



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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STATE WELL DRILLERS AND PUMP INSTALLERS
EXAMINING AND ADVISORY BOARD

State Well Drillers and Pump Installers Examining and Advisory Board Meeting Minutes for July 15, 2010

Board Members Present: Art Becker (Chairperson), Tony Tirro (Vice-Chairperson), Richard Dalton, Gary Poppe, Joe Yost, Karl Muessig, and Carol Graff. Fred Sickels attended the meeting until 2 PM.

Board Members Absent: Joe Pepe

NJDEP Staff Present: Pat Bono, Julia Altieri (AM only), Tracy Omrod, Steve Reya, Brian Buttari, Michael Schumacher (PM only), Rachel Horowitz (DAG, AM only), John Olko (Compliance & Enforcement- AM only)

Member(s) of the Public: none

- 1. Call to Order** - The meeting was called to order by A. Becker at 9:50 am with a quorum present.
- 2. Review of Minutes from May 20, 2010 Meeting** – A. Becker noted that the last sentence of the second paragraph within item #5, which mentions a National Ground Water Association (NGWA) grace period for certification renewal is incorrect. This sentence will be omitted. A motion to accept the minutes with this change was made by G. Poppe, seconded by T. Tirro and approved unanimously.
- 3. Review and Certification of the June 9, 2010 Master, Journeyman, Journeyman B, Monitoring, Soil Borer and Pump Installers Exam Scores** – The Journeyman applicant roster score listed two “no shows” because both applicants had already passed the exam on the April test cycle. They applied for the June test in the event that they did not pass but still had to pay the non-refundable application fee. S. Reya brought up the possibility of altering the exam schedule and/or Board meeting schedule for 2011 to ensure that the scores for the April exam are available to test candidates prior to the application deadline for June. He also noted that there is a second time in the yearly testing cycle when the same problem is encountered (October/December exam cycles). A. Becker discussed the possibility of certifying both test applicants and exam scores via email to eliminate the requirement to wait

for the next regularly scheduled meeting for their approval. Rachel Horowitz, DAG read through the statute and regulations and found that they state that certification must be done at regularly scheduled meetings so they could not be certified electronically without a statute change.

F. Sickels said that the Department is currently soliciting requests to change outdated laws that slow approvals and processes so an issue such as this may receive consideration. A. Becker requested that Bureau staff email a link to the statute and regulation for review by Board members. He noted that this issue is also significant as the Board continues to pursue utilizing a third party to administer to testing and licensing program for well drillers and pump installers.

Exam Certification:

Journeyman – A motion to approve the scores as presented was made by G. Poppe, seconded by K. Muessig and approved unanimously.

Journeyman B – A motion to approve the scores as presented was made by F. Sickels, seconded by C. Graff and approved unanimously.

Monitoring – A motion to approve the scores as presented was made by T. Tirro, seconded by A. Becker and approved unanimously

Soil Borer – A motion to approve the scores as presented was made by C. Graff, seconded by J. Yost and approved unanimously

Pump Installer - A motion to approve the scores as presented was made by G. Poppe, seconded by K. Muessig and approved unanimously

4. **Licensing Topics – Driller/Plumber jurisdiction for installing water treatment equipment** A. Becker proposed sending a letter to the Department of Community Affairs (DCA) to work to resolve the conflicting differences between the DCA and DEP regulations regarding the installation of water treatment systems. Specifically, he intends to reference the word “appurtenances” as stated in N.J.A.C. 7:9D, which he believes apply to water treatment equipment. He also said that he had recently spoken with Tom Pitcherello from DCA, who had previously attended a Board meeting regarding this issue, about working out this issue through a meeting of the stakeholders. A meeting between DCA, DEP, the NJ Board of Master Plumbers and the NJ State Well Driller and Pump Installer Advisory Board was suggested in lieu of pursuing legal action to interpret the apparent conflicting regulations. A. Becker proposes to resolve the matter such that both license types (Well Driller/Pump Installer and Master Plumber) would be permitted to install water treatment in buildings where the water supply is a well. He added that this might result in local health departments issuing permits to licensed plumbers, well drillers and pump installers for the installation of water treatment systems, but would prohibit unlicensed individuals from performing the work.

