***** CURRENT THROUGH THE 2011 REGULAR SESSION *****
Title 17 Professions, Occupations, and Businesses
Subtitle 2. Nonmedical Professions
Chapter 50 Water Well Constructors
Subchapter 1 - General Provisions

17-50-101. Title.

This chapter shall be known and cited as the "Arkansas Water Well Construction Act".

HISTORY: Acts 1969, No. 641, § 1; A.S.A. 1947, § 21-2001.

17-50-102. Purpose.

(a) In that there is an ever-increasing demand for water in this state necessitating the construction of water wells, it is imperative that the general health, safety, and welfare be protected by providing a means for the proper development of the natural resource of underground water in an orderly, sanitary, reasonable, and safe manner, without waste, so that sufficient potable supplies for the continued economic growth of our state may be assured. To that end it is essential that persons engaged in water well drilling cooperate with the State of Arkansas in the development of ground water resources.

(b) In that there is an ever-increasing demand for water in this state necessitating the construction of water wells and pump installation, it is imperative that the general health, safety, and welfare be protected by providing the Commission on Water Well Construction with jurisdiction over pump installation, which is an inherent part of well construction. The regulation of pump installation and installers is essential to fulfill the intent of this chapter.

HISTORY: Acts 1969, No. 641, § 2; A.S.A. 1947, § 21-2002; Acts 1987, No. 693, § 1.

17-50-103. Definitions.

As used in this chapter:

(1) "Abandoned water well" means a well whose use has been permanently discontinued or which is in such a state of disrepair that continued use for the purpose of obtaining ground water is impractical;

(2) "Apprentice" means a natural person who under the supervision of a registered pump installer or registered water well driller is obtaining the knowledge, skills, and abilities necessary to obtain a certificate of registration as a pump installer or water well driller;

(3) "Apprenticeship program" means a program developed by the Commission on Water Well Construction pursuant to § 17-50-312 to develop certain minimum knowledge, skills, or abilities in those natural persons desiring registration as pump installers or water well drillers;

(4) "Commission" means the Commission on Water Well Construction as created by § 17-50-201;

(5) "Continuing education" means a program approved by the commission designed to provide certificate or license holders further knowledge, skills, or abilities in water well construction, pump installation, or related activities;

(6) "Heat pump circulating pipe" means pipes that circulate fluid in heat pump wells and are a part of heat pump well construction but are not considered pumping equipment;

(7) (A) "Heat pump wells" means any excavation that is drilled, redrilled, cored, bored, washed, driven, dug, jetted, or otherwise artificially constructed for the purpose of obtaining or exchanging geothermal energy for use with ground water source air conditioning or heat pump systems.

(B) The excavation may have pipes installed inside the excavation to circulate or discharge various fluids for the use and purpose set out in this subdivision (7), and the well may or may not be backfilled after excavation;

(8) "Person" means any natural person, partnership, association, business trust, and public or private corporation;

(9) "Pitless adapter" means an underground or above-ground discharge assembly that attaches directly to the well casing and extends the casing above the ground surface, providing a watertight subsurface connection for conducting water from the well, sealing out contaminants, protecting the water from temperature extremes, and providing access to the pump or other systems within the well;

(10) "Pump installer" means any natural person who engages for compensation in pump installation or repair and who is authorized to plug abandoned water wells and to install pitless adapters;

(11) (A) "Pumping equipment" means all machinery and parts of pumps such as deep well turbine pumps with right angle gear drive, vertical hollow shaft motors, jet pumps and motors, submersible pumps and motors, and other parts and fittings installed or attached to the well.

(B) "Pumping equipment" shall exclude cooling units, horizontal electric motors, heat pump circulating pipe, and stationary diesel or gas engines;

(12) "Repair" means any action which results in a breaking, opening, or replacement of a well seal or cap;

(13) "Rig" means any power-driven, percussion, rotary, digging, jetting, direct push, vibrating, hydrofracturing, or augering machine used in the construction, alteration, repair, or abandonment of water wells, or any hoist or machine used in installing or removing pumps from wells with a lifting capacity of one thousand pounds (1,000 lbs.) or more;

(14) (A) "Water well" means any excavation that is drilled, redrilled, cored, bored, washed, driven, dug, jetted, or otherwise artificially constructed for the purpose of locating, acquiring, diverting, or artificially recharging ground water.

(B) (i) "Water well" shall also include excavations made for the purpose of exchanging the geothermal energy found in the earth as defined in subdivision (7) of this section.

(ii) "Water well" shall not include an excavation made for the purpose of:

(a) Obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying;

(b) Inserting media to repressure oil or natural gas-bearing formations; or

(c) Storing petroleum, natural gas, or other products;

(15) "Water well contractor" means any person who engages in the business of well construction or pump installation or repair, exclusive of surveying or other acts preparatory to the construction of a water well;

(16) "Water well driller" means any natural person who engages for compensation in well construction in this state; and

(17) "Well construction" means the act of setting up the rig for and engaging in the excavation of a water well, the modification of the borehole, the setting or removal of casing up to the point of installing or repairing pump equipment, and plugging abandoned water wells.

