff, the Colorado Water Well Contractors Association (on behalf of its membership), and State Engineer's staff. Infrequently, other entities, such as County employees, professional geologists, and engineering consultants, contact the Board of Examiners' staff ("Staff") regarding possible violations of the Statutes and/or the Rules.

The Staff uses prioritization of possible violations as a general guideline for initial complaint processing and evaluation. Based on individual circumstances, the Staff may deem it necessary to elevate a complaint to the highest priority requiring immediate attention and action. The prioritization of types of violations has been adopted only to facilitate an efficient system for evaluation of complaints. The priority assigned to a type of alleged violation may have no effect or influence on the resulting Board action that may be taken if the allegation is substantiated.

The Board of Examiners has directed the Staff to evaluate and pursue alleged violations of the Rules and Statutes, according to the following priorities:

2.1.1 First Priority

First priority violations are those related to well construction and/or installation of pumping equipment by contractors that are not licensed by the Board. Complaints regarding unlicensed contractors are processed and pursued as described in section no. 9.

2.1.2 Second Priority

Second priority violations are those that are related to deficiencies in well construction with regard to minimum well construction and pump installation standards adopted in the Rules. These types of possible violations include, but are not limited to, insufficient depth of steel casing, use of substandard well construction materials, inadequate grout interval, improper grout placement, insufficient annular space, inadequate well disinfection, failure to comply with construction requirements indicated on the Conditions of Approval of the well permit (including well location), and improper or inadequate well abandonment.

2.1.3 Third Priority

Third in priority are violations regarding well construction and pump installation without a valid well permit or verbal authorization from the State Engineer authorizing well construction and/or pump installation and/or insufficient, improper notice for construction of monitoring holes, failure to conduct a well yield test, and failure to conduct a test of the pumping equipment after installation.

2.1.4 Fourth Priority

Fourth priority violations are those based on the requirement of timely submittal of work reports that contain complete and accurate information about the construction of the well or installation of the pumping equipment. These violations include failure to file work reports, not filing work reports within the allowed time period (currently 60 days), and failure to provide a copy of the work report to the well owner.

2.1.5 Other

Other types of violations, such as failing to obtain a variance prior to well construction, submitting documents to the Division of Water Resources that contain untrue statements, failing to display license number on advertisements and equipment, etc. are evaluated individually and are prioritized based upon their individual merits and circumstance.

3. Complaint Procedure - Licensed Contractors

3.1 Written Complaint Required

Section 37-91-104(f), C.R.S., (1998), states that the Board of Examiners shall:

"Conduct hearings upon its own motion or upon receipt of written complaints with respect to any license under this article and with respect to the denial, revocation, or suspension of a license..."

The Board therefore requires that a complaint against a licensed water well contractor or licensed pump installation contractor be submitted in writing by the individual (or his representative) or entity lodging the complaint. Complaints may be communicated to the Board's Staff by telephone or other media, but a corrective action of the Board may only be initiated after receipt of a written complaint. Complaints must be as specific and detailed as possible in describing the nature of the complaint and the chronology of events leading to submittal of the complaint, and must be accompanied by all available documentation supporting the allegations of the complaint.

3.2 Staff Complaints

The Board's Staff shall research complaints and supporting documents received from the State Engineer and his staff. Upon completion of initial processing of such complaints and receipt of a response regarding the allegations of the complaint from the contractor, the Board's Staff shall present the information to the Board at its next regularly scheduled meeting. The Board shall determine whether or not the complaint appears to be justified and shall direct the Staff to pursue the complaint upon the Board's own motion if the complaint appears to be justified.

3.3 Initial Staff Evaluation

3.3.1 Upon receipt of a written complaint, the Staff shall first determine whether or not the complaint alleges a violation of the Statutes and/or the Rules and, therefore, comes within the Board's authority to take action against the license of the contractor named in the complaint if the alleged violation is proven. The Staff shall advise complainants that the Board only has authority to take action against a contractor's license when the licensed contractor fails to comply with the referenced Statutes and/or the Water Well Construction Rules and that the Board has no authority to take action against a contractor's license for non-performance of contractual obligations. However, the Board may take action against a contractor's license where a contractor allegedly has used fraud or deception in collecting fees from persons with whom he has contracted for well construction or pump installation (see Section 37-91-108(f), C.R.S., 1998). The Staff also shall advise complainants that the Board has no authority to levy fines against licensed contractors and can only order a licensed contractor to reconstruct a well, reinstall pumping equipment, or reimburse the costs of those activities, based upon a stipulated resolution of the complaint wherein the parties have agreed to such reconstruction, reinstallation, or reimbursement.

