

# **MISSOURI WELL INSTALLATION BOARD MEETING**

**May 13, 2011**

**Missouri Department of Natural Resources**

**Northeast Regional Office**

**1709 Prospect Drive**

**Macon, MO**

## **OPEN MINUTES**

The regular meeting of the Well Installation Board was held on May 13, 2011, at the Northeast Regional Office, Macon, MO. A quorum being present, Mr. Robert Lawrence, Chairman, called the meeting to order at 10:05 a.m.

**Board Members Present:** Mr. Robert Lawrence, Chairman; Mr. Fred Schoen, Vice-Chairman; Mr. Robert Broz; Ms. Annetta St. Clair; Ms. Sharlene Morgan and Mr. Bill Duley

**Board Member Participating Via Conference Call:** None

**Board Members Absent:** Mr. Danny Flynn

**Legal Counsel Present:** Mr. Don Willoh, Assistant Attorney General

**Guests Present:** Gerald Buechting, Missouri Water Well Association (MWWA); James Hadley Williams; Marilyn Williams; Ed St. Clair; Carol Eighmey, Petroleum Storage Tank Insurance Fund (PSTIF); Brad Rayburn, Missouri Rural Water Association (MRWA), Mr. William Barrow, Mr. Gary Troxell.

**DNR Staff Present:** Ms. Beth Marsala, Ms. Sheri Fry, Ms. Hylan Beydler and Ms. Connie Edwards

## **INTRODUCTION**

Mr. Lawrence welcomed everyone to the meeting and introduced himself. He asked the Board to introduce themselves, followed by staff and the audience.

## **MINUTES OF THE FEBRUARY 21, 2011 & MARCH 3, 2011 BOARD MEETINGS**

The Chair asked if there were any corrections to the minutes from the February 21, 2011, meeting. Mr. Broz moved to accept the minutes. Ms. St. Clair seconded the motion. Motion carried. The Chair asked if there were any corrections to the minutes from the March 3, 2011, conference call meeting. Mr. Broz moved to accept the minutes. Mr. Duley seconded the motion. Motion carried.

## **MISCELLANEOUS**

The Chair read an email submitted to the Board by Mr. James Hadley Williams complementing the Board on a job well done.

## **PROGRAM UPDATE**

The Chair recognized Ms. Beth Marsala.

Ms. Marsala gave Mr. Prewett's regrets for being unable to attend the meeting. Staff would like to welcome Ms. Sharlene Morgan to the Board. Ms. Morgan was appointed to the Board by the Governor on February 16, 2011, and confirmed by the Senate on April 21, 2011. Ms Morgan replaces Ms Harriet Beard. Ms. Marsala presented a packet to Ms. Morgan with a welcome letter and updated version of the rules. Ms. Marsala read a letter written to the Board by Ms. Harriett Beard, thanking the Board and compelling them to continue to work to preserve Missouri water supplies. Staff sent Ms. Beard a thank you letter and plaque.

Ms. Marsala gave an update on legislation. House Bill (HB) 250 referring to the Well Drillers Act, referencing benevolent and charitable organizations is moving in legislature. This bill would allow these organizations to be exempt from rules relating to well construction except rules under the Well Driller's law applying to multi-family wells. Qualifications to meet this exemption are: They must not regularly serve an average of 100 persons, at least 60 days out of the year, and system does not have a school or daycare facility. The well will still be considered a public water supply and require testing. Previously these facilities were required to put in a public water supply if they served 25 people or more 60 days out of the year. HB 697 is also moving in the legislature at this time. This bill pertains to rules and would allow the Joint Committee on Administrative Rules (JCAR) to review rules and decide which ones need to be changed. Their review would be focused on any rule that has not been changed in over 30 years or anything with obsolete language or technology. JCAR would then require the department to change the rule. HB 116 and HB 316 are also in the legislation. These bills would require staff to report to Department of Revenue, the tax identification number of persons who apply for licenses within a month after they apply. If licensee does not pay their taxes, the license could be pulled.

The Geological Survey Program is pursuing the idea of purchasing a down hole bond logger. This tool will benefit both the program and section to ascertain if wells are properly sealed. Purchasing this equipment may compliment other equipment already owned within the program as well.

## **SECTION UPDATE**

The Chair recognized Ms. Beth Marsala.

Molly Starkey has accepted one of the geologist positions in the section to fill the position vacated by Kyle Rollins. Ms. Starkey has a master's degree in geology and will be attending the August Well Installation Board meeting.

Staff have been reviewing a new type of heat pump system technology. The system, HPGX, is being considered in the bid for a system being installed in the Kansas City airport area. The system uses graphite grout, chemically joined joints and a casing material that is similar to fiberglass. MSDS sheets have been provided on the grout, chemicals used in the joints. The system and its installation process will be reviewed to see if can be approved through the variance procedure.

Other daily operations such as investigating complaints, certifying wells, permitting people and enforcing the law continue as usual.

## **FUND UPDATE**

The Chair recognized Ms. Beth Marsala.

