

WATER WELL DRILLERS

Occupations Code

Title 12. Practices and Trades Related to Water, Health, and Safety

Chapter 1901

Administered by the Texas Department of Licensing and Regulation

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SUBCHAPTER A. GENERAL PROVISIONS

§ 1901.001. Definitions

In this chapter:

- (1) "Commission" means the Texas Commission of Licensing and Regulation.
- (3) "Council" means the Texas Water Well Drillers Advisory Council.
- (4) "Department" means the Texas Department of Licensing and Regulation.
- (5) "Dewatering well" means an artificial excavation that is constructed to produce groundwater to lower the water table or potentiometric surface and that is not used to produce or to facilitate the production of minerals under a state regulatory program.
- (6) "Dewatering well driller" means a person who drills, bores, cores, or constructs a dewatering well. The term includes the owner or operator of a well or the contractor or drilling supervisor. The term does not include a person who acts under the direct supervision of a dewatering well driller and is not primarily responsible for the drilling operation.
- (7) "Driller" means a water well driller, injection well driller, dewatering well driller, or monitoring well driller.
- (7-a) "Executive director" means the executive director of the department.
- (7-b) "Groundwater conservation district" means a district to which Chapter 36, Water Code, applies.
- (8) "Injection well" includes:
 - (A) an air-conditioning return flow well used to return water that has been used for heating or cooling in a heat pump to the aquifer that supplied the water;
 - (B) a cooling water return flow well used to inject water that has been used for cooling;
 - (C) a drainage well used to drain surface fluid into a subsurface formation;
 - (D) a recharge well used to replenish water in an aquifer;
 - (E) a saltwater intrusion barrier well used to inject water into a freshwater aquifer to prevent the intrusion of salt water into fresh water;
 - (F) a sand backfill well used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines;
 - (G) a subsidence control well used to inject fluids into a non-oil-producing or non-gas-producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water; and
 - (H) a closed system geothermal well used to circulate water, other fluids, or gases through the earth as a heat source or heat sink.
- (9) "Injection well driller" means a person who drills, bores, cores, or constructs an injection well. The term includes the owner or operator of a well or the contractor or drilling supervisor. The term does not include a person who acts under the direct supervision of an injection well driller and is not primarily responsible for the drilling operation.

- (10) "Monitoring well" means an artificial excavation that is constructed to measure or monitor the quantity or movement of substances below the surface of the ground and that is not used in conjunction with the production of oil, gas, or other minerals.
- (11) "Monitoring well driller" means a person who drills, bores, cores, or constructs a monitoring well. The term includes the owner or operator of a well or the contractor or drilling supervisor.
- (12) "Person" means an individual, firm, partnership, association, corporation, or other private legal entity.
- (13) "Pollution" means a change to the physical, thermal, chemical, or biological quality of water in a way that:
 - (A) makes the water harmful to humans, animals, vegetation, or property; or
 - (B) impairs the public enjoyment of the water for a reasonable purpose.
- (14) "Water well" means an artificial excavation constructed to explore for or produce groundwater. The term does not include:
 - (A) a test or blast hole in a quarry or mine or a well or excavation constructed to explore for or produce oil, gas, or other minerals unless the hole is also used to produce groundwater; or
 - (B) an injection water source well regulated under Section 91.101, Natural Resources Code.
- (15) "Water well driller" means a person who drills, bores, cores, or constructs a water well in this state. The term includes the owner or operator of a well or the contractor or drilling supervisor. The term does not include a person who:
 - (A) drills, bores, cores, or constructs a water well on the person's own property for the person's own use; or
 - (B) assists in constructing a water well under the direct supervision of a driller and is not primarily responsible for the drilling operation.
- (16) "Well" means a water well, injection well, dewatering well, or monitoring well.

§ 1901.002. Effect on Groundwater Rights

This chapter does not affect the ownership of or the rights of landowners in groundwater.

§ 1901.003. Liability Under Law

A person is not relieved from liability under law by obtaining a license under this chapter.

SUBCHAPTER B. ADMINISTRATION AND LICENSING PROGRAMS

§ 1901.051. Licensing

- (a) The department, with the advice of the council, shall prepare licensing examinations.
- (b) The department shall evaluate the qualifications of license applicants.
- (c) The executive director shall issue licenses to applicants who qualify.

