

Kentucky Water Well Drillers Certification Board Meeting

MINUTES

11-15-2013

9:15 AM EST

Carter Caves State Resort Park

ATTENDEES	Danny Kelly, Orris Hayes, Roy Toney, Bart Davidson, David Jackson, Kevin Moses, Scotty Robertson
------------------	--

Agenda:

- ❖ Roll Call
- ❖ Opening Remarks
- ❖ Approval of Previous Meeting Minutes from September 27
- ❖ Old Business
- ❖ Status of Geothermal Well Drillers Legislation
- ❖ Discussion of an Apprentice Driller Program
- ❖ New Business
- ❖ Announcement of Drillers’ Logs Now Available Online
- ❖ Schedule Location, Date, and Time of Next Meeting
- ❖ Adjournment

CALL TO ORDER	Danny Kelly called the meeting to order at 9:15 am EST.
ROLL CALL	Present were Danny Kelly, Orris Hayes, Bart Davidson, David Jackson, Kevin Moses, Roy Toney, and Scotty Robertson. Missing was Todd Mills.
OPENING REMARKS	Danny noted that Lesley Combs is available to pre-file the geothermal bill .
APPROVAL OF THE LAST MEETINGS MINUTES	<p>Danny asked if everyone had read the minutes. Kevin said that the emergency act description for his overweight rigs was a little different than what he had meant or said. He explained that John Schneider did not “create” an emergency act, but that Mr. Schneider had used or invoked an emergency act already in existence to expedite the situation. Kevin said that other than that the minutes were fine.</p> <p>David noted two corrections: Glynn Beck’s name was misspelled and “statutes” was in place of “regulations” on page eight.</p> <p>Kevin said he liked all the details included in the minutes, and Orris said that if you don’t want what you said to be reiterated, then don’t say it because otherwise it will be in the minutes.</p>

	<p>Kevin motioned that the minutes be accepted (and David noted that they needed to include the changes), Orris seconded, and the minutes were accepted unanimously with the changes as discussed.</p>
OLD BUSINESS	<p>Danny opened the discussion on the geothermal amendment. Danny noted that he had called many senators, all the ones on the list plus the ones in his area. He noted that for most of them he did not actually speak to them, he just left a message.</p> <p>Danny further noted that he called Jared Carpenter, Brendon Smith, Joe Bowen, Chris Girdler, (he said that he didn't call Ray Jones because he knew that Orris was going to call him), and Bob Leeper; Danny said in fact that he had called just about all of them.</p> <p>Danny mentioned that he was told by others that Bob Leeper is not going to run again, and Danny wondered if Sen. Leeper would be there for the voting. David noted that there were some special elections scheduled for December in some counties, but he wasn't sure they were in McCracken County, Sen. Leeper's district.</p> <p>Danny continued that he also called Jerry Rhoads, John Schickel, Johnny Ray Turner, Robin Webb, and Whitney Westerfield. Danny further noted that he personally spoke with Richard Heath and Steve Rudy and they both indicated to him that they are in favor of the geothermal amendment.</p> <p>Danny also said that Representatives Heath and Rudy both agreed with what Orris had said in previous meetings, that it would be best to have a Republican and a Democrat co-sponsor the Bill and that it should be introduced in the Senate. Danny opined that it was best to have a Republican in the Senate and a Democrat in the House introduce the Bill, and he noted that Leslie Combs has done a fantastic job, in the past, in the House.</p> <p>Orris said that he spoke with Ray Jones, and Orris noted that Sen Jones is ready to do whatever the Board asks him to do. Orris continued that he also talked with Leslie Combs, and he said that Rep. Combs recommended that they introduce the bill early in case it has to have changes and she also suggested that a Republican sponsor it in the Senate. Orris noted that the bill was satisfactory when it came through the House the last time.</p> <p>Danny said that he had called Stan Humphries several times, but he had not spoken to him yet because when he called, Sen. Humphries was in meetings. He stated that he wanted to talk to him personally about sponsoring the Bill, and he said that he had given a message with the request to Sen. Humphries' assistant.</p>

OLD BUSINESS

Orris noted that he sent a letter on October fourth to Brandon Smith asking Sen. Smith to call him at his convenience. He said hadn't heard back from Sen. Smith in over three weeks. Orris said that after three weeks had past, he emailed Sen. Smith and received an email reply on October 17th. He said that the reply appeared to be a type of standard form letter. Orris said that he then left a message with Sen. Smith's secretary, and now he is currently waiting for a phone call in reply.

