

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SUWANNEE RIVER WATER MANAGEMENT,)	
)	
Petitioner,)	
)	
vs.)	CASE NO. 92-3654
)	
WILLIAM BEDARD,)	
)	
Respondent.)	
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RECOMMENDED ORDER

The final hearing in the above-styled matter was heard pursuant to notice by Stephen F. Dean, assigned Hearing Officer of the Division of Administrative Hearings, on September 24, 1992, in Lake City, Florida.

APPEARANCES

For Petitioner: Janice F. Bessinger, Esquire
BRANNON, BROWN, HALEY, ROBINSON &
COLE, P.A.
10 North Columbia Street
Lake City, Florida 32056-1029

For Respondent: William Bedard, pro se
Post Office Box 545
Branford, Florida 32208

ISSUE

Whether the Respondent committed the acts alleged in the Administrative Complaint.

PRELIMINARY STATEMENT

William Bedard (Bedard) is a water well contractor with license #2830. Sometime prior to July 11, 1991, Bedard constructed a four inch well for Wendell Forsythe in Columbia County, Florida. However, Bedard did not apply for a permit for said well until July 11, 1991. The Suwannee River Water Management District (District) requested additional information regarding the location of the well. Said information was not provided to the District until May 22, 1992. On June 16, 1992, a permit was issued for said well approximately eleven months after the well had been drilled. On or about May 28, 1992, a Notice of Violation was sent to Bedard for failure to obtain a well permit prior to construction of a private supply well. Said Notice of Violation ordered Bedard to pay the District its reasonable administrative costs and attorney's fees in the amount of \$202.56, submit to the District a penalty of \$275.00 and have 2.5 points assessed against Bedard's license. On or about June 4, 1992, the District received a request for a hearing from Bedard regarding this matter.

After the hearing, the Respondent submitted a letter which was read and considered. The Petitioner submitted proposed findings which were substantially adopted.

FINDINGS OF FACT

1. District is a governmental agency of the State of Florida created and empowered by Chapter 373, Florida Statutes, to regulate permitting and construction of water wells, and to regulate well contractors.

2. William Bedard, Post Office Box 545, Branford, Florida 32208, is a water well contractor with license #2830.

3. Bedard constructed a water well for Wendell Forsythe in Three Rivers Estate, Township 6 South, Range 15 East, Section 25 in Columbia County, Florida. This is within the District.

4. Said well was a four inch water well.

5. Said well was constructed sometime prior to July 11, 1991.

6. Bedard applied for a permit from the District on July 11, 1991.

7. District requested additional information from Bedard by telephone on July 11, 1991, and followed up with a letter which was mailed March 23, 1992.

8. The additional information in the form of a survey was provided to the District on May 22, 1992.

9. The District issued a permit for said water well on June 16, 1992, approximately 11 months after the well was drilled.

10. Bedard had one previous violation for drilling a water well without a permit. He applied for and received an after-the-fact permit in that instance.

11. In mitigation, Bedard offered the following facts:

(a) Wendell Forsythe (Forsythe) lives in South Florida and only comes to his property in Columbia County on weekends.

(b) Forsythe met with Bedard on the site to discuss the proposed well.

(c) Forsythe said he wanted to go forward, and Bedard advised Forsythe that he would begin on Monday after he obtained a permit from the District Office which was closed.

(d) Forsythe wanted to see the work done, and told Bedard that he would get another contractor if Bedard would not start the well right away.

(e) Bedard constructed the well and applied for a permit on the first working day after construction of said well.

(f) Before Bedard constructed the well, Forsythe told him that the site was not within the flood plain and a survey would not be required.

(g) The site was within the flood plain, and a topographic survey was required. The District asked Bedard for a survey.

(h) Bedard passed the request for the survey on to Forsythe, however, Forsythe did not provide this information until May of 1992 when he became aware that he might be liable.

12. The District's attorney's fees and administrative costs were \$970.00.

CONCLUSIONS OF LAW

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

14. Suwannee River Water Management District, Route 3, Box 64, Live Oak, Florida 32060, is an agency of the State with authority to regulate water well construction in the district and well drilling contractors operating within the district pursuant to Chapters 373, Florida Statutes. Section 373.129, supra, provides as follows:

373.129 Maintenance of actions. - The department, the governing board of any water management district, or any local board is authorized to commence and maintain proper and necessary actions and proceedings in any court of competent jurisdiction for any of the following purposes:

- (1) To enforce rules, regulations, and orders adopted or issued pursuant to this law.
- (2) To enjoin or abate violations of the provisions of this law or rules, regulations, and orders adopted pursuant hereto.
- (3) To protect and preserve the water resources of the state.
- (4) To defend all actions and proceedings involving its powers and duties pertaining to the water resources of the state.
- (5)(a) To recover a civil penalty for each offense in an amount not to exceed \$10,000 per offense. Each date during which such violation occurs constitutes a separate offense.
- (b) A civil penalty recovered pursuant to paragraph (a) shall be deposited in the Water Management Lands Trust Fund established under s. 373.59 and utilized exclusively by the water management district that deposits the money into the fund. Any such civil penalty recovered after the expiration of such fund shall be deposited in the Pollution Recovery Fund created by s. 403.165 and utilized exclusively within the water management district that deposits the money into the fund.