§ 1901.052. Rules

- (a) The commission shall adopt rules as necessary to enforce this chapter, including rules governing:
 - (1) license applications;

- (2) qualifications of applicants;
 - (3) standards of conduct for drillers, including standards for marking well drilling rigs and equipment; and
 - (4) procedures and practices before the department.
- (b) The commission may not adopt a rule under this chapter that:
- (1) regulates the installation or repair of well pumps and equipment by:
 - (A) a person on property the person owns or controls for the person's own use;
 - (B) an employee of a person described by Paragraph (A); or
 - (C) a person who is not hired or compensated and who acts on behalf of a person described by Paragraph (A); or
 - (2) requires a person who owns or controls property or possesses a well to complete, repair, or retrofit the well to any standard other than a standard in effect at the time the well was originally completed unless the well is found to be a threat to public health and safety or to water quality.

§ 1901.053. Water Well Drillers Account

- (a) The department shall deposit money collected under this chapter to the credit of the water well drillers account in the general revenue fund. Money deposited in that account under this section may be used only to administer this chapter.
- (b) The department shall allocate not more than 20 percent of the money in the account to cover the department's administrative costs.

§ 1901.054. Register of License Holders

The department shall maintain a current register of license holders.

§ 1901.055. Transfer of Functions

If the functions necessary to the proper implementation of duties under this chapter are transferred to another entity, the powers and duties under this chapter are transferred to that entity.

SUBCHAPTER C. TEXAS WATER WELL DRILLERS ADVISORY COUNCIL

§ 1901.101. Council Membership

- (a) The Texas Water Well Drillers Advisory Council consists of nine members appointed by the presiding officer of the commission, with the commission's approval, as follows:
 - (1) six members who are drillers experienced in the well drilling business and familiar with well drilling, completion, and plugging methods and techniques; and
 - (2) three public members.
- (b) One member appointed under Subsection (a)(1) must be selected from the state at large and the remaining five driller members must be selected from each of the following geographic areas of the state:
 - (1) Gulf Coast area;

- (2) Trans-Pecos area;
 - (3) Central Texas area;
 - (4) Northeast Texas area; and
 - (5) Panhandle-South Plains area.
- (c) Appointments to the council shall be made without regard to the race, creed, sex, religion, or national origin of the appointee.

§ 1901.102. Eligibility of Members

- (a) A person is not eligible to serve as a member under Section 1901.101(a)(1) if:
- (1) the person is employed by or owns an interest in a company, firm, or business association engaged in any phase of the well drilling business; and
 - (2) a member serving under Section 1901.101(a)(1) is employed by or owns an interest in the same company, firm, or business association.
- (b) A person is not eligible for appointment as a public member of the council if the person or the person's spouse:
- (1) is licensed by an occupational regulatory agency in the field of well drilling; or
 - (2) is employed by, participates in the management of, or has, other than as a consumer, a financial interest in a business entity or other organization related to the field of well drilling.

§ 1901.103. Membership and Employee Restrictions

- (a) An officer, employee, or paid consultant of a trade association in the well drilling industry may not be a council member or an employee of the department connected with the administration of this chapter.
- (b) A council member or an employee of the department connected with the administration of this chapter may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the well drilling industry.
- (c) A person may not serve as a member of the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities on behalf of a trade or professional association in the well drilling industry.

§ 1901.104. Terms

Council members serve six-year terms expiring September 15.

§ 1901.105. Presiding Officer

The presiding officer of the commission, with the commission's approval, shall appoint a member of the council to serve as presiding officer of the council for two years.

§ 1901.106. Grounds for Removal

It is a ground for removal from the council that a member:

- (1) does not have at the time of appointment the qualifications required by Section 1901.101 or 1901.102;

- (2) does not maintain during service on the council the qualifications required by Section 1901.101 or 1901.102;
- (3) violates a prohibition established by Section 1901.103; or
- (4) is absent from more than half of the regularly scheduled council meetings that the member is eligible to attend each year.

§ 1901.107. Meetings; Quorum

- (a) The council shall hold meetings at the call of the presiding officer.
- (b) The council shall conduct meetings in compliance with Chapter 551, Government Code.
- (c) A majority of the council constitutes a quorum.

§ 1901.108. Per Diem; Reimbursement

- (a) A council member is entitled to a per diem as set by legislative appropriation for each day the member engages in the business of the council.
- (b) A council member may be reimbursed for travel expenses, including expenses for meals and lodging. A member is entitled to reimbursement for transportation expenses as prescribed by the General Appropriations Act.

§ 1901.109. Council Powers and Duties

- (a) The council may propose rules for adoption by the commission relating to the regulation of drillers registered under this chapter.
- (b) The council shall advise the department on the contents of licensing examinations.
- (c) The council may:
 - (1) recommend standards for continuing education programs, including standards relating to:
 - (A) the qualifications of program providers and instructors; and
 - (B) the amount of program fees; and
 - (2) recommend topics to be covered in a continuing education course.
- (d) The council shall assist the commission in evaluating continuing education programs.