HISTORY: Acts 1969, No. 641, § 3; 1985, No. 822, § 1; A.S.A. 1947, § 21-2003; Acts 1987, No. 693, § 2; 2001, No. 1184, § 1; 2003, No. 297, § 1.

17-50-104. Violations.

(a) It shall be unlawful and a violation of this chapter, unless exempted under the provisions of §§ 17-50-107(b) and 17-50-108(b), for:

(1) Any person to engage in well construction or pump installation unless the work is performed under the supervision of an individual certified by the Commission on Water Well Construction in the type of work done;

(2) (A) Any water well contractor to fail to deliver a report on water well construction to the commission within ninety (90) days after completion of well construction.

(B) The report on water well construction shall contain such information as may be requested by appropriate rules and regulations of the commission and shall be upon forms supplied by the commission;

(3) Any person to install, construct, repair, or alter a water well or water well pumping equipment which is not in compliance with appropriate rules and regulations or is a health hazard;

(4) A person to operate a rig without a permit as prescribed in § 17-50-310; or

(5) A person to enter into a contract for well construction or pump installation or hold himself or herself out in the business as a water well contractor without posting bond or bond fee and holding a license as provided in §§ 17-50-304 - 17-50-309.

(b) Every day or any part of a day in which a violation occurs shall constitute a separate offense.

HISTORY: Acts 1969, No. 641, § 12; A.S.A. 1947, § 21-2012; Acts 1987, No. 693, § 7; 1999, No. 69, § 1; 2001, No. 1184, § 2; 2003, No. 297, § 2.

17-50-105. Criminal penalties.

(a) Any person who violates § 17-50-104 shall be guilty of a Class A misdemeanor.

(b) Any person who violates any other provision of this chapter, regulations issued under this chapter, or order pursuant to this chapter shall be guilty of a Class B misdemeanor.

(c) Every day, or any part of a day, in which the violation occurs shall constitute a separate offense.

(d) Any person found guilty of a Class A or Class B misdemeanor for violation of any provision of this chapter who continues to engage in the behavior or activity giving rise to violation shall be guilty of a Class D felony for the second or any subsequent offense.

(e) Persons described in this section may be arrested by any sheriff, constable, chief of police, or other law enforcement officer of this state or any political subdivision of this state.

HISTORY: Acts 1969, No. 641, § 18; A.S.A. 1947, § 21-2018; Acts 2003, No. 297, § 3.

17-50-106. Alternative civil penalties.

(a) Whenever the Commission on Water Well Construction, after a hearing conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq., finds that a person has violated the provisions of this chapter or any rules or regulations promulgated by the commission pursuant to the authority granted in this chapter, the commission shall have the power and authority to impose a civil penalty on the person in lieu of prosecuting the person under § 17-50-105.

(b) If a person against whom a civil penalty has been imposed by the commission, as authorized in this section, fails to pay the penalty to the commission, the commission may file action in the Pulaski County Circuit Court to collect the civil penalty.

(c) If the commission prevails in the action, the defendant shall be directed to pay, in addition to the civil penalty, reasonable attorney's fees and costs of the commission for prosecuting the action.

(d) No civil penalty shall be assessed by the commission against any person if that person is prosecuted under § 17-50-105.

(e) The commission shall not assess a civil penalty in excess of two thousand five hundred dollars ($2,500) per offense.

HISTORY: Acts 1981, No. 521, § 3; A.S.A. 1947, § 21-2018.1; Acts 2003, No. 297, § 4.

17-50-107. Scope.

(a) No person shall construct, repair, or abandon, or cause to be constructed, repaired, or abandoned, any water well without complying with the provisions of this chapter and the rules and regulations adopted pursuant to it.

(b) The provisions of this chapter and rules and regulations adopted pursuant to it shall not be construed to repeal the provisions of any other law or ordinance of any municipality establishing standards with respect to water well drilling or pump installation and shall prevail concurrently with such other law or ordinance.

HISTORY: Acts 1969, No. 641, §§ 4, 20; A.S.A. 1947, §§ 21-2004, 21-2020.

17-50-108. Exemptions - Limitations.

(a) Where the Commission on Water Well Construction finds that compliance with all requirements of this chapter would result in undue hardship, an exemption from any one (1) or more such requirements may be granted by the commission to the extent the exemption can be granted without impairing the intent and purpose of this chapter.

(b) Nothing in this chapter or any rule, regulation, or order pursuant to it shall prevent a person who has not obtained a license pursuant to §§ 17-50-303 and 17-50-304 from constructing, altering, or repairing a water well or installing or repairing a pump or pumping equipment for use by him or her on his or her own land. This chapter shall not apply to any person owning, operating, and maintaining on May 27, 1969, any such well unless it constitutes a public health hazard.

(c) (1) (A) No well in existence on May 27, 1969, shall be required to conform to the provisions of § 17-50-205 or any rules or regulations adopted pursuant thereto.