David noted that somebody might have to go to Frankfort and visit the legislators at their offices when the session opens and ask the legislators to sponsor the bill.

Orris said Rep. Leslie Combs recommended Senator Brandon Smith, and he added that Rep. Combs noted that Sen. Smith and Sen. Johnny Ray Turner are on good terms and might be willing to co-sponsor the bill.

David said that any Republican in the senate could introduce the Bill and once it goes into committee, board members can call on the committee members for their support. David opined that it was importation to get it introduced in the Senate, and that Sen. Turner sounded like a good possibility.

Orris noted that Sen Turner and Sen. Jones are both Democrats, and it would be better to co-sponsor the bill with a Republican. Orris agreed with David and said he had a mind to get in his truck and drive to Frankfort and meet with certain Senators, and Orris then noted that they only have two weeks until the December 1st deadline for pre-filing a bill.

Orris spoke about a big turnout of the Legislature in Pikeville, and how the governor said at the event that Leslie Combs would be appointed transportation advisor.

Orris further noted that they need to contact one of these senators soon. Danny said if he doesn't hear from Sen. Humphries by noon, that he would call Steve Rudy and/or Richard Heath and have them call Sen. Humphries in hopes of getting an expedited return phone call from Sen. Humphries.

David opined that email is often the best way to get in touch with the senators.

Kevin agreed that they read emails, but he opined that they tend to send back form letter responses. David reiterated that the sooner

OLD BUSINESS

they contact the legislators, the better, and Orris agreed.

Orris noted that the HVAC people questioned the orientation of the loops last year and that may have been what delayed the bill. David noted that it was a short session last year, but this coming year will be a long session.

Orris reiterated his support to have the bill cosponsored by both a Democrat and a Republican.

Bart asked for help in wording a one sentence description of the bill. Danny said that the bill will require the geothermal well drillers to follow regulations just like everybody else. Danny explained that right now, the geothermal drillers have no regulations and can put their geothermal wells wherever they want to, even next to an existing water well.

David recommended using the existing fact sheets for the description, and Scotty said they were included in the last minutes. Scotty directed Bart to where the fact sheets were located in the folder. [\(Fact Sheet & Bill – Attachments 1 & 2\)](#)

Orris noted that Greg Stumbo suggested they attach the new bill to the existing statutes, so that it will amend KRS 223:400. Bart clarified that it was not new legislation, it is merely an amendment. Bart noted that the meat of the bill is on page 2, and David agreed and noted that it's good to point out that the bill's provisions not only protect the groundwater but also the citizens of the Commonwealth.

Bart asked for a digital copy of the summary from the facts sheet so that he could pass it on to the Senators. David noted that the summary had been originally prepared for the Senators so they would have a nice short summary of the Bill to refer to.

Orris summarized the history of the water well drillers regulation which was promulgated twenty-six years ago. He noted that since then, geothermal heating and cooling has become popular, and that there are no regulations to protect existing wells and the groundwater from geothermal drilling. Orris said when he explained this to Greg Stumbo, Rep. Stumbo agreed that it would be best to attach the geothermal legislation to the existing water well regulations.

Orris further explained that he would try to contact Brandon Smith. Danny interjected that Stan Humphries is the main one to contact, and he opined that the Senators are more important to contact than the Representatives at this time.

OLD BUSINESS

Danny stated that they just have a week to contact everyone. David noted that with Thanksgiving they have just eight working days to get it done.

David suggested that if they don't find a Senator who will introduce it by December 1st, then they should ask Leslie Combs to reintroduce it so that it gets introduced as soon as possible.

Danny concurred and noted that that would still give them a little time to work with Stan Humphries or Brandon Smith. David agreed, and noted that you kind of get two for one if you get either one of those guys.

Orris suggested setting a deadline of Friday the 22nd, and if they don't have somebody lined up by then, then they should contact Leslie Combs and see if she would take care of it.

