

Minutes
Well Contractors Certification Commission Meeting
August 1, 2017

The regularly scheduled meeting of the Well Contractors Certification Commission was called to order on Tuesday, August 1, 2017 at **11:00 am** at 131 W. Margaret Ln., Hillsborough, NC, Rm. 004 with Chairman Daniel Ortiz presiding. The following persons were in attendance for the meeting:

Commission Members

David Brown
Justin Barefoot
Jonathan Dills
Doug McVey
Todd Muench
Daniel Ortiz
Thomas Whitehead
Billy Yow

WCC Staff

Andrew Morgan
Joanne Rutkofske

DHHS Staff

Larry Michael
Allen Hawkes

Legal Staff

John Barkley

Guests

John Nykamp, Guilford County
Jim Joyce
Matthew Houston, K & L Gates LLP
Steve English
Gayle English
Joseph Smith
Rawlins Clarke, IV

I. Preliminary Matters

(1) Chairman Daniel Ortiz welcomed everyone in attendance and called the meeting to order. He then read the NC State Government Ethics Act which mandates that the Chairman inquire as to whether any member knows of a conflict of interest or appearance of conflict with respect to matters before the Commission. He asked if any member knows of a conflict of interest or appearance of a conflict. No conflicts noted.

(2) The chairman also read a statement on the purpose of the Well Contractors Certification Commission: (Article 7A-Well Contractors Certification, G.S. 87-98.3). **Purpose:** It is the purpose of this Commission to protect the public health and safety by ensuring the integrity and competence of well contractors, to protect and beneficially develop the groundwater resources of the State, to require the examination of well contractors and the certification of their competency to supervise or conduct well contractor activity, and to establish procedures for the examination and certification of well contractors.

(3) Notation of Any Revisions or Additions to the Agenda

Chairman Ortiz asked the Commissioners if they had any additions or revisions to add to today's agenda. Drew Morgan asked that Commissioner Whitehead give one last Budget Committee report before Commissioner Muench takes his place on the Commission. The topic was added.

II. Action Items

(1) Budget Committee Report

The Budget Committee report was presented by Commissioner Whitehead. The Committee met in Myrtle Beach, SC in conjunction with the South Atlantic Well Drillers JUBILEE Tradeshow. The Committee reviewed the status of past requests and approved staff to have a booth at upcoming events in 2018 including the NCGWA, VWWA, TWWA, and JUBILEE.

(2) Service Award

Chairman Ortiz presented a service award to Commissioner Whitehead for his dedication and commitment to the people and natural resources of our state through his service to the Commission.

(3) Appointments

Todd Muench takes Thomas Whitehead's place on the Commission. This is a Senate appointment. The NC State Board of Elections & Ethics Enforcement has received and reviewed Commissioner Muench's 2017 Statement of Economic Interest. They did not find an actual conflict of interest, but found the potential for a conflict of interest. The potential conflict does not prohibit service on the Commission.

Commissioner Yow was reappointed to serve on the Commission. This is a Senate appointment.

(4) Approval of Minutes

The Commission reviewed the May 2, 2017 meeting minutes. Commissioner Dills made a motion that the minutes be approved. Commissioner McVey made a second to the motion. A vote was taken and the motion passed unanimously.

(5) Budget Committee Appointment

Commissioner McVey was appointed to the Budget Committee at the last Commission meeting in anticipation of Commissioner Whitehead's end of term. Now serving on the Budget Committee are Commissioner Yow as Committee Chair, Commissioner McVey, and Chairman Ortiz.

(6) Certification Clarification- Coring Boreholes on Mining Sites

John Nykamp of Guilford County Environmental Health presented the topic. The clarification request is for the *abandonment* of coring boreholes on proposed mining sites. John Barkley stated that regarding the certification requirement this would fall under the current exemption in G.S. 87-98.4(b)(7) which states: "Exploratory drilling for mining-related investigations." The Commission recommended Mr. Nykamp ask the NC Department of Environmental Quality (DEQ), Division of Water Resources, what rules of theirs this would fall under and if there have been any violations. Commissioner Brown felt the rules should be changed to better protect the groundwater resource and expressed concern of boreholes being left open. Chairman Ortiz asked Mr. Nykamp to keep the Commission informed of what he finds out from DEQ.

(7) Periodic Rules Review

Joanne Rutkofske presented the status of the Periodic Rules Review. Included in the meeting packet was a timeline of the rulemaking process thus far for the 10-year Periodic Review, the Regulatory Impact Analysis/Fiscal Note, and the Notice of Text.

Commissioner Dills made a motion for the Commission to approve the Fiscal Note, and approve to go out for public notice the 15A NCAC 27 .0101 change, and readoption of rules .0110, .0301, .0410, .0420, and .0440. Commissioner McVey made a second to the motion. A vote was taken and the motion passed unanimously.