(B) However, any well abandoned or repaired, including any well deemed to have been abandoned, as defined in this chapter, shall be brought into compliance with the requirements of this chapter and applicable rules or regulations with respect to abandonment of wells.

(2) Any well supplying water which is determined by the commission to be a health hazard must comply with the provisions of this chapter and applicable rules and regulations within a reasonable time after notification of the determination has been given.

(d) This chapter shall not apply to any distribution of water beyond the point of discharge from any storage or pressure tank, or beyond the point of discharge from the pump if no tank is employed, nor to any well, pump, or other equipment used temporarily for dewatering purposes.

(e) A county, municipality, or other political subdivision of the state engaged in well drilling shall be exempt from paying the license or rig fees for the operations performed for the political subdivision by employees of and with equipment owned by the governmental entity.

HISTORY: Acts 1969, No. 641, §§ 4, 8, 13, 19; A.S.A. 1947, §§ 21-2004, 21-2008, 21-2013, 21-2019; Acts 1987, No. 693, §§ 8, 9; 1993, No. 328, § 3; 1993, No. 348, § 3.

17-50-109. Enforcement procedure.

Whenever the Commission on Water Well Construction has reasonable grounds for believing that there has been a violation of this chapter or any rule or regulation adopted pursuant to this chapter, the commission may enforce compliance in the following manner:

(1) The commission shall give written notice to the person or persons alleged to be in violation;

(2) The notice shall identify the provisions of this chapter or regulation issued hereunder alleged to be violated and the facts alleged to constitute the violation;

(3) The notice shall be served in the manner required by law for the service of process upon a person in a civil action or by an employee of the commission and may be accompanied by an order of the commission requiring described remedial action which, if taken within the time specified in the order, will effect compliance with the requirements of this chapter and regulations issued under this chapter;

(4) The order shall become final unless a written request for hearing before the commission is made within ten (10) days from the date of service of the order; and

(5) In lieu of such an order, the commission may require the person or persons named in the notice to appear at a hearing, at a time and place specified in the notice, after which an appropriate remedial order may issue.

HISTORY: Acts 1969, No. 641, § 16; A.S.A. 1947, § 21-2016; Acts 2003, No. 297, § 5.

17-50-110. Applicability of Arkansas Administrative Procedure Act.

(a) Any and all proceedings taken under this chapter shall be subject to and conducted in accordance with the provisions of the Arkansas Administrative Procedure Act, § 25-15-201 et seq., unless otherwise provided by the provisions of this chapter.

(b) Any person aggrieved by any action of the commission pursuant to the authority granted in this chapter may appeal the decision in the manner and procedure prescribed for appeals from other administrative decisions in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

HISTORY: Acts 1969, No. 641, § 17; 1981, No. 521, § 3; A.S.A. 1947, §§ 21-2017, 21-2018.1.

Subchapter 2 - Commission on Water Well Construction

17-50-201. Creation - Members.

(a) There is created a Commission on Water Well Construction which shall exercise its duties as provided by this chapter.

(b) The commission shall consist of seven (7) members, composed of:

(1) The Director of the Department of Health or his or her designated representative;

(2) The Director of the Arkansas Soil and Water Conservation Commission or his or her designated representative;

(3) (A) One (1) person engaged in the business of manufacturing, distributing, or supplying heat pumps which require heat pump water wells.

(B) The person shall be recommended by the Arkansas Heat Pump Association or the EnviroEnergy Group or another groundwater source industry association.

(C) The person shall be a licensed HVACR contractor under § 17-33-101 et seq., and shall be appointed by the Governor and confirmed by the Senate; and

(4) (A) Four (4) persons who are, by trade, water well drillers.

(B) The water well drilling members shall be:

(i) Two (2) water well drillers whose principal place of business is southeast of the fall line in Arkansas, and who are actively engaged in the construction of water wells and pump installation in the Mississippi Embayment or Gulf Coastal Plain as represented on the geologic map of Arkansas; and

(ii) Two (2) water well drillers whose principal place of business is northwest of the fall line in Arkansas and who are actively engaged in the construction of water wells and pump installation business in the Ozark Region, Arkansas River Valley, or Ouachita Mountain Region as represented on the geologic map of Arkansas.

(C) These members shall be appointed by the Governor and confirmed by the Senate and shall be certified under the provisions of §§ 17-50-301 and 17-50-302.

(D) No person may be appointed as a water well driller member of the commission unless his or her principal place of business is at least twenty (20) miles in a straight line from any other water well driller members.

(c) Terms of office shall commence on January 15 and shall end on January 14 of the fifth year following the year in which the term commenced.

(d) Any vacancies arising on the membership of the commission for any reason other than expiration of the regular terms for which the members were appointed shall be filled by appointment by the Governor, to be effective until the expiration of the regular terms, subject, however, to the confirmation of the Senate when it is next in session.

(e) The five (5) business and trade members of the commission may receive expense reimbursement and stipends in accordance with § 25-16-901 et seq.

