

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SOUTH FLORIDA WATER MANAGEMENT)
DISTRICT,)
)
Petitioner,)
)
vs.) CASE NO. 91-5885
)
TIM YOUNGQUIST,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, William F. Quattlebaum, held a formal hearing in the above-styled case on December 3, 1991, in Fort Myers, Florida.

APPEARANCES

For Petitioner: Dana Bivins, Esq.
Post Office Box 24680
West Palm Beach, Florida 33416-4680

For Respondent: Tim Youngquist, pro se
15465 Pine Ridge Road
Fort Myers, Florida 33908

STATEMENT OF THE ISSUE

Whether the allegations of the Administrative Complaint are correct and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On August 1, 1991, Petitioner South Florida Water Management District filed an Administrative Complaint against Respondent Tim Youngquist alleging that Respondent had failed to obtain appropriate permits prior to beginning to drill six public supply water wells in Fort Myers, Florida, and that Respondent had failed to timely notify the Petitioner prior to the placement of grout in the annular spaces in the wells. By response filed August 19, 1991, the Respondent disputed the allegations of the complaint and requested a formal administrative hearing. The Petitioner forwarded the request to the Division of Administrative Hearings which scheduled and noticed the proceeding.

At hearing, Petitioner presented the testimony of J. W. Jackson, Steven D. Anderson and Bill Rasperger, and offered into evidence exhibits numbered 1-11, which were admitted. Respondent presented the testimony of Don Douglas and testified on his own behalf.

A transcript of the hearing was filed on December 23, 1991. Both parties filed proposed recommended orders. The proposed findings of fact are ruled upon either directly or indirectly as reflected in this Recommended Order, and in the Appendix which is attached and hereby made a part of this Recommended Order.

FINDINGS OF FACT

1. Tim Youngquist is a licensed water well contractor, holding Florida license #2172, and is principal of Youngquist Brothers, Inc.

2. The South Florida Water Management District, operating pursuant to Chapter 373, Florida Statutes, and Chapter 40E, Florida Administrative Code, is responsible for the permitting and regulation of nonexempt water well drilling within the District's geographical jurisdiction. Unless specifically exempted from permitting requirements, each well must be separately permitted prior to construction. Due to the unique characteristics of wells, well construction permits are issued separately for each individual well and are not issued on a site basis.

3. The Respondent, in the summer of 1990, contracted with the City of Fort Myers, Florida, to construct twenty public water supply wells and eight monitoring wells, all located within the existing city well field site. The Respondent was responsible for compliance with all applicable permit requirements. On December 19, 1990, the Respondent obtained the appropriate city permit for the drilling operation, but did not at that time apply for or obtain any permits as required by the Petitioner.

4. The City of Fort Myers permits wells in compliance with the Standard Plumbing Code, but does not have a well construction ordinance. The city permit does not substitute for the Petitioner's well construction permits.

5. On April 9, 1990, the Petitioner received an inquiry from a representative of the Lee County Health Department as to whether the Respondent had obtained well construction permits from the Petitioner. At that time, there had been no application for the permits submitted to the Petitioner by the Respondent.

6. On April 10, 1990, Don Douglas, Youngquist Brothers manager for the Fort Myers city wells project, contacted the Petitioner and inquired as to the method for obtaining permits for the well construction. Mr. Douglas was advised to immediately cease any well construction operations at the City of Fort Myers well field pending receipt of the appropriate permits.

7. On April 11, 1991, Petitioner's staff inspected the City of Fort Myers well field site, and observed six newly-completed public supply wells on the site. Petitioner's staff again instructed Respondent's representative to cease any further activity. There is no evidence that, subsequent to the Petitioner's directions to cease operations at said site, any additional construction activities occurred.

8. On April 16, 1991, Petitioner's staff again inspected the City of Fort Myers well field site, and observed three additional public supply wells on the site, two of which were surface-cased with the third well appearing to be completed.

9. On May 23, 1991, a Notice of Violation (NOV) was issued to Youngquist citing the failure to obtain well construction permits for the seven completed

public water supply wells and the failure to provide notice to the Petitioner 24 hours in advance of the placement of grout in the annular spaces of the seven wells. The Petitioner's staff determined that the extent of the two surface-cased wells construction did not prohibit appropriate inspection even though the wells would also require permitting.

10. As stated in the NOV, the Petitioner sought a fine of \$5,000 for the violations. Further, because the Petitioner's staff was first informed by the Respondent's representative that there were six wells completed on site when in fact there were nine, the NOV sought the imposition of a 20% penalty applied to the \$5,000, and the suspension of Respondent's well drilling license.