3.3.2 Complaints alleging violations within the scope of the Board's authority shall be prioritized, as described in section no. 2, for further evaluation and investigation. The Staff shall acknowledge complaints which appear to be outside of the Board's authority in a letter of explanation to the complainant and such complaints shall be dismissed from further action by the Board or its Staff.

3.4 Staff Evaluation and Investigation

3.4.1 The Staff shall assign a Complaint File number ("Complaint File") to complaints alleging violations within the scope of the Board's authority, which file shall contain the written complaint and documentation supporting the allegations, including copies of work reports and other relevant records obtained from the Division of Water Resources. The Staff shall mail a letter setting forth the allegations of the complaint to the contractor, which letter shall identify the specific Statutes and/or Rules that the contractor may have violated. The Staff's letter shall provide a period of twenty (20) days for the contractor to submit a written response to the allegations. The Staff's letter serves as the written complaint in actions to be pursued upon the Board's own motion and a copy of the letter mailed to the complainant serves to acknowledge the Staff's receipt of the complaint.

3.4.2 Copies of complaints received from individuals and other entities shall be provided to the contractor upon request. A request by the contractor for copies of complaints, other correspondence, or documents and records of the Division of Water Resources shall not extend the time period specified for the contractor's written response to the allegations. However, the Staff may grant an extension of time to respond upon request if, for good reason, the contractor is unable to respond within the specified time.

3.5 Brief and Advise the Board

3.5.1 At regularly scheduled meetings of the Board, and such other times as are deemed necessary, the Staff shall brief the Board with regard to new complaints against licensed contractors and advise the Board as to the progress of pending complaints.

3.5.2 Based upon the allegations of the written complaint, statement of alleged violations in the Staff's letter, the contractor's written response, and other records and documents included in the Complaint File, the Staff shall request approval from the Board to discontinue investigation of complaints that have not been substantiated, or authorization to pursue a stipulated resolution of complaints or to set a complaint for a hearing before the Board. Where a contractor has failed to respond to the Staff's letter, the Staff shall request authorization to set the matter for a hearing before the Board. For each complaint, the Staff shall proceed in accordance with the direction stated in a motion adopted by the Board.

3.5.3 Where a complainant has alleged violations that the Staff has not been able to substantiate, and for which the Board has authorized the Staff to discontinue investigation of the allegations, the Staff shall notify the complainant of the Board's decision and shall advise the complainant that he or she may request, in writing, a hearing before the Board, on his or her own behalf, to address the complaint. The Staff shall provide a copy of a written request for a hearing before the Board to the contractor named in the complaint and shall, upon request, furnish copies of correspondence and documents in the Complaint File (\$0.50 per page) to both parties. Records of the Division of Water Resources (well permit files, etc.) are available through the Division's Records Section at \$0.50 per page of photocopied material.

4. Notice of Complaint / Notice of Hearing

4.1 At the Board's direction to pursue resolution of a complaint, and upon obtaining legal assistance from the Attorney General's Office, the Staff shall assign a Hearing File number ("Hearing File") to each complaint. The Staff shall commence formal action on behalf of the Board by issuance of a Notice of Complaint or Notice of Hearing, signed by the Secretary of the Board, pursuant to the provisions of the State Administrative Procedure Act (Article 4 of Title 24, C.R.S. (1998)). The Staff shall serve such notices on behalf of the Board by U.S. mail addressed to the contractor at the business address registered with the Division in the contractor's license file or by arranging hand delivery if necessary. Service of the Notice shall also be made by U.S. mail, or by hand delivery, to the contractor's attorney, if the Staff has been advised that an attorney has been employed to represent the contractor in the matter, and to individuals or entities filing the complaint and their attorneys if the Staff has been so advised. Service need not be made by certified mail, but may be made by certified mail when deemed desirable by the Staff.

4.2 The complainant may withdraw a complaint at any time during the process upon written notification to the Staff. The Staff shall advise the Board that the Complaint has been withdrawn and shall, upon direction by the Board, notify all other parties. The Board may however, upon its own motion, direct the Staff to continue efforts to resolve issues after withdrawal of a Complaint by an individual or entity, if it believes resolution of the matter is necessary to protect public health and safety.

4.3 Notice of Complaint

4.3.1 A Notice of Complaint shall identify the alleged Statute/Rule violations to which the contractor has admitted or has not denied in his written response and shall be accompanied by a proposed Stipulation developed by the Staff and its attorney to resolve the matter. The Notice shall direct the parties to meet prior to a specified date to discuss a stipulated resolution of the issues. Any party to the complaint who is dissatisfied with the terms of the Stipulation, resulting in an inability to resolve the issues by stipulation, may submit a written request for a hearing before the Board of Examiners to resolve the matter.

