

- (A) As a condition of doing business in this state, private water systems contractors shall annually register with the department and comply with the surety bonding requirements of section 3701.344 of the Revised Code and the requirements of this rule.
- (1) Only registered contractors may construct, alter, or seal private water systems, drill water wells, and install pitless adapters.
  - (2) With the exception of paragraph (A)(1) of this rule, registration is not required of any person who performs labor or services as an employee under the direct supervision of a registered contractor, any private water system owner who performs work on the private water system serving his dwelling house, or any person who aids the owner with this work without compensation. Owners of a primary or secondary property, or property rentals in which they do not reside, or owners, altering or sealing water wells for their dwelling house shall obtain a registration to perform work, but are exempt from the bonding requirements established in paragraph (B) of this rule, and may only perform work on residences they own. Persons exempt from registration under this paragraph shall comply with all applicable rules of this chapter.
  - (3) For purposes of this rule "direct supervision" means that a registered water system contractor instructs and controls the person claimed to be supervised, the person is an employee of the registered contractor, and that the registered water system contractor is responsible for the actions of that person and is reasonably available if and when needed, even though such registered water systems contractor may not be physically present at the work site.
  - (4) Any person who is performing work on a private water system that is not subject to paragraph (A)(1) or (A)(2) of this rule, shall immediately cease work on the private water systems at the order of the board of health or the department of health.
  - (5) Subcontractors who perform work under contract for a registered private water systems contractor for electrical, welding or excavation work for trenching are not required to obtain a registration as a private water systems contractor.
- (B) Requirements for registration.
- (1) Application for annual registration as a private water systems contractor shall be made to the director on forms prescribed and provided by the department of health. The application shall include:
    - (a) A two hundred and fifty dollar registration fee made payable only by check or money order to "Treasurer, State of Ohio"; or a five hundred dollar registration fee made payable only by check or money order to "Treasurer, State of Ohio" for registrations submitted after a private water system has been constructed without a valid registration;

- (b) An annual registration bond, complying with paragraph (D) of this rule, executed by the applicant as principal, and a surety company authorized to do business in the state as surety, in the sum of ten thousand dollars available for each calendar year coinciding with the applicant's registration. Applicants for a private water systems registration that have not previously held a valid registration, or applicants whose registration has been suspended, shall submit a registration bond in the sum of twenty thousand dollars for a period of three registration years. Applicants with a valid bond claim in the prior registration year shall also submit a registration bond for twenty thousand dollars for a period of three registration years. Upon the third registration year with no valid bond claim, new or previously suspended applicants, or applicants with prior valid bond claims, may submit a bond for ten thousand dollars the following registration year;
  - (c) The surety bond shall run to the state as obligee and shall be for the benefit of any aggrieved party for damages incurred as a result of a violation of this chapter. The bond shall provide that the aggregate liability of the surety for any and all breaches of the conditions of the bond shall in no event exceed the penal sum of the bond for the year of registration;
  - (d) Proof of not less than five hundred thousand dollars of general business liability insurance;
  - (e) Proof of a construction inspection by the department of health, a person designated by the director to conduct contractor inspections, or board of health as authorized in paragraph (F) of rule 3701-28-04 of the Administrative Code;
  - (f) Any other information as required by the director.
- (2) An applicant which is a partnership, corporation or other business association, shall designate one partner, officer, or director who shall be the company's representative to register on the company's behalf, and who shall be responsible to ensure compliance with this chapter.
- (C) Registration issuance and renewal.
- (1) Private water systems contractors shall submit an application for renewal of the private water systems contractor registration along with the fees and information required under paragraph (B) of this rule by December thirty-first of each calendar year. Upon receipt of an application form for registration and the information and fees required under paragraph (B) of this rule, the director shall conduct a review to determine if the information is accurate, complete, and that the private water systems contractor has no unresolved bond claims or outstanding violations of this chapter.
    - (a) Upon determination that the application and information is accurate and complete, the director shall furnish the registrant with a valid and current registration card containing the name of the registrant, the

registrant's representative, if applicable, the registration number, and the expiration date;