11. Subsequent to the issuance of the NOV, the Petitioner's staff met with Respondent's project manager to discuss the matter. At that time, it was determined that there actually were only six fully completed public water supply wells and three additional surface-cased but incomplete public water supply wells. The Petitioner dropped the proposed 20% penalty and suspension of Youngquist's license. However, subsequent to this discussion, the parties could not resolve the dispute and an Administrative Complaint was filed. 1/

12. Six individual well construction permits are required for the six completed public water supply wells located at the City of Fort Myers well field. The evidence establishes that the Respondent constructed and completed the six public water supply wells without obtaining the appropriate permits from the Petitioner. The failure to obtain the six permits constitutes six separate violations.

13. The evidence establishes that, in completing the wells, the Respondent failed to notify the Petitioner 24 hours in advance of placement of grout in the annular spaces of the six completed wells. The failure to notify the Petitioner 24 hours in advance of placement of grout in the annular spaces of the six completed wells constitutes six separate violations.

14. There is no evidence that, prior to initiation of the well construction activities and prior to the discovery of the violations by Petitioner's staff, the Respondent made any attempt to comply with the permitting requirements of the Petitioner.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the parties to and subject matter of this proceeding. Section 120.57(1), Florida Statutes.

16. The burden of proof is on the Petitioner to establish that the factual allegations of the administrative complaint are correct and that the facts constitute a violation of the statutes and rules. In this case, the Petitioner has met the burden.

17. The Department of Environmental Regulation has adopted guidelines governing disciplinary actions related to inappropriate water well construction. The guidelines are applicable to actions taken by the state's water management districts. Section 373.333, Florida Statutes. The Petitioner is responsible for the permitting and regulation of nonexempt water well drilling within the District's geographical jurisdiction. Chapter 373, Florida Statutes, and Chapter 40E, Florida Administrative Code.

18. A well construction permit must be obtained prior to the construction of a water well within the District's geographical jurisdiction. Section 373.333(4)(e), Florida Statutes, and Rule 40E-3.041(1), Florida Administrative Code. Each well requires a separate permit. The evidence establishes that the Respondent constructed six public water supply wells without first obtaining the required permits. The failure to obtain such permits prior to construction constitutes six separate violations.

19. A well contractor must notify the District not less than 24 hours in advance of placement of grout in the annular space of any public water well. Rule 40E-3.461(4), Florida Administrative Code. The evidence establishes that the Respondent failed to provide such notice for any of the six wells completed prior to the construction permits being issued. The failure to provide such notice constitutes six separate violations.

20. When a water management district finds a person guilty of committing one or more specifically prohibited acts, the district may deny an application for licensure or license renewal, revoke or suspend a license, impose an administrative fine not to exceed \$1,000 for each count or separate offense, place the licensee on probation for a period of time, or restrict the licensee's authorized scope of practice. Section 373.333(5), Florida Statutes.

21. The "Department of Environmental Regulation Water Well Disciplinary Guidelines and Procedures Manual" and the "Florida Unified Citations Dictionary For Water Well Construction" were adopted by incorporation in Chapter 40E-3, Florida Administrative Code, in December, 1989 and are applicable to this case. The guidelines and dictionary establish the recommended penalty for each violation based upon the nature and severity of the violation, and whether corrective action can be taken. Points are assessed based upon the violation. A matrix is established which contains a sliding scale penalty amount related to the actual resource impact of each violation. Penalty adjustments can be made based upon good faith efforts to comply with District rules prior to discovery of the violation, degree of willfulness or negligence of the violation, the violator's history of noncompliance, and the economic benefit of noncompliance to the party committing the violation.

22. The guidelines establish that the failure to obtain a permit prior to well construction is a "major violation of medium severity". No corrective action can be taken after the fact to correct a failure to obtain a well construction permit prior to construction. According to the Florida Unified Citations Dictionary For Water Well Construction, each violation results in a recommended penalty of \$500.00. In this case, the six violations result in a recommended penalty of \$3,000.00

23. The guidelines further establish that the failure to notify the District not less than 24 hours in advance of placement of grout in the annular space of a public water supply well is a "major violation of medium severity". No corrective action can be taken after the fact to correct a failure to timely notify the District in advance of placement of grout in the annular space of a public water supply well. However, the Florida Unified Citations Dictionary For Water Well Construction indicates that the District is provided with a degree of flexibility in enforcement actions related to said failure, and that three repetitions of this violation may occur prior to the District's issuance of a Notice of Violation. Each violation cited results in a recommended penalty of \$500.00. In this case, of the six violations, three were cited by the District and result in a recommended penalty of \$1,500.00

24. In the Administrative Complaint, the Petitioner seeks the additional imposition of \$200.00 in attorney's fees and costs against the Respondent. There is no legal authority cited for, and this Order does not recommend, said imposition of fees.

RECOMMENDATION

Based on the foregoing, it is hereby

RECOMMENDED that the South Florida Water Management District enter a Final Order imposing an administrative fine of \$4,500.00 against Tim Youngquist.

DONE and RECOMMENDED this 14th day of January, 1992, in Tallahassee, Florida.

WILLIAM F. QUATTLEBAUM
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, FL 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of January, 1992.