HISTORY: Acts 1969, No. 641, § 5; 1979, No. 80, § 1; A.S.A. 1947, § 21-2005; Acts 1995, No. 840, § 1; 1997, No. 250, § 152.

17-50-202. Employees.

The Commission on Water Well Construction shall:

(1) Employ an executive secretary who, with the approval of the agency housing the commission's office, may be an employee of the agency; and

(2) Hire such other employees and contract for such legal and engineering services as may be necessary to perform its powers and duties under the provisions of this chapter and fix their salaries within such limitations as may be provided by law.

HISTORY: Acts 1969, No. 641, § 5; 1979, No. 80, § 1; A.S.A. 1947, § 21-2005.

17-50-203. Office.

The office of one (1) of the agencies represented on the Commission on Water Well Construction may be designated by the commission to house the office of the commission.

HISTORY: Acts 1969, No. 641, § 5; 1979, No. 80, § 1; A.S.A. 1947, § 21-2005.

17-50-204. Powers and duties.

(a) The Commission on Water Well Construction shall be responsible for the administration of this chapter and shall adopt, and from time to time amend or repeal, necessary rules and regulations governing the installation, construction, repair, and abandonment of water wells and pumping equipment. With respect thereto, it shall:

(1) Hold public hearings in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.;

(2) Issue such orders and take such other actions as may be necessary to enforce the provisions of this chapter and the rules and regulations adopted pursuant thereto;

(3) Establish procedures and forms for the submission, review, approval, and rejection of applications, notifications, and reports required under this chapter;

(4) Prepare subject matter for examinations to test the knowledge and skills of:

(A) Water well drillers in the construction, alteration, and repair of water wells, including proper sealing and abandonment of water wells, and the rules and regulations of this chapter;

(B) Pump installers in the planning, installation, operation, and repair of pumping equipment and water wells including sealing and abandonment, pumping efficiency, and the rules and regulations of this chapter; and

(C) Other persons who by trade install, alter, construct, or repair water wells and related equipment and who are eligible for license or certificate;

(5) Adopt, amend, or repeal, and publish rules and regulations governing examinations;

(6) Hold examinations of applicants for certificates of registration at least once a year;

(7) Grade all tests and examinations for certificates of registration;

(8) Issue licenses, permits, or certificates for the type or class of well construction or repair or pump installation; and

(9) Perform such other duties as are consistent with the purposes of this chapter.

(b) The commission may adopt and procure a seal for its official use.

HISTORY: Acts 1969, No. 641, §§ 5, 6; 1979, No. 80, § 1; A.S.A. 1947, §§ 21-2005, 21-2006; Acts 1987, No. 693, § 3; 1989, No. 748, § 1.

17-50-205. Inspections.

(a) The Commission on Water Well Construction is authorized to inspect any water well or abandoned water well. Authorized representatives of the commission may at reasonable times enter upon, and shall be given access to, any premises for the purpose of inspection.

(b) Upon the basis of such inspections, if the commission finds that applicable laws, rules, or regulations have not been complied with or that a health hazard exists, the commission shall disapprove the well. If disapproved, no well shall thereafter be used until brought into compliance and any health hazard is eliminated.

(c) Any person aggrieved by the disapproval of a well shall be afforded the opportunity of a hearing before the commission.

HISTORY: Acts 1969, No. 641, § 7; A.S.A. 1947, § 21-2007.

17-50-206. Disposition of funds.

All fees, civil penalties, or payments of any type collected by the Commission on Water Well Construction under this chapter shall be deposited in one (1) or more banks qualifying for the deposit of public funds to be used by the commission for the proper administration of this chapter. The deposits shall be audited under the rules and regulations prescribed by the Department of Finance and Administration.

HISTORY: Acts 1969, No. 641, § 15; 1981, No. 521, § 4; A.S.A. 1947, §§ 21-2015, 21-2018.2.

17-50-207. Injunctions - Liability of members.

(a) The Commission on Water Well Construction is authorized to seek in a court of competent jurisdiction an injunction, whether permanent or temporary, upon affidavit to prevent any person, business, corporation, or other legal entity from violating any provisions of this chapter or any rule or regulation promulgated by the commission under the authority of this chapter. Such injunctions shall be issued without bond.

(b) The issuance of any injunction shall not preclude any criminal prosecution for violations of this chapter.

(c) The members of the commission, when acting in good faith, shall not be personally liable for any proceedings taken under this chapter.

HISTORY: Acts 1989, No. 748, § 1.

17-50-208. Proceedings before commission.

(a) The Commission on Water Well Construction is empowered, by majority vote, to issue subpoenas for witnesses, to require their attendance in the giving of testimony before it, and to require the production of books, papers, and records in any proceeding before the commission as may be pertinent to any questions lawfully before the commission. The subpoena shall be served by the sheriff or any other officer authorized by law to serve process in this state.