Ms. Marsala gave a brief update on the section's fund. The fund balance as of April 30, 2011, is approximately \$286,000. Expenses have been averaging about \$55,000 per month which includes salaries, social security, gas, equipment, life insurance, health insurance and retirement. Monthly revenue has been just over \$74,000. Staff are in the process of hiring an Office Support Assistant. DGLS staff have assisted with these duties the past several months. All records are coming in at normal rates except water wells, which are still lower than average. Heat Pump record submittals have increased exponentially. The program has received more heat pump records in the last few months than total received in the past three years.

## **PERMIT APPEALS**

The Chair recognized Mr. William Barrow, Allstate Consultants, Inc.

Mr. Barrow applied for a non-restricted monitoring well permit and received a denial letter from the department. Mr. Barrow asked to be granted a non-restricted monitoring permit without participating in the apprenticeship program or putting up a bond. Mr. Barrow was previously grandfathered in as a non-restricted monitoring well installation contractor from mid 90s until 2001 when he let the permit lapse due to not working in the field at that time. Staff recommended the Board allow Mr. Barrow to become re-permitted as a non-restricted monitoring well contractor and the financial responsibility be waived. The recommendation was based on Mr. Barrow's past work and form submittals proving he had the required experience. Mr. Fred Schoen made a motion to accept staff recommendation. Mr. Duley seconded the motion. Motion carried.

## **APPEALS**

The Chair recognized Mr. Gary Troxell.

Mr. Troxell was issued an order of abandonment on January 10, 2011. Mr. Willoh stated at this time he would be recusing himself from participating in this discussion due to personal and professional ties to the appellant. He advised the Board to see what type of record Mr. Troxell wanted to make. Ms. St Clair also stated she would be recusing herself from participating in this hearing due to serving as advisor to Mr. Troxell in her previous career.

Mr. Troxell stated he would like to go forward with this appeal in this setting instead of a formal administrative hearing. Mr. Troxell informed the board of his situation including when his farm was purchased, issues with discovering diesel fuel in well, and discussing his situation with neighbors and local pipeline company. The pipeline company sent an environmental firm out to test Mr. Troxell's well and their report stated the pipeline had nothing to do with the diesel in the well. DNR's Environmental Emergency Response team tested the soil around Mr. Troxell's well and did not find any evidence of petroleum products in the soil around the well.

DNR told Mr. Troxell that based on the investigation, they could not find a source of the petroleum and suggested the possibility of someone introducing the petroleum products in the well. Mr. Troxell stated that according to lab results of August, 2010, there are five inches of diesel fuel floating on top of the 210 foot deep well. In November, Mr. Troxell received an order to close the well pursuant to a section of the State of Missouri statutes known as the "Spill Bill." Mr. Troxell responded with a letter stating the statutes did not apply to him. Mr. Troxell did not receive a response until January when the Wellhead Protection Section sent him a letter stating he had thirty days to plug the well. Mr. Troxell is disputing the fact that his well is a threat to surrounding groundwater.

He stated that DNR's Environmental Emergency Response Program sampled four soil borings all of which contained no contaminants. Mr. Troxell asked the Board to stop the order of abandonment to allow him time to remediate the well, pump out water, clean the casing, place a liner inside and have it tested again. Mr. Troxell plans to use the well for cattle.

Ms. Fry gave an update on how the program handled Mr. Troxell's case to-date and staff recommendation of requiring the well to be plugged within 30 days. Discussion ensued among the board, Mr. Troxell and some audience members. Mr. Schoen made a motion that the Division work with Mr. Troxell to allow him time to come up with a plan to determine where the contaminate source came from and either remediate the well or plug it within six months. Ms. Marsala asked if the motion could include an agreement with Mr. Troxell. The board then amended the motion to include that Mr. Troxell provide a written plan to the division within 30 days and the department would draw up an agreement based on the approved plan for Mr. Troxell to sign. The motion also stated that the well should be either remediated or plugged within six months. Mr. Duley seconded the motion. Motion carried. Ms. St Clair abstained.

## **RULE UPDATES**

The Chair recognized Ms. Sheri Fry.

Heat Pump Rule – Ms. Fry stated this rule has been sent to the Department legal counsel and the Director’s Office for approval. After the rule is approved, it will go to interagency review and the regulatory impact report will be on a public comment period for sixty days. Staff plan to bring the rulemaking back to the Board for more discussion at the August meeting.

Monitoring Well Rule – Ms. Fry stated the final order of rule making was filed with the Secretary of State’s office. It will be published in the Missouri Register in June, in the Code of State Regulations on June 30 and the entire rule package will become effective on July 30, 2011.

Disciplinary Action & Appeals – Ms. Fry stated this rule has been sent to the Department legal counsel and the Director’s Office for approval. After the rule is approved, it will go to interagency review for thirty (30) days. Staff plan to bring the rulemaking back to the Board for a possible vote at the August meeting.

