DISCLAIMER

The South Carolina Legislative Council is offering access to the unannotated South Carolina Code of Laws on the Internet as a service to the public. The unannotated South Carolina Code on the General Assembly's website is now current through the 2012 session. The unannotated South Carolina Code, consisting only of Code text, numbering, and history may be copied from this website at the reader's expense and effort without need for permission.

The Legislative Council is unable to assist users of this service with legal questions. Also, legislative staff cannot respond to requests for legal advice or the application of the law to specific facts. Therefore, to understand and protect your legal rights, you should consult your own private lawyer regarding all legal questions.

While every effort was made to ensure the accuracy and completeness of the unannotated South Carolina Code available on the South Carolina General Assembly's website, the unannotated South Carolina Code is not official, and the state agencies preparing this website and the General Assembly are not responsible for any errors or omissions which may occur in these files. Only the current published volumes of the South Carolina Code of Laws Annotated and any pertinent acts and joint resolutions contain the official version.

Please note that the Legislative Council is not able to respond to individual inquiries regarding research or the features, format, or use of this website. However, you may notify Legislative Printing, Information and Technology Systems at [LPITS@scstatehouse.gov](mailto:LPITS@scstatehouse.net) regarding any apparent errors or omissions in content of Code sections on this website, in which case LPITS will relay the information to appropriate staff members of the South Carolina Legislative Council for investigation.

CHAPTER 23.

ENVIRONMENTAL CERTIFICATION BOARD

**SECTION 40‑23‑5.** Application of chapter; conflict of laws.

Unless otherwise provided in this chapter, Article 1 of Chapter 1, Title 40, applies to the Environmental Certification Board and its licensees regulated by the Department of Labor, Licensing and Regulation. If there is a conflict between this chapter and Chapter 1 of Title 40, the provisions of this chapter control.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑10.** Environmental Certification Board; creation; membership; terms.

(A) There is created the South Carolina Environmental Certification Board composed of nine members appointed by the Governor. Of the nine members, one must be a licensed public water treatment operator and one must be a licensed public water distribution system operator; two must be licensed wastewater operators, one of whom must be certified in the physical chemical specialty; one must be a licensed well driller; one must be a member of the public at large; one must be a representative from the Land, Water, and Conservation Division of the Department of Natural Resources; one must be a member of the Department of Health and Environmental Control, designated by the Commissioner of the Department of Health and Environmental Control; and one must be a representative from a technical education or other higher education institution actively involved in operator training.

(B) The Water Environment Association of South Carolina may recommend two licensed public wastewater treatment operators, one of whom must be certified in biological specialty and one of whom must be certified in the physical chemical specialty; the South Carolina Section of the American Water Works Association may recommend one licensed public water treatment operator; the South Carolina Ground Water Association may recommend a licensed well driller; and the South Carolina Rural Water Association may recommend one licensed public water distribution system operator. Any individual, group, or association may nominate qualified individuals to the Governor for his consideration.

(C) Members shall serve terms of four years and until their successors are appointed and qualify. The Governor may reject any of the nominees that the Governor finds unacceptable. Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑20.** Definitions.

When used in this chapter:

(1) "Abate" or "abatement" refers to actions taken to ameliorate or correct conditions requiring remediation as defined in this section.

(2) "Accessible supervision" means the supervisor is on‑ site or immediately available to supervised persons via telephone, radio, or other electronic means.

(3) "Board" means the South Carolina Environmental Certification Board.

(4) "Bored" means a large diameter well, commonly greater than or equal to twenty‑four inches in diameter, which is typically installed at a very shallow depth and constructed of rock, concrete, or ceramic material.

(5) "Certificate of Registration", " Certificate", or "License" means a serially numbered document issued by the board, containing the name of the person registered, certified, or licensed and the date of registration, certification, or licensing and certifying that the person named is authorized to practice a profession regulated by the board as specified on said document.

(6) "Coastal well" means an opening into the ground, which qualifies as a "well" of Type II, III, IV, or V construction as defined in this section, that is made by boring, drilling, jetting, driving, direct push technology, or any other method into unconsolidated materials, and that does not qualify as an environmental well.

(7) "Director" means the Director of Labor, Licensing and Regulation.

(8) "Direct push technology" means the creation of a man‑ made opening in the earth through the use of mechanical means wherein a tool is forced or hammered into the earth. Direct push technology includes but is not limited to cone penetrometers.

(9) "Environmental well" means an opening into the ground which qualifies as a "well" of Type I, II, III, IV, or V construction as defined in this section, that is made by boring, drilling, jetting, driving, direct push technology, or any other method for obtaining a sample of underground waters or soils for environmental or geological investigation or research or for environmental remediation, where the depth of the opening is reasonably likely to penetrate the water table.

(10) "Environmental systems operator" is a generic term for any occupation licensed by the board.

(11) "Human consumption" means water used for drinking, bathing, cooking, dishwashing, maintaining oral hygiene, or other similar uses.

(12) "Licensed activity" means any operation, function, or action of any kind in which one may not engage, or offer to engage, without a license issued pursuant to this chapter.

(13) "Licensee" means a person currently or previously authorized to practice a licensed activity pursuant to this chapter and includes a person holding a license, permit, certification, or registration granted pursuant to this chapter.