J. Yost discussed the authority of a Master Well Driller, as specified on page 8 of the regulations (N.J.A.C. 7:9D-1.7(a)1.ii), which states that they are able to “install or replace well pumping equipment and appurtenances, storage tanks and appurtenances and connecting lines between a well and storage tank.” Therefore, he felt that if the treatment were to be installed “after” a well pressure tank, drillers/pump installers would not be able to perform the work under their license. A. Becker believed that the regulation referred to connecting lines between the well and the tank and that they could still work on water treatment equipment, as they would be appurtenances installed directly after the tank. He also brought

up the issue of providing "potable water" to the plumbing supply, which he believed began at the main shutoff supply valve. He again referred to the July 1988 DCA bulletin, number 88-10, in which the judge ruling specified that plumbing begins at the main shutoff supply valve after the tank and that the water is to be potable at this point. A. Becker said that water might require treatment prior to the valve in order to meet potable water standards.

G. Poppe made a motion to move forward with scheduling an informal meeting between all four stakeholders to attempt to resolve the issue. The purpose would be to find an amenable solution that could then be adopted by revising the appropriate regulations (DCA and DEP). The motion was seconded by J. Yost and approved unanimously. C. Graff suggested that A. Becker distribute copies of the Plumbing Code to Board members and any others who would be attending the meeting so it could be reviewed in advance.

5. **Licensing Topics - DEP Correspondence Update** – A. Becker mentioned that he had recently contacted DAG, Jill Denyes, for further information on procedures to which the Board must adhere when conducting administrative hearings. Ms. Denyes sent some info but there is more needed to understand how to proceed properly. He also sent a letter to DEP Commissioner, Bob Martin, in which he discussed the need to revise the current well drilling regulations. A. Becker received one response from Assistant Commissioner Scott Brubaker, but had not received any additional follow up or update within the past few months. He sent a second letter regarding the lack of DEP follow-up for existing violations and failure to adequately address frequent, repeat violators of the regulations. This prompted the Board to discuss the fact that license holders have always been allowed to renew driller and pump installer licenses even with outstanding violations. The current regulations do not allow the Bureau to restrict renewal based upon this, but they do prohibit those with outstanding violations from being approved to sit for a license exam. The Board members discussed how this should be revised when the regulations are updated.

6. **Licensing Topics - Enforcement Procedures Administrative Hearing Process and**
A. Becker asked DAG, Rachel Horowitz, whether individual Board members would have their legal fees and any associated liability covered by the state if any Board members become involved in a lawsuit as the Board becomes more active in enforcement activities, which may mean suspending or revoking licenses. R. Horowitz stated that the state would defend the Board member(s) if the action were directly a result of their official capacity on the Board and that the State Office of Legal Affairs would assist the Board member(s).

DAG Horowitz explained that the formal enforcement procedures would start with the NJDEP staff sending a complaint to the Board with the appropriate documentation. The Board would send the list of charges to the driller/pump installer/person by certified mail. She recommended that DAG Denyes help the DEP develop a charges list format that would be based on the facts and any investigative work that had been done. The Board would set a hearing date and advise the person that they could bring an attorney for legal representation. A transcript must be kept and an independent hearing officer is needed. This process is an alternative to the administrative hearing process when conducted by the NJDEP. The Board members may choose to deliberate the decision in a closed session. As part of the process, the Board needs to lay out the range of recommendations that can be made in this situation to the person beforehand so they know the consequences.

A. Becker requested the Bureau staff work with the DAG to develop a form that is essentially a swearing in of charges. He questioned whether DEP inspectors could sign such a form and submit it to the Board for enforcement recommendation. R. Horowitz said that

those conducting the hearing (the Board) must be entirely separate from those who investigated the case or were involved in the investigation in any way (DEP staff). The Board also discussed how the law states that after a hearing, the Board refers their position to the DEP commissioner who has the power to suspend or revoke licenses.

