

MINUTES

S. C. Environmental Certification Board
Tuesday, May 14, 2013, 10:00 A.M.
110 Centerview Drive, Kingstree Building, Room 108
Columbia, South Carolina 29210

Meeting Called to Order

William Armes, Chairman, of Simpsonville, called the regular scheduled meeting of the S.C. Environmental Certification Board to order at 10:04 a.m. Other members participating in the meeting included Vice-Chair, Elizabeth Williams, of Sumter; Mitch Dew, of Latta, Dwight Johnson, of Jefferson; Jimmy Rodgers, of Greenwood, and Hank Rutland, of Orangeburg; arriving late, was David Baize, of Irmo.

Staff members participating during the meeting included: Lenora Addison-Miles, Administrator; Georgia Lewis, Advice Counsel; Kristina Baker, General Counsel; Yolanda Rodgers, OIE; and Theresa Garner, Program Assistant.

Public Notice

Chairman Armes announced that public notice of this meeting was properly posted at the S. C. Board of Environmental Certification Office, Synergy Business Park, Kingstree Building, and provided to all requesting persons, organizations, and news media in compliance with Section 30-4-80 of the South Carolina Freedom of Information Act.

Section 40-23-40

The purpose of this board is to protect the general public through the regulation of persons engaged in occupations appointed by the legislature for regulation by the board. These occupations are referred to in Chapter 23 collectively as Environmental Systems Operators.

Application Hearing

Gonzalo Luis Castrillon-Water Treatment

Due to a conflict, Mr. Castrillon called and requested postponement of his appearance until July 9, 2013.

Excused Absences

All board members were present.

Approval of the March 12, 2013 Minutes

MOTION

Dwight Johnson made a motion to approve the March 12, 2013 meeting minutes as presented. Mitch Dew seconded the motion which carried unanimously.

Chairman's Remarks-William Armes

Mr. Armes welcomed everyone and stated he believed all items on the agenda could be addressed at this meeting. He invited everyone to speak freely, and state their positions. He said one of the topics for

discussion would be ways to attract young professionals into the operator profession. He praised board members for the exceptional job they have done in responding to the regulated community.

Administrator's Remarks-Lenora Addison-Miles

Mrs. Miles gave an update on the Bottled Water Exam. She stated the last correspondence she had with ABC was on April 23rd, there were four questions on the exam that were not written in the proper exam format and required some grammatical changes, which have been updated. ABC will send the file to AMP in order to start the process for launching the examination around June or July. Mrs. Miles said the Bottled Water CE requirements were posted on the website on May 2nd, and notices were mailed to all current Bottled Water Operators on May 3rd. The notices informed operators that they would need to start obtaining CE's beginning July 1, 2013.

Office of Investigation and Enforcement (OIE)

There was no report given.

Use of Citations for unlicensed practice pursuant to 40-23-95

For the board's review, and consideration, included in the board packets were examples of various violations referenced to in the Statute, Section 40-23-95 Administrative Citations. The board revisited the option to regulate and issue citations for certain individuals that choose not to seek a license. This would allow investigators to issue citations for unlicensed practice that falls within the statute. For example; in the past the board was concerned an operator may have operated improperly but immediately realizing the situation possibly the agency caught the situation and corrected what they were doing. Therefore, this board felt the matter had been resolved and should not come before them. Advice Counsel, Georgia Lewis said if an Investigator issues a citation the licensee can protest and the citation is stayed, they have 15 days to appeal. She said Section 40-23-95 spells out the whole citation process. Chairman Armes asked board members, in their opinion, would citations help the profession and help the board expedite these cases when it is obvious the person is doing something wrong?

He asked if the board was interested in issuing citations. Was there any limiting use that should be pointed out and put into place for the investigators? David Baize stated that if an inspector came upon someone drilling without a license, certainly that was clear. He said the remainder was really beyond their technical abilities, the inspectors could not tell if the well was properly grouted and water well record forms do not have to be submitted to DHEC until after the well is drilled. Mr. Baize asked what could a field inspector do if water well records were not submitted within thirty to sixty days after the well was drilled. He said he agreed with what chairman Armes was saying regarding malpractice verses clear unlicensed practice.