(14) "Operator" when used in reference to public water or wastewater treatment means a person employed in a public water treatment facility or public wastewater treatment plant whose duties include alteration of the physical, chemical, or bacteriological characteristics of water or wastewater. When used in reference to public water distribution, "operator" means a person employed in a public water distribution system whose duties include making process control and system integrity decisions about water quality or quantity that affect public health.

(15) "Person" means an individual, partnership, copartnership, cooperative, firm, company, public or private corporation, political subdivision, government agency, trust, estate, joint structure company, or any other legal entity or its legal representative, agent, or assigns.

(16) Reserved.

(17) Reserved.

(18) "Public wastewater treatment plant" means that portion of any system that treats domestic or industrial waste and that alters physical, chemical, or bacteriological characteristics before placing the waste into any receiving waters.

(19) "Public water distribution system" means that portion of a public water system that is utilized for the delivery of water for human consumption, whether bottled, piped, or delivered through some other constructed conveyance, up to the point of consumer or owner connection.

(20) "Public water system" means:

(a) any publicly or privately owned waterworks system which provides water, whether bottled, piped, or delivered through some other constructed conveyance, for human consumption, including the source of supply whether the source of supply is of surface or subsurface origin;

(b) all structures and appurtenances used for the collection, treatment, storage, or distribution of water delivered to point of meter of consumer or owner connection;

(c) any part or portion of the system, including any water treatment facility, which in any way alters the physical, chemical, radiological, or bacteriological characteristics of the water; however, a public water system does not include a water system serving a single private residence or dwelling. A separately owned system with its source of supply from another waterworks system must be a separate public water system. A connection to a system that delivers water by a constructed conveyance other than a pipe must not be considered a connection if:

(i) the water is used exclusively for purposes other than residential uses consisting of drinking, bathing, and cooking or similar uses;

(ii) the Department of Health and Environmental Control determines that alternative water sources to achieve the equivalent level of public health protection provided by the applicable State Primary Drinking Water Regulations is provided for residential or similar uses for drinking or cooking; or

(iii) the Department of Health and Environmental Control determines the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass‑through entity, or the user to achieve the equivalent level or protection provided by the applicable State Primary Drinking Water Regulations.

(21) "Public water system treatment facility" means that portion of a public water system that alters the physical, chemical, or bacteriological characteristics of water furnished to the public for human consumption, whether the source of supply is of surface or subterranean origin.

(22) "Remediation" means the correction, repair, restoration, or any other action taken in order to bring any condition or circumstance into compliance with a statute, standard, or regulation.

(23) "Rock well" means an opening into the ground, which qualifies as a "well" of Type I construction as defined in this section, that is made by boring, drilling, jetting, driving, direct push technology, or any other method into consolidated materials, and that does not qualify as an environmental well.

(24) "Safe Drinking Water Act" means Article 1, Chapter 55, Title 44.

(25) "Soil sampling" means the extraction of soils from beneath the surface of the earth by mechanical means for the purpose of environmental or geological investigation or research or for environmental remediation, where the depth of the opening is reasonably likely to penetrate the water table.

(26) "Well" means a manmade horizontal, vertical, or angled opening in the ground made by digging, boring, drilling, jetting, driving, direct push technology, or any other method through which water is injected or withdrawn from beneath the surface of the earth for the purpose of human consumption, irrigation, industrial or commercial processes, or construction of closed loop systems. The duration of, existence of, or use of any well is of no consequence for purposes of this definition. For purposes of this chapter, wells are categorized by the following types of construction:

(a) Construction Type I: open hole wells into bedrock aquifers;

(b) Construction Type II: screened, natural filter wells into unconsolidated aquifers;

(c) Construction Type III: screened, artificial filter wells into unconsolidated aquifers including, but not limited to, gravel pack filters;

(d) Construction Type IV: open hole wells into limestone aquifers;

(e) Construction Type V: bored wells;

(f) Construction Type VI: environmental wells of any other construction method.

(27) "Well drilling category" means the taxonomy of well drilling licenses according to the type of well a licensee is authorized to construct including, but not limited to, environmental wells, coastal wells, rock wells, and bored wells.

(28) "Exploration boring" means a borehole for the purpose of subsurface, mineral investigation, exploration, and mineral sampling that can be converted later to measure groundwater levels.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑30.** Environmental systems operator licensure requirement.

It is unlawful for a person to practice as an environmental systems operator in this State without prior authorization through licensure in accordance with this chapter.

HISTORY: 2002 Act No. 185, Sections 1.

**SECTION 40‑23‑40.** Purpose of board.

The purpose of the Environmental Certification Board is to protect the general public through the regulation of persons engaged in occupations appointed by the legislature for regulation by the board. These occupations are referred to in this chapter, collectively, as "environmental systems operators".

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑60.** Conducting election of officers and board meetings; rules and regulations promulgation.

The board shall conduct election of officers and board meetings as provided by Section 40‑1‑60. The board may adopt rules governing its proceedings and internal operations and may promulgate regulations and adopt standards as necessary to carry out the provisions of this chapter.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑70.** Powers and duties.

In addition to the powers and duties provided in this chapter, the board has those powers and duties set forth in Section 40‑1‑10, et seq.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑80.** Conduct of investigations.