(b) In case of failure or refusal on the part of any person to comply with any subpoena issued by the commission, or in case of the refusal of any witness to testify or answer as to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county where the person is domiciled or is engaged in business or where the records are filed, on application of the commission, may issue an order to compel the person to comply with the subpoena and to attend before the commission and produce the documents and give his or her testimony upon matters, as may be lawfully required.

(c) The court shall have the power to punish for contempt as in case of disobedience of like subpoena issued by or from the court, or for a refusal to testify therein.

HISTORY: Acts 1989, No. 748, § 1.

17-50-209. Investigations.

When engaged in any investigation, any employee of the Commission on Water Well Construction shall have the power to administer oaths and to take depositions of persons relevant to any investigations for violations of this chapter.

HISTORY: Acts 1989, No. 748, § 1.

Subchapter 3 - Certificates, Licenses, and Permits

17-50-301. Certificate - Applicant qualifications.

(a) Upon proper application to the Commission on Water Well Construction, any person shall be entitled to be registered and to be issued a certificate of registration as a certified water well driller or certified pump installer who shall furnish to the commission proof that he or she:

(1) Is not less than eighteen (18) years of age;

(2) Is of good moral character;

(3) Has knowledge of the rules and regulations adopted under this chapter; and

(4) Has had no less than two (2) years of experience as defined by the commission's rules in the work for which he or she is applying for a certificate of registration.

(b) The commission shall provide examinations and a course of instruction, when required, which each applicant must pass in order to qualify for the certificate of registration.

(c) Beginning July 1, 2005, any person applying to be registered as a certified water well driller or certified pump installer shall have:

(1) Completed the apprenticeship program;

(2) In the past ten (10) years, held a valid certificate of registration from the commission of the type and class for which the applicant is applying; or

(3) A valid certificate from another state of a type and class substantially similar to the type and class for which the person is applying for a period of years that equals the apprenticeship program requirement.

HISTORY: Acts 1969, No. 641, § 10; 1981, No. 521, § 1; A.S.A. 1947, § 21-2010; Acts 1987, No. 693, § 4; 1993, No. 328, § 1; 1993, No. 348, § 1; 1993, No. 1219, § 13; 2001, No. 1184, § 3; 2003, No. 297, § 6.

17-50-302. Certificate - Reciprocity.

The Commission on Water Well Construction may issue a certificate of registration to any person who:

(1) Applies for such a certificate;

(2) Pays the proper registration and testing fees;

(3) Passes the applicable test; and

(4) Holds a certificate of qualification or registration issued to him or her by proper authority in any state, territory, or possession of the United States or of any other country if:

(A) The registration standard under which the certificate was issued is of a standard not lower than that specified by the provisions of this chapter and the rules of the commission promulgated pursuant to the provisions hereof; and

(B) That particular state, territory, or possession of the United States or other country extends similar privileges to the persons registered under the provisions of this chapter.

HISTORY: Acts 1969, No. 641, § 10; A.S.A. 1947, § 21-2010; Acts 2001, No. 1184, § 4; 2003, No. 297, § 7.

17-50-303. Certificate - Expiration and renewal.

(a) Certificates of registration issued pursuant to this chapter are not transferable and shall expire on July 31 of each year.

(b) A certificate of registration may be renewed without examination by making application for a certificate and paying the applicable fee.

(c) As a condition for renewal of certificates of registration, the Commission on Water Well Construction may require the person holding the certificate to complete a program of continuing education.

(d) If any person issued a certificate of registration under this chapter shall fail to make application for renewal thereof within one (1) year after the expiration of the certificate of registration, the certificate of registration of the person shall be renewed only upon application, examination, and payment of the applicable fee plus a penalty of twenty-five dollars ($25.00).

HISTORY: Acts 1969, No. 641, § 10; 1973, No. 335, § 1; 1979, No. 80, § 3; A.S.A. 1947, § 21-2010; Acts 2003, No. 297, § 8.

17-50-304. License requirement - Exemption.

(a) Every person who wishes to engage in business as a water well contractor shall obtain from the Commission on Water Well Construction a license to conduct such a business.

(b) The license requirement shall not apply to any person who performs labor or services at the direction and under the personal supervision of a licensed water well contractor.

(c) A land owner installing pumping equipment in a water well owned by him or her for his or her own use is exempted from the licensing requirements of this chapter.

HISTORY: Acts 1969, No. 641, § 11; A.S.A. 1947, § 21-2011; Acts 1993, No. 328, § 2; 1993, No. 348, § 2.

17-50-305. License - Application and issuance.

(a) (1) The Commission on Water Well Construction may adopt, and from time to time amend or repeal, rules and regulations governing applications for water well contractor licenses.

(2) The commission shall license as a water well contractor any person properly making application on a form prepared and furnished by the commission.

(b) Any person whose application for a license to engage in business as a water well contractor has been denied may request, and shall be granted, a hearing in the county where the complainant has his or her place of business before an appropriate officer of the commission.

(c) No application for a license issued pursuant to § 17-50-304 may be made within one (1) year after revocation thereof.

