

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
July 17, 2007 (9:00 a.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Ruth Ann Wall, presiding officer, presided. No Board members were present.

Kimberly Robinson appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc = Disciplinary Case	C = Complainant/Claimant
Lic = Licensing Application	A = Applicant
RF = Recovery Fund Claim	R = Respondent/Regulant
Trades = Tradesmen Disciplinary Case/Application	W = Witness
	Atty = Attorney

Participants

- | | |
|---|--|
| 1. Kilgore Construction LLC
File Number 2007-01116 (Disc)
(NO DECISION MADE) | Michael Van Sandt – C |
| 2. Travis L Walsh
t/a T W Masonry
File Number 2007-02584 (Disc)
(NO DECISION MADE) | None |
| 3. Tommy Kelley
t/a Tommy Kelley Welldrilling
File Number 2006-00133 (Disc) | Kelley –R
Todd Fowler – W
Philip Davis – W |
| 4. Tommy Kelley
t/a Tommy Kelley Welldrilling
File Number 2006-05490 (Disc) | Kelley –R
Philip Davis – C
Todd Fowler – W |

The meeting adjourned at 2:45 p.m.

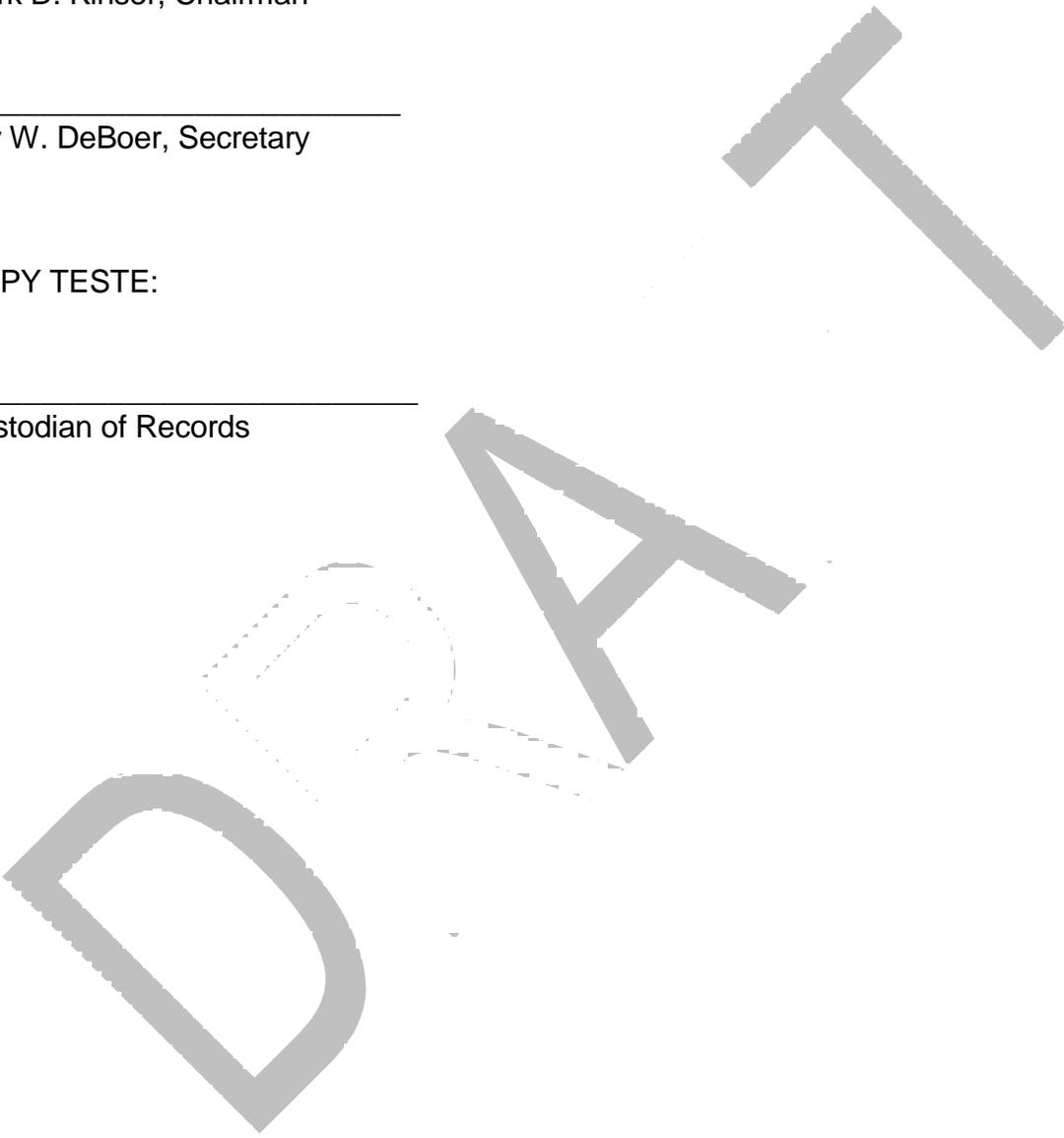
BOARD FOR CONTRACTORS

Mark D. Kinser, Chairman

Jay W. DeBoer, Secretary

COPY TESTE:

Custodian of Records



**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Tommy Kelley, t/a Tommy Kelley Welldrilling
Hardy, VA 24101

File Number 2006-00133
License Number 2705007631

CONSENT ORDER

Respondent Tommy Kelley, t/a Tommy Kelley Welldrilling ("Tommy Kelley") recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

Board's Regulations provides:

18 VAC 50-22-200. Remedial education, revocation or suspension; fines.

The board may require remedial education, revoke or suspend a license or fine a licensee when a licensee has been found to have violated or cooperated with others in violating any provision of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or any regulation of the board.

Pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended:

