

EFFECTIVE DATE
JUNE 7, 2011

NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

178 NAC 13

TITLE 178 ENVIRONMENTAL HEALTH

CHAPTER 13 THE WATER WELL STANDARDS AND CONTRACTORS' LICENSING BOARD

13-001 SCOPE AND AUTHORITY: These regulations define the purpose, membership, duties, and procedural rules for the operation of the Water Well Standards and Contractors' Licensing Board. The authority is found in Neb. Rev. Stat. §§ 46-1201 to 46-1241 and the Uniform Credentialing Act.

13-002 DEFINITIONS

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

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

Department means the Department of Health and Human Services .

License means an authorization issued by the Department to an individual to engage in a profession or to a business to provide services which would otherwise be unlawful in this state in the absence of such authorization. (In 178 NAC 10 to 13 it means those licenses issued under the Act.)

UCA means the Uniform Credentialing Act, Neb. Rev. Stat. §§ 38-101 to 38-1,139.

13-003 BOARD PURPOSE: The purpose of the Board is to protect the health, safety, and welfare of the public.

13-004 BOARD DUTIES: The duties of the Board include, but are not limited to:

1. Setting the minimum standards of proficiency and competency,
2. Providing recommendations regarding reinstatement of licenses,
3. Providing recommendations related to the issuance or denial of licenses, disciplinary action, and changes in legislation,
4. Providing the Department with recommendations on regulations to carry out the Act and the UCA,
5. Setting construction standards for water wells,
6. Setting fees, and
7. Approving regulations.

13-005 BOARD MEMBERSHIP

13-005.01 Designation of Members: The Water Well Standards and Contractors' Licensing Board will be composed of ten members, six of whom will be appointed by the Governor as follows: (1) a licensed water well contractor representing irrigation water well contractors, (2) a licensed water well contractor representing domestic water well contractors, (3) a licensed water well contractor representing municipal and industrial water well contractors, (4) a licensed pump installation contractor, (5) a manufacturer or supplier of water well or pumping equipment, and (6) a holder of a license issued under the Water Well Standards and Contractors' Practice Act employed by a natural resources district. The chief executive officer of the Department of Health and Human Services or his/her designated representative, the Director of Environmental Quality or his/her designated representative, the Director of Natural Resources or his/her designated representative, and the Director of the Conservation and Survey Division of the University of Nebraska or his/her designated representative will also serve as members of the Board. Each member shall be a resident of the State of Nebraska. Each industry representative shall have had at least five years of experience in the business of his/her category prior to appointment and shall be actively engaged in such business at the time of appointment and while serving on the Board. Each member representing a category subject to licensing under the Water Well Standards and Contractors' Practice Act shall be licensed by the Department pursuant to the Act.

13-005.01A The appointed members of the board will be appointed for terms of five years except as stated in Neb. Rev. Stat. § 46-1218. No appointed member will be appointed for or serve for more than two consecutive full five-year terms except as otherwise specifically provided in the UCA.

13-005.02 Changes in Membership: State agency representative Board members will serve at the discretion of their respective agency heads. The Board Chairperson must be notified by letter signed by the agency head of his/her designated representative and any changes in such agency's representation on the Board as from time to time may be made. New members will be entitled to vote only after receipt by the Chairperson of such notification. In the absence of the Chairperson, such letters will be transmitted to and received by the Vice Chairperson. For purposes of continuity of action, it is the policy of the Board to encourage each agency to designate only one representative and to discourage frequent substitution of representation.

13-006 COMMITTEES: The Board may establish advisory committees or other advisory bodies as necessary for specific purposes. At least one Board member will serve on each advisory committee or body, and other members may be appointed from outside the Board. No committee thus established will have authority to take final action on any matters assigned to it but will report its findings and make recommendations to the full Board for action as necessary.

13-007 CONDUCT OF BUSINESS

13-007.01 Election of Officers: The Board will organize annually at its first meeting subsequent to December 1 and will select a chairperson, a vice-chairperson, and a secretary from its membership.

13-007.02 Quorum Requirements: No action may be taken by the Board unless a quorum is present. A majority of the members of the Board constitutes a quorum for transaction of business. Six affirmative votes will be necessary for the passage of motions. Every act of a majority of the total number of members of the Board will be deemed to be an act of the Board.

13-007.03 Designation of Meeting Dates and Notification Thereof: Meetings of the Board shall be called by the Board Chairperson. Special meetings of the Board shall be called by the Chairperson upon the written request of any three members of the Board. The Board Chairperson will cause due notice to be publicized and transmitted to each Board member no less than ten days prior to the meeting. Board members will simultaneously be provided with copies of a tentative agenda and other relevant material. Notice and conduct of all Board meetings will be in accordance with the Nebraska Open Meetings Act. All meetings will be held at the offices of the Department unless otherwise determined by the Board.

13-007.04 Parliamentary Rules: The Board will at all officially convened meetings conduct its business in accordance with the current edition of Robert's Rules of Order except insofar as they may be inconsistent with these rules and regulations.