HISTORY: Acts 1969, No. 641, § 11; A.S.A. 1947, § 21-2011; Acts 1987, No. 693, § 5; 1995, No. 1296, § 66; 2003, No. 297, § 9.

17-50-306. License - Display.

The licensee shall conspicuously display his or her license at his or her principal place of business.

HISTORY: Acts 1969, No. 641, § 11; A.S.A. 1947, § 21-2011.

17-50-307. License - Expiration and renewal.

(a) Licenses issued pursuant to this subchapter are not transferable and shall expire on July 31 of each year.

(b) As a condition for license renewal the Commission on Water Well Construction may require the licensee or its agent to complete a program of continuing education.

(c) (1) (A) The contractor shall renew the license annually by applying no later than thirty (30) days after the expiration date and paying the applicable fee.

(B) When the contractor submits the renewal materials and fee, the commission shall extend the validity of the current license until the contractor receives the new license or the applicant is notified by the commission that it has refused to renew the license.

(2) After August 31 of each year, a license will be renewed only upon application and payment of the applicable fee plus a penalty of fifty dollars ($50.00).

HISTORY: Acts 1969, No. 641, § 11; 1979, No. 80, § 4; A.S.A. 1947, § 21-2011; Acts 2003, No. 297, § 10.

17-50-308. License - Suspension and revocation.

(a) Whenever the Commission on Water Well Construction, after notice and hearing, determines that the holder of a license issued pursuant to this subchapter has violated any provision of this chapter or any rule or regulation adopted pursuant to it, the commission is authorized to suspend or revoke the license.

(b) The commission shall serve any order issued pursuant to this section upon the licensee by:

(1) Certified mail with return receipt requested; or

(2) Personal service.

(c) Any such order shall become effective upon return of receipt to the commission.

(d) Any person aggrieved by any order issued after the hearing may appeal within thirty (30) days to the circuit court of the county where that person resides or to the Pulaski County Circuit Court.

HISTORY: Acts 1969, No. 641, § 11; A.S.A. 1947, § 21-2011; Acts 2003, No. 297, § 11.

17-50-309. Bond.

(a) All water well contractors shall abide by the licensing laws of Arkansas and shall post a water well contractor's bond.

(b) The Commission on Water Well Construction shall establish and promulgate rules establishing the amount of water well contractor's bonds based on a contractor's past performance or violations of the rules and regulations of this chapter, construction methods, type or class of construction, and business practices.

(c) In no instance shall this bond be less than ten thousand dollars ($10,000) unless exempted by other provisions of this chapter.

HISTORY: Acts 1969, No. 641, § 11; 1981, No. 521, § 2; A.S.A. 1947, § 21-2011; Acts 1987, No. 693, § 6; 2003, No. 297, § 12.

17-50-310. Rig permits.

(a) (1) The Commission on Water Well Construction shall issue rig permits if the contractor has:

(A) A valid license;

(B) Made proper application for a rig permit; and

(C) Paid the required fee.

(2) Rig permits shall not be transferable and shall expire July 31 of each year.

(b) (1) (A) The contractor must renew the rig permit annually by applying no later than thirty (30) days after the expiration date and paying the required fee.

(B) After receiving the renewal materials and fee, the commission shall extend the validity of the current rig permit until the contractor receives:

(i) The new rig permit; or

(ii) Notice that the commission has refused to renew the rig permit.

(2) After August 31 of each year, the commission shall only renew a rig permit upon application and payment of the applicable fee plus a penalty of twenty-five dollars ($25.00).

(c) (1) No water well contractor shall operate a rig or permit an employee to operate a rig unless the contractor holds a valid rig permit issued by the commission.

(2) The contractor shall obtain a separate permit for each rig operated by the contractor during the permit year.

(d) (1) The commission shall issue permits composed of weatherproof material.

(2) The contractor shall firmly and conspicuously attach the permit to the rig for which it was issued.

HISTORY: Acts 1969, No. 641, § 9; 1979, No. 80, § 2; A.S.A. 1947, § 21-2009; Acts 2003, No. 297, § 13.

17-50-311. Fees.

(a) The Commission on Water Well Construction shall establish and collect fees not to exceed the maximum amounts as follows:

(1) Contractor's license - well drilling $200.00
(2) Contractor's license - pump installer . ..$200.00
(3) Contractor's license - well drilling and pump installer . . $400.00
(4) Rig permit fee $160.00
(5) Registration fee - well driller $150.00
(6) Registration fee - pump installer $150.00
(7) Registration fee - apprentice $150.00

(b) The commission shall not reduce fees for any license or rig permit even though it may be valid for less than a full license or permit year.

(c) The commission is authorized to establish and receive fees for the cost incurred in rendering services and material, provided the fees reflect the reasonable cost to the commission. The commission shall establish the fees as set forth in the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d) The commission shall have the authority to set fees not to exceed the maximums set in subsection (a) of this section.