Danny agreed and noted that the work of the Board will not be finished once the bill has been entered. He suggested that they will need to work with Ray Jones to help get the bill passed.

David opined that they might be able to have dual bills introduce in both the Senate and House. He described that if that happens, the legislators would just combine them when the time comes.

Orris said that he would call Steve Collins, who works for Greg Stumbo, to find out if the dual bill plan would be possible.

David noted that sending emails was the best way to get in touch with the state legislators. Orris opined that face to face meetings are the most effective since then it is harder for them to turn you down.

Scotty noted that however they decide to contact them they need to act quickly. He suggested that if they haven't communicated with the legislators by Friday, that they may need to drive to Frankfort on Monday.

Orris and Danny agreed that they would talk to each other by the 22nd and come up with a plan.

Danny asked if there was any more discussion on the Geothermal Bill. There was none, so he opened the discussion on the **well driller apprenticeship program**.

Danny noted that Scotty had done a lot of research on the topic and then he turned the meeting over to Scotty.

OLD BUSINESS

Scotty said that as requested by the Board at the previous meeting, he had researched whether or not the proposed apprenticeship program would require a regulatory change or a statute change, and then he passed out a written summary of what he had learned ([Attachment 3](#)).

Scotty noted that Statute 223.405 had eliminated the rig operators originally and he read aloud "It is unlawful for any person to construct or repair a water well without first having obtained a valid certificate as approved by KRS 223.425." He summarized that this is basically saying that a well driller has to install a well and he noted that to change it would require a change to the statutes.

Scotty further noted that the NGWA exam is defined in the regulations under what testing is required, so that changing it would require a regulation change. But he concluded that it would require a statute change to allow anyone other than a registered driller to drill, repair, or modify a well.

Danny asked if anyone had questions, and Orris asked to have it explained again. Danny asked Scotty to go over all he had discovered.

Scotty stated that in 2004, it was noted that having rig operators drill wells violated the law, and a briefing sheet was submitted to the governor in December 2004. Specifically, he read from the briefing sheet, "certification regulations 401 KAR 6:320 are inadequate and should be revised. New regulations have been drafted by DOW staff."

Scotty continued reading his summary, and he described that, by allowing rig operators to drill wells, 401 KAR 6:320, contradicted the requirements of KRS 223.405.

Orris asked if that meant that certified drillers could direct a rig operator.

Scotty continued to read his summary, and he noted that at the bottom of page 1, KRS 223.405 states that it is unlawful for any person to construct, alter, or repair a water well without first having obtained a valid certificate.

Kevin stated that it meant that a rig operator could not install a water well, period. David agreed that allowing rig operators to do that work was in direct violation of the law.

OLD BUSINESS

A discussion of the history of certified drillers ensued. Orris noted that on June 1, 1985 the drillers were grandfathered in as certified drillers. Scotty noted that in 2008 the rig operators were disallowed and that the only way to change it now would be to amend the statute to allow an apprenticeship program.

Scotty continued, and noted that the National Groundwater Association (NGWA) exam was included in the regulations, and that to change the regulation would require the Cabinet to draft legislation and to file a request to amend the regulations to allow rig operator apprentices.

However, Scotty noted that before that could be done the statute would have to be amended.

A discussion of KRS 223.405 ensued.

David summarized that KRS 223.405, in the Cabinet's opinion, means that the certified driller has to be in sight of the rig while it is operating. David explained that this is because the rig operators weren't bonded, so if something happened then the homeowner potentially had no recourse against the rig operator. He further explained that legally one may not be able to go after the driller for actions of the rig operator.

Orris said that he always instructs his employees to do the job right and safely, and he noted that they still get back injuries, and he gave the example of labor hearings to illustrate his responsibility to his drillers.

A discussion of rig operators ensued.

Scotty noted that in 2008 rig operators were no longer allowed, and companies that had rig operators had to lay them off or find other jobs for them to do if they didn't get certified.

David noted that the law had always been there, but the Cabinet had misinterpreted it and the mistake was noticed when they started having problems. He explained that the Cabinet's attorneys had noted the contradiction, and had determined that the best way to address the problems was to do away with the rig operators and require everybody to be certified well drillers.