Apprentice Rule – Ms. Fry stated this rule has been sent to the Department legal counsel and the Director’s Office for approval to file with the Joint Committee and Secretary of State’s office for publication. She stated that this is the second time this rule has been brought to the Board for changes in the past few years. Staff continue to have issues with the current rule and wanted to bring these issues to the Board. Issues with the rule include:

- Companies that only install large public supply wells usually do not construct the required twenty-five installations in two years;
- Several monitoring well companies only install temporary wells that are filed on abandonment forms which the new rule states will only count for ten percent of the required installations to complete the apprenticeship. Therefore, they cannot get a non-restricted permit;
- The Board has allowed people who appeal to have their license reinstated if they were previously permitted but now applicants are asking to obtain a different type of permit along with the permit type they previously held. Should this practice be allowed?
- Out-of-state companies are having issues with the requirement to serve an apprenticeship;
- An issue came up regarding whether an apprentice who has met their required installations may serve as the responsible party for another apprentice;
- To avoid needing to get permitted, people are hiring drillers to be an employee under their company and hiring that driller’s company to do the work;
- Contractors are hiring people to be their responsible parties in other areas of the state. This is because they cannot become an apprentice for someone local. The responsible party is required to be on site at all times during the initial

installations, which would be very difficult if they are far away from the apprentice they are responsible for.

Discussion was held on the two year time period quota required and the drillers working as an employee under another company. Staff recommended that the rule be returned from the director's office for more discussion with the Board on these issues.

Mr. Broz moved to request that the apprentice rule be sent back from department legal, brought to the next meeting for more discussion, and wait to file rule making with the Secretary of State until these issues could be resolved. Mr. Duley seconded the motion. Motion carried.

### **ENFORCEMENT UPDATE**

The Chair recognized Ms. Sheri Fry.

Ms. Fry stated the enforcement update is from March 1, 2011 to May 11, 2011. Staff have written six letters of warning for working without a permit, eighty percent of these were heat pump contractors; three administrative notices of violations issued for forms, fees, or operating without a permit; resolved six notices of administrative violations; seventy-seven cases assigned of which seventy-one are administrative and six are field cases; thirty-nine cases resolved of which two were administrative and seven were field cases; eight probationary agreements signed, which require pre-notification of work performed; no referrals; three settlement agreements; sixty-one permits were not renewed during this time.

### **MISSOURI WATER WELL ASSOCIATION COMMENTS**

The Chair recognized Mr. Gerald Buechting.

Mr. Buechting stated the Missouri Water Well Association (MWWA) had two issues to bring before the Board. First, he was under the impression that wells drilled prior the 1985 law are not covered under the law. However, staff are currently charging a fifty dollar fee for the record on wells where casing is being brought above grade because it is considered to be a reconstruction of the well and must be registered. Mr. Buechting stated prior Wellhead section management did not require the fee on these wells. Ms. Marsala stated the law requires registration forms to be submitted to report raising of casing above grade in an old well and allows them to charge a fee for registration forms. It does not require them to charge a fee for this particular type of registration.

Mr. Schoen made a motion to direct staff not to charge for raising casing as an encouragement for homeowner's to do so. Ms. St. Clair seconded the motion. Motion carried. Ms. Marsala stated that a notice will be sent to all drilling and pump installation companies regarding this fee change. Mr. Buechting asked the status of the Wellhead Program looking at the MWWA's CEU program. Ms. Marsala stated Mr. Jerry Prewett asked her to write a briefing paper to present to the Director's Office. This paper

discusses the issue in detail, stating what happened before when this issue was brought before the board, statutory authority, available resources, pros and cons to instituting the program, etc. The paper has been written and waiting for Mr. Prewett's review at this time.

## **OTHER BUSINESS**

None

## **PUBLIC COMMENT AND CONCERNS**

The Board recognized Mr. Gary Troxell.

Mr. Troxell stated that the Department of Natural Resources staff that helped at his farm were all great people, cooperative and very nice. Mr. Troxell stated staff helped with everything they could and tried to explain everything the best they could. Any problems Mr. Troxell had were not with the individuals dealt with. Mr. Troxell stated Mr. Wendell Hall, whom he called quite a bit, was very helpful.

## **FUTURE MEETINGS**

The Board approved holding an open session meeting on Monday, November 7, 2011, at 10 a.m., at the Missouri Department of Natural Resources complex in Rolla, MO. The motion was made by Ms. St. Clair and seconded by Mr. Broz. Motion carried with a unanimous voice vote.

Mr. Fred Schoen made a motion that the Well Installation Board meet in closed session at 9:30 a.m. at the next regular board meeting for the purpose of discussing matters protected from disclosure by law as provided for in Section 610.021, RSMo., including but not limited to: legal actions, pending litigation, and attorney-client privileged matters with the Board attorney. The motion was seconded by Mr. Broz. A roll call vote was taken as follows: Mr. Broz, yes; Mr. Duley, yes; Ms. Morgan, yes; Ms. St. Clair, yes; Mr. Schoen, yes; Mr. Lawrence, yes. Motion carried.

## **ADJOURNMENT**

Ms. St. Clair moved that the meeting be adjourned. Mr. Schoen seconded. Motion carried. Meeting adjourned at 11:57 a.m.