Investigations pursuant to this chapter must be conducted as provided in Section 40‑1‑80.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑90.** Investigation by board of initial complaints; authorizing department to issue formal complaint for disciplinary action.

Presentation of results of an investigation and proceedings pursuant to this chapter must be conducted as provided in Section 40‑1‑90. The board may receive complaints by any person against a licensee and may require the complaints to be submitted in writing, specifying the exact charge or charges and to be signed by the initial complainant. Upon receipt of an initial complaint, the board administrator, where appropriate, may refer the complaint to an investigator of the department, who shall investigate the allegations in the complaint. The results of any investigation must be reported to the board. If from these results it appears a violation has occurred or a licensee has become unfit to practice, the board may authorize the department to issue a formal complaint for disciplinary action as authorized by Section 40‑1‑120 or 40‑23‑120.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑95.** Department referral of violations to board; administrative citations; cease and desist orders; protest hearings; appeals; disciplinary hearings; enforcement of contracts.

(A) The department may refer reports of violations of this chapter and Article 1, Chapter 1 or of any associated regulations, except for unlicensed practice violations, directly to the board pursuant to Section 40‑23‑90. In the alternative, the department may issue administrative citations and cease and desist orders, in person or by certified mail, and may assess administrative penalties against any person for a violation of this chapter.

(B)(1) The department may issue separate citations and assess separate administrative penalties for each violation. However, no more than two thousand dollars in administrative penalties may be assessed against a person a day pursuant to a single citation.

(2) Administrative citations may include an order to abate any existing violations, where possible and appropriate, by a date certain. Abatement, timely or otherwise, does not absolve the accused of professional misconduct or of other violation of law or terminate the board's jurisdiction to prosecute the accused on these grounds. However, the board or hearing officer may take timely abatement into consideration in determining an appropriate sanction, including reduction or elimination of a minimum sanction otherwise required by law.

(3) If within fifteen calendar days of a person's receipt of an administrative citation issued by the department, the person files a written protest of the citation with the board administrator, a protest hearing must be scheduled before the board or before a hearing officer appointed by the board. Timely filing of the protest stays imposition of the sanctions assessed by the citation until final order of the board. If no protest is timely filed, the citation is deemed a final order of the board and the administrative penalties must be paid within thirty days of receipt of the citation.

(4) If a citation is timely protested, the protesting party must be given no less than thirty days' notice of the place and date of the protest hearing. The hearing must be conducted in accordance with the Administrative Procedures Act hearing procedures under this title. Service of the notice of hearing shall be accomplished in the same manner as specified for pleadings by Section 40‑23‑90. Failure to appear may be deemed a default and an admission to the violations specified in the citation.

(5) After notice and hearing, the board or hearing examiner shall issue an order which may affirm, dismiss, or modify the citation. A party aggrieved by a final order from a protest hearing conducted by a hearing officer may appeal to the full board within fifteen calendar days of the party's receipt of a written order by a hearing. The notice of appeal must be in writing and served upon the administrator of the board. Appeals from the decision of the board are to an administrative law judge in accordance with Title 1, Chapter 23, Article 5.

(6) Nothing in this section is to be construed as limiting in any way the authority of the board or the department to seek other applicable remedies which are provided by this chapter or by any other provision of law including, but not limited to, civil penalties, injunctive relief, and criminal sanctions.

(C) A licensee who within any three‑year period, or as otherwise provided by regulation, has accumulated at least three final, affirmed citations pursuant to this chapter and who is accused of any subsequent violations of this chapter or regulations promulgated under this chapter, upon receipt of a formal complaint and notice of hearing, shall appear before the board for a disciplinary hearing. The licensee is subject to all applicable sanctions that may be imposed under these proceedings. Further, in any circumstance where a citation is issuable pursuant to this chapter, except for prosecution for unlicensed practice, the department may elect to recommend the matter for disciplinary proceedings by formal complaint pursuant to Section 40‑23‑90.

(D) A person who, without a valid license as required by this chapter, engages in any activity requiring licensure by this chapter may not bring any action or raise a counter‑claim, either at law or in equity, to enforce the provisions of any contract arising from, or in any way associated with, the performance of or commitment to perform, such activity. A sworn affidavit from department staff attesting to a person's unlicensed status is admissible without further foundation as a defense in a proceeding to enforce provisions of a contract associated with activities requiring a license by this chapter.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑100.** Board authorized to seek remedies for violations; immunity; bonds.

In addition to all other remedies and immunities provided for in this chapter, the board and its members have the authority to seek remedies for violations of this chapter and regulations promulgated under this chapter, and have the associated immunities for its actions, as provided by Section 40‑1‑100. No bond may be required of the board by a judge as a condition to the issuance of an injunction or order contemplated by the provisions of this section.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑105.** Recovery of payment for regulated services by unlicensed provider; limitations.

(A) If a person has made payment for services subject to regulation by this chapter, the person has a cause of action in magistrate's court or the court of common pleas, as appropriate, for recovery of the payment, plus reasonable costs and attorney's fees, if the person providing or offering to provide the services:

(1) at any point in the transaction, did not possess a valid license, registration, or certificate as required by this chapter; or

(2) failed to timely file a report, record, application, or other document required by law with respect to the construction or abandonment of wells.