HISTORY: Acts 1969, No. 641, § 14; 1975, No. 657, § 1; 1985, No. 783, § 1; A.S.A. 1947, § 21-2014; Acts 2003, No. 297, § 14; 2007, No. 434, § 1; 2009, No. 371, § 1.

17-50-312. Apprenticeship program.

(a) The Commission on Water Well Construction shall develop an apprenticeship program to assist persons applying for registration and having a minimum level of knowledge, skills, and abilities for the type or class of registration for which they are applying.

(b) (1) The program shall include the following:

(A) Registration and issuance of a certificate of apprenticeship for the type or class of registration for which the apprentice will be applying; and

(B) Supervision of the apprentice by a person holding a valid certificate or certificates of registration of the type or class for which the apprentice will be applying.

(2) The supervising certificate holder shall report to the commission at the time of certificate of apprenticeship registration renewal that the apprentice is successfully obtaining the necessary knowledge, skills, and abilities for the type or class of certificate for which the apprentice will be applying.

(3) The apprenticeship program requirement shall not exceed four (4) years.

HISTORY: Acts 2003, No. 297, § 15.

Subchapter 4 - Arkansas Water Well Rig Confiscation Act

17-50-401. Title.

This subchapter may be known and cited as the "Arkansas Water Well Rig Confiscation Act".

HISTORY: Acts 2003, No. 855, § 1.

17-50-402. Legislative findings.

It has been found by the General Assembly that:

(1) Certain persons continuously violate Arkansas law requiring that they first obtain the proper registration, licensure, and training for construction of water wells and that such persons do not have the required bond to protect well owners;

(2) Construction of water wells by those persons is a threat to the general health, safety, and welfare because the Commission on Water Well Construction does not have knowledge of their actions and has no means of holding them accountable for failure to develop water in an orderly, sanitary, reasonable, and safe manner; and

(3) Because those persons pose a great threat to the people of Arkansas, the commission must have the ability to obtain the forfeiture of the property of violators.

HISTORY: Acts 2003, No. 855, § 1.

17-50-403. Definitions.

As used in this subchapter:

(1) "Commission" means the Commission on Water Well Construction, which was created for administration and enforcement of the Arkansas Water Well Construction Act, § 17-50-101 et seq.;

(2) "Contraband property" means property of any nature, including personal, tangible, or intangible, but not real property, that is used or intended to be used in violation of § 17-50-104;

(3) (A) "Pumping equipment" means all machinery and parts of pumps such as deep well turbine pumps with right angle gear drive, vertical hollow shaft motors, jet pumps and motors, submersible pumps and motors, and other parts and fittings installed or attached to the well.

(B) "Pumping equipment" does not include cooling units, horizontal electric motors, heat pump circulating pipe, and stationary diesel or gas engines;

(4) "Rig" means any power-driven, percussion, rotary, digging, jetting, direct push, vibrating, hydrofracturing, or augering machine used in the construction, alteration, or abandonment of water wells, or any hoist or machine used in installing or removing pumps from wells with the lifting capacity of one thousand pounds (1,000 lbs.) or more; and

(5) (A) "Water well" means any excavation that is drilled, redrilled, cored, bored, washed, driven, dug, jetted, or otherwise artificially constructed for the purpose of locating, acquiring, diverting, or artificially recharging ground water.

(B) (i) "Water well" includes excavations made for the purpose of exchanging the geothermal energy found in the earth as heat pump wells as defined in § 17-50-103.

(ii) "Water well" does not include an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying, or for inserting media to repressure oil or natural gas-bearing formations, or for storing petroleum, natural gas, or other products.

HISTORY: Acts 2003, No. 855, § 1.

17-50-404. Property subject to forfeiture.

The following are subject to forfeiture upon the initiation of a civil proceeding filed by the prosecuting attorney and when so ordered by the circuit court in accordance with this subchapter:

(1) Contraband property used or intended to be used in violation of § 17-50-104;

(2) The proceeds gained from a violation of § 17-50-104;

(3) Personal property acquired with proceeds gained from a violation of § 17-50-104;

(4) (A) All conveyances, including vehicles and rigs, that are used or intended for use to facilitate a violation of § 17-50-104.

(B) No conveyance used as a common carrier by any person in business as a common carrier is subject to forfeiture unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter.

(C) No conveyance is subject to forfeiture under this subchapter by reason of any act or omission established by the owners to have been committed or omitted without the owners' knowledge or consent.

(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party or parties;

(5) All materials including pumping equipment, casing, piping, motors, and other equipment used or intended for use in violation of § 17-50-104;

(6) (A) Everything of value furnished or intended to be furnished in exchange for a violation of § 17-50-104 or all profits, proceeds, or property, excluding real property, traceable to such an exchange.

(B) It may be presumed that the property described in subdivision (6)(A) of this section was acquired with proceeds gained from a violation of § 17-50-104 and is subject to forfeiture; and

(7) Property used in a violation of § 17-50-104 that has title of ownership with two (2) parties on the title or a cosigner if one (1) party on the title uses the property in violation of § 17-50-104 or receives titled property as the proceeds of the violation even if the second party claims that he or she did not have knowledge or involvement in the violation.