John Olko, from the Department's Compliance and Enforcement element, explained that the process used by his program involve Bureau staff signing a charges form and sending it to the Board, whose members would set up the administrative hearing and contact the alleged violator. He also said that typically if a recipient fails to pick up or sign for their notification, which would be sent via certified mail, a DEP Enforcement Officer would hand deliver the form. J. Olko believes that the Board has authority regarding suspending or revoking a license, but only the DEP can assess a fine. If existing fines have not been paid by the violator, however, the Board can insist that the fine must be paid in conjunction with other enforcement action that is to be taken against the person.

7. **Enforcement Update-** J. Altieri has compiled a list of the top twelve frequent violators of the regulations. She stated that the criteria for identifying the twelve were based on the criteria the Board identified at the last meeting. As requested by Board members at the May meeting, the list did not contain the individual or company names of the frequent violators, it used a numbering system to list the individuals.

J. Olko He noted that he recently discovered that the fine amounts that the Bureau of Water Systems and Well Permitting has been referring to Compliance and Enforcement have often been Settlement Offer Letters (SOLs) in which the penalty assessments have been based on fine amounts consistent with first-time offenders. He stated that the two programs would now be working closely to ensure that frequent violators and those who commit egregious violations are issued fines that are commensurate with their behavior. This would ensure that those who willfully violate the Department's regulations are not given a chance to resolve their violations at a reduced rate. His office is working to increase compliance with enforcement of the well regulations by sending out penalty assessments to these violators in the form of an Administrative Order and Notice of Civil Administrative Penalty Assessment (AONOCAPA). He stated that if the person does not respond to the document or request a hearing, it becomes a final enforcement document and is enforceable in a court of law. Listing the names of frequent violators in a Department press release was another option he brought up, which he believed may deter some from willfully ignoring the Department's laws and regulations. Finally, J. Olko mentioned that the Department is now utilizing the services of outside collection agencies to pursue individuals who have outstanding fines.

Board members discussed the fact that the Bureau should refer a complaint for which they have documentation of obvious violations. A. Becker requested that the Bureau identify the top two of these cases and draft a Board referral document for review at the next meeting.

8. **NGWA Certification Program** – F. Sickels provided an update of the NGWA testing, licensing and continuing education program that the Department could potentially use. He felt that with current staff resources, a program such as NGWA would enable the Bureau to better use available resources. He said that he would prefer to outsource as much of the licensing, testing, tracking/administrative tasks and continuing education as possible. He believed this would better both the industry (increased frequency of testing, better study guide materials and additional training opportunities) and the well permitting program (realign priorities to

increase field services and technical reviews/support). He also discussed a June 30, 2010 letter from Kevin McCray, NGWA Executive Director, which was sent to the Department following his meeting with multiple Department and Board representatives (A. Tirro, C. Graff, A. Becker). In his letter, Mr. McCray provided a list of thirty questions that the Bureau must answer so NGWA can begin to develop a proposal and cost estimate for the services that will be provided. P. Bono mentioned that the Bureau must determine whether or not NGWA can be considered a "sole source vendor" as the potential provider of all of these services. If the association were not considered one, the program would have to go out to bid. The Bureau will work on obtaining the answers to the questions posed in Mr. McCray's letter and respond accordingly.