(B) This section is to be construed in favor of recovery for the plaintiff.

(C) An action or claim to enforce the provisions of this section must be filed within three years of the date of completion of the services subject to regulation under this chapter.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑110.** Disciplinary action; grounds.

(A) In addition to the grounds for disciplinary action provided in Section 40‑1‑110, the board may revoke, suspend, or otherwise restrict a licensee's right to practice or reprimand or otherwise discipline a licensee if, upon a satisfactory showing to the board, the licensee:

(1) has used a false, fraudulent, or forged statement or document or practiced a fraudulent, deceitful, or dishonest act in connection with any of the licensing, registration, or certificate requirements of the board;

(2) has practiced while under the influence of alcohol or drugs to such a degree as to affect adversely the licensee's ability to practice;

(3) uses alcohol or drugs to such a degree as to affect adversely the licensee's ability to practice;

(4) has knowingly performed an act which in any way assists a person to practice illegally;

(5) has sustained physical or mental impairment or disability which renders further practice by the licensee dangerous to the public;

(6) has violated the principles of ethics as adopted by the board in regulation;

(7) is guilty of obtaining fees or assisting in obtaining fees under deceptive, false, or fraudulent circumstances;

(8) is guilty of the use of intentionally false or fraudulent statements in a document connected with his work;

(9) is guilty of misrepresentation or the omission of a material fact in a transaction involving the public, the board, or any government entity with authority to regulate actions performed in the course of a licensed activity;

(10) is guilty of making a false or fraudulent representation or of engaging in a deceitful practice in offering, selling, or providing a product or service;

(11) is guilty of engaging in dishonorable, unethical, or unprofessional conduct that is likely to deceive, defraud, or harm the public;

(12) has been found by the board to lack the professional or ethical competence to practice a licensed activity;

(13) has engaged in substandard work or is guilty of gross negligence in the course of a licensed activity;

(14) has engaged in a pattern of failure to perform pursuant to an oral or written contract, in the course of a licensed activity or has failed to timely pay employees or suppliers;

(15) has failed to timely abate or remediate deficient or substandard work after receiving notice of deficient or substandard work from regulating authorities including, but not limited to, the board, the department, or the Department of Health and Environmental Control;

(16) has violated a provision of this chapter or of the State Safe Drinking Water Act or a regulation or standard adopted pursuant to this chapter or the State Safe Drinking Water Act;

(17) has knowingly violated a statute, regulation, or ordinance that in any way controls, regulates, limits, or affects the performance of an action associated with a licensed activity;

(18) failed to obtain a license before doing business in this State;

(19) has been convicted of, or has pled guilty or nolo contendere to, a felony or to any other crime involving fraud, moral turpitude, or drugs or to any criminal violation of any law that controls, regulates, limits, or affects the performance of any action associated with a licensed activity. For purposes of this section, "drugs" includes a substance whose possession, use, or distribution is governed by Section 44‑53‑110 through Section 44‑53‑580 or which is listed in the current edition of the Physician's Desk Reference;

(20) has incurred any disciplinary sanction including, but not limited to, a denial, revocation, suspension, or restriction of a license to practice a profession or occupation in any state or jurisdiction if the disciplinary action taken in the state or jurisdiction is based upon grounds that would constitute misconduct under this section or Section 40‑1‑110 ;

(21) has constructed or supervised the construction of any well in violation of the bonding requirements of this chapter.

(B) In addition to all other remedies and actions incorporated in this chapter, the certificate, registration, or license of a licensee adjudged mentally incompetent by a court of proper jurisdiction is deemed automatically suspended upon the adjudication until he is adjudged by a court of competent jurisdiction or in any manner provided by law as being restored to mental capacity.

(C) The license of a person who is convicted of, or who pleads guilty or nolo contendere to, a crime stated in item (19) of subsection (A) must be immediately suspended pending hearing and final action of the board. A license suspended under this subsection must be reinstated immediately upon the filing of a certificate that the conviction has been reversed. The reinstatement does not terminate a disciplinary action pending against the person.

(D) Acts or omissions by a licensee causing the imposition of a disciplinary sanction including, but not limited to, a denial, revocation, suspension, or restriction of a licensee to practice a profession or occupation in another state or jurisdiction supports the issuance of a formal complaint and the commencement of disciplinary proceedings under this chapter if the disciplinary action taken in another state is based on grounds that would constitute misconduct under this section or Section 40‑1‑110. Proof of these acts or omissions may be shown by a copy of the transcript of record of the disciplinary proceedings in another state or a copy of the final order, consent order, or similar order stating the basis for the action taken. For purposes of this section, a certified true copy of the documents is admissible evidence without further foundation.

No later than thirty days after a licensee's receipt of a formal complaint alleging that the licensee has been disciplined in another state or jurisdiction, the licensee must file an answer to the complaint with the administrator of the board, and include for the board copies of all transcripts, documents, and orders used, relied upon, or issued by the authority imposing the alleged discipline.

If the licensee fails to produce these items within thirty days of the board's formal complaint the board may suspend the individual's license until such time as the items have been supplied to the board.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑115.** Board jurisdiction.

(A) The board has jurisdiction over the actions committed or omitted by current and former licensees during the entire period of licensure.