Orris said that to change things now they would have to amend KRS 223.405. David agreed, and noted that the days of having a rig operator working out there without direct supervision are gone.

OLD BUSINESS

A discussion of drilling company employees ensued.

Kevin reiterated his opinion that well logs need to be completed for each well that is drilled, and he noted that he has an employee who can't pass the exam. Orris said that he too has an employee who is qualified but not certified.

Scotty said that if they are not certified they shouldn't be drilling.

Scotty stated that if the Board wants to take action they have two options. They can write up an amendment that will allow for their employees to work independently of them, or they can propose to the Cabinet that they amend the regulations so that they no longer have to pass the NGWA exam, or otherwise redo the requirements for certification.

David opined that the Cabinet's position would probably be that they won't support changing the regulation just four years after having changed it previously. He further noted that the Board has two choices: One - if they want people drilling wells that don't have to be certified then they will need to add an amendment to KRS 223 as Scotty said earlier.

David continued, noting that testing is a different issue and it would require an amendment to the regulations in order to change the requirements for the test. David concluded that then it would be a decision that the Cabinet would have to make on what they would require.

Scotty noted that he talked to a driller the other day who had taken the Tennessee exams but not the National exams. Scotty said that he then asked Luke Ewing of Tennessee about the exams, and Luke had said there is no real difference between the Tennessee exam and the national exam, both covered the same topics and subject matter.

Kevin noted that he didn't have to take a test to get his license in Tennessee since he had taken the NGWA exam previously.

Danny said that the Board should offer more classes, and perhaps the state would offer some instruction. David said that DOW was willing to offer classes.

A discussion ensued on having workshops for rig operators, especially ones that included classes on the regulations, and on suggestions that would help Kevin's employee pass the test.

Scotty said that whatever they decide to do will require a statute change and the state legislators will have to approve it.

Kevin said it would be nice if Danny took the NGWA test and came back and told them about it, and Kevin said he would even pay for the test. Hilarity ensued.

Scotty noted that the National Groundwater Convention in Nashville is offering a day of classes for \$450 on all the different drilling operations. It's December 6th and the convention registration fee is \$150 plus \$450 for the all-day class.

Danny said it was time for a break, and he broke the meeting at 11:05am EST.

OLD BUSINESS

The meeting resumed at 12:00 pm EST.

David asked what the Board was going to propose in place of the certification program that is in place now. He noted that those are the kind of questions that would need to be answered when they propose a change like this.

Danny opined that the regulations are going to apply to everybody, but people learn how to abuse them.

Kevin said that he had a temporary solution, but first he wanted to get David and Scotty's opinion on what they think is going to happen if the proposal comes before the Secretary.

David said he would have to take it to Pete Goodmann (Acting Director of DOW).

Orris said that on-the-job training is the best method of learning, and he opined that if rig operators conduct supervised work for a certain amount of time that would prepare them to take the test.

David stated that he had two points - 1 – the end result of whatever program they might develop is that the driller is always going to have to be certified and 2 - every apprentice program that he has looked at required the rig operator to work under the driller at all times. He emphasized that he has not seen any rig operator programs currently in existence like the one that Kentucky had in the past.

Scotty noted that the other states have a test similar to the NGWA

OLD BUSINESS

Exam, and if Kentucky had its own test it would also be similar.

Kevin said he just needs a test that his driller can pass. He opined that the section on pump installation shouldn't be in the driller exam.

David explained that pump installation questions will be on the exam as long as drillers in Kentucky are allowed to install pumps. He continued that if a new certification program for pump installers was developed, then a pump installation exam would be developed for the pump installers with all of those type of questions, and then they wouldn't need to be on the driller exam.

A discussion on the topics of the exam ensued. Geology and hydrology were two of the topics discussed.

David opined that they have to develop more and better training. Scotty noted that there were numerous good instructors at the Southeast Jubilee.

David stated that regular training would make the rig operators comfortable with the various topics and familiar with the unfamiliar terms. A discussion of testing ensued.

Bart said that he had a class on the Geology of Kentucky available right now. Everyone exclaimed in delight and asked if he would give it at the next Well Drillers Conference and Bart said that he would.

