

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ST. JOHNS RIVER WATER )  
MANAGEMENT DISTRICT, )  
 )  
Petitioner, )  
 )  
vs. ) CASE NO. 93-5440  
 )  
C. L. HICKS, )  
 )  
Respondent. )  
\_\_\_\_\_)

RECOMMENDED ORDER

Pursuant to notice, final hearing in the above-styled case was held in Orlando, Florida, on December 17, 1993, before Robert E. Meale, Hearing Officer of the Division of Administrative Hearings.

APPEARANCES

The parties were represented at the hearing as follows:

For Petitioner: Attorney Clare E. Gray  
St. Johns River Water Management District  
Post Office Box 1429  
Palatka, Florida 32178-1429

For Respondent: C. L. Hicks, pro se  
1935 CR 470 West  
Okahumpka, Florida 34762

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent is guilty of failing to install casing in seven wells to or below the static water level of the producing aquifer and, if so, what penalty should be imposed.

PRELIMINARY STATEMENT

By Notice of Violation dated August 13, 1994, Petitioner alleged that on September 17, 1991, Respondent was issued warning notices for three wells that he constructed in Lake County. The notices alleged that Respondent failed to install well casing to or below the static water level of the producing aquifer.

The Notice of Violation alleges that on April 1, 1993, Respondent was issued warning notices for four additional wells that he constructed in Lake County for the same deficiency. Three of these wells were for Ridge Properties at lots 51, 63, and 64. The fourth well was for Shamrock Construction. At the commencement of the hearing, Petitioner was granted leave to amend the Notice of Violation to change the reference to lot 64 to lot 62.

The Notice of Violation alleges that Respondent has now received four warning notices in excess of the recommended cumulative total and has not made any attempt to fix the construction problems.

In the Conclusions of Law, the Notice of Violation alleges that Respondent constructed four wells in violation of Rule 40C- 3.512(7)(a). The Notice of Violation asserts that Chapter 17- 531 allows Petitioner to enter an order imposing discipline recommended by Petitioner's Water Well Contractor Disciplinary Guidelines and Procedures Manual.

The Notice of Violation demands that Respondent correct each of the violations concerning the four wells within 30 days of the final order and file completion reports within an additional 15 days. The Notice of Violation demands an administrative fine of \$2000 and costs of \$186.40.

By letter dated September 10, 1993, Respondent requested a formal hearing.

The final hearing commenced on December 17, 1993. Petitioner completed its case by the end of the day. By Supplemental Notice of Hearing entered December 20, 1993, the remainder of the hearing was set for February 17, 1994, after Respondent rejected earlier dates due to conflicts. However, on the evening of February 15, 1993, Respondent informed the hearing officer by telephone that he did not wish to present additional evidence. After the hearing officer explained that he had not yet presented any witnesses or exhibits, and had a right to do so, Respondent restated that he did not wish to present any evidence on his behalf.

At the hearing, Petitioner called four witnesses and offered into evidence nine exhibits. Respondent called no witnesses and offered into evidence no exhibits. All exhibits were admitted.

The transcript was filed March 21, 1994. Petitioner filed a proposed recommended order. The proposed findings are adopted or adopted in substance, except for proposed findings 9 and 12-15, which are rejected as subordinate.

#### FINDINGS OF FACT

1. Respondent is a well-drilling contractor, holding WWC License #7015.
2. Ridge Properties, Inc., which is the developer of Sundance Ridge, hired Respondent to construct private water wells on lots as they were developed in preparation for the construction of residences.
3. On December 5, 1991, Respondent prepared a completion report for a well that he constructed at lot 64 of Sundance Ridge. The report indicates that Respondent installed well casing to a depth of 63 feet, which was two feet into "hard brown rock," as described on the report. The report discloses that the static water table was encountered 78 feet below the top of the well casing. As indicated in the report, Respondent sent no cuttings to Petitioner for this well-drilling job.
4. On April 24, 1992, Respondent prepared a completion report for a well that he constructed at lot 51 of Sundance Ridge. The report indicates that Respondent installed well casing to a depth of 67 feet, which was 12 feet into "bedrock," as described on the report. The report discloses that the static

water level was encountered 76 feet below the top of the well casing. As indicated in the report, Respondent sent no cuttings to Petitioner for this well-drilling job.

5. There is no completion report for the well that Respondent constructed at lot 62 of Sundance Ridge. However, based on information from the well tag, Respondent constructed this well on December 5, 1991, and its casing depth does not reach the static water level.