(B) The board has jurisdiction to act on any matter which arose prior to any licensee's period of licensure by the board where the matter reflects upon the licensee's fitness to practice in this State.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑120.** Sanctions and other disciplinary actions.

In addition to any and all sanctions provided for in this chapter, the board has the authority to impose sanctions and take other actions as provided by Section 40‑1‑120 in all proceedings before the board. Further, the board may take any other appropriate disciplinary action against a licensee including, but not limited to, requiring the licensee to undertake additional professional training, requiring an increase in surety bonding or imposing other security requirements, or imposing any other appropriate discipline or reprimand, including any combination of these sanctions.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑130.** Licensure denial.

The board may deny licensure to an applicant as provided by Section 40‑1‑130.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑140.** Licensure denial; prior criminal record.

The board may deny licensure to an applicant based upon the applicant's prior criminal record as provided in Section 40‑1‑140.

HISTORY: 1962 Code Section 56‑1544.13; 1966 (54) 2668; 1968 (55) 2439; 1969 (56) 179; 1972 (57) 2829; 1981 Act No. 157, Section 3; 1982 Act No. 459, Section 4; 1988 Act No. 621, Section 1; 2002 Act No. 185, Section 1.

**SECTION 40‑23‑150.** License; voluntary surrender.

A licensee under investigation for a violation of this chapter or a regulation promulgated under this chapter may voluntarily surrender the license in accordance with Section 40‑1‑150. A voluntary surrender does not deprive the board of jurisdiction to pursue any pending or future disciplinary proceedings involving the licensee.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑160.** Appeal.

A party aggrieved by a final action of the board may seek review of the decision in accordance with Section 40‑1‑160.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑170.** Costs.

A person found in violation of this chapter or regulations or standards promulgated under this chapter may be required to pay costs associated with the investigation and prosecution of the case in accordance with Section 40‑1‑170.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑180.** Costs and fines; collection and enforcement.

All costs and fines imposed pursuant to this chapter must be paid in accordance with, and are subject to, the collection and enforcement provisions of Section 40‑1‑180.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑190.** Confidentiality of initial investigations; formal complaints open to public; communications privileged; respondent's due process rights preserved.

(A) Except as otherwise provided by law, all initial complaints, investigations, proceedings, records, and information relating to allegations of misconduct or incapacity are confidential and must not be disclosed to the public. A record published, released, or made public must not disclose the initial complainant's name or identity except by order of the board made with due consideration of the complainant's privacy. While the matter remains confidential, the members and staff of the department and the board must not reveal in any way the nature of the initial complaint except to persons directly involved in the matter and then only to the extent necessary for proper investigation and disposition of the matter.

(B) When a formal complaint is filed regarding an allegation of misconduct, the formal complaint and any answer become open to the public after the filing of the answer or if no answer is filed, thirty days after the service of the charges upon the licensee. Thereafter, except as otherwise provided by this chapter, all subsequent records and proceedings relating to the misconduct allegation are open to the public. If an allegation of incapacity is raised during the misconduct proceedings, all records, information, and proceedings relating to the allegation are confidential.

(C) However, the department or the board may disclose information to another government agency, including law enforcement officials, at any stage of the proceedings in order to protect the public or for the administration of justice.

(D) Each communication, oral or written, made by or on behalf of a complainant or by a person in the course of an investigation or hearing pursuant to this chapter to or by the department, the board, or their agent is privileged. A civil or criminal action or proceeding may not be brought against the person, by or on whose behalf the communication is made, except upon other proof that the communication was made with malice.

(E) Nothing in this chapter may be construed to prohibit the licensee respondent or the respondent's legal counsel from exercising the respondent's constitutional right of due process as provided by law or to prohibit the respondent from normal access to the charges made and evidence filed against the respondent as part of due process as provided by law.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑200.** Unauthorized practice; penalty.

A person who practices or offers to practice in this State in violation of this chapter or a regulation promulgated under this chapter or who knowingly submits false information for the purpose of obtaining a license is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than one year or fined not more than one thousand dollars, or both.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑210.** Civil penalties and injunctive relief.

In addition to initiating a criminal proceeding for a violation of this chapter, the board may seek civil penalties and injunctive relief in accordance with Section 40‑1‑210.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑220.** Severability.

The severability provisions of Section 40‑1‑220 apply to any determination that a provision of this chapter, or the application of a provision of this chapter to a person or circumstance, is invalid.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑230.** Issuance, renewal, and reinstatement of licenses; notification of address change; current licensees.

(A) The board may issue a license to an applicant if he satisfies all licensure requirements of this chapter. A license confers a personal right and is not transferable, and the issuance of a license is evidence that the person is entitled to all rights and privileges of a licensee while the license remains current and unrestricted. A license is the property of the State and upon suspension or revocation must be returned to the board immediately.

(B) A license issued under this chapter is renewable:

(1) as provided for in Section 40‑1‑30;

(2) upon the payment of a renewal fee; and

(3) upon the fulfillment of continuing education as determined by the board in regulation.

(C) The department may reinstate the license of a licensee who allows his license to lapse by failing to renew the license as provided in this section if the licensee:

(1) makes payment of a reinstatement fee and the current renewal fee;

(2) files an application for renewal within three hundred sixty‑five days of the date on which the license expired; and

(3) demonstrates he complies with the current continuing education requirements of the prior licensing period or that he complies with the current continuing education requirements after the department renews his license, provided he does not engage in licensed activity until he has completed the continuing education requirement.