SUBCHAPTER D. LICENSE REQUIREMENTS

§ 1901.151. License Required

A person may not act or offer to act as a driller unless the person holds a license issued by the executive director under this chapter and rules adopted under this chapter.

§ 1901.152. License Application; Examination Fee

- (a) An application for a license must contain:
 - (1) the applicant's name;
 - (2) the applicant's business address;

- (3) the applicant's permanent mailing address; and
- (4) any other relevant information required by the department.

(b) An applicant must pay to the department an examination fee at the time the application is submitted.

§ 1901.153. Residency Requirement

A person must reside in this state for at least 90 days before the date the person applies for a license under this chapter.

§ 1901.154. License Fee

A person who qualifies for a license must pay to the department the license fee set by the commission.

§ 1901.155. License Expiration; Renewal

Except as provided by Section 51.205(a), a license issued under this chapter expires August 31 of each year. On or before that date, a license holder must pay an annual renewal fee to the department.

§ 1901.158. License Not Transferable

A license is not transferable or assignable.

§ 1901.159. Replacement of Lost or Destroyed License

On application and payment of a fee, the department shall issue a duplicate license to replace a lost or destroyed license.

§ 1901.161. Exemption: Dewatering Well

The licensing requirements of this subchapter do not apply to a person who drills, bores, cores, or constructs a dewatering well or system to remove water for the purpose of constructing a highway, road, bridge, drainage, or underground utility project.

§ 1901.162. Waiver for Applicant Licensed in Another State

The commission may adopt rules allowing waiver of a license requirement for an applicant who is licensed in another state that has license requirements substantially equivalent to those of this state.

SUBCHAPTER E. EXAMINATION

§ 1901.201. Frequency of Examination

- (a) The department shall offer examinations at least once each year.
- (b) The department shall offer examinations more frequently if more than 10 persons petition for an additional examination.

§ 1901.202. Contents of Examination

- (a) The department shall design written examinations to disqualify a person who lacks the necessary knowledge of drilling, of completion and plugging methods and techniques, and of groundwater formations to the extent that drilling by the person would create a serious risk of polluting fresh water.
- (b) The department may prescribe additional requirements:
 - (1) for the examination of monitoring well drillers; and
 - (2) that relate to water conservation for the examination of dewatering well drillers.

§ 1901.203. Oral Examination

An applicant may take an oral examination.

§ 1901.204. Grading of Examination

The department shall administer examinations so that a person grading an examination does not know the identity of the person taking the examination.

§ 1901.206. Reexamination

A person who fails an examination may apply to take a subsequent examination on payment of the examination fee.

SUBCHAPTER F. PRACTICE BY LICENSE HOLDER

§ 1901.251. Well Log

- (a) Each driller who drills, deepens, or otherwise alters a water well in this state shall make and keep a legible and accurate well log in accordance with rules adopted by the commission and on forms prescribed by the executive director. The well log shall be recorded at the time of drilling, deepening, or otherwise altering the well and must contain:
 - (1) the depth, thickness, and character of the strata penetrated;
 - (2) the location of water-bearing strata;
 - (3) the depth, size, and character of casing installed; and
 - (4) any other information required by rules adopted by the commission.
- (b) Not later than the 60th day after the date of the completion or cessation of drilling, deepening, or otherwise altering the well, the driller shall deliver or send by certified mail a copy of the well log to:
 - (1) the department;
 - (2) the Texas Natural Resource Conservation Commission; and
 - (3) the owner of the well or the person for whom the well was drilled.
- (c) If the department receives, by certified mail, a written request from the owner of the well or from the person for whom the well was drilled that the well log be made confidential, the department shall protect the contents of the well log as confidential and not a matter of public record.

§ 1901.252. Marking Rig

- (a) A driller shall legibly mark the license number that appears on the driller's license on each rig used by the driller or the driller's employees in the well drilling business.
- (b) The commission shall adopt rules specifying the manner for marking a rig.

§ 1901.253. Completing Water Well

A driller shall complete a well under standards and procedures adopted by the commission.

§ 1901.254. Notice Regarding Injurious Water; Plugging, Repair, or Completion of Well

- (a) A driller shall notify the department and the landowner or person having a well drilled on encountering water injurious to vegetation, land, or other water and determining that the well must be plugged, repaired, or properly completed in order to avoid injury or pollution.

- (b) The driller shall ensure that the well is plugged, repaired, or properly completed under standards and procedures adopted by the commission.