Mr. Baize stated the reason you have fellow professionals judging malpractice because they are in a better position to do that. He said he would have concerns regarding LLR Inspectors in the field making certain judgments as opposed to someone from DHEC.

Georgia Lewis, Advice Counsel, informed the board that all the information that was presented were examples of various violations. She said the board could have the citations as limited as they wanted or expansive. She suggested they appoint a committee to review the possibilities, and perhaps meet with the investigators and get an idea of the more frequent things they come up with and report back to the board. Mr. Armes proposed that the two sections of the statute that would affect the past discussions and possibly affect today's, were Title 40 Chapter 23, Section 40-23-110(A)(18), specifically, failed to obtain a license before doing business in this state, and 40-23-110(A)(4) has knowingly performed an act

which in any way assists a person to practice illegally, both of those appear to be in support of what was discussed regarding disciplinary action grounds. Mr. Baize stated the idea of moving forward with field citations was a good idea but the details of what would be citable needed to be worked out. Examples or things that would be a concern; are, an inspector may not have the expertise to make the call in the field. He suggested we form a subcommittee to work through those. Georgia Lewis, Advice Counsel said the board could approach, at this point, unlicensed practice, and aiding and abetting unlicensed practice. They could initiate just those two, and later on expand on it.

MOTION

David Baize made a motion the board move forward to approve the field citation process with unlicensed practice, and aiding and abetting at this time, details to be added as appropriate Title 40 Chapter 23, Section 40-23-110(A)(18), and Section 40-23-110(A)(4). The motion was seconded by Mitch Dew which carried unanimously.

Mrs. Lewis, Advice Counsel, suggested staff direct this to investigations and have them draft final citations to be presented to the board at the next meeting.

Office of General Counsel

There was no report given.

Structured Shadowing Program for High School Students

Mrs. Williams stated that Central Carolina Technical College will be starting a dual program in the fall which will allow high school students to enroll in CCTC's water or wastewater online certificate program, which can be counted towards college credits, and high school credits. In addition, they are working with Apprenticeship Carolina to establish a youth apprenticeship program where high school students can work as youth apprentices at local water or wastewater facilities, evenings, weekends, and summers. Currently the paperwork is at the Department of Labor pending approval.

At the last meeting she presented this to the board to encourage other people to get into the profession, since a lot of operators are retiring. She asked what could be done to encourage young people with regards to licensing since the stumbling blocks are, you cannot obtain a trainee permit if you are not (18) years or older or if you do not have a high school diploma or GED. Mrs. Williams stated that she was hopeful they can get some utilities on board to accept the apprentices. She asked if the board could do anything regarding the age and education requirements.

Executive Session

MOTION

Hank Rutland made a motion to enter into executive session for legal advice. Mitch Dew seconded the motion which carried unanimously.

Return to Public Session

MOTION

Dwight Johnson made a motion to return to public session. Hank Rutland seconded the motion which carried unanimously. It was noted for the record that no votes or actions were taken while in executive session.

Mr. Armes thanked Mrs. Williams for her presentation of the Structured Shadowing Program. He said the board will accept the information for further consideration, possibly at the next board meeting. He asked that Mrs. Williams give another status report at her convenience.

Discussion Topics

Age and Education requirements for obtaining a Trainee License

MOTION

Mrs. Williams stated the board's position is to drop the age requirement for obtaining a trainee permit for the well driller, water treatment, water distribution, and wastewater treatment operator licenses, including biological and physical/chemical wastewater. And also move the high school diploma requirement for obtaining a trainee permit to the "E" level for water treatment, and "D" level for water distribution, and wastewater treatment licensing, including biological and physical/chemical wastewater. Dwight Johnson seconded the motion which carried unanimously.