6. There is no completion report for another well on Marshal Road that Respondent constructed for Shamrock Construction. However, Petitioner admits that Respondent has corrected any problems that may have existed regarding this well.

7. The three wells that Respondent drilled for Ridge Properties, Inc. produced water with a substantial amount of particulate matter. The presence of particulate matter, which was largely sand, was attributable to the fact that Respondent failed to drive the well casings below the static water level in these three wells.

8. Contrary to his claims, Respondent did not encounter chert in drilling these three wells or driving the casings for them. Chert is a dense consolidated mass of rock, often silica. It is more typically found in Alachua and Marion Counties than it is in the Sorrento area of Lake County, which is the location of these three wells.

9. Respondent never repaired the three wells in question. Repair would have required driving the casing deeper until it extends below the static water table.

10. Respondent never obtained a variance for driving the casings to a depth shallower than the depth of the static water level.

11. On April 1, 1993, Petitioner issued warning notices for the three Sundance Ridge wells, plus the Shamrock Construction well. When Respondent failed to make the necessary repairs within the time allowed by the warning notices, Petitioner issued a Notice of Violation on August 13, 1993. The Notice of Violation alleges that the casings do not extend to or below the static water level in the four wells and that Respondent has received four warning notices over the "recommended repetitive total."

12. The Notice of Violation seeks an administrative penalty of \$2000, costs and attorneys' fees of \$186.40, and correction of the violations within 30 days of entry of a final order and filing of completion reports within 15 additional days.

13. Paragraph 15 of the Notice of Violation explains:

This Notice of Violation (NOV) will become a Final Order of [Petitioner] and may be used in further disciplinary actions against your water well contractor's license if you do not comply with it, or do not timely request a hearing pursuant to Section 373.333, F.S., and Rule 17-531.400, F.A.C., as explained in this Notice of Rights.

14. The Notice of Violation warns:

[Petitioner] is not barred by the issuance of this NOV from maintaining an independent action in circuit court with respect to the alleged violations.

15. Ten days after issuing the Notice of Violation, Petitioner issued a Technical Staff Report, which states that Respondent's water well contractor's license had been placed on six months' probation in 1991 and again in 1992. After Respondent completed repairs, the probationary status was removed in October 1992.

16. The Technical Staff Report states that, since October 1992, Petitioner has cited Respondent for six additional violations of Chapter 40C-3. Two violations were reportedly "resolved." According to the report, Respondent "has attempted to correct the violations at the other four sites, but has been unable to drive the well casing any deeper..

17. The Technical Staff Report acknowledges that a Notice of Violation was mailed Respondent on August 13, 1993, due to noncompliance with the four warning notices. The Technical Staff Report mentions that Respondent has been issued 23 citations for violations of Chapter 40C-3, including 13 for not extending the casing to or below the static water level.

18. The Technical Staff Report recommends that Respondent be placed on six months' suspension, during which time Respondent shall correct the deficient wells. If repaired by the end of the six months' suspension, then Respondent's license would be placed on six months' probation. During the term of probation, Respondent would be required to notify Petitioner's staff 48 hours in advance of beginning construction of any well so that staff could be present to ensure that the wells were lawfully constructed. The Technical Staff Report, which was mailed to Respondent on or about August 23, 1993, gives him an opportunity to request a formal hearing.

19. On September 10, 1993, Respondent demanded a hearing by letter, which Petitioner received September 13. The demand references a "request for a formal hearing on notice of violation and order for corrective action," which is a reference to the Notice of Violation. The demand states that Respondent received notice of Petitioner's action by certified letter on "August 13, 1993." The demand adds:

[Petitioner's] determination in the above matter can destroy [Respondent's] ability to earn a living in his profession, cause [Respondent] to lose his current employment, cause to continue extensive physical and emotional stress exerted on the above [Respondent] by [Petitioner], and cause the unjust ruination of his reputation in the community that he resides.

20. Treating the demand for hearing as applicable to the Notice of Violation, but not the Technical Staff Report, Petitioner referred only the Notice of Violation to the Division of Administrative Hearings and immediately proceeded to suspend Respondent's license, based on his failure to file a separate demand for a hearing on the Technical Staff Report.

CONCLUSIONS OF LAW

21. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties. Section 120.57(1), Florida Statutes. (All references to Sections are to Florida Statutes. All references to Rules are to the Florida Administrative Code.)

