



State of New Hampshire
WATER WELL BOARD



Kelly M. Dobrowolski, *Pump Installer, Chair*
Peter W. Caswell, C.W.D. - P.I., *Water Well Contractor*
Scott Costa, C.W.D. - P.I., *Water Well Contractor*
Abigail Fopiano, P.G., *Staff*

Bart Cushing, *Technical Driller*
Rene Pelletier, P.G., *Dept. of Environmental Services*
Frederick H. Chormann, Jr., P.G., *State Geologist*
Steve Lamb, P.G., *Public Member*

Final
NH WATER WELL BOARD MINUTES

December 13, 2018

A meeting of the New Hampshire Water Well Board ("Board") was held on December 13, 2018, in the Department of Environmental Services (DES) Building in rooms 112 & 113, 29 Hazen Drive, Concord, NH 03301.

Present were: Kelly Dobrowolski, Chair
Board Members: Scott Costa, Bart Cushing, Steve Lamb and Peter Caswell
DES Staff: Abigail Fopiano

Administrative Hearing – Roth Artesian Well Company, Water Well Contractor License No. 20:

Ms. Dobrowolski opened the hearing at 9:31 A.M., and read the opening statements. The Board members introduced themselves and welcomed the public in attendance.

Ms. Fopiano was sworn in and provided testimony and evidence to the Board relative to well completion reports that were either not submitted or submitted late in 2017 and 2018 by Roth Artesian Well Company (Roth), water well contractor license no. 20. In addition, Ms. Fopiano provided a synopsis of Roth's history of non-compliance with well completion reporting.

Following Ms. Fopiano's testimony, Mr. Roth (water well contractor license no. 20), the qualified individual of Roth Artesian Well Company, was sworn in and provided testimony to the Board. Mr. Roth noted that he has submitted well completion reports late in the past and he discussed his drilling operations and practice of confirming that all reports submitted are complete and accurate.

Following questions from the Board, Ms. Fopiano's and Mr. Roth's testimony concluded.

The hearing of record ended at 10:11 A.M.

Deliberations were held from 10:12 A.M. to 10:34 A.M. Following the discussion, upon motion by Mr. Cushing and seconded by Mr. Costa, the Board voted unanimously to suspend water well contractor license no. 20 with the following conditions:

- Suspend Mr. Roth's water well contractor license for 120 days starting on December 17, 2018, pursuant to RSA 482-B:8,I(d). Roth Artesian Well Company is ordered to cease all well construction operations in the State of New Hampshire during the suspension.
- Lift the suspension at next Water Well Board meeting, to be held on February 7, 2019, if Mr. Roth submits an acceptable written plan on how the business will improve future well completion report practices. This plan must be submitted to the Board at least 14 days before the February 7, 2019 Water Well Board meeting.

- Place Roth Artesian Well Company on probation until December 17, 2020, pursuant to RSA 482-B:8,I(d). During this probationary period, Roth will be required to submit well completion reports within 45 days of construction, rather than 90 days.

It was noted that if Mr. Roth fails to comply with the conditions of the suspension, it would result in the scheduling of an administrative hearing to again consider suspension or revocation of the water well contractor license No. 20, held by Charles Roth and Roth Artesian Well Company.

After the end of deliberations at 10:34 A.M. there was a break in the meeting. Ms. Dobrowolski brought the meeting to order at 10:43 A.M. The Board members introduced themselves and welcomed the public in attendance.

Approval of Minutes

The Board reviewed the Minutes for the October 4, 2018 Board meeting. Ms. Dobrowolski noted grammatical edits that should be addressed. Mr. Cushing motioned to approve the October 4, 2018 Water Well Board Minutes. Mr. Costa seconded the motion and the Board unanimously voted to accept the minutes.