On May 23, 2007, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Tommy Kelley ("Kelley"), t/a Tommy Kelley Welldrilling, to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On July 17, 2007, an Informal Fact-Finding Conference ("IFF") convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Kelley, Respondent; Todd Fowler ("Fowler") and Philip Davis ("Davis"), Witnesses; Kimberly Robinson and Jennifer Kazzie, Staff Members; and Ruth Ann Wall, Presiding Officer.

The Report of Findings, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

During the IFF, Kelley stated that the problems with these wells were the result of an employee who improperly grouted the wells. Kelley assumed his employee was grouting the wells. Fowler indicated that since December 2006, Kelley has been cooperative and taken steps to correct the grout problems with the wells.

The Board and Tommy Kelley, as evidenced by the signatures affixed below, enter into this Consent Order. Tommy Kelley knowingly and voluntarily waives any further proceedings in this matter under Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

By signing this Consent Order, Tommy Kelley acknowledges an understanding of the charges and hereby admits to the violation(s) of the Counts as outlined in the Report of Findings. Tommy Kelley consents to the following term(s):

	Count 1	18 VAC 50-22-260.B.6	\$0.00
	Count 2	18 VAC 50-22-260.B.6	\$0.00
	Count 3	18 VAC 50-22-260.B.6	\$0.00
	Count 4	18 VAC 50-22-260.B.6	\$0.00
	Count 5	18 VAC 50-22-260.B.6	\$0.00
	Count 6	18 VAC 50-22-260.B.6	\$0.00
	Count 7	18 VAC 50-22-260.B.6	\$0.00
	Count 8	18 VAC 50-22-260.B.5	\$0.00

	SUB-TOTAL (MONETARY PENALTIES)		\$0.00
	BOARD COSTS		\$250.00
	TOTAL		\$250.00

In addition, for violation of Counts 1 through 8, Tommy Kelley agrees to a one (1) year probation of his license as of the effective date of this order. During this one (1) year probation, Tommy Kelley agrees to:

- (1) Comply with the rules and regulations of the Board for Contractors;
- (2) Not be in violation of any local, state, or federal laws or regulations.