HISTORY: Acts 2003, No. 855, § 1.

17-50-405. Petition - Order to show cause - Notice.

(a) (1) The prosecuting attorney of the judicial district within whose jurisdiction the property sought to be forfeited is seized shall promptly proceed against the property by filing in the circuit court having jurisdiction of the property a petition for an order to show cause why the court should not order forfeiture of the property.

(2) The petition shall set forth:

(A) A statement that the action is brought pursuant to § 17-50-404;

(B) The law enforcement agency bringing the action;

(C) A description of the property sought to be forfeited;

(D) A statement that on or about a date certain the property was used or intended to be used in a criminal act constituting violation of § 17-50-104 or that the property was purchased or otherwise obtained as a result of commission of the violation;

(E) A statement detailing the facts in support of forfeiture; and

(F) A list of all persons known to the law enforcement agency, after diligent search and inquiry, who may claim an ownership interest in the property by title or registration or by virtue of a lien allegedly perfected in the manner prescribed by law.

(b) (1) Upon receipt of a petition complying with the requirements of subsection (a) of this section, the circuit judge of the court having jurisdiction shall issue an order to show cause setting forth a statement that this subchapter is the controlling law.

(2) In addition, the order shall set a date at least forty-one (41) days after the date of first publication of the order pursuant to subsection (c) of this section for all persons claiming an interest

in the property to file the pleadings as they desire as to why the court should not order the forfeiture of the property to the law enforcement agency seeking forfeiture of the property.

(3) The court shall further order that all persons who do not appear on that date are deemed to have defaulted and waived any claim to the subject property.

(c) (1) The prosecuting attorney shall give notice of the forfeiture proceedings by:

(A) Causing to be published a copy of the order to show cause two (2) times each week for two (2) consecutive weeks in a newspaper having general circulation in the county where the property is located, with the last publication being not less than five (5) days before the show cause hearing; and

(B) Sending a copy of the petition and order to show cause by certified mail, return receipt requested, to each person having ownership of or a security interest in the property or in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure if:

(i) The property is of a type for which title or registration is required by law;

(ii) The owner of the property is known in fact to the law enforcement agency at the time of seizure; or

(iii) The property is subject to a security interest perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.

(2) The law enforcement agency shall be obligated only to make diligent search and inquiry as to the owner of the property and if after diligent search and inquiry the agency is unable to ascertain the owner, the requirement of actual notice by mail with respect to persons having perfected security interests in the property shall not be applicable.

(d) At the hearing on the matter, the petitioner shall establish by a preponderance of the evidence that the property is subject to forfeiture as provided in § 17-50-404.

(e) The final order of forfeiture by the circuit court shall perfect in the law enforcement agency all rights, title, and interest in and to the property and shall relate back to the date of the seizure.

(f) Physical seizure of property shall not be necessary in order to allege in a petition under this section that property is forfeitable.

(g) Upon filing the petition, the prosecuting attorney for the judicial district may also seek such protective orders as necessary to prevent the transfer, encumbrance, or other disposal of any property named in the petition.

HISTORY: Acts 2003, No. 855, § 1.

17-50-406. Sale of forfeited property.

If a law enforcement agency desires to sell property forfeited to it under § 17-50-404, the law enforcement agency shall:

(1) Publish at least two (2) times a week for two (2) consecutive weeks in a newspaper having general circulation in the county notice of the sale, including the time, place, conditions of the sale, and a description of the property to be sold;

(2) Send a copy of the notice of the sale to each person having ownership of or a security interest in the property by certified mail, return receipt requested, or in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure if:

(A) The property is of a type for which title or registration is required by law;

(B) The owner of the property is known in fact to the law enforcement agency at the time of seizure; or

(C) The property is subject to a security interest perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.; and

(3) Dispose of the property at public auction to the highest bidder for cash without appraisal.

HISTORY: Acts 2003, No. 855, § 1.

17-50-407. Application of proceeds from sale.

(a) The proceeds of any sale under § 17-50-406 shall be applied as follows:

(1) To payment of the balance due on any lien preserved by the court in the forfeiture proceedings;

(2) To payment of the costs incurred by the seizing agency in connection with the storage, maintenance, security, and forfeiture of the property;

(3) To payment of the costs incurred by the court;

(4) To payment of the costs incurred by the prosecuting attorney or attorney for the law enforcement agency to which the property is forfeited or to the Commission on Water Well Construction in investigating and developing the case; and

(5) The remaining proceeds shall be equally divided between the commission to be used in furtherance of the commission's activities and the law enforcement agency to which the property is forfeited.

(b) If more than one (1) law enforcement agency is substantially involved in effecting a forfeiture under § 17-50-404, the circuit court having jurisdiction over the forfeiture proceeding shall equitably distribute the law enforcement agency portion of the property among the law enforcement agencies.

HISTORY: Acts 2003, No. 855, § 1.