

TITLE 178 ENVIRONMENTAL HEALTH

CHAPTER 11 CONTINUING EDUCATION AND FEES

11-001 SCOPE AND AUTHORITY: These rules set standards for continuing education as a condition for renewal of licenses/certificates, and prescribe fees for licensure/certification under the Water Well Standards and Contractors' Licensing Act. The authority for these regulations is found in Neb. Rev. Stat. §§ 46-1201 to 46-1241 and 71-162 to 71-162.05.

11-002 DEFINITIONS

Act means the Water Well Standards and Contractors' Licensing Act, Neb. Rev. Stat. §§ 46-1201 to 46-1241.

Board means the Water Well Standards and Contractors' Licensing Board.

Certificate means a water well, pump installation, a water well monitoring technician, or a natural resources ground water technician certificate of competence issued by the Department.

Certificate of Completion means written evidence or documentation that shows attendance and completion of a continuing education program.

Continuing Education means that education required as a condition of licensure/certification under the Act, for the maintenance of skills necessary for the protection of groundwater and the health and general welfare of the citizens and the competent practice of the construction of water wells, the installation of pumps and pumping equipment, and water well monitoring which has been approved by the Board in accordance with 178 NAC 11-004.

Continuing Education Program or Program means a formal offering of instruction or information to license/certificate holders for the purpose of maintaining skills necessary to the protection of groundwater and the health and general welfare of the citizens and the competent practice of the construction of water wells, the installation of pumps and pumping equipment, water well monitoring, the inspection of chemigation systems, or the inspection and servicing of flow meters. Programs may be offered under names such as "school", "clinic", "forum", "lecture", "course of study", "educational seminar", "workshop", "conference", "convention", or "short course".

Department means the Department of Health and Human Services Regulation and Licensure.

Hour of Continuing Education means 1 hour of credit toward the requirements of the Act (Neb. Rev. Stat. § 46-1225).

Installed Water Well Equipment means but is not limited to equipment that may be set up for use on a water well such as main line check valves, vacuum relief valves, chemigation devices, and flow meters.

License means a water well contractor's license or pump installation contractor's license issued by the Department.

Natural resources ground water technician means any individual employed by a natural resources district and engaged in the inspection of chemigation systems, measuring and recording static water levels, inspection and servicing of flow meters, and water sampling practices and techniques. Natural resources ground water technician does not include: (1) An individual who constructs a water well or installs or repairs pumps or pumping equipment or a water well; (2) a water well monitoring technician; or (3) an individual who carries out the measurement, sampling, or inspection of a water well which is on land owned by him/her and used by him/her for farming, ranching, or agricultural purposes or as his/her place of abode.

Provider means an institution, organization or individual that presents continuing education programs to license/certificate holders and requests approval from the Board for the programs.

Pump Installation Contractor means the principal officer, director, manager, or owner-operator of any business engaged in the installation of pumps and pumping equipment or the decommissioning of water wells. Pump installation contractor does not include: (1) an individual who installs or repairs pumps and pumping equipment for a water well, or who decommissions a driven sandpoint well, which is on land owned by him/her and used by him/her for farming, ranching, or agricultural purposes or as his/her place of abode; (2) a pump installation supervisor; or (3) an individual who repairs pumps and pumping equipment at a location other than a water well location.

Pump Installation Supervisor means any individual engaged in the installation of pumps and pumping equipment or the decommissioning of water wells. Such supervisor may have discretionary and supervisory authority over other employees of a pump installation contractor. Pump installation supervisor does not include: (1) an individual who installs or repairs pumps or pumping equipment for a water well, or decommissions a driven sandpoint well, which is on land owned by him/her and used by him/her for farming, ranching, or agricultural purposes or as his/her place of abode; (2) an individual who repairs pumps and pumping equipment at a location other than a water well location; or (3) any licensed pump installation contractor.

Sampling Event means the collection of a single sample or a single set of samples per each site visit from a water well for the purposes of water quality analysis.