If Tommy Kelley violates any terms of this probation, his license shall be suspended for one (1) year. Tommy Kelley understands the right to have this suspension considered in an informal fact-finding conference and/or formal hearing under Sections 2.2-4019, 2.2-4020, and 2-2.4021 of the Code of Virginia, and knowingly and voluntarily waives his rights to these proceedings.

Based on the testimony, it appears Kelley knows the proper methods to grout the well and the problems with these wells were the result of an employee

failing to perform the grout work. Therefore, remedial education was not imposed because the content of the classes will not cover the issues that resulted in this complaint against Kelley.

Any monetary penalties, costs, and/or sanctions are to be paid/performed within ninety days of the effective date of this consent order unless otherwise specifically noted above. Tommy Kelley acknowledges any monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Tommy Kelley will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in Section 58.1-15 of the 1950 Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

Tommy Kelley acknowledges that failure to pay any monetary penalty or cost and/or to comply with all terms of this Order within the specified time period shall result in the automatic suspension of Tommy Kelley's license until such time as there is compliance with all terms of this Order. Tommy Kelley understands the right to have this automatic suspension considered in an IFF pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

The undersigned represents and affirms that he/she has the authority to legally bind Tommy Kelley, t/a Tommy Kelley Welldrilling, to this Consent Order. The individual, by his/her signature below, acknowledges he/she read the Consent Order, understands it, and agrees that Tommy Kelley, t/a Tommy Kelley Welldrilling, shall be bound by its terms and conditions.

Signature Date

Printed Name and Title

WITNESSED BY:

The individual named above signed this document in my presence.

Witness Signature Date

Printed Name and Title

SO ORDERED:

Entered this _____ day of _____, 2007.

Board for Contractors

BY: _____
Jay W. DeBoer, Secretary

EEO

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATION DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: February 13, 2007 (revised May 22, 2007)

FILE NUMBER: 2006-00133
RESPONDENT: Tommy Kelley, t/a Tommy Kelley Welldrilling
LICENSE NUMBER: 2705007631
EXPIRATION: February 29, 2008

SUBMITTED BY: Timothy R. Hairston
APPROVED BY: Janet Creamer

COMMENTS:

Companion to File Number 2006-05490.

Tommy Kelley ("Kelley"), t/a Tommy Kelley Welldrilling, was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705007631).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On July 5, 2005, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Dan Richardson ("Richardson"), Environmental Health Supervisor for the Bedford County Health Department, regarding Kelley. (Exh. C-1)

In a letter dated July 1, 2005, Richardson stated that over the course three years the staff of the Bedford County Health Department had discovered numerous wells drilled by Kelley that were inadequately grouted or not grouted at all. (Exh. C-1)

In a written response dated August 11, 2005, Kelley stated, "The reason for the wells not being properly grouted was due to a former employee I had working for me for approximately ten years. I was trusting him to have the job done right and I am now

finding out that he was not completing jobs like he said. However, I know that this is still not acceptable nor is it satisfactory work by my company...Upon notice of the wells not being properly done, I have and will continue to go back and fix them.” (Exh. R-1)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

On May 30, 2002, Kelley submitted a Uniform Well Completion Report for a well drilled at Lot 15, Bass Cover Subdivision, Bedford County, Virginia (Permit number 109-02-0348). On the report, Kelley indicated the well was grouted from 0 to 30 feet. Kelley signed the report and certified the information was correct. (Exh. C-2)

Richardson received a call from the property owner regarding concerns about the well. (Exh. C-1 and C-3)

On November 24, 2003, Rachel Stull (“Stull”) of the Bedford County Health Department performed a well inspection and discovered the well had not been grouted. (Exh. C-3)

On March 17, 2004, an operation permit was issued after grouting was discovered upon re-inspection. (Exh. C-1)

2. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

Kelley submitted a Uniform Water Well Completion Report, dated January 14, 2003, for a well drilled at 106 Waywood Hill Drive, Vinton, Virginia (Permit number 109-03-1053). On the report, Kelley indicated that the well was grouted from 0 to 60 feet. Kelley signed the report and certified the information was correct. (Exh. C-4)