ENDNOTE

1/ The wells were subsequently permitted by the Petitioner.

APPENDIX CASE NO. 91-5885

The following constitute rulings on proposed findings of facts submitted by the parties.

Petitioner

The Petitioner's proposed findings of fact were set forth in two sections, "A. Whether Respondent Violated Rules 40E-3.041(1) and 40E-3.461(4), Florida Administrative Code," and "B. What Penalty Should Be Imposed". The proposed findings are accepted as modified and incorporated in the Recommended Order, except as follows:

- A. Whether Respondent Violated Rules 40E-3.041(1) and 40E- 3.461(4), Florida Administrative Code
- 16. Rejected, cumulative.
 - B. What Penalty Should Be Imposed
 - 1-3, 5-9, 11-13. Rejected, conclusions of law.
 - 4, 10, 16-18. Rejected, unnecessary.
 - 15. Rejected, cumulative.

Respondent

The Respondent's proposed findings of fact are accepted as modified and incorporated in the Recommended Order except as follows:

- 7. Rejected, immaterial.
- 8-10. Rejected, irrelevant.

COPIES FURNISHED:

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West Palm Beach, FL 33416-4680

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South Florida Water Mgt. Dist.
Post Office Box 24680
West Palm Beach, FL 33416-4680

Tim Youngquist
15465 Pine Ridge Road
Fort Myers, FL 33908

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

ALL PARTIES HAVE THE RIGHT TO SUBMIT WRITTEN EXCEPTIONS TO THIS RECOMMENDED ORDER. ALL AGENCIES ALLOW EACH PARTY AT LEAST TEN DAYS IN WHICH TO SUBMIT WRITTEN EXCEPTIONS. SOME AGENCIES ALLOW A LARGER PERIOD WITHIN WHICH TO SUBMIT WRITTEN EXCEPTIONS. YOU SHOULD CONTACT THE AGENCY THAT WILL ISSUE THE FINAL ORDER IN THIS CASE CONCERNING AGENCY RULES ON THE DEADLINE FOR FILING EXCEPTIONS TO THIS RECOMMENDED ORDER. ANY EXCEPTIONS TO THIS RECOMMENDED ORDER SHOULD BE FILED WITH THE AGENCY THAT WILL ISSUE THE FINAL ORDER IN THIS CASE.

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AGENCY FINAL ORDER

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STATE OF FLORIDA
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT,

Petitioner,

vs.

DOAH CASE NO. 91-5885

TIM YOUNGQUIST,

Respondent.

_____ /

FINAL ORDER

This case came before the Governing Board of the South Florida Water Management District on February 13, 1992, pursuant to the Recommended Order entered by Hearing Officer William F. Quattlebaum. The Governing Board having considered the Recommended Order and being otherwise fully advised on the premises, enters the following findings of fact, conclusions of law and order:

1. This proceeding concerns an administrative action brought by the District against Tim Youngquist for drilling six public water supply wells without obtaining well construction permits from the District and for failure to notify the District twenty-four hours in advance of grouting the six public water supply wells. The Administrative Complaint and Order is attached and incorporated herein by reference as Exhibit A.

2. Tim Youngquist petitioned for a formal administrative hearing. His petition was accepted by the Governing Board and forwarded to the Division of Administrative Hearings for further proceedings.

3. A hearing was held on December 3, 1991, in Ft. Myers, Florida. On January 14, 1992, the Hearing Officer entered a Recommended Order (Exhibit B) upholding the imposition of an administrative fine of \$4500.00 against Tim Youngquist.

4. The Governing Board authorized the Executive Director, or his designee, to execute this Order.

CONCLUSIONS OF LAW

5. Rule 40E-1.564, F.A.C., provides that the parties may file exceptions to the recommended Order within 15 days of the date of the Recommended Order. No exceptions to the Recommended Order were filed by the parties by January 29, 1992. Therefore, Tim Youngquist has waived his right to take any exception to the Hearing Officer's Recommended Order. State of Florida Department of Environmental Regulation v. Ralph Rittman, et al., 11 FALR 1699 (1989).

6. The Governing Board is required to enter a Final Order in this case within 45 days after entry of the Recommended Order, pursuant to Section 120.60, Fla. Stat. Therefore, this Final Order is timely.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

A. The Hearing Officer's Recommended Order is adopted in toto as to the Findings of Fact and Conclusions of Law.

B. The Board imposes an administrative fine of \$4500.00 against Tim Youngquist.

C. Tim Youngquist is ordered to pay the \$4500.00 administrative fine within 30 days of the entry of this Final Order by cashier's check or money order, mailed to the attention of Rachel Coley, South Florida Water Management District, P.O. Box 24680, West Palm Beach, Florida 33416-4680.

SOUTH FLORIDA WATER MANAGEMENT
DISTRICT,

By _____
Tim MacVicar
Deputy Executive Director

ATTEST

By _____
Assistant Secretary