Water Sampling Practices means acts by which ground water samples are obtained from a water well or pumping system in which the water well seal is broken. The term shall generally include any act which serves to protect the integrity of the water well or the quality of the ground water and may include preparation of the sampling point, use of sampling equipment, and certain aspects of sample collection. Water well monitoring technicians may temporarily employ sampling equipment or pumping equipment in a water well for each and every sampling event after which time the equipment must be removed. Natural resources ground water technicians may temporarily employ sampling equipment. Employment of sampling equipment for longer periods of time or pumping equipment may only be carried out by a licensed pump installation contractor or certified pump installation supervisor and is deemed to be pump installation rather than water sampling practices.

Water Sampling Techniques means the procedure(s) and/or method(s) by which water sampling practices are conducted.

Water Well means any excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed for the purpose of exploring for groundwater, monitoring groundwater, utilizing the geothermal properties of the ground, obtaining hydrogeologic information, or extracting water from or injecting water into the underground water reservoir. Water well does not include any excavation made for obtaining or prospecting for oil or natural gas, or for inserting media to repressure oil or natural gas bearing formations regulated by the Nebraska Oil and Gas Conservation Commission.

Water Well Contractor means the principal officer, director, manager, or owner-operator of any business engaged in the construction or decommissioning of water wells. Water well contractor does not include: (1) an individual who constructs a water well, or who decommissions a driven sandpoint well, which is on land owned by him/her and used by him/her for farming, ranching, or agricultural purposes or as his/her place of abode; or (2) a water well drilling supervisor.

Water Well Drilling Supervisor means any individual engaged in the construction or decommissioning of water wells. Such supervisor may have discretionary and supervisory authority over other employees of a water well contractor. Water well drilling supervisor does not include: (1) an individual who constructs a water well, or decommissions a driven sandpoint well, which is on land owned by him/her and used by him/her for farming, ranching or agricultural purposes or as his/her place of abode; or, (2) any licensed water well contractor.

Water Well Monitoring Technician means any individual engaged solely in the measuring of ground water levels, the collection of ground water samples from existing water wells, or the inspection of installed water well equipment or pumping systems. The term does not include: (1) An individual who constructs or decommissions a water well or installs or repairs pumps or pumping equipment, or a water well; or (2) a natural resources ground water technician; or (3) an individual who carries out the measurement, sampling, or inspection of a water well which is on land owned by him/her and used by him/her for farming, ranching, or agricultural purposes or as his/her place of abode.

### 11-003 CONTINUING EDUCATION REQUIREMENTS

11-003.01 General Requirements: Each individual licensed/certified pursuant to the Act must on or before December 31 of the third full year following the issuance of his/her license/certificate and every three years thereafter complete at least 18 hours of continuing education related to the discipline for which his/her license/certificate was issued.

11-003.01A Each individual licensed/certified under the Act may, following his/her completion of each continuing education program, submit to the Board an affidavit evidencing his/her completion of the program or may in the alternative make one or more affidavit submissions to the Board of evidence of all programs completed during the applicable period. License/certificate holders must make submissions on or before December 31 of the final year of the 3 year period.

11-003.01B License/certificate holders must submit a notarized affidavit showing evidence of completion of the programs. The affidavit must include the name, address, telephone number, and license/certificate number of the individual; the program name and provider; the program location; the program dates; and the number of continuing education hours that were earned at each program. The license/certificate holder must submit a copy of all certificates or other evidence of completion provided by the program sponsor for each program included on the affidavit.

11-003.01C Whenever license/certificate holders serve as presenters in a program, they may receive credit only for their initial presentation during a single renewal period, regardless of the number of times a program is presented.

11-003.02 Responsibilities: The license/certificate holder is responsible for:

1. Maintaining a record of attendance at continuing education programs;
2. Verifying with the Board that the continuing education program is approved by the Board in accordance with 178 NAC 11-004; and
3. Maintaining documentation of attendance at continuing education programs.

11-003.03 Exemption from Continuing Education Requirements

11-003.03A Grounds for Waiver or Exemption: The Board may waive or exempt a license/certificate holder from continuing education requirements, in whole or in part, for any 3-year period when a license/certificate holder submits documentation supporting an exemption for circumstances beyond his/her control which prevented completion of the requirements. Circumstances include, but are not limited to:

1. That the license/certificate holder has served in the regular armed forces of the United States during part of the 36 months immediately preceding the license/certificate renewal date;

2. That the license/certificate holder suffered a serious or disabling illness or physical disability which prevented completion of continuing education hours during the 36 months immediately preceding the license/certificate renewal date.