On March 2, 2004, Phillip Davis ("Davis") of the Bedford County Health Department performed a well inspection and discovered the well was not grouted. Davis also discovered the annular space was open down to approximately three (3) feet. (Exh. C-1 and C-5)

On March 29, 2004, Davis and Richardson directed Kelley to over ream the well hole. (Exh. C-1 and C-5)

On April 5, 2004, Kelley submitted a Uniform Water Well Completion Report for the well drilled at 106 Waywood Hill Drive, Vinton, Virginia (Permit number 109-03-1053). On the report, Kelley indicated that the well was grouted from 0 to 60 feet. Kelley signed the report and certified the information was correct. (Exh. C-4)

On April 6, 2004, Kelley over reamed the hole and installed the grout as instructed by Davis and Richardson. (Exh. C-1 and C-5)

On April 8, 2004, Davis issued the operational permit for the well. (Exh. C-1)

3. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

Kelley submitted a Uniform Water Well Completion Report, dated November 24, 2003, for a well drilled at Lot 15, Lipscomb Road, Moneta, Virginia 24121 (Permit number 109-02-1534). On the report, Kelley indicated that the well was grouted from 0 to 23 feet. Kelley signed the report and certified the information was correct. (Exh. C-6)

On March 8, 2004, Todd Fowler ("Fowler") of the Bedford County Health Department performed a well inspection. Fowler discovered an empty sand bag was stuffed into the annular space around the casing at the ground surface, and the well was not grouted. (Exh. C-7)

On March 29, 2004, Kelley grouted the well and Folwer issued the operational permit. (Exh. C-1 and C-7)

4. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

Kelley submitted a Uniform Water Well Completion Report, dated July 24, 2003, for a well drilled at Rt. 654, Hickory Cove, Moneta, Virginia (Permit number 109-02-1654). On the report, Kelley indicated that the well was grouted from 0 to 30 feet. Kelley signed the report and certified the information was correct. (Exh. C-8)

On November 3, 2004, Brock Malcom ("Malcom") of the Bedford County Health Department performed a well inspection and discovered the well was not grouted. (Exh. C-1 and C-9)

5. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

Kelley submitted a Uniform Water Well Completion Report, dated June 21, 2004, for a well drilled at Lot 3, Lake Retreat Subdivision, Bedford County, Virginia (Permit number 109-00-0862). On the report indicated that the well was grouted from 0 to 53 feet. Kelley signed the report and certified the information was correct. (Exh. C-10)

On November 23, 2004, Malcom performed a well inspection and discovered that the well was not grouted. (Exh. C-11)

On December 1, 2004, Malcom notified the owner of the property that the well had not been grouted. (Exh. C-1)

On January 23, 2005, Malcom performed a re-inspection and discovered the well was cased and grouted to 53 feet. (Exh. C-1)

6. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

On March 29, 2005, Kelley submitted Uniform Water Well Completion Report for a well drilled at Lot 13, Summit Ridge Subdivision, Bedford County, Virginia. On the report, Kelley indicated that the well was grouted from 0 to 30 feet. Kelley signed the report and certified the information was correct. (Exh. C-14 and C-15)

On March 30, 2005, Fowler performed a well inspection and discovered that the well was not grouted. (Exh. C-15)

On April 8, 2005, Fowler re-inspected the well and discovered the well was grouted. (Exh. C-15)

On April 11, 2005, an operational permit was issued. (Exh. C-15)

7. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

On April 8, 2005, Kelley submitted a Uniform Water Well Completion Report for a well drilled at Lot 15, Callahan Farm, Bedford County, Virginia. (Permit number 109-04-0292) On the report, Kelley indicated that the well was grouted from 0 to 58 feet. Kelley signed the report and certified the information was correct. (Exh. C-1, C-12, and C-13)

