

Opinion and Declaratory Ruling Regarding the Practice of Geology
Underground storage tank (UST) removal
and related site investigations and corrective actions

Kentucky Board of Registration for Professional Geologists
December 6, 2010

The Kentucky Board of Registration for Professional Geologists received a letter in April 2010, from Erik L. Lewis, Chair of the Rowan County Chapter for Kentuckians for the Commonwealth (KFTC). In that letter, Mr. Lewis stated: "Kentuckians for the Commonwealth has concerns regarding the requirements of KRS 322A regulating the public practice of geology and the corrective actions tasks allowed of PSTEAF certified contractors who are not registered professional geologists or geologists-in-training." Furthermore the letter requested determination by the Board regarding these concerns. The concerns expressed were general and did not cite any specific case of malfeasance or harm to public health and safety because of the improper professional practice of geology by someone not licensed who was allegedly engaging in activities constituting the practice of geology as defined by state law.

KFTC is concerned that individuals designated as certified contractors in accord with provisions of 401 KAR Chapter 42:314 who are not licensed professional geologists (PGs) may have engaged in the *public practice of geology* by conducting underground storage tank (UST) removals, site investigations, and corrective action field tasks in accord with requirements of state agencies. Mr. Lewis' letter asserts the Kentucky Underground Storage Tank Branch (USTB) allows PSTEAF-certified contractors who are not registered PGs or professional engineers (PEs)(who are otherwise exempt from KRS Chapter 322A) to engage in the public practice of geology, which is prohibited under KRS 322A.

KRS 322A.010(1) and (3) define "geology" and the "public practice of geology."

1) "Geology" means the science which treats the earth as a whole; the investigation, analysis, classification, and location of the rocks and other materials which compose the earth's crust; the study of minerals, gases, and liquids composing and contained within the earth's crust; and the study of geologic materials and processes;

(3) "Public practice of geology" means the performance of service to the public in connection with the geological description, location, or evaluation of earth materials, liquids, and gases and the natural processes acting upon them.

The Board has discussed the concerns raised by Mr. Lewis at its Board meetings and through its Board attorneys, Mr. Michael West and Mr. Mark Brengelman, Assistant Attorneys General, who requested and received input from the Kentucky Division of Waste Management,

Mr. Tony Hatton, PG (letter to Mr. Lewis dated September 21, 2010), and the USTB, Mr. Robert Daniell and Ms. Sarah J. Gaddis, PG (letter to Michael West dated July 21, 2010).

The letter dated July 21, 2010, signed by Mr. Robert Daniell and Ms. Sarah J. Gaddis, PG, stated that the certified contractor program is utilized for the purpose of maintaining eligibility for reimbursement from the Petroleum Storage Tank Environmental Assurance Fund (PSTEAF). The certified contractor requirement is intended “to satisfy the statutory requirement in KRS 224.60–130 that criteria be established and met by persons who contract to perform corrective action to be eligible for reimbursement. This provision does not supersede the requirement in the USTB regulations that all technical reports be signed by a PE or PG.”

The letter further stated: “the USTB agrees with KFTC that many tasks required for UST closure, site investigation and corrective actions constitute the practice of geology per KRS 322A.010. USTB technical regulations, 401 KAR 42:060, 42:070, and 42:080, require PG or PE signatures to demonstrate the oversight and reporting of PEs or PGs for permanent closure, site investigations, and corrective actions.” Furthermore, the signature of a PE or PG is required by regulation on the following USTB forms:

- Certification of the Site Assessment Report,
- Certification of the Site Check Report,
- Closure Assessment Report,
- Site Investigation Checklist,
- Certification of the Corrective Action Plan, and
- Classification Certification.

In many cases, a report will be signed by both a certified contractor and a PG or PE, but in all cases (to be compliant with 401 KAR 42:060, 42:070, and 42:080) reports must be signed by a PG or PE.

Although regulations require a PE or PG to have primary oversight, a PE or PG is not required to be on site at all times while technical work is being performed. The PG may rely on subordinates to do part of the work. The required level of oversight by a PG to warrant their seal and signature is established under KRS 322A.030(6), Code of Professional Conduct and regulated under 201 KAR 31:060 Code of Professional Conduct, Section 3 Integrity in Professional Practice (6): “A registered geologist shall sign and seal only professional work, including, but not limited to, maps and reports for which the registrant has *direct professional knowledge*, and for which the registrant intends to be responsible for its accuracy and adequacy.”

Kentucky Board members have discussed the role of PGs in the performance of UST closures, site investigations and corrective actions with members of geologist registration boards of other states. Kentucky Board members have also reviewed the requirements of other states concerning the role of PGs in regard to UST-related work. The consensus from other states is that PGs are not required to perform UST closure work or to collect related soil samples. Rather, the technical role of the PG involves the correlation and extrapolation of subsurface conditions. PGs are not required to be on site at all times, but are responsible for UST project oversight and must sign off on reports, which require the PG to have “direct professional knowledge” as mandated by Board regulation.

The Board has not been presented with a complaint that any PG in their professional capacity has placed their seal or signature on work for which they have no *direct professional knowledge*. If a complaint is filed with the Board alleging any PG is acting contrary to provisions of KRS 322A, then the Board will investigate.

The Board will alert all PGs through the *Kentucky Geologists* newsletter that concerns have been raised about the Code of Conduct for PGs under KRS 322A and will reiterate that *direct professional knowledge* must be present in all actions they engage in as a PG and that PGs must be prepared to demonstrate their *direct professional knowledge* if called upon to do so by the Board. In addition, the Board will submit a summary of this Opinion and Declaratory Ruling Regarding the Practice of Geology to the following organizations: the Kentucky UST Branch, the American Institute of Professional Geologists (AIPG), the Kentucky Section of AIPG, and the Kentucky Society of Professional Geologists. Each organization will be encouraged to publish the summary in their newsletter.