License Complaints and Violations

Ms. Fopiano provided information to the Board related a well that was installed with a cable tool rig, by a licensee who only holds a rotary drilling water well contractor license. In November, Ms. Fopiano had a phone conversation with a representative of the owner of a new well in Greenfield. Information was provided that a pounded well was installed by Chris Parker. At the time, Ms. Fopiano did not have a well completion report or record of this well being installed. Ms. Fopiano reached out to Chris Parker the qualified individual of Chris Parker Enterprises, rotary drilling well contractor license # 1791, in request for a well completion report. Mr. Parker then provided one; it was submitted within the 90 day reporting timeline. Chris Parker confirmed that the well was installed on his behalf with a cable too rig by Jason Ferguson. Jason Ferguson does not currently hold a NH water well contractor license. Per RSA 482-B:5 and the Water Well Board rules (specifically We 303.01), the types of well construction covered by the NH water well contractor licensing are rotary drilled wells, cable tool drilled wells, wash wells, dug wells and technical wells. A separate license is required for each type of construction. Mr. Parker's rotary license did not allow him to install a well utilizing a cable tool rig. Mr. Parker was present at the meeting, the Board invited Mr. Parker to the table to discuss the well. Following discussion, the Board decided will not take an administrative action against Mr. Parkers license. Rather, the Board will send a letter to Mr. Parker acknowledging the occurrence and clarifying rules related to water well construction licensing. This letter will be kept in Mr. Parker's licensee file.

New License Applications

Ms. Fopiano informed the Board that three applications approved at a previous meetings passed their examination. Kyle Pepin is now a licensed domestic pump installer and the qualified individual for Ethical Home Pro, License # 1957. Michael Fournier is now a licensed technical drilling water well contractor and the qualified individual for Environmental Projects, Inc., License # 1857. Nicholas Freyenhagen is now a licensed rotary drilling water well contractor working under Lynde Well Drilling, Inc., License # 876.

Two new applications were presented to the Board. The first application, Jason Ferguson, is seeking a cable tool drilling license under a new company, Fergs Water Worx out of Lempster, NH. The Board motioned to table review of this application at the last meeting due to incomplete information related to the business registration with the Secretary of State. That information was since submitted and is now considered complete. Mr. Ferguson was present at the meeting, the Board invited Mr. Ferguson to the table to discuss the application. Following a discussion, Mr. Cushing motioned to allow the applicant to sit for the exam. Mr. Costa seconded the motion. The Board voted 3 in favor and 1 opposed to allow the applicant sit for the exam. Please note, later in the meeting the Board retracted this vote.

The second application, Robert Roy, is seeking a domestic pump installer license under a previously licensed, but since inactive company, Paradigm Plumbing, Heating & Air Conditioning, Inc. out of Hooksett, NH. Following review of the application, Mr. Cushing motioned to allow the applicant to sit for the exam. Mr. Costa seconded the motion. The Board voted unanimously to allow the applicant sit for the exam.

Probation Report

Ms. Fopiano reported that two licensees, Lucy Faxon (License # 1768) and Tri-State Drilling & Boring (License # 1762) are considered in compliance with the terms of their probation. One licensee, Roth Artesian Well Company (License #20), is considered not in compliance with the terms of the probation. The Board took administrative action on the license held by Roth during the Administrative Hearing held at the start of this Board meeting.

DES Enforcement Report

Ms. Emily Jones, DES Drinking Water Groundwater Bureau's Enforcement Supervisor, was not present to give the enforcement report. Ms. Fopiano presented the report to the Board on her behalf. The enforcement report presented information regarding enforcement actions initiated by DES for violations of RSA 482-B and the rules of the Board, We 100 - 1000. The report included a general overview of the violations, DES actions, and current status of specific cases handled mostly over the last year. This report included a synopsis of cases that have been settled with DES where the respondent is currently within a two-year compliance tracking period as a condition of the settlement.

Within the enforcement report, the Board was reminded of current pending enforcement actions against Douglas Ferguson and Jason Ferguson for performing water well construction work and installing a pump without proper NH licensure in May and June 2018. The Board held a discussion related to approving an applicant to take the examinations and be issued a water well contractor license while there are pending enforcement actions on that applicant. Mr. Cushing made a motion to re-open and potentially amend the vote to allow Jason Ferguson to sit for the examination and be issued a water well contractor license. Mr. Costa seconded the motion. The Board voted unanimously to re-open and amend the vote.

The Board discussed tabling the vote to allow Jason Ferguson to sit for the exam until further information pertaining to the pending enforcement case is provided. The Board requested Ms. Fopiano ask the Board's counsel the ability of the Board to issue a license to an individual that is currently undergoing enforcement actions, specifically for doing work without a license. Mr. Cushing made a motion to delay the vote to allow Jason Ferguson to sit for the exam in advance until further information pertaining to the pending enforcement case is provided. Mr. Costa seconded the motion. The Board

voted unanimously to delay the water well contractor application of Jason Ferguson in advance until the next Board meeting pending DES input on pending enforcement actions.