(D) A licensee shall ensure that the board administrator has the licensee's correct official mailing address of record and that the administrator is expressly and specifically notified in writing and in a timely manner of any change in the licensee's official mailing address.

(E) As of the effective date of this chapter, a person who possesses a current well driller license from the board is eligible to receive a:

(1) Class A well driller license if the licensee:

(a) files an application with the board for grandfather status within ninety days of the effective date of this section;

(b) provides proof that the applicant is in compliance with the bonding requirements of this chapter; and

(c) has conducted or supervised well drilling in the State for five or more years;

(2) Class B well driller license in one or more of the well drilling categories if the licensee:

(a) files an application with the board for grandfather status within ninety days of the effective date of this section;

(b) provides proof that the applicant is in compliance with the bonding requirements of this chapter;

(c) provides proof that he has for at least three years constructed or supervised at least twenty wells in each category for which licensure status is sought; or

(d) provides, in the case of persons who do not meet the minimum requirements for a Class B well driller, proof of construction or supervision of at least twenty‑five wells in the category for which licensure status is sought and experience, training, and education suitable for practicing in the requested well drilling category.

HISTORY: 2008 Act No. 223, Section 1.

**SECTION 40‑23‑240.** Reciprocity agreements; licensure of person credentialed in another jurisdiction.

(A) The board may enter into a reciprocal agreement with another jurisdiction of the United States that credentials any licensed activities regulated by this chapter if the board finds the jurisdiction has substantially the same or higher licensure criteria as are required by this chapter.

(B) The board may license a person who is currently credentialed in another jurisdiction of the United States for licensed activities regulated by this chapter if the person demonstrates to the satisfaction of the board that he possesses credentials, education, and experience that are the substantial equivalent of the requirements of this chapter for the licensed activity in question.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑250.** License as prerequisite to practice or offer to practice.

No person may practice or offer to practice any licensed activity regulated by this chapter or use any advertisement, business card, or letterhead or make any other verbal or written communication asserting or suggesting that the person is available to engage in any licensed activity or acquiesce in such a representation unless that person has fully complied with this chapter and holds a current license issued by the board authorizing the person to perform the licensed activity.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑260.** Continuing education; code of ethics.

The board may establish continuing education requirements and a code of ethics in regulations. The absence of an adopted code of ethics does not prevent the board from finding a licensee is guilty of unethical or unprofessional conduct.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑270.** Exceptions from application of chapter.

This chapter does not apply to:

(1) salaried employees performing duties for which they were trained and hired solely within a federal or state governmental agency;

(2) persons constructing, opening, or closing wells on their own property;

(3) persons constructing, opening, or closing exploration borings;

(4) persons licensed as contractors pursuant to Chapter 11 who drill a borehole for measuring groundwater levels, blasting, or short term dewatering for construction purposes.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑280.** Requirements, proof, and initiation of claim on bond.

(A) If an applicant is required to provide proof of a bond in order to receive a license pursuant to this chapter, the bond must:

(1) be payable for losses because of defective construction or performance by the bond principal or the principal's agents operating in the course and scope of the principal's agency; and

(2) be cancelable only upon thirty days' written notice to the board; and

(3) provide that cancellation does not affect any liability on the bond that accrued before cancellation; and

(4) be subject to claims as authorized by subsection (B); and

(5) be approved by the board as to form, execution, and sufficiency of the surety.

(B) If proof of a bond is required for licensure by this chapter, the requirement may be satisfied by proof that:

(1) the applicant maintains a current bond in his own name that is in compliance with the requirements of subsection (A);

(2) the applicant is a bona fide employee of a corporation that maintains a current bond in the corporate name that is in compliance with the requirements of subsection (A); or

(3) the applicant is a bona fide employee of a licensed well driller who maintains a current bond in the employer licensee's name that is in compliance with the requirements of subsection (A).

(C) After a hearing the board may initiate claims on the bond of any licensee for the cost of remediation or abatement of deficiencies or losses found to be the responsibility of the licensee. Claims are limited to actual damages and may not include attorney's fees or consequential or punitive damages. Claims may also be initiated upon the bond by the Department of Health and Environmental Control for remediation of deficiencies or losses determined, in accordance with that agency's procedures, to be the responsibility of a licensee.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑300.** Certification classifications.

(A) A person employed as an operator of a public water treatment facility must hold a water treatment operator license issued by the board in the certification class required by this section. The required certification class must be determined based upon the treatment group of the public water system treatment facility where the operator is employed, as established by the Department of Health and Environmental Control pursuant to Section 44‑55‑40(K). The certification class required for each treatment group is as follows:

(1) Group I treatment facilities require operators with at least a Class "E' ' certification.

(2) Group II treatment facilities require operators with at least a Class "D" certification.

(3) Group III treatment facilities require operators with at least a Class "C" certification.

(4) Group IV treatment facilities require operators with at least a Class "C" certification.

(5) Group V treatment facilities require operators with at least a Class "B' ' certification.

(6) Group VI treatment facilities require operators with at least a Class "A" certification.