4.4 Notice of Hearing

4.4.1 A Notice of Hearing that identifies the alleged violations of the complaint and that states the time, date, and place of the hearing before the Board, shall be issued on behalf of the Board in those instances where a contractor fails to respond to the Staff's efforts to obtain a response to the allegations, when a contractor denies violating the Statutes or Rules enumerated in the complaint and evidence exists supporting the allegations of the complaint, and in such other instances where the Board has determined that a hearing is necessary or desirable. Service of the Notice of Hearing shall follow the procedure described for service of a Notice of Complaint.

4.4.2 The Notice of Hearing shall direct the parties to meet within a specified time to discuss a stipulated resolution of the issues or develop a Prehearing Statement that will limit the scope of the hearing to disputed issues. The Notice shall also advise the licensed contractor that he must respond to the Board within thirty (30) days, in writing, regarding the allegations of Statute and/or Rule violations identified in the Notice of Hearing.

4.5 Continuance or vacation of a scheduled hearing may be requested by filing with the Board a Motion to Continue Hearing or Motion to Vacate Hearing by the parties, singly or jointly, which Motion shall specify the reason(s) for the request to continue or vacate the hearing. Hearings may only be continued to a new time and date or vacated by an Order of the Board.

5. Resolution/Disposition of the Issues by Stipulation

5.1 The Staff shall present stipulations that have been signed by the contractor and the Staff's attorney to the Board for approval of the terms of the Stipulation at its next regularly scheduled meeting after execution of the Stipulation. If the Board accepts the Stipulation, it shall issue a Findings of Fact, Conclusions of Law, Decision and Order ("Board's Order") consistent with the provisions of the Stipulation, but may also impose conditions for verification of compliance with the terms of the Board's Order. The Staff shall monitor compliance with the Board's Order and advise the Board regarding a contractor's compliance with the Board's Order until such time as the Board authorizes closure of the Hearing File. A copy of the Board's Order will be mailed to the office of the Division in which the violation occurred and to the contractor's bonding company.

5.2 In the event of failure to comply with the terms of the Stipulation and Board's Order, the Board may direct the Staff to prepare, through its attorney, the appropriate documents to be filed on behalf of the Board in district court for judicial enforcement of the Board's Order, and/or the Board may choose to schedule a hearing before the Board to determine if further action should be taken against a contractor's license.

6. Resolution/Disposition of the Issues at Hearing

6.1 The Board shall conduct hearings in accordance with Section 24-4-105, C.R.S. (1998). If a contractor fails to file a written answer to the Notice of Hearing thirty days after the service or mailing of the Notice, the Board may enter a default judgment against that contractor. For good cause shown, the Board may set aside the entry of default within ten days after the date of such entry. The Board shall preside at the hearing and hear evidence from all the parties. Each party may cross-examine witnesses who testify at the hearing. A party may appear on his or her own behalf at the hearing, or be represented by an attorney at that party's own expense. For each hearing, the Board shall enter a Findings of Fact, Conclusions of Law, Decision and Order ("Order"), which the Board shall serve upon each party by first class mail. The Order shall be effective on the date mailed to the parties or such later date as stated in the Order. A copy of the Board's Order will be mailed to the office of the Division in which the violation occurred and to the contractor's bonding company.

7. Appeal of Board Actions

7.1 Pursuant to Section 24-4-106, C.R.S. (1998), any party to a Board hearing may commence an action for judicial review of a Board order in the District Court for the City and County of Denver within thirty days after the date that order becomes effective. Upon a finding that irreparable injury would otherwise result, the Court may order the postponement of the effective date of the Board order pending judicial review. The Court bases its review of Board action on the record, and if it finds no error, upholds the Board's decision. The Court will hold unlawful and set aside a Board order and may remand the case for further proceedings if it determines that the Board's action was arbitrary and capricious, a denial of statutory right, contrary to constitutional right, in excess of statutory jurisdiction, authority, purpose or limitations, not in accordance with procedures required by law, an abuse of discretion, based on findings of fact that are clearly erroneous in light of the record, or unsupported by substantial evidence when the record is considered as a whole.