- (b) Upon determination that the application and information is incomplete, the director shall notify the applicant of the information that is required and not issue a registration until all required materials are received by the department; or
  - (c) Upon determination that the applicant has unresolved bond claims or outstanding violations of this chapter, the director shall deny the private water systems contractor registration.
  - (d) The private water systems registration becomes valid upon issuance by the director.
- (2) In the case of those applicants subject to paragraph (B)(2) of this rule, the partnership, corporation, or other business association and not the representative designated in accordance with paragraph (B)(2) of this rule shall be the registrant. When the representative is no longer associated with the registrant, the registrant shall so inform the department of health in writing within thirty days and give the name of another representative in accordance with paragraph (B)(2) of this rule.
- (3) The initial and renewal registration shall not be transferable and expires annually on December thirty-first, unless earlier revoked. A registration may be renewed for an ensuing year by making application to the director in accordance with paragraph (B) of this rule. If a renewal application has been received on or prior to December thirty-first, such application shall extend the period of validity of the current registration until a new complete registration is issued or the director denies a new registration under the provisions of division (B)(3) of section 3701.344 of the Revised Code, this chapter, and Chapter 119. of the Revised Code.

(D) Registration bonds.

- (1) Registration bonds shall be executed in the name of the applicant, as principal, on a bond agreement form provided by the department of health and shall include a certificate from the superintendent of insurance demonstrating that the surety company is authorized to operate a surety business in this state.
- (2) If the registration bond supporting the registration is canceled, the registrant shall submit within ten days to the department of health a new registration bond, in accordance with the requirements of this rule. The surety company shall give ninety days written notice to the department of health prior to the effective date of cancellation.
- (3) No private water systems contractor shall perform work on a private water system without a valid registration bond. In the event that the registration bond is cancelled, the private water systems contractor shall not perform work on a private water system until a valid replacement bond has been provided to the department of health.

- (4) As a condition precedent to making a claim on a registration bond:
- (a) Any aggrieved party who alleges that violations of this chapter exist for a private water system, shall contact the private water systems contractor who performed the work on the private water system and the board of health having jurisdiction in the health district where the private water system is located regarding the nature of the alleged violation. The board of health having jurisdiction shall investigate the complaint and determine if a violation of this chapter has occurred. The board of health shall consult with the aggrieved party and the private water systems contractor on the corrective actions necessary to resolve the violation. After consultation with the board of health and the private water systems contractor on the plan for correction of the violation, the aggrieved party shall provide the private water systems contractor an opportunity to correct the alleged violation, unless otherwise authorized by the director. For purposes of this rule "aggrieved party" means the property owner or the agent of the property owner who contracts for a private water system with a water systems contractor and whose system is not installed, altered, repaired or abandoned in substantial compliance with the provisions of this chapter. The rights of the aggrieved party to the bond shall be forfeited if the aggrieved party denies the water systems contractor access to the private water system to perform actions necessary to correct the violation or violations.
  - (b) If a violation identified by an aggrieved party and the board of health is not corrected by the private water systems contractor, the person who alleges to be an aggrieved party shall give written notification to the director and to the board of health having jurisdiction in the health district where the private water system is located. The written notification shall state the violation of Chapter 3701-28 of the Administrative Code upon which the person desires to base a claim. The director shall send a copy of the complaint to the water systems contractor and the board of health.
  - (c) The director, with the assistance of the board of health, shall investigate the validity of the allegation, and may consult with the aggrieved party, board of health, and the private water systems contractor. The director may hold an informal meeting with the aggrieved party, the private water systems contractor, other technical experts, or board of health at the request of any of the parties involved to work towards resolution and correction of the violation.
  - (d) If the director concludes that no rule violation exists, he shall so notify the alleged aggrieved party, the board of health, and the registered contractor in writing. The director, if satisfied of the existence of a rule violation, shall notify in writing the aggrieved party and board of health, of the rule violation and issue a notice of violation to the water systems contractor and the surety company that sets forth the following:
    - (i) The nature of the violation;
    - (ii) The action required to correct the violation; and