§ 1901.255. Plugging Water Well

- (a) In this section:
 - (1) "Abandoned well" means a well that is not in use. A well is considered to be in use if:
 - (A) the well is not a deteriorated well and contains the casing, pump, and pump column in good condition;
 - (B) the well is not a deteriorated well and has been capped;
 - (C) the water from the well has been put to an authorized beneficial use, as defined by the Water Code;
 - (D) the well is used in the normal course and scope and with the intensity and frequency of other similar users in the general community; or
 - (E) the owner is participating in the Conservation Reserve Program authorized by Sections 1231-1236, Food Security Act of 1985 (16 U.S.C. Sections 3831-3836), or a similar governmental program.
 - (2) "Deteriorated well" means a well that, because of its condition, will cause or is likely to cause pollution of any water in this state, including groundwater.
- (b) A driller who knows of an abandoned or deteriorated well shall notify the landowner or person who possesses the well that the well must be plugged or capped to avoid injury or pollution.
- (c) Not later than the 180th day after the date a landowner or other person who possesses an abandoned or deteriorated well learns of its condition, the landowner or other person shall have the well plugged or capped under standards and procedures adopted by the commission.
- (d) Not later than the 30th day after the date the well is plugged, a driller, licensed pump installer, or well owner who plugs an abandoned or deteriorated well shall submit a plugging report to:
 - (1) the board of directors of the ground water conservation district in which the well is located, if the well is located in the boundaries of a groundwater conservation district; and
 - (2) the executive director.
- (e) The department or the groundwater conservation district in which the well is located shall furnish plugging report forms on request. The executive director shall prescribe the content of the forms.

§ 1901.256. Enforcement by Groundwater Conservation District

- (a) This section applies only to a violation related to a well located in the boundaries of the groundwater conservation district seeking to bring an action under this section.
- (b) A groundwater conservation district shall enforce compliance with Section 1901.255 related to wells located in the boundaries of the district.
- (c) A groundwater conservation district may bring an action to enjoin a person from violating Section 1901.255.

- (d) A groundwater conservation district may enforce by injunction or other appropriate remedy in a court any rule, decision, determination, or order adopted or entered under this chapter that is related to Section 1901.255.
- (e) A groundwater conservation district may bring an action to recover a civil penalty under Section 1901.401 for a violation of this chapter or a rule adopted under this chapter related to Section 1901.255.
- (f) The groundwater conservation district may bring the action in the county in which:
 - (1) the offending activity occurred; or
 - (2) the person engaging in the activity resides.

§ 1901.257. Memorandum of Understanding Regarding Abandoned Wells

- (a) In this section, “abandoned well” and “deteriorated well” have the meanings assigned by Section 1901.255.
- (b) The Texas Commission on Environmental Quality and the department shall by rule adopt or revise a joint memorandum of understanding to coordinate the efforts of the department, groundwater conservation districts, and the field offices of the Texas Commission on Environmental Quality relating to investigative procedures for referrals of complaints regarding abandoned and deteriorated wells.
- (c) Each groundwater conservation district in which an abandoned or deteriorated well is located shall join the memorandum of understanding adopted under Subsection (b).

SUBCHAPTER G. PROHIBITED PRACTICES & DISCIPLINARY PROCEDURES

§ 1901.301. Grounds for Disciplinary Action

The commission may discipline a person under Section 51.353 for a violation of this chapter or a rule adopted under this chapter, including:

- (1) an intentional misstatement or misrepresentation of a fact on an application or well log or to a person for whom a well is being drilled, deepened, or otherwise altered;
- (2) the failure to keep, deliver, or send a well log as required by Section 1901.251;
- (3) the failure to advise a person for whom a well is being drilled that:
 - (A) injurious water has been encountered;
 - (B) the water is a pollution hazard; and
 - (C) the well must be immediately plugged in an acceptable manner; or
- (4) the failure to complete a well in accordance with standards and procedures adopted by the commission.

SUBCHAPTER I. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

§ 1901.401. Civil Penalty

A person who violates this chapter or a rule adopted under this chapter is subject to a civil penalty of not less than \$200 or more than \$1,000 for each day of noncompliance or each act of noncompliance as determined by the court.

§ 1901.402. Injunction and Other Enforcement Provisions

- (a) The executive director may bring an action to enjoin a person from violating this chapter.

- (b) The executive director may enforce by injunction or other appropriate remedy in a court any rule, decision, determination, or order adopted or entered under this chapter.

§ 1901.403. Venue

The executive director may bring an action in:

- (1) Travis County; or
- (2) the county in which:
 - (A) the offending activity occurred; or
 - (B) the person engaging in the activity resides.

§ 1901.404. Action by Attorney General

- (a) On request, the attorney general shall represent the department in an action under Section 1901.402.
- (b) At the request of the executive director, the attorney general shall bring an action in the name of the state for injunctive relief, to recover a civil penalty, or for both injunctive relief and a civil penalty, as authorized by this subchapter.