Danny asked if Scotty could look into finding presenters for the next conference. Scotty pointed out that Danny himself could give a talk on some of the aspects of operating his rig, and that he (Scotty) could video tape his talk this winter for use in future training classes.

Danny said that Kevin's driller has to pass the test and he opined that it's learning that helps you get on in life.

Scotty noted that drill owners can have training for their own workers. Scotty said that if they tell him about it first, he can approve it and it will count as training.

Danny said that he didn't know that before, and noted that he was going to go to the training at the Convention next month.

At this point the discussion deteriorated into tales of questionable taste.

Orris stated that there needs to be a way for a driller to be able to stay running. Scotty said they just need to get more training.

<p>OLD BUSINESS</p>	<p>Danny said that he personally takes more training than is required just to get the knowledge.</p> <p>Scotty said it's not possible to drill a well without a certified driller on site with the laws as they currently are. Scotty continued that if they want to try to make that possible, the Board will have to get together and decide exactly what it is that they want to try to do, and then present it to the Cabinet, and explain why it is a good idea.</p> <p>Danny opined that it would be best to work on the Geothermal legislation now and not throw anything else into new legislation now. Orris and Kevin concurred.</p> <p>A discussion ensued on how to pick, train, and pay workers.</p> <p>Danny summarized that they will work on the training of workers first, as well as, to work on the Geothermal Bill, and asked if there was any other old business. There was none.</p>
<p>NEW BUSINESS</p>	<p>Danny asked if there was any new business. Bart noted that all of the scanned drillers logs that have been received through the certification program are now on line through the Kentucky Groundwater repository. Bart further explained that KGS had worked with Pete, David & Jo Blanset for 15 years to get the DEP lawyers to allow it to go through, and they finally agreed.</p> <p>Roy asked if they can post it in the newsletter, and all agreed that was a good idea.</p> <p>Danny asked what exactly was included, and Bart said it is the actual scanned logs that the drillers submitted, as well as other associated data such as maps and plats and he added that some even have water sample data. Danny said that it was exactly what he'd been looking for.</p> <p>Scotty noted that previously you had to make a FOIA request to the DOW to get to see the logs. He also noted that the attorney's had been concerned about privacy issues with the landowners' names being on the logs, but the lawyers had finally agreed that it was already a matter of public record who the landowners were and released the logs to KGS.</p> <p>All agreed that it was very good to have access to the logs now.</p> <p>Danny asked if there was any other business. There was none.</p>

<p>NEXT BOARD MEETING</p>	<p>Danny asked Roy where the next meeting was going to be, and he suggested Pennyrile State Resort Park.</p> <p>Orris noted that the KY Groundwater Tradeshow is March 6 & 7 at the Holiday Inn East at 1325 South Hurstborne Lane in Louisville, KY, and inquired if the Board wanted to meet before then.</p> <p>Danny asked when the amendment might be brought up, and David said that it's hard to say, and noted that they often get to various bills in February, so they could be done with it by then or it may still have stuff going on with it.</p> <p>Danny asked if they wanted to meet again in February. David stated that he didn't see why because once the bill is filed there isn't much to do except contact the legislature and ask for votes.</p> <p>David suggested meeting at the tradeshow for this meeting, and then meet at Pennyrile the meeting after that.</p> <p>Danny asked for a motion to meet at the Tradeshow, Roy motioned and David seconded. Everyone was in favor.</p> <p>Danny stated that if they need to call an emergency meeting then they will meet earlier at the Pennyrile Park; otherwise they will meet March 6th before the trade show. Scotty noted that they need to make sure the Groundwater Association meeting isn't at the same time.</p> <p>Danny asked how much time to allow for the meeting. Scotty noted that they have been going four or five hours, but David noted that there shouldn't be a lot to do if the Bill is going along through the legislature at that time. Orris said he would yield the floor to the others, to general amusement.</p> <p>It was agreed that Scotty would check when the groundwater meeting was going to be and then he would schedule the Board meeting around it and notify the Board. Wednesday evening was discussed as a likely time that would be free, the night before the tradeshow.</p>
<p>ADJOURNMENT</p>	<p>Kevin made a motion to adjourn. Roy seconded and the motion passed unanimously.</p> <p>Meeting adjourned at 12:55 pm EST.</p>

Attachments 1 through 3