22. Petitioner is authorized to adopt rules providing for the disciplining of water well contractors. Section 373.333(1 ).

23. Section 373.333 provides in relevant part:

(4) The following acts constitute grounds for which disciplinary actions specified in subsection (5) may be taken by a water management authority:

\* \* \*

(d) Violating or refusing to comply with any provision of this part or a rule adopted by the department or water management district . . . .

\* \* \*

(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:

\* \* \*

(b) Revocation or suspension of a license.

(c) Imposition of an administrative fine not to exceed \$1000 for each count or separate offense.

(d) Placement of the water well contractor on probation for a period of time subject to such conditions as the water management district may specify.

\* \* \*

24. Rule 40C-3.512(4) provides:

For wells completed into consolidated aquifers, a continuous casing shall extend from the upper terminus and be seated into:

(a) the producing aquifer, or

(b) into a consolidated stratum within a continuous noncaving confining unit immediately overlying the aquifer from which the water is to be withdrawn.

25. Rule 17-532.500(2)(b) provides:

For wells obtaining water from consolidated earth materials, a continuous casing shall extend from the upper terminus of the well to the top of the uppermost consolidated unit. . . . The bottom end of the well casing

shall extend to or below the water level of the aquifer intended to supply water to the well. . . .

26. Rule 40C-3.512(7) states:

For wells constructed in those areas of the District in which chert occurs, the well casing shall extend from its upper terminus to:

(a) a point below the dry season water level of the producing aquifer, or

(b) a point firmly seated in chert overlying a stratum of limestone if the underlying limestone does not produce a quantity of particulate materials after development that will clog a filter or decrease the ability of the well to produce water.

27. Rule 40C-3.455 authorizes the granting of variances following receipt of a written request and implies that the variance will be in writing or, in emergencies, documented following completion of the well. Also, Rule 40C-3.455(3) requires that the variance "not adversely affect the water resource."

28. Petitioner must prove the material allegations against Respondent by clear and convincing evidence. *Ferris v. Turlington*, 510 So. 2d 292 (Fla. 1987).

29. Petitioner has proved that Respondent violated the well-construction rules by not extending the casing down to the static water level. The evidence failed to establish the existence of chert at these well locations. Even if the evidence had been otherwise, Respondent would not have satisfied the special chert rule because of the presence of considerable levels of particulate matter.

30. Under Rule 40C-1.609(1)(a), Petitioner "shall suspend a license or permit, when it determines that the licensee or his agent has . . . [v]iolated chapter 373, F.S., and the rules promulgated thereunder, . . ."

31. Under Rule 40C-1.609(2)(b) and (c), Petitioner "shall revoke a license or permit when it determines that the licensee or his agent has:

(b) committed three or more repetitive violations as set forth in subsection (1) above,

(c) allowed a violation to continue after [Petitioner's] direction to remedy it

32. Rule 40C-1.609(4) states:

The provisions of subsections (1)-(3) shall not preclude [Petitioner] from exercising other enforcement remedies pursuant to Chapters 120 and 373, F.S., when it determines such action is necessary and appropriate either in addition to or instead of suspension or revocation described above. A determination under this subsection shall be based on the

extent of damage or potential for damage due to the violation, the need for immediate action and the kind of sanction which would most likely deter future violations of a similar nature.

33. Petitioner suspended Respondent when he failed to file a separate demand for hearing after receiving the Technical Staff Report. This action was erroneous and unlawful. The demand for a hearing pertained to the Notice of Violation and Technical Staff Report. If there was any confusion on the part of Respondent, it was understandable as Petitioner unnecessarily instituted separate disciplinary proceedings against Respondent based at least in part on the same four wells. It was clear that Respondent sought a hearing on whether the four wells that were the subject of the Notice of Violation and Technical Staff Report were lawfully constructed. By taking immediate action on the Technical Staff Report, Petitioner effectively denied Respondent his right to a pre-enforcement hearing.

34. Even if Respondent's demand for hearing were limited to the Notice of Violation, as Petitioner evidently believed, paragraph 15 of the Notice of Violation assures Respondent, by negative implication, that if he timely requests a hearing, Petitioner will not use the issue of the four wells cited in the Notice of Violation as grounds for additional discipline against Respondent.

35. In any event, Section 120.57(1)(b)3 provides: "The referring agency shall take no further action with respect to the formal proceeding, except as a party litigant, as long as the [Division of Administrative Hearings] has jurisdiction over the formal proceeding."