8. **Technical Topics** – S. Reya discussed a meeting that he, P. Bono, B. Buttari and A. Tirro had with Halliburton/Baroid Industrial Products Technical Director, Dr. Charles Landis and their regional Account Representative, Dennis Duty, on May 27, 2010. He said that Dr. Landis presented permeability information (Fugro Consultants, Inc. report dated May 19, 2010 (revised June 22, 2010)) regarding BAROTHERM GOLD. The six mixes up to and including the 350-lb sand mix all met the Department requirement of having a permeability value that does not exceed 1×10^{-7} cm/sec. The 400-lb sand sample, however, exhibited a value of 1.8×10^{-7} cm/sec, which is slightly higher than the allowable limit. S. Reya added that in the letter he sent Dr. Landis, he only requested testing on the 0 to 350-lb sand mixtures as the Board had requested. This was because the initial permeability testing provided for the 400-lb mix proved acceptable, but no data was provided for the six other mixes. R. Dalton discussed how a different permeant (San Francisco Bay Water) had been used in the initial, lower permeability test than the second, higher permeability test, in which tap water was used. He also discussed speaking with the Fugro Consultants Assistant Manager of the Geotechnical Laboratory, Maurice Morvant. R. Dalton felt that the permeability was extremely close to the required value and that some variability among samples would occur. It was also possible that given a longer testing period, the value may have proved acceptable. For these reasons, he sent a memo to the Bureau recommending that Baroid proceed with setting up the on-site pumpability test. The permeabilities at the mixer and at borehole return would then be submitted for lab permeability testing. R. Dalton recommended that if the permeability on the return sample proves acceptable, the Department should then approve the mix. All Board members agreed. S. Reya mentioned that the BARAD 381 cement additive had not yet been tested for permeability and he would be hearing back from Dr. Landis upon completion. The Board hopes to accomplish onsite testing of both products on the same day for scheduling purposes. S. Reya will send a letter to Dr. Landis requesting an update on the BARAD 381 testing and will work with him to schedule a demo with Board members.
9. **NGWA Geothermal Town Hall Meeting July 7, 2010** – A. Becker discussed this online meeting in which he was a presenter. He said that NGWA is currently publishing new guidelines for the installation of geothermal wells, which will be sent to regulatory government agencies. NGWA has just begun a new geothermal well driller license certification entitled the Certified Vertical Closed Loop Driller (CVCLD). The Geothermal Certification previously offered by NGWA will now be replaced by the new CVCLD certification.
10. **DEP Program Updates** –
E permitting – P. Bono noted that one positive update to the ePermitting program has been the fact that users are now able to print a PDF of their well record submittal. This copy of the well record is the same as the final/DEP-approved well record except that it states that it is a draft and contains a disclaimer stating that the information is what was submitted to the

Department but may not have been reviewed or approved. This has helped some drilling contractors by allowing them to provide clients, health departments and other DEP programs like Site Remediation with a draft copy containing the submitted information. P. Bono also discussed some technical problems with the processing of payments for ePermit submittals. The Bureau is looking into resolving these software glitches.

Well Searches- P Bono stated that the individual well searches are primarily caught up. There has been a surge in well search requests, but changes to the Bureau's processing of the searches has resulted in increased efficiency. She also added that the Bureau is working on software upgrades that will enable well drillers and the public to view well records on line. There are security issues with releasing this information, which must be resolved before the program could be used by those outside the Department.

- 11. Lowering of Water Levels in Wells in Monmouth County-** G. Poppe mentioned observing a significant drop in the water level for domestic wells in Colts Neck. He expressed concern with the effects that the recent heat wave has had on the aquifers within this area based on his experience with lowering pump settings in a number of wells in Colts Neck Twp. Most of these wells were screened in the Englishtown Formation, which is a confined aquifer in that area. F. Sickels noted that this formation is designated as a Critical Area 1, and is strictly regulated by the Bureau of Water Allocation. Therefore, no new withdrawals (for wells equipped to pump 70 gallons per minute (GPM) or more) would have been granted anytime recently. DEP reports have not indicated a significant water level lowering in this aquifer. G. Poppe noted that many of the homes in this area have large lawns and often have 5 horsepower, 50 GPM well pumps and that some homes have multiple wells so there may be a number of single family homes with a combined pump capacity of greater than 70 GPM. This capacity would require a Water Use Registrations with the Bureau of Water Allocation. Freehold and Marlboro Townships were other areas where G. Poppe noted similar situations..

- 12. Adjournment -** A motion to adjourn the meeting was made by G. Poppe, seconded by R. Dalton and unanimously approved at 2:55 PM.