(6) To recover investigative costs, court costs, and reasonable attorney's fees.
(Emphasis supplied.)

15. Section 373.313, supra, provides:

373.313 Prior permission and notification.

(1) Taking into consideration other applicable state laws, in any geographical area where the department determines such permission to be reasonably necessary to protect the ground water resources, prior permission shall be obtained from the department for each of the following:

- (a) The construction of any water well;
- (b) The repair of any water well; or
- (c) The abandonment of any water well.

However, in any area where undue hardship might arise by reason of such requirement, prior permission will not be required.

(2) The department shall be notified of any of the following whenever prior permission is not required:

- (a) The construction of any water well;
- (b) The repair of any water well; or
- (c) The abandonment of any water well.

(Emphasis supplied.)

16. Rule 40B-3.041, Florida Administrative Code, provides in part:

Unless expressly exempted by law or district rule, a permit must be obtained prior to the construction . . . of any well within the District.

17. The statutes and the rules make it a violation for anyone to construct a well without prior permitting. The District holds the well contractor responsible for obtaining the permit.

18. Section 373.333, supra, provides in part as follows:

373.333 Disciplinary guidelines; adoption and enforcement; license suspension or revocation.

(1) The department shall adopt by rule disciplinary guidelines applicable to each specific ground for disciplinary action which may be imposed by the water management districts, providing each water management district and representatives of the water well contracting industry with meaningful opportunity to participate in the development of the disciplinary guideline rules as they are drafted. The disciplinary guidelines shall be adopted by each water management district. The guideline rules shall be consistently applied by the water management districts and shall:

(a) Specify a meaningful range of designated penalties based upon the severity and repetition of specific offenses.

(b) Distinguish minor violations from those which endanger public health, safety, and welfare or contaminate the water resources.

(c) Inform the public of likely penalties which may be imposed for proscribed conduct. A specific finding of mitigating or aggravating circumstances shall allow a water management district to impose a penalty other than that provided in the guidelines. Disciplinary action may be taken by any water management district, regardless of where the contractor's license was issued.

* * *

(4) The following acts constitute grounds for which disciplinary actions . . .

* * *

(d) Violating or refusing to comply with any provision of this part or a rule adopted by the department or water management district, or any order of the water management district previously entered in a disciplinary hearing.

(e) Constructing, repairing, or abandoning a water well without first obtaining all applicable permits.

* * *

(5) When the water management district finds a person guilty of any of the grounds set forth in subsection (4), it may enter an order imposing one or more of the following disciplinary actions:

* * *

(c) Imposition of an administrative fine not to exceed \$1,000 for each count or separate offense. (Emphasis supplied.)

19. Section 373.333, Florida Statutes, quoted above, provides that the Department of Environmental Regulation shall adopt by rule disciplinary guidelines applicable to each specific ground for disciplinary action which may be imposed by the water management districts. Further, the statute provides that these guidelines shall be adopted by each water management district. Rule 40B-3.037, Florida Administrative Code, adopted the Water Well contractor Disciplinary Guidelines, and Paragraph (6) of Rule 17-531.450, Florida Administrative Code, provides that a copy of the guidelines may be obtained from the Department of Environmental Regulation.

20. Bedard's construction of a water well prior to applying for a permit is a violation of Section 373.333, supra. The Water Management District has suggested that the Respondent be fined \$275 for violation of the statute, be assessed its costs of investigation, attorney's fees, and court costs, and be assessed 2.5 points against his license. Presumably, the guidelines provide for civil fines and the assessment of points; however, as noted above, the statutes provide only that the District may commence proceedings in any court of competent jurisdiction to recover investigative costs, court costs and attorney's fees. The Division of Administrative Hearings, while having been

granted statutory authority to award attorney's fees and costs in some instances, is not a court. The District's authority is limited to filing in courts, and does not have authority to request attorney's fees and costs in this forum.

RECOMMENDATION

Upon the foregoing findings of fact and conclusions of law, it is RECOMMENDED that:

- (1) A penalty be assessed against the Respondent in the amount of \$275, and
- (2) Two and one half points be assessed against the Respondent's license, and
- (3) No attorneys fees or costs be assessed through this administrative hearing process.

DONE and RECOMMENDED this 3rd day of November, 1992, at Tallahassee, Florida.

STEPHEN F. DEAN, Hearing Officer
Division of Administrative Hearings
The De Soto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of November, 1992.

COPIES FURNISHED:

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William Bedard
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Branford, FL 32208

Jerry Scarborough, Executive Director
Suwannee River Water Management District
Route 3 Box 64
Live Oak, FL 32060

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 10 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.