11-003.03B In order to apply for exemption or waiver of continuing education requirements, the license/certificate holder must submit on or before December 31 of the applicable renewal period a written request for a waiver or exemption addressed to the Board which includes:

1. The applicant's license/certificate number;
2. Specification of the number of continuing education hours for which waiver or exemption is sought;
3. A narrative explaining what circumstances beyond the applicant's control prevented completion of all or part of the continuing education requirements, including, but not limited to, pertinent dates and identification of persons by name, address, and telephone number, who have direct knowledge of the grounds claimed for waiver or exemption; and
4. Documentation of the circumstances which prevented the license/certificate holder from fulfilling the continuing education requirement. Documentation must include, but is not limited to, things such as letters from treating physician(s) stating that the license/certificate holder suffered a serious illness or physical disability, duration of the illness and recovery period and the inability of the license/certificate holder to complete the continuing education hours; official documentation of dates of service in the armed forces of the United States.

#### 11-003.04 Audits

11-003.04A Random Audit: Following the first 3-year period ending December 31, 1989, the Board may annually select, at random, a sample of license/certificate renewal applications for audit of continuing education hours. Notice of the random audit, must accompany the license/certificate holder's renewal notice. Each license/certificate holder selected for audit will be required to produce additional documentation of his/her attendance at approved continuing education programs and the nature of the contents of any programs. Documentation may include but is not limited to copies of certificates issued by the provider, cancelled checks, programs and materials distributed at the programs, and similar items. Documentation is due on or before the date of expiration of the license/certificate.

11-003.04B Other Audit: The Board reserves the right to audit for good cause the continuing education filing of any license/certificate holder by notifying the license/certificate holder and requesting the license/certificate holder to produce within 30 days of mailing all documents verifying attendance at approved continuing education programs.

11-003.04C Failure to Document: If a license/certificate holder is unable to document any hours of attendance at a continuing education program after audit as provided in these regulations, the Department will not include those hours in the calculation of the total of continuing education credit hours earned by the applicant for renewal of his/her license/certificate.

11-004 APPROVAL OF CONTINUING EDUCATION PROGRAMS: The Board will evaluate applications from license/certificate holders or providers for approval of continuing education programs. The Board will grant approval for a specific number of hours of continuing education and will indicate to which occupational activities the program applies.

11-004.01 General Requirements for Approval: To be approved for hours of continuing education all continuing education programs must meet the following general requirements:

1. Content must relate directly to ground water or the water well industry and must include but is not limited to, water well and water well pump standards, geologic characteristics of the State, state groundwater laws and regulations, water well construction and pump installation practices and techniques; water well monitoring; inspection of chemigation devices; and inspection or repair of flow meters;
2. Presenters of programs must be qualified by education, experience or training; and
3. The program provider agrees to provide each attendee a certificate of attendance and to submit a complete attendance record to the Board no later than 30 days after the occurrence of each program provided and must include the following information and assurances:
  - a. The name and address of licensed/certified individuals in attendance,
  - b. Program title,
  - c. Program date(s), and
  - d. Number of hours each individual was in attendance.

11-004.02 Application: To obtain approval of a continuing education program, a provider or a license/certificate holder must submit a written application, which must include the following information:

1. The applicant's name, address and telephone number;
2. The name, address, and telephone number of the provider;
3. The name, location and date(s) of the program;
4. A description in detail of program content;
5. A description of program objectives;
6. A description of the qualifications of each presenter;
7. The number of hours of continuing education credit for which approval is requested;
8. In the case of application by a provider, a description of the process the provider uses to verify attendance; a sample of the document required in 178 NAC 11-004.01 item

- 3 which the provider must issue to attendees and the Board; and, the means by which and the time the provider intends to maintain records of attendance.
9. In the case of application by a license/certificate holder a copy of any written evidence or certification of attendance of the program from the provider showing attendance and completion of the program and properly executed affidavit of completion of continuing education programs as required in 178 NAC 11-003.01B.