13-007.05 Executive Secretary to the Board: The Department will designate an individual with the approval of the Board to serve as Executive Secretary of the Board. The Executive Secretary will act as administrative coordinator of the Board's activities and needs; and, will be responsible for the recording of minutes of meetings and their subsequent distribution to all Board members and other concerned parties consistent with Neb. Rev. Stat. §84-1413. The Executive Secretary to the Board will keep continually current a roster of the members of the Board, including their date of appointment and their term in office; and will be responsible for notifying the Chairperson of the Board and the Governor of any resignations or vacancies on the Board which may occur because of limitation of terms as provided in Neb. Rev. Stat §46-1218.

13-008 PUBLIC HEARINGS

13-008.01 Calling Public Hearings: The Board may at any time on its own motion order any public hearing which the Board is authorized, either by law or by inherent authority, to conduct and, after giving notice, conduct such hearing in the manner appropriate to the nature of the hearing as hereinafter provided.

13-008.02 Formal Adjudicatory Hearings: The Board will set a formal adjudicatory hearing when requested by any individual appealing a decision of the Board. The Board hereby

adopts by reference for its rules of practice and procedure in any formal adjudicatory hearing Title 184 NAC 1 - Rules of Practice and Procedure for Administrative Hearings, except that the word "Board" will be substituted for "Department".

13-008.03 Informal, Non-adjudicatory hearings: All hearings set by the Board, not formal adjudicatory hearings, and which may include but not be limited to hearings called for rule making and for public inputs into the Board responsibilities for advising and consenting to Department rules and regulations will be informal, non-adjudicatory hearings governed by this rule and regulation.

13-008.03A Notice: Notice will be given of all public hearings held by the Board. Except as otherwise specified by law, the notice will be published at least once in a newspaper or newspapers of general circulation in the state. The notice may also be published in the area or areas which are affected by the business of the hearing, if regional or local in nature and the publication will be made at least ten days prior to the date of the hearing. The published notice will contain information as to the date, time, place and purpose of the hearing, and as appropriate will include an agenda of the meeting or the place where an agenda is available.

13-008.03B Presiding Officer or Hearing Examiner: The Chairperson of the Board or his/her delegate will serve as presiding officer over the hearing; however, the presiding officer will, in all cases, be a member of the Board. The presiding officer may appoint a hearing examiner for the purpose of assisting in the conduct of the hearing, which person may or may not be a member of the Board.

13-008.03C Powers of Officer or Examiner: The presiding officer or hearing examiner will among other things, open the proceedings; enter into the record the notice given of the hearing; take appearances; accept and see that exhibits are properly numbered; answer questions asked or call upon other persons present to answer questions asked; and close the proceedings. The presiding officer and hearing examiner have no power, acting alone, to take any action involving a final determination from the proceedings when action by law is required of the Board. The record in any hearing will not be affected by any change of presiding officers or examiners during the conduct of that hearing.

13-008.03D Oath Not Required: No person will be required to be sworn or take an oath prior to presenting any comments, which may consist of any oral or written question, statement relevant to the subject of the hearing, and any document.

13-008.03E Receipt of Comments: Comments at a public hearing will ordinarily be received in the following sequence: (1) Board member and staff; (2) other state agencies (3) all other persons in the order the presiding officer, at his/her discretion, chooses. All persons present will be given the opportunity to be heard on matters relevant to the business and purpose of the hearing.

13-008.03F Presentation of Comments: All persons presenting comments at a hearing must first state their full name and address, and declare whether they are appearing on their own behalf or on behalf of another person or organization, in which case the person or organization represented must be named.

13-008.03G Propriety of Comments: All comments presented at the hearing are to be directed at the business and purpose of the hearing. Any comments not directed at the business and purpose of the hearing, or which are cumulative or repetitive, must, at the request of the presiding officer or hearing examiner, be terminated and excluded from the record.

13-008.03H Staff Comments: In addition to comments presented by other persons, the Board may, through the Board staff or otherwise, secure and present such comments as it may consider necessary or desirable. A copy of the notice given for the public hearing and a statement explaining the business and purpose of the hearing will be made as part of the record of the hearing.

13-008.03I Record Made: A record will be made of the hearing proceedings with the comments presented being a part thereof. Such record may consist of written statements and other documents along with tape recordings of oral evidence or transcripts as deemed necessary by the Board.

13-008.03J Record Held Open: The record of public hearings may be held open for a specific period of time at the discretion of the presiding officer for submission of any comments not available or presented at the time of the hearing. At the designated time the hearing will be closed by the presiding officer or hearing examiner after the inclusion of any comments submitted and accepted.

13-009 APPROVAL: The Department, with the approval of the Board, shall adopt and promulgate rules and regulations for the establishment of standards for the:

1. Construction of water wells,
2. Installation of pumps and pumping equipment, and
3. Decommissioning water wells.

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13-010 REQUESTS FOR REPORTING: The Board will routinely, as a part of each meeting, request reports from each agency represented on the Board. In advising the Department as provided under the Act, the Board will, following such reports, assign any subjects or proposals requiring Board advice, consultation, or advice and consent to any standing or special committee of the Board for further investigation or work and will upon report of any such committee to the Board take such further action as deemed appropriate. The Board may take such action at any regular or special meeting of the Board with or without a public hearing.

THESE AMENDED RULES AND REGULATIONS Replace Title 178 NAC 13, Procedural Rules for Operation of the Water Well Standards and Contractors' Licensing Board, effective June 13, 2007.