36. Prior to the final hearing, recommended order, and final order in the present case, Petitioner imposed a penalty based in large part on the alleged violations that were the subject of the present case. There was no allegation that Respondent presented such a danger to the public that his license had to be suspended or revoked without a hearing, in which case decisional law gives the licensee a right to an immediate hearing. No law authorized Petitioner to initiate a second disciplinary proceeding covering the same factual issues as the first proceeding and then, in the absence of a second demand for a hearing, to take enforcement action. At minimum, Petitioner should recognize the risk of imposing discipline for a violation that it later is unable to prove.

37. Petitioner has already imposed a penalty for the acts and omissions that are the basis of the subject disciplinary proceeding. No further penalty is warranted.

#### RECOMMENDATION

Based on the foregoing, it is hereby

RECOMMENDED that the St. Johns River Water Management District enter a final order suspending Respondent's license commencing from the effective date of the suspension imposed pursuant to the Technical Staff Report and ending six months thereafter, without regard to whether Respondent has repaired the three Sundance Ridge wells or ever repairs them.

ENTERED on April 20, 1994, in Tallahassee, Florida.

---

ROBERT E. MEALE  
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  
on April 20, 1994.

COPIES FURNISHED:

Henry Dean  
Executive Director  
St. Johns River Water  
Management District  
Post Office Box 1429  
Palatka, FL 32178-1429

Attorney Clare E. Gray  
St. Johns River Water  
Management District  
P.O. Box 1429  
Palatka, FL 32178-1429

C. L. Hicks  
1935 CR 470 W.  
Okahumpka, FL 34762

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.



=====

AGENCY FINAL ORDER

=====

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT

ST. JOHNS RIVER WATER  
MANAGEMENT DISTRICT,

Petitioner,

File of Record  
93-1396  
DOAH CASE NO. 93-5440

v.

C. L. HICKS,

Respondent.

\_\_\_\_\_ /

FINAL ORDER

Pursuant to notice, the Division of Administrative Hearings (DOAH), by its duly designated hearing officer, Robert E. Meale, held a formal administrative hearing in the above-styled case on December 17, 1993, in Orlando, Florida. On April 22, 1994, Mr. Meale submitted to the St. Johns River Water Management District ("District"), and all other parties to this proceeding, a Recommended Order, a copy of which is attached hereto as Exhibit "A". The St. Johns River Water Management District timely filed exceptions to the Recommended Order. This matter then came before the Governing Board on May 11, 1994, for final agency action.

APPEARANCES

For Petitioner, St. Johns River Water Management District: Clare E. Gray, Esquire  
Fla. Bar no. 435325  
P.O. Box 1429  
Palatka, FL 32178-1429

For Respondent, C. L. Hicks: C. L. Hicks, pro se  
P.O. Box 105  
Okahumpka, Florida 34762

STATEMENT OF THE ISSUES

The issue in this proceeding is whether Respondent failed to install casing in three wells to or below the static water level of the producing aquifer such that the wells met the water well construction standards contained in chapter 40C-3, Florida Administrative Code (F.A.C.), and, if so, what penalty should be imposed.

On April 1, 1993, Respondent was issued warning notices for four wells where the casing was not installed either to or below the static water level of the producing aquifer, in contravention of paragraph 40C-3.512(7)(a), F.A.C. On August 13, 1993, the District sent a Notice of Violation to Respondent for failure to construct wells in accordance with chapter 40C-3, F.A.C. On August

26, 1993, Respondent requested a formal hearing on the Notice of Violation. On September 13, 1993, the request was dismissed for failure to satisfy paragraph 40C-1.521(2)(d), F.A.C. On September 13, 1993, Respondent filed another request for Formal Hearing which was referred to the Division of Administrative Hearings on September 17, 1993. Prior to the hearing, the parties stipulated that one of the four wells had been corrected.

#### RULINGS ON EXCEPTIONS TO CONCLUSIONS OF LAW

##### I. District's Exception No. 1

In its Exception No. 1, the District takes exception generally to the Hearing Officer's characterization of the Notice of Violation as a disciplinary proceeding. The Hearing Officer misinterpreted the law regulating water well contractors and, therefore, for the reasons stated below, the exception is granted.