(B)(1) To be licensed by the board as a Trainee Water Treatment Operator, an applicant must:

(a) be at least eighteen years of age;

(b) have completed high school or the equivalent; and

(c) submit an application on forms approved by the board and the prescribed fee.

(2) To be licensed by the board as a Class "E" Water Treatment Operator, an applicant must:

(a) hold a valid Trainee Operator license;

(b) pass an examination approved by the board;

(c) have completed at least six months of actual operating experience as an operator of a public water treatment facility; and

(d) submit an application on forms approved by the board and the prescribed fee.

(3) To be licensed by the board as a Class "D" Water Treatment Operator, an applicant must:

(a) hold a valid Class "E" operator certification;

(b) pass an examination approved by the board;

(c) have completed at least one year of actual operating experience as an operator of a public water treatment facility or the equivalent; and

(d) submit an application on forms approved by the board and the prescribed fee.

(4) To be licensed by the board as a Class "C" Water Treatment Operator, an applicant must:

(a) hold a valid Class "D" operator certification;

(b) pass an examination approved by the board;

(c) have completed at least two years of actual operating experience as an operator of a public water treatment facility or the equivalent; and

(d) submit an application on forms approved by the board and the prescribed fee.

(5) To be licensed by the board as a Class "B" Water Treatment Operator, an applicant must:

(a) hold a valid Class "C" operator certification;

(b) pass an examination approved by the board;

(c) have completed at least three years of actual operating experience as an operator of a public water treatment facility or the equivalent; and

(d) submit an application on forms approved by the board and the prescribed fee.

(6) To be licensed by the board as a Class "A" Water Treatment Operator, an applicant must:

(a) hold a valid Class "B" operator certification;

(b) pass an examination approved by the board;

(c) have completed at least four years of actual operating experience as an operator of a public water treatment facility or the equivalent; and

(d) submit an application on forms approved by the board and the prescribed fee.

(7) To be licensed as a Bottled Water Class Operator, an applicant must:

(a) pass an examination approved by the board;

(b) have completed high school or the equivalent; and

(c) submit an application on forms approved by the board and the prescribed fee.

HISTORY: 2002 Act No. 302, Section 1.

**SECTION 40‑23‑305.** Wastewater treatment operator licenses.

A person employed as an operator of a public wastewater treatment plant must hold a wastewater treatment operator license issued by the board in the certification class required by this section and the regulations of the board. The required certification class must be determined by the treatment group of the public wastewater treatment plant where the operator is employed, as established by the Department of Health and Environmental Control pursuant to Section 48‑1‑110. The board shall establish in regulations the certification class required for each treatment group of public wastewater treatment plants defined in Section 40‑23‑20.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑310.** Water distribution system operator licenses.

(A) A person employed as an operator of a public water distribution system facility must hold a water distribution system operator license issued by the board in the certification class as required by this section. The required certification class must be determined based upon the distribution group of the public water distribution system facility where the operator is employed, as established by the Department of Health and Environmental Control pursuant to Section 44‑55‑40(L). The certification class required for each distribution group is as follows:

(1) Group I distribution facilities do not require a certified operator.

(2) Group II distribution facilities require operators with at least a Class "D" certification.

(3) Group III distribution facilities require operators with at least a Class "C" certification.

(4) Group IV distribution facilities require operators with at least a Class "B" certification.

(5) Group V distribution facilities require operators with at least a Class "A" certification.

(B)(1) To be licensed by the board as a Trainee Water Distribution System Operator, an applicant must:

(a) be at least eighteen years of age;

(b) have completed high school or the equivalent; and

(c) submit an application on forms approved by the board and the prescribed fee.

(2) To be licensed by the board as a Class "D" Water Distribution System Operator, an applicant must:

(a) hold a valid Trainee Operator license;

(b) pass an examination approved by the board;

(c) have completed at least one year of actual operating experience as an operator of a public water distribution system facility; and

(d) submit an application on forms approved by the board and the prescribed fee.

(3) To be licensed by the board as a Class "C" Water Distribution System Operator, an applicant must:

(a) hold a valid Class "D" operator certification;

(b) pass an examination approved by the board;

(c) have completed at least two years of actual operating experience as an operator of a public water distribution system facility or the equivalent; and

(d) submit an application on forms approved by the board and the prescribed fee.

(4) To be licensed by the board as a Class "B" Water Distribution System Operator, an applicant must:

(a) hold a valid Class "C" operator certification;

(b) pass an examination approved by the board;

(c) have completed at least three years of actual operating experience as an operator of a public water distribution system facility or the equivalent; and

(d) submit an application on forms approved by the board and the prescribed fee.

(5) To be licensed by the board as a Class "A" Water Distribution System Operator, an applicant must:

(a) hold a valid Class "B" operator certification;

(b) pass an examination approved by the board;

(c) have completed at least four years of actual operating experience as an operator of a public water distribution system facility or the equivalent; and

(d) submit an application on forms approved by the board and the prescribed fee.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑320.** Well drilling licenses; categories; classes.

(A) Well drilling licenses must be issued in one of three well drilling categories‑‑environmental wells, coastal wells, and rock wells‑‑and in one of four classes‑‑Class "D", Class "C", Class "B", and Class "A". However, a Class "A" licensee is authorized to practice in all three well drilling categories. No person may engage, or offer to engage, in the drilling of wells for which he does not possess a license of the proper well drilling category and class.