License Clarification Request

Charles Roth of Roth Artesian Wells, License # 20, addressed to Board with a request to clarify the suspension of his license, specifically that the suspension shall only relate to his water well contractor license not his pump installer license. Mr. Roth indicated that even though his business has one license number, he, as an individual licensee, holds two separate and distinct licenses. The administrative action taken against him for well reporting violations are on his water well contractor license and do not have relevance to his pump installer license. The Board could not provide clarity to his questions and recommended he seek legal counsel. The Board request Ms. Fopiano reach out to the Boards counsel for input on the matter.

The meeting broke for lunch at 12:04 P.M. Ms. Dobrowolski brought the meeting back to order at 12:54 P.M.

DES Fact Sheet Review

Ms. Fopiano noted that at the October 4, 2108 Board meeting that the Board requested to review DES Fact Sheets that are related to the water well industry and provide edits. Three Fact Sheets were provided for review during the December 13 meeting, these included: 1) Disinfecting a Private Well, 2) Bedrock (Artesian, Drilled) Well Design, and 3) Point Well Design. Ms. Fopiano reminded the Board that although all edits are accepted, any final updates to the Fact Sheets must be approved by DESs public information office. Mr. Cushing offered to make recommended edits to the Chlorination Fact Sheet, Ms. Dobrowolski offered to update the Point Well Design Fact Sheet and Mr. Costa will update the Bedrock Well Design Fact Sheet. It was decided that the three Fact Sheets would be updated by these individuals and drafts sent to Ms. Fopiano by January 25 for distribution to all Board members to gain additional insights. The edited Fact Sheets will then be discussed at the next Board meeting on February 7, 2019.

Old Business

Joint Committee on Code Enforcement

Ms. Dobrowolski provided a synopsis of the Joint Committee on Code Enforcement (“Committee”) meeting held on November 8th. Per the Statue (RSA Section 153:4-b), the Chair of the Water Well Board is to sit on the Committee. This Committee has been reviewing regulations (HB1254), which initiated a special legislative committee perform a study to review the process of adopting building and fire codes. On November 1, 2018, this legislative committee issued a Final Report on HB 1254 titled “Final Report of the Committee to Study Procedures for Adoption of National Codes by the State of New Hampshire”. Ms. Dobrowolski provided a synopsis of this Final Report.

The legislative committee had reviewed recommendations made by the Joint Committee and others at public meetings. The legislative committee agreed with many of the Joint Committee’s recommendations, most importantly to keep the code adoption process in the hands of the professionals in that industry. However, the legislative committee would like more public transparency and involvement in the code adoption process. They acknowledge the lack of consistency in enforcement of

codes between Towns; the hope would be to have all Towns succinct in the code enforcement process. The legislative committee discussed enacting a certification program for building code inspectors. The legislative committee also wanted to keep the state no more than one code cycle behind.

New Business

Online Reporting Form Updates

Ms. Fopiano provided information on updates to the online well completion reporting processes. The process itself is not being updated; but rather the fillable well completion form used in the online driller data provider will more accurately match the current paper well completion form. In addition, there are fields to be updated in the database to be able to qualify incoming well reports GPS locations so they can be mapped spatially in DES's private well GIS data layer. A discussion ensued related to user and technical issues with the online well report database and availability of well record information online.

Mr. Cushing requested that the Board send a letter to the Commissioner of NHDES detailing the lack of urgency and/or funding in getting the backlog of paper well completion reports into the online database. Mr. Cushing specifically noted the difficulty of the Board to legitimize enforcement actions for violations of well reporting when there appears to be a lack of action once those well reports are in the hands of NHDES. The applicability of using fines obtained by DES for non-reporting violations to funding this project was discussed. Ms. Fopiano will draft this letter and send as requested.

New Water Well Board Council

Ms. Fopiano noted that the Water Well Board has new legal counsel, John "JD" Lavallee with the New Hampshire Department of Justice, Attorney General's Office.

Mr. Cushing motioned to adjourn the meeting. Mr. Costa seconded the motion, and the Board unanimously voted to adjourn at 2:02 P.M.



Rene Pelletier
Water Well Board Secretary