As stated in the District's exception, the purpose of the Notice of Violation is to enforce the water well construction standards in order to protect the resource. The water well construction standards of chapter 40C-3, F.A.C., are "reasonably necessary to insure the protection and management of water resources and the health, safety, and general welfare of the people of the District." See section 40C-3.011, F.A.C. Violations of chapter 40C-3, F.A.C., potentially cause harm to the water resource and, therefore, the well construction standards therein may be enforced through the Notice of Violation. The Notice of Violation advises the well contractor of the water well construction standards of chapter 40C-3, F.A.C., that have been violated and explain what the contractor must do to remedy the violation. If the contractor disagrees, then he may request an administrative hearing on the Notice of Violation which would be conducted pursuant to section 120.57, F.S.

The Notice of Violation seeks to impose corrective action and an administrative fine as a penalty for violations of chapter 40C-3, F.A.C. Penalties for violations of chapter 40C-3, F.A.C., are provided in section 373.129 and 373.336, F.S., and chapter 17-531, F.A.C. See section 40C-3.039, F.A.C. The Notice of Violation does not seek disciplinary action on the water well contractors license.

The Notice of Violation in and of itself is not a disciplinary action. Disciplinary action arises when the water well contractor has committed violations of chapter 17-531, Water Well Contractors, sufficient to warrant taking disciplinary action which relates to the contractor's license. "Disciplinary" action must comply with the Florida Department of Environmental Regulation, Water Well Contractor Disciplinary Guidelines and Procedures Manual, October 1992 (hereinafter, Disciplinary Guidelines). The Notice of Violation is the first formal enforcement action taken pursuant to the Disciplinary Guidelines.

The Hearing Officer improperly categorized the Notice of Violation as a disciplinary action. Therefore, the conclusion of law is rejected as a matter of law. See Subparagraph 120.57(1)(b)10., F.S.; Harloff v. City of Sarasota, 575 So. 2d 1324, 1325 (Fla. 2d DCA 1991), rev. denied, 583 So. 2d 1035 (Fla. 1991); Alles v. Dept. of Professional Regulation, 423 So. 2d 624 (Fla. 5th DCA 1982) (Agency may reject a hearing officer's conclusion of law without limitation).

## II. District's Exception No. 2

In its Exception No. 2, the District takes exception to the Hearing Officer's Conclusion of Law No. 22 that the District is authorized to adopt rules for disciplining water well contractors, citing section 373.333(1), F.S. For the reasons stated below, the exception is granted.

Both subsection 373.333(1), F.S., and section 373.337, F.S., provide in substance that the Department of Environmental Protection (DEP), not the water management districts, shall adopt by rule disciplinary guidelines applicable to each specific ground for disciplinary action which may be imposed by the water management districts. These same statutory provisions provide that the water management district must adopt these same disciplinary guidelines. Chapter 373, F.S., does not give the district independent rulemaking authority to establish in the first instance standards for water well contractor regulation and discipline. Therefore, the District cannot adopt rules to discipline water well contractors which differ from the rules of the department. Consequently, the Hearing Officer's Conclusion of Law No. 22 is rejected as a matter of law. See Subsection 120.57(1)(b)10., F.S.; *Harloff v. City of Sarasota*, 575 So. 2d 1324, 1325 (Fla. 2d DCA 1991), rev. denied, 583 So. 2d 1035 (Fla. 1991); *Alles v. Dept. of Professional Regulation*, 423 So. 2d 624 (Fla. 5th DCA 1982) (Agency may reject a hearing officer's conclusion of law).

## III. District's Exception No. 3

The District takes exception to the Hearing Officer's Conclusions of Law 30-32 that Rule 40C-1.609, F.A.C., applies to this proceeding. For the reasons stated below, this exception is granted.

The Hearing Officer's citation to section 40C-1.609 is misplaced. Pursuant to section 40C-3.037, the water well licensing program must be administered and enforced by the District pursuant to the authority delegated to it by DEP. The rules governing the suspension of a water well contractor's license are contained in chapter 17-531, F.A.C., and the Disciplinary Guidelines incorporated therein. Violations of contractor licensing requirements are specifically listed in sections 17-531.380, 17-531.450, and 17-531.500, F.A.C. See section 40C-3.038, F.A.C. The Hearing Officer cites sections of 40C-1.609 but does not draw a specific conclusion of law from its application. Therefore, the Conclusions of Law 30-32 are rejected as irrelevant to this proceeding. *Harloff v. City of Sarasota*, 575 So. 2d 1