11-004.03 Additional Information: An applicant may submit additional documents or information as the applicant may consider relevant to the application and compliance with the provisions of these regulations.

11-004.04 Incomplete Applications: The Board will consider only applications which are complete. In the event that the Board determines an application is incomplete, the Board will notify the applicant of the information necessary to complete the application. The Board may accept alternative sources of evidence from that required under 178 NAC 11-004.

11-004.05 Continuing Approval: Once the Board has approved an application for any continuing education program, reapproval is not required for each occasion on which the program is presented provided the program is not changed, or program requirements are not changed by law or regulation. If the program, or any portion of a program is changed, or requirements are changed by statute or regulations, reapplication must be made in accordance with these rules and regulations. The program provider must notify the Department in writing each time an approved continuing education program is presented. The notification must include the date, number of hours presented, and a statement that the program presented was not changed from the program approved previously by the Department.

11-004.06 Advertisement of Approvals: After the Board has granted its written approval of an application, the provider is entitled to state upon its publications: "This program is approved for \_\_\_\_\_ (number of credit hours approved) hours of continuing education credit (on water well construction licenses/certificates, pump installation licenses/certificates, water well monitoring technician certificates, or natural resources ground water technician certificates) (or any combination) under the Nebraska Water Well Standards and Contractors' Licensing Act".

11-004.07 Prior Approval: The Board must receive a complete application at least 65 days prior to the date on which the program is to be presented in order for the Board to issue prior approval. Board action on applications received less than 65 days prior to the date on which the program is to be presented may be deferred until the next regularly scheduled Board meeting.

11-004.08 Post-Program Approval: Applications for approval of a continuing education program made after the program has occurred must be submitted to the Board within 1 year from the date the program was presented.

11-004.09 Provider Record Keeping: In order for the Board to approve a continuing education program, the provider must maintain the records of all certificates of completion issued for the most recent 4 years. The records must identify the following:

1. Full name of each recipient;
2. License/certificate number as appropriate;
3. Program title;
4. Date(s) of program;
5. Program description; and
6. Number of hours of continuing education credit earned.

11-004.10 List of Approved Continuing Education Activities: The Board must provide, upon request, a list of all approved continuing education activities currently available to the public.

The list must include but need not be limited to information on the location where the activity is to be held, the number of credit hours assigned, and program description.

11-004.11 Approved Continuing Education Activity - Loss of Approval

11-004.11A The Board may withdraw or suspend approval of a program if the Board determines that:

1. The provider changed the program teaching method or program content without notice to the Board and the Board's approval of the program as changed;
2. The provider issued a certificate of completion to an individual who did not attend or complete the approved program in accordance with the provisions under which the program was approved;
3. The provider did not give certificates of completion to all individuals who have satisfactorily completed the approved activity in accordance with the provisions under which the program was approved;
4. The provider does not maintain records for certificates of completion issued; or
5. Fraud or misrepresentation has occurred with the application for program approval, maintenance of records, teaching method, program content, or issuance of certificates for a particular course or program.

11-004.12 Appeal: If the Board proposes to deny, suspend or withdraw approval of a continuing education program, it must send notice and provide opportunity for hearing in accordance with Neb. Rev. Stat. §§ 84-901 to 84-920 and its rules of procedure 184 NAC 1.

11-005 FEES SET BY THE BOARD

11-005.01 Schedule of Fees: The following fees set by the Board include a \$1 fee for the Licensee Assistance Program.