Mrs. Lewis, Advice Counsel, stated it should be noted for the record, this is the board's position and no changes are being made at this time to the statute or regulation.

Mrs. Miles asked if the recommendations also applied to Bottled Water Operators. Mrs. Williams stated there were no recommended changes for Bottled Water Operators regarding age or education requirements.

Application of accessible supervision pursuant to 40-23-20 and Direct Supervision Pursuant to 51-5

Mr. Armes stated there seemed to be some conflict in language regarding accessible and direct supervision. He said the regulation refers to direct supervision, and the statute refers to accessible supervision. He said he thought the intent was that "accessible" and "direct" meant the same thing. Mrs. Lewis, Advice Counsel, referred board members to the statute 40-23-20(2) defines "accessible" supervision as: the supervisor is on-site or immediately available to supervise persons via telephone, radio or other electronic means. "Direct Supervision" found in Regulation 51-7(A) means: supervision provided by a licensee who must (a) be on-site or immediately available to supervise persons via telephone, radio, or other electronic means: and (b) maintain continued involvement in appropriate aspects of each professional activity of the supervisee.

Executive Session

MOTION

Mitch Dew made a motion to enter into executive session for legal advice. Hank Rutland seconded the motion which carried unanimously.

Return to Public Session

Dwight Johnson made a motion to return to public session. Hank Rutland seconded the motion which carried unanimously. It was noted for the record that no votes or actions were taken while in executive session.

MOTION

David Baize made a motion relevant to Section 40-23-340(B)(1), class "D" well drillers and supervisors shall follow the definition of "accessible supervision" as defined in 40-23-20(2), and as referred to in Regulation 51-5 Operator-in-Training, as defined in 51-5, the supervisor shall follow "Direct supervision" as defined in 51-7(A), these terms as defined by statute and regulation shall be strictly construed and enforced. Jimmy Rodgers seconded the motion which carried unanimously.

Mrs. Lewis, Advice Counsel, stated that for purposes of the record this was the board's interpretation of the statutes and regulations as provided in Chapter 40-23-20 and Regulation 51-5.

Committee Reports

Well Driller Exams

Elizabeth Williams gave an updated report regarding the Well Driller Exam Committee that reviewed the exams and categorized the questions. She said they have met, and will be contacting ABC, and hopefully the information will be available in July.

Public Comments

John Young - Representing the WEASC

Mr. Young stated this was relevant to the requirements that a trainee have a high school diploma and be 18 years old. It is the WEA's opinion that this should be dropped for all classes of trainee's but there is concern about how this change will be implemented, and how the regulations and laws would be modified. Mr. Young's personal recommendation was there should be a classification that is less than a trainee; call it a "student" trainee that would be allowed to sit and take the examinations while they are still in high school and are 18 years or less. He said this would be a benefit to the community and would encourage a number of people to get into the business and not be penalized for being under the age of 18 years old. His recommendation was a category that is allowed by law called a "student" trainee, they would not be a full trainee and would not be allowed to operate a treatment plant, they would not be allowed to operate by themselves but they would be allowed to sit for and take the examinations allowing subtenant value to their positions, which would be a great statement for a potential employer.

Jim Matthews - Representing the S. C. WQA

Mr. Matthews stated the WQA was in favor of removing the age requirements and the high school degree for a trainee. He said his understanding of the motion regarding "accessible" supervision, was to enforce the existing statute and regulation, he said the WQA would support the motion. The WQA is opposed to Administrative Citations authority; they may support it if it is limited to "unlicensed" practice.

Phillip Thompson-King - Representing the S.C. WQA

Mr. King asked the board to exercise caution in issuing Administrative Citations, he said if you act in haste you can affect someone's livelihood and reputation.

Adjournment

MOTION

Mitch Dew made a motion to adjourn the meeting at 12:40 p.m. Dwight Johnson seconded the motion which carried unanimously.

The next meeting of the S. C. Environmental Certification Board is scheduled for July 9, 2013, in room 108.