8. Judicial Enforcement of Board Orders

8.1 The Board may commence an action for judicial enforcement of any Board order in any court of competent jurisdiction.

9. Complaint Procedure - Unlicensed Contractors

Sections 37-91-105(1) and 37-91-111(1)(c) and (d), C.R.S. (1998), prohibit contracting for the construction of and constructing water wells, and contracting for the installation of and installing pumping equipment without first obtaining a license from the Board of Examiners. The Board has directed the Staff to investigate and resolve complaints regarding the unlawful construction of water wells and/or installation of pumping equipment by unlicensed contractors in the following manner:

9.1 Verification of Complaint

9.1.1 Upon receiving a complaint or notification regarding the unlawful construction of a water well or installation of pumping equipment by an unlicensed contractor, the Staff shall contact the complainant to obtain all documents available that support the complaint, including a written statement from the complainant that describes the date, place, and circumstances of the alleged violation of the Statutes, which statement shall also identify the person or company alleged to have unlawfully engaged in well construction and/or pump installation activities and the person or entity for whom the services were allegedly provided, including well permit numbers if available. The Staff may also attempt to contact the person or entity for which the unlawful services were provided to obtain relevant documents and a similar statement, if possible.

9.2 Order to Cease Activities

9.2.1 Upon verification of the complaint, to the extent that verification is possible, the Staff shall immediately assign a Complaint File number to the complaint and prepare an Order directing the unlicensed contractor to cease engaging in the unlawful activity and submit the Order to the Secretary of the Board for signature. Such Orders shall state the alleged unlawful activity, identify the person for whom the service was performed, the approximate date and location that the alleged unlawful activity occurred, and shall require a written response to the allegation within twenty (20) days of receipt of the Order. The Staff shall serve such Orders on behalf of the Board of Examiners by certified U.S. mail or arrange hand delivery if necessary.

9.3 Disposition / Resolution of Complaints Against Unlicensed Contractors

9.3.1 The Staff shall advise the Board at its regularly scheduled meetings regarding the status of new and pending complaints against unlicensed contractors alleged to have been engaging in the unlawful construction of water wells and/or installation of pumping equipment. Based upon the statements of the Complainant and the party for whom the alleged unlawful services were provided, information contained in documents obtained by the Staff, the unlicensed contractor's response to the allegations, the Staff's account of conversations with the complainant and/or party for whom the alleged unlawful services were provided, and any other information the Board considers relevant to the matter, the Board shall direct the Staff to either dismiss the complaint, if the complaint has not been substantiated, or authorize the Staff to obtain legal assistance from the Attorney General's Office to file for an injunction, civil penalty and attorney fees with the district court in which the grounds for the injunction arose.

9.3.2 After the Staff has filed for an injunction, civil penalty and attorney fees, and at the direction of the Board, the Staff may attempt to enter into a Stipulation to Dismiss wherein the parties agree that

the Court may enter an Order enjoining the unlicensed contractor from continuing to construct wells or install pumping equipment in wells without being licensed and directing the unlicensed contractor to pay a civil penalty and the State's attorney fees.

9.4 Criminal Penalties.

9.4.1 The Board may direct that the Staff contact the appropriate District Attorney's Office to pursue criminal penalties against any person suspected to have violated the provisions of Title 37, Article 91 or the Rules promulgated thereunder.

9.5 Penalties – General

9.5.1 The general concept for penalties is to balance the Rule and/or statute violation with a commensurable penalty. The Board views all infractions as serious, however, some are viewed less severe in their merits or circumstance and therefore, each violation is evaluated independently. For instance, the penalty assessed for a single unintentional violation is generally developed to inform or educate the person with regard to the Rule or Statute violated and is often issued in the form of a warning letter or letter of admonition to contractors, or by seeking a minimal civil penalty and reasonable attorney fees from an unlicensed contractor, authorized individual, private driller, private pump installer, or well owner. In addition, if the infraction results in a situation that can adversely affect the public health, corrective action is often required to eliminate or diminish the potential for contamination of the well and the ground water resource. The scale of penalties referenced in this section 9.5.1 does not limit the Board's ability to impose or seek a more severe penalty if it is deemed necessary by the Board to do so.

9.5.2 Flagrant, continued or repeated violation of the Rules promulgated by the Board and/or the provisions of Article 91 of Title 37, C.R.S., create a serious risk to public health and the ground water resource. As a response to those situations, and in accordance with the duty of the Board to protect the public health and the ground water resources of the state through the proper construction and abandonment of wells, the Board has directed that penalties increase substantially for flagrant or repeated violation of its Rules and/or applicable statutes. For licensed contractors the penalties may range from a probationary period to suspension or revocation of his/her license. The Board may also direct that, in addition to the administrative penalty, a complaint be filed against the contractor through the Attorney General's office to obtain a judicial remedy for the violations. Persons who are not licensed by the Board (not subject to administrative penalties) that flagrantly or repeatedly violate the Rules/statutes may be pursued through the office of the Attorney General to obtain the maximum relief allowed by law.