

**DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE BOARD FOR CERTIFICATION OF
WATER AND WASTEWATER SYSTEMS OPERATORS**

Board Meeting Minutes

June 5, 2008

Board Members Present

Mary McElhinny

John Schombert

Matthew Higgins

John Brutz, Chairman

Mike Kyle

Joe Swanderski

Nicki Kasi

Cheri Sansoni, Board Secretary

Non Board Members Present

Janette Washington, BWSFR

Asya Staevska, Legal Counsel

John Brutz called the meeting of the State Board for Certification of Water and Wastewater Systems Operators to order at 10:10 AM.

Criminal History Reports

Kevin Karmosky presented two Criminal History Cases:

Client #244110, Public Drunkenness, False Alarms and Disorderly Conduct, all in 1993.

Client #252347, DUI in 1998 and Unauthorized Use of Auto Vehicle in 1999.

Both cases were investigated. Nicki Kasi moved to issue certificates to both operators based on Kevin's recommendations. Mary McElhinny seconded. The vote was unanimous and the motion carried.

Approval of April 25, 2008 Minutes

Nicki Kasi moved to approve the April 25, 2008 minutes. John Schombert seconded.

The vote was unanimous and the motion carried.

New Applications, Upgrades and Reciprocity Requests

The new and upgrade applications were presented to the Board for approval. Mike Kyle moved to approve and issue all new and upgrade certificates. Mary McElhinny seconded. The vote was unanimous and the motion carried.

The following wastewater reciprocity application was reviewed:

Adrian Hill holds a valid Wastewater license in California. He has worked at a Class A wastewater plant in California for over 13 years with experience in Sub Classes 1, 2, and 4.

John Schombert moved to issue Adrian Hill a WWAE 1, 2, and 4. Mary McElhinny seconded. The vote was unanimous and motion carried.

After some discussion reciprocities will now be scanned and emailed to the Board prior to the Board meetings.

Finalization of Comments on Chapter 302 Regulations

Strict Liability:

Mary Lou Barton presented an overview on Strict Liability:

Statutes are all different. All licensure programs implemented by the Department of Environmental Protection or the Department of State have some form of strict liability. Current thinking is that the Constitution gives every citizen the right to clean water and the protection of our environment. As a result, all environmental statutes give PA the right to clean water and calls for strict liability. Representatives of the Professional Licensure Committee in the state legislature and the Department of State agree.

The language in the Operator Certification Act is similar to language in other statutes related to licensure and strict liability, since the operators and owners of water and wastewater systems can have a direct impact on water and the environment in the implementation of their responsibilities. The Act is also the only statute that has two levels of protection to the operators and owners of water and wastewater systems. First, the Board is the only entity that can take a formal action related to the issuance, denial, revocation or suspension of an operator's license and this Board has designated operator and owner members. Second, the Department is required to issue and order and the owner or operator is required to violate that order before the Department can assess civil penalties.

Mike Kyle had concerns with operators being responsible for acts of nature. Language in the statute under the duties of an operator protect the operator from this happening, by stating that the operator is responsible for operating the system with "available resources." In addition, further protection is provided by the statute by putting the requirement on the owner to address violations or potential violations once the operator provides the owner with the necessary information in writing. Further protection against the operator losing his job is also provided through the whistleblower provisions.

After some discussion and further review of the Department's proposed language for the draft regulations, the Board drafted the following language for the Chapter 302 draft regulation comment letter:

After careful consideration of the Department's proposal and the comments raised to us from a number of constituents, the Board interprets the intent of the Water and Wastewater Systems Operators' Certification Act (Act 11) and the Chapter 302 regulations is to insure the protection of public health and the environment through the licensure of those individuals responsible for making process control decisions at either water or wastewater system. With that license comes the recognition that the operator has a responsibility to operate the water or wastewater system to insure compliance with all applicable federal and state laws, rules and regulations. It is also our interpretation that Act 11 intends to provide protection to the operator through a number of different provisions including:

1. The list of duties in Section 13 clarifies how the operator will meet his or her responsibilities to insure compliance. It requires the operator to maintain the system in compliance utilizing "available resources". In addition, it also requires the notification of all potential violations to the owner, with any suggestions as to options for resolution of the problem.

2. The Whistleblower Protection in Section 15 insures the operator can not be fired or otherwise penalized by the owner for complying with the requirements of notification of wrong doing.
3. The penalty provisions in Section 14 require the Department to first issue an order. The Department can assess civil penalties only after the operator has violated this order. Act 11 is the ONLY environmental statute that requires the Department to take this additional step. The Department's addition to Chapter 302 to rectify the compilation error in the statute further insures this extra step is taken.

Therefore, based on our interpretation of the intent of Act 11 and the Department's suggested language for Chapter 302, the Board feels there is a sufficient amount of protection for the operator, while protecting public health and the environment.

Collection Systems

Nicki Kasi met with Regional Staff to review the comments received from the Board and the Certification Program Advisory Committee last April and proposed revisions to Section 302.1209 to address the concerns raised. Since the statute defines a wastewater system to include collection as 2,000 gallons, the amount of flow can not be used as a cut-off point for defining which satellite collection systems need a certified operator. After some discussion, the Board determined the intent of the statute is to require certified operators for all satellite collection systems, public and private. Therefore, the final comment letter needs to state opposition to the proposed language for Section 302.1209 to differentiate between publicly and privately owned satellite collection systems and recommend this section be eliminated.

John Schombert moved to finalize the letter to the Department capturing the Board's comments. Joe Swanderski seconded. The vote was unanimous and the motion carried. Nicki Kasi abstained from voting.

ABC Nominations

There were no nominations for officers.

John Schombert moved to nominate William Ross for the "Harris F. Seidel Award" which is a lifetime achievement award. Mike Kyle seconded. Vote was unanimous and the motion carried.

Cheri Sansoni will submit ABC Award Nomination form along with his resume and certificate resolution language. Nomination form must be received by June 30, 2008.

Resolution for William Ross

Mike Kyle moved to adopt the resolution for William Ross. John Brutz seconded. The vote was unanimous and the motion carried.

Cheri Sansoni will email Mr. Ross regarding his availability to come to a meeting and lunch July 11 or Sept 11.

Board Secretary Report

None.

Old and New Business

Nicki Kasi provided hand outs regarding the public input effort now underway by the Governor's Sustainable Water Infrastructure Task Force. Nicki will provide a summary of the comments received once they are finalized to the Board for their information.

John Brutz formally welcomed Joe Swanderski to the Board.

On-line exams will be starting July 1, 2008. The exam duration will be three and a half hour sessions. There are time limits for each exam. All 23 exams will be offered through AMP, which is under contract with ABC to provide these services. Since all the exams will be offered, examinees will not be able to register on-line, but will need to contact a call center. There will be eight sites across the Commonwealth. Basically AMP will be treated like another approved exam provider.

Comments from the Public

None.

Mary McElhinny motioned to adjourn at 1:45 pm.