On April 11, 2005, Fowler performed a well inspection and discovered that the well was not grouted. (Exh. C-13)

On May 23, 2005, Fowler re-inspected the well and discovered it was grouted. Fowler issued the operational permit. (Exh. C-1)

8. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

5. Negligence and/or incompetence in the practice of contracting.

FACTS:

In addition to the facts outlined in Counts 1 through 7:

Between November 24, 2003, and April 11, 2005, the Bedford County Health Department performed inspections on seven wells constructed by Kelley, and determined that none of the wells had been grouted. (Exh. C-3, C-5, C-7, C-9, C-11, C-13, C-15)

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

Re: Tommy Kelley, t/a Tommy Kelley Welldrilling
Hardy, VA 24101

File Number 2006-05490
License Number 2705007631

CONSENT ORDER

Respondent Tommy Kelley, t/a Tommy Kelley Welldrilling ("Tommy Kelley") recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

Board's Regulations provides:

18 VAC 50-22-200. Remedial education, revocation or suspension; fines.

The board may require remedial education, revoke or suspend a license or fine a licensee when a licensee has been found to have violated or cooperated with others in violating any provision of Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or any regulation of the board.

Pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended:

On May 23, 2007, the Notice of Informal Fact-Finding Conference ("Notice") was mailed, via certified mail, to Tommy Kelley ("Kelley"), t/a Tommy Kelley Welldrilling, to the address of record. The Notice included the Report of Findings, which contained the facts regarding the regulatory and/or statutory issues in this matter. The certified mail was signed for and received.

On July 17, 2007, an Informal Fact-Finding Conference ("IFF") convened at the Department of Professional and Occupational Regulation.

The following individuals participated at the IFF: Kelley, Respondent; Phillip Davis ("Davis"), Complainant; Todd Fowler ("Fowler"), Witness; Kimberly Robinson and Jennifer Kazzie, Staff Members; and Ruth Ann Wall, Presiding Officer.

The Report of Findings, which contains the facts regarding the regulatory and/or statutory issues in this matter, is incorporated with the Consent Order.

During the IFF, Davis indicated that he spoke to Kelley in May 2006 about the problems with the well installation. The homeowner sent Kelley a letter requesting that the well be fixed sometime in June 2006. Kelley stated that he did not remember receiving the letter from the homeowner. Davis testified that the homeowner eventually hired another well driller to reset the casing and grout the well.

The Board and Tommy Kelley, as evidenced by the signatures affixed below, enter into this Consent Order. Tommy Kelley knowingly and voluntarily waives any further proceedings in this matter under Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

By signing this Consent Order, Tommy Kelley acknowledges an understanding of the charges and hereby admits to the violation(s) of the Counts as outlined in the Report of Findings. Tommy Kelley consents to the following term(s):

Count 1	18 VAC 50-22-260.B.6	\$250.00

SUB-TOTAL (MONETARY PENALTIES)		\$250.00
BOARD COSTS		\$250.00
TOTAL		\$500.00

In addition, for violation of Counts 1, Tommy Kelley agrees to a one (1) year probation of his license as of the effective date of this order. During this one (1) year probation, Tommy Kelley agrees to:

- (3) Comply with the rules and regulations of the Board for Contractors;
- (4) Not be in violation of any local, state, or federal laws or regulations.

If Tommy Kelley violates any terms of this probation, his license shall be suspended for one (1) year. Tommy Kelley understands the right to have this suspension considered in an informal fact-finding conference and/or formal hearing under Sections 2.2-4019, 2.2-4020, and 2-2.4021 of the Code of Virginia, and knowingly and voluntarily waives his rights to these proceedings.

Based on the testimony, it appears Kelley knows the proper methods to grout the well and the problems with this well was the result of an employee failing to perform the grout work. Therefore, remedial education was not imposed because the content of the classes will not cover the issues that resulted in this complaint against Kelley.