(8) Commission Going Independent Study

Joanne Rutkofske stated that the Budget Committee had directed staff to look into whether any other boards or commissions had started under a Department and later went independent to see what process they used. The Septic Tank Installers started within state government but stayed only briefly, for about a year, while getting set up then moved independent. To the staff and Commission's knowledge no board or commission has operated within state government for a substantial amount of time before going independent. Most boards and commissions appear to operate independently.

Chairman Ortiz directed the Budget Committee to work with staff on developing a "Scope of Work" for a 3rd party to perform a feasibility study of the Commission going independent and report back to the Commission. Once that information is gathered, the Commission can further discuss the potential of going independent.

Commissioner Dills voiced concerns over the legal ramifications of going independent. The Commission should consider what exposure the Commission would have as a whole and commissioners and staff would have individually. If the risk is too high then there would be no point in moving forward with the study. John Barkley said any tort claims would be paid out the same way but with different limits. The Commission would need to purchase liability insurance.

III. Information Items

(1) Budget Items Approvals Process

Allen Hawkes, Business Director for DHHS/DPH Budget, was available to answer questions. He told the Commission that according to the State Budget Manual the Commission can not use "state receipts" for "promotional items" such as t-shirts, even if considered educational and sent only to certified well contractors with renewal card. If we had a federal grant to pay for it we could get t-shirts. Radio spots, tv commercials and billboards are approvable items. Business cards and brochures are also approvable items.

(2) Status of HB 701

House Bill 701 relates to defining Boards. This legislation has not moved since 4/26/2017.

(3) Status of SB 8

Senate Bill 8 relates to an application fee waiver for military personnel. The content of this bill has been completely overwritten with different legislation.

(4) Staff Report

The staff report was presented by Drew Morgan. The report lists out-of-cycle exams, exam reviews, civil penalties assessed, outreach events and other staff activities that occurred between May and July 2017.

Joanne Rutkofske presented the 2017 Exam Statistics. In June Mrs. Rutkofske reviewed several past exams for commonly missed questions at the request of the Review Committee and she also reviewed all the question banks, making any updates needed. Since the exam overhaul the passing rate has come up even more to 44%.

(5) Review Committee Report

Commissioner Brown presented the Review Committee report for Committee meetings held May-July 2017. The Review Committee had reviewed 28 applications for certification and reviewed 15 continuing education courses for pre-approval.

Staff reported they have received a few requests for exam reviews to be held the day before an exam. Staff expressed concern this would be used as more of a cram session than guidance on where to focus studying efforts. The Review Committee directed staff to approve such requests and to schedule a day-before exam review for the October exam in Hickory as a test run to see if there are many requests.

The Commission discussed the exam pass rate and would like to see it continue to increase. The Commission directed staff to look into providing a class for certification applicants. Staff are to offer the idea to NCGWA first. The Commission would like to see the cost kept down and for the course to be offered in a western location like Hickory. A length of two hours was proposed. Staff is to also offer the idea of creating "audio book" versions of the rule books at free or low cost. If the NCGWA is not interested, staff may proceed.

(6) Disciplinary Committee Report

The Disciplinary Committee had meetings on 5/2/2017 and 7/18/2017. Chairman Ortiz gave the overview.

At the 7/18/2017 meeting, Chad Deese, NCWC 3562-A, was given a six month suspension plus 10 hours of continuing education to be earned by June 30, 2018 to include two hours on proper well grouting for being grossly negligent or demonstrating willful disregard of any applicable laws or rules governing well construction.

At the 5/2/2017 meeting, David Coble, NCWC 2001-A, was given a Letter of Reprimand for failing to use reasonable care, judgement, or the application of his knowledge or ability in the performance of any well contractor activity.

(5) Ethics Update

Joanne Rutkofske provided the Ethics update reminding Commissioners of the annual Statement of Economic Interest requirement and who would need required ethics training soon. A tracking list of when each Commissioner must obtain additional Ethics training was provided.

V. Upcoming Meetings

Commission Meeting – November 7, 2017 @ 11am, 131 W. Margaret Ln., Hillsborough, NC

Review Committee – September 12, 2017 @ 10am, 131 W. Margaret Ln., Hillsborough, NC

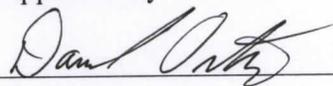
Budget Committee – February 2, 2018 @ 10am, at NCGWA

VI. Adjournment

With no further business or comments from Commission or Staff, the meeting was adjourned at 1:45 p.m.

Respectfully submitted,
Joanne Rutkofske
WCC Staff

Approved by WCCC:



Daniel Ortiz, REHS
Chairman, Well Contractors Certification Commission

www.wellcontractors.nc.gov

2/1/18

Date