1. A fee of \$114 for a regular or temporary hardship water well contractor's license or a pump installation contractor's license;
2. A fee of \$189 for a regular or temporary hardship combination license for a water well contractor's license and a pump installation contractor's license;
3. A fee of \$28 for a single certificate for a water well drilling supervisor's certificate, a pump installation supervisor's certificate, a water well monitoring technician's certificate, or a natural resources ground water technician's certificate;
4. A fee of \$35 for a combination certificate for a water well drilling supervisor's certificate and a pump installation supervisor's certificate;
5. Those individuals holding a license and a certificate subject to licensure and certification under the Act must pay separate fees as appropriate under 178 NAC 11-005.01 items 1 and 3.
6. A fee for each water well required to be registered by the Department of Natural Resources. The fee for water wells designed and constructed to pump less than 50 gallons per minute and each monitoring and observation well is \$30. The fee for a water well designed and constructed to pump 50 gallons per minute or more is \$70. For water wells permitted pursuant to the Industrial Ground Water Regulatory Act, the fee is collected for each of the first 10 water wells registered; and for each group of 10 or fewer water wells registered thereafter, the fee is collected as if only 1 water well is being registered. These fees are remitted to the Director of Natural Resources with the registration form required by Neb. Rev. Stat. §46-602 and are in addition to the fees in Neb. Rev. Stat. § 46-606;
7. A fee of \$25 for late application by a license holder;
8. A fee of \$25 for late application by a certificate holder;
9. A fee of \$100 for application for a declaratory order and;
10. A fee of \$100 for application for a variance.

11-005.02 Proration of initial license or certificate fee:

1. When a license will expire within 180 days after its initial issuance date, the Department will collect one-fourth of the initial licensing fee, and the license will be valid until December 31 of the year the license is obtained.

2. When a certificate will expire within 180 days after its initial issuance date, the Department will collect \$25, and the certificate will be valid until December 31 of the year the certificate is obtained.

11-005.03 License Renewal Fee: The fee for renewing a license or certificate is the same as the initial fee for the license or certificate.

11-005.04 Certification of License/Certificate Fee: The Department will charge a fee of \$25 for issuance of a certification of a credential under the Water Well Standards and Contractors' Licensing Act. The certification includes information regarding:

1. The basis on which a license/certificate was issued;
2. The date of issuance;
3. Whether disciplinary action has been taken against the license/certificate holder; and
4. The current status of the license/certificate.

11-005.05 Verification of License/Certificate Fee: The Department will charge a fee of \$5 to issue a verification of a certificate. The verification includes written confirmation stating whether or not a certificate was valid at the time the verification was made.

11-005.06 Duplicate License/Certificate Fee: The Department will charge a fee of \$10 for a duplicate of an original or reissued license/certificate.

11-005.07 Administrative Fee: For a denied license/certificate or a withdrawn application, an administrative fee of \$25 will be retained by the Department.

11-006 ADMINISTRATIVE PENALTY: The Department may assess an administrative penalty when evidence exists that a person practices without a credential. Practice without a credential for the purpose of 178 NAC 11 means practice:

1. Prior to the issuance of a credential;
2. Following the expiration of a credential; or
3. Prior to the reinstatement of a credential.

11-006.01 Evidence of Practice: The Department will consider any of the following conditions as prima facie evidence of practice without a credential:

1. The person admits to engaging in practice;
2. Billing or payment records document the provision of service by the person;
3. Service records document the provision of service by the person;
4. Water well registrations or other government records indicate that the person was engaged in practice; and

5. The person opens a business and announces or advertises that the business is open to provide service.

For purposes of 178 NAC 11 prima facie evidence means a fact presumed to be true unless disproved by some evidence to the contrary.

11-006.02 Penalty: The Department may assess an administrative penalty in the amount of \$10 per day, not to exceed a total of \$1,000 for practice without a credential. To assess such penalty, the Department will:

1. Provide written notice of the assessment to the person. The notice will specify:
  - a. The total amount of the administrative penalty;
  - b. The evidence on which the administrative penalty is based.
  - c. That the person may request, in writing, a hearing to contest the assessment of an administrative penalty;
  - d. That the Department will within 30 days following receipt of payment of the administrative penalty, transmit the penalty to the State Treasurer for credit to the Permanent School Fund; and
  - e. That an unpaid administrative penalty constitutes a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of the county in which the violator resides or owns property.
2. Send by certified mail, a written notice of the administrative penalty to the last known address of the person to whom the penalty is assessed.

11-006.03 Administrative Hearing: When a person contests the administrative penalty and requests a hearing, the Department will hold a hearing pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920 and the Department's rules and regulations adopted pursuant to these statutes.