Any monetary penalties, costs, and/or sanctions are to be paid/performed within ninety days of the effective date of this consent order unless otherwise specifically noted above. Tommy Kelley acknowledges any monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Tommy Kelley will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in Section 58.1-15 of the 1950 Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

Tommy Kelley acknowledges that failure to pay any monetary penalty or cost and/or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Tommy Kelley's license until such time as there is compliance with all terms of this Order. Tommy Kelley understands the right to have this automatic suspension considered in an IFF pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

The undersigned represents and affirms that he/she has the authority to legally bind Tommy Kelley, t/a Tommy Kelley Welldrilling, to this Consent Order. The individual, by his/her signature below, acknowledges he/she read the Consent Order, understands it, and agrees that Tommy Kelley, t/a Tommy Kelley Welldrilling, shall be bound by its terms and conditions.

Signature Date

Printed Name and Title

WITNESSED BY:

The individual named above signed this document in my presence.

Witness Signature Date

Printed Name and Title

SO ORDERED:

Entered this _____ day of _____, 2007.

Board for Contractors

BY: _____
Jay W. DeBoer, Secretary

EEO

VIRGINIA DEPARTMENT OF PROFESSIONAL
AND OCCUPATIONAL REGULATION
COMPLIANCE & INVESTIGATIONS DIVISION
3600 WEST BROAD STREET
RICHMOND, VA 23230-4917

REPORT OF FINDINGS

BOARD: Board for Contractors
DATE: February 15, 2007 (revised May 22, 2007)

FILE NUMBER: 2006-05490
RESPONDENT: Tommy Kelley, t/a Tommy Kelley Welldrilling
LICENSE NUMBER: 2705007631
EXPIRATION: February 29, 2008

SUBMITTED BY: Timothy R. Hairston
APPROVED BY: Janet Creamer

COMMENTS:

Companion to File Number 2006-00133.

Tommy Kelley ("Kelley"), t/a Tommy Kelley Welldrilling, was at all times material to this matter a licensed Class B contractor in Virginia (No. 2705007631).

Based on the analysis and/or investigation of this matter, there is probable cause to believe the respondent has committed the following violation(s) of the Code of Virginia and/or Board's regulation(s):

BACKGROUND:

On June 23, 2006, the Compliance & Investigations Division of the Department of Professional and Occupational Regulation received a written complaint from Phillip Davis ("Davis"), Environmental Health Specialist for the Bedford County Health Department, regarding Kelley. (Exh. C-1)

1. Board Regulation (Effective January 1, 2003)

18 VAC 50-22-260. Filing of charges; prohibited acts.

B. The following are prohibited acts:

6. Misconduct in the practice of contracting.

FACTS:

On March 28, 2005, Kelley submitted a Uniform Water Well Completion Report for a well drilled at Lot 20, Sundale Meadows Subdivision, McDaniel Road, Bedford County, Virginia (Permit number 109-04-0769). On the report, Kelley indicated that the well was grouted from 0 to 30 feet. Kelley signed the report and certified the information was correct. (Exh. C-2)

On April 28, 2006, Davis performed a well inspection and found no apparent indication that the well had been grouted between the ground surface and approximately five feet below the ground surface. (Exh. C-1 and C-3)

On May 9, 2006, Kelley told Davis he either ran out of grout or his pump broke down and must have not returned to "top it off." Kelley promised to contact Davis to schedule a time to meet at the subject property to determine if the well could be grouted properly. (Exh. C-1)

On June 20, 2006, the owner of the subject property informed Davis another well driller would be working on the well to make it compliant. (Exh. C-1)

As of June 20, 2006, Kelley failed to contact Davis regarding a meeting at the subject property. (Exh. C-1)

On February 15, 2007, Kelley stated he poured six bags of cement around the well and grouting was down about 8 or 9 feet. Kelley stated he spoke with someone at the Health Department and told them that if they stuck an eight foot rod down the hole, they would see the well was grouted. Kelley agreed to pour more cement around the well, but was told he had to redrill the casing. Kelley did not return to correct the problem because the Health Department told him he could not touch the well. (Exh. I-2)