- (iii) The date for completion of the corrective action.
- (e) If a water systems contractor fails to comply with the notice of violation issued pursuant to paragraph (D)(4)(d) of this rule within sixty days, the director shall notify the surety company, the aggrieved party, the board of health, and the water systems contractor and shall:
- (i) Set forth the violation; and
  - (ii) Inform the surety of its options in responding to the notice, as set forth in paragraph (D)(4)(d) of this rule.
- (f) Within thirty days from the date the surety company receives a notice under paragraph (D)(4)(d) of this rule the surety company shall notify the director that it will perform one of the following:
- (i) Not correct the violation or violations resulting in the issuance of the order and shall make payment for the full amount of the bond to the aggrieved party;
  - (ii) Correct the violation or violations, or pay the cost of correction within thirty days of receiving the notice and submit to the director a plan for performance of the work necessary to correct the violation or violations; or
  - (iii) Make payment to the aggrieved party in an amount equal to the purchase price of the private water system and any other activity necessary to bring the private water system into compliance with this chapter, including the sealing of a private water system, if necessary.
- (g) The rights of the surety company to correct the violation or violations resulting in a notice issued under paragraph (F)(4)(f) of this rule shall be terminated and the director shall order the entire amount of the bond forfeited if the surety company fails to:
- (i) Notify the director within thirty days of receipt of the notice that it will or will not correct the violation or violations;
  - (ii) Submit a plan for completing the required work at the same time it notifies the director that it will perform or pay the cost of performing the required work; or
  - (iii) Commence, continue, or complete the required work in a manner and in accordance with this rule and the provisions of this chapter.
- (5) The notification required in paragraph (D)(4)(a) of this rule must be made within two years from the date the work on the private water system, or the component thereof, is completed. The rights of the aggrieved party to the bond shall be forfeited if the aggrieved party denies the bond company or its agents access to the private water system to perform actions necessary to correct the violation or violations. The bond claim shall be withdrawn due to lack of response within sixty days from the aggrieved party after notification

from the department, the private water systems contractor or the surety on the proposed corrections of the violation or violations.

- (6) The surety company shall give written notice to the director within thirty days of payment on a claim against a registration bond. The notice shall specify the name of the registered contractor, the name of the aggrieved party, the amount of the claim, and the date and manner in which the claim was paid.
- (E) The director shall publish annually a list of names and addresses of all persons holding registrations under this chapter and upon written request shall provide a copy of the list to any person.
  - (F) Every registrant shall maintain and submit to the board of health, the department of health and/or the director such complete and accurate records as may be required for determining compliance with all applicable rules of this chapter.
  - (G) Suspension, revocation, and denial of registration.
    - (1) The director may suspend, revoke, or deny any registration of a private water systems contractor for violation of the requirements of this chapter.
    - (2) Grounds for suspension, revocation, or denial of a private water systems contractor's registration shall include, but not be limited to:
      - (a) A material misstatement or falsification of facts in the contractor's application for a registration or obtaining a registration through fraud or misrepresentation;
      - (b) A material misstatement or falsification of facts on a private water systems permit, job completion form, spring, pond, cistern or pump completion form, continuous disinfection form, or well log;
      - (c) A violation of the conditions of the contractor's registration;
      - (d) A failure to submit forms and/or well logs in accordance with rule 3701-28-03 of the Administrative Code;
      - (e) A violation of any applicable rule of this chapter;
      - (f) Failure to maintain a surety bond as required under this rule;
      - (g) Conviction in any criminal proceeding or failure to comply with a judgment or order that is issued by the court in any civil proceeding in connection with a private water system;
      - (h) Aiding or abetting an unregistered person to evade the requirements of division (B)(3) of section 3701.344 of the Revised Code and this rule, allowing one's registration to be used by an unregistered person, or acting as an agent, partner or associate of an unregistered person with the intent to evade the provisions of this chapter;

- (i) A demonstrated incompetency to act in the business or businesses for which a registration is held; or
  - (j) Having more than one bond claim within a three year period where the director determined that there were violations of this chapter and that damages did occur.
- (3) The private water systems advisory council created by section 3701.346 of the Revised Code shall meet at the behest of the director to advise the director on the suspension, revocation, or denial of a private water systems contractor's registration.
- (4) Procedures for the revocation, suspension, or denial of a registration by the director shall be in accordance with Chapter 119. of the Revised Code. Pursuant to that chapter, the private water systems contractor is entitled to a hearing upon request made within thirty days of the mailing of notice of the action on the registration. The date set for the hearing shall be within fifteen days, but not earlier than seven days, after the private water systems contractor has requested a hearing, unless otherwise agreed to by both the agency and the contractor.

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