(B) To be licensed as a Class "D" environmental, coastal, or rock well driller, an applicant must:

(1) be at least eighteen years of age;

(2) pass a written examination approved by the board; and

(3) submit an application on forms approved by the board, and pay the prescribed fee.

(C) To be licensed as a Class "C" environmental, coastal, or rock well driller, an applicant must:

(1) pass a written examination approved by the board;

(2) submit an application on forms approved by the board, and pay the prescribed fee;

(3) complete at least one year of experience as an apprentice well driller, primarily spent in installing wells of the well drilling category for which Class "C" status is sought;

(4) possess the necessary drilling equipment or present to the board sufficient evidence to show the applicant has access to the use of this equipment at any time the applicant needs it; and

(5) furnish proof of a surety bond in accordance with Section 40‑23‑280 in an amount of at least twenty‑five thousand dollars or in an amount as specified by the board in regulation. The board, by regulation, may establish bonding requirements in amounts greater or less than twenty‑five thousand dollars if the board finds these amounts are in the public interest.

(D) To be licensed as a Class "B" environmental, coastal, or rock well driller, an applicant must:

(1) pass a written examination approved by the board;

(2) submit an application on forms approved by the board, and pay the prescribed fee;

(3) complete at least one year of experience as a Class "C" employee of a Class "B" or Class "A" well driller, primarily spent in installing wells of the well drilling category for which Class "B" status is sought;

(4) possess the necessary drilling equipment or present to the board sufficient evidence to show the applicant has access to the use of this equipment at any time the applicant needs it; and

(5) furnish proof of a surety bond in accordance with Section 40‑23‑280 in an amount of a least twenty‑five thousand dollars or in an amount as specified by the board in regulation. The board, by regulation, may establish bonding requirements in amounts greater or less than twenty‑five thousand dollars if the board finds these amounts are in the public interest.

(E) To be licensed as a Class "A" well driller, an applicant must:

(1) pass a written examination approved by the board;

(2) submit an application on forms approved by the board, and pay the prescribed fee;

(3) complete at least two years in practice as a Class "C" or Class "B" well driller in each of the three well drilling categories;

(4) possess the necessary drilling equipment or present to the board sufficient evidence to show the applicant has access to the use of this equipment at any time the applicant needs it; and

(5) furnish proof of a surety bond in accordance with Section 40‑23‑280 in an amount of at least twenty‑five thousand dollars or in an amount as specified by the board in regulation. The board, by regulation, may establish bonding requirements in amounts greater or less than twenty‑five thousand dollars if the board finds these amounts are in the public interest.

HISTORY: 2002 Act No. 185, Section 1.

**SECTION 40‑23‑340.** Well driller practice categories; restrictions.

(A)(1) A well driller authorized to practice as an environmental well driller may engage in the drilling of environmental wells of construction Types I through VI, inclusive, as these wells are defined by Section 40‑23‑20. However, these wells must be constructed in accordance with all applicable well construction requirements of the State Safe Drinking Water Act and associated regulations and any other applicable requirements of law.

(2) A well driller authorized to practice as a coastal well driller may engage in the drilling of wells, other than environmental wells, of construction Types II, III, IV, and V as these wells are defined by Section 40‑23‑20. However, these wells must be constructed in accordance with all applicable well construction requirements of the State Safe Drinking Water Act and associated regulations and any other applicable requirements of law.

(3) A well driller authorized to practice as a rock well driller may engage in the drilling of wells, other than environmental wells, of construction Type I as these wells are defined by Section 40‑23‑20. However, these wells must be constructed in accordance with all applicable well construction requirements of the State Safe Drinking Water Act and associated regulations and any other applicable requirements of law.

(4) A well driller authorized to practice as a bored well driller may engage in the drilling of wells, other than environmental wells, of construction Type V as these wells are defined by Section 40‑23‑20. However, these wells must be constructed in accordance with all applicable well construction requirements of the State Safe Drinking Water Act and associated regulations and any other applicable requirements of law.

(B)(1) A Class "D" well driller may not engage in the construction of wells that are not within the well drilling category for which the apprentice is licensed. Further, an apprentice may practice only as a bona fide employee of a Class "A" or Class "B" driller, and under accessible supervision of a Class "A", Class "B", or Class "C" driller who is licensed to practice in the same well drilling category of the Class "D" driller.

(2) A Class "C" well driller may not engage in the construction of or supervise the construction of wells that are not within the well drilling category for which the Class "C" driller is licensed. Further, a Class "C" driller may practice only as a bona fide employee and under the general supervision of a Class "A" or Class "B" driller who is licensed to practice in the same well drilling category of the Class "C" driller.

(3) A Class "B" well driller may not engage in the construction of or supervise the construction of wells that are not within the well drilling category for which the Class "B" well driller is licensed. A Class "B" driller is not required to practice as an employee of any other licensee, if the Class "B" driller is bonded in accordance with this chapter.

(4) A Class "A" well driller may engage in the construction of wells in all well drilling classes. A Class "A" driller is not required to practice as an employee of any other licensee if the Class "A" driller is bonded in accordance with this chapter.

HISTORY: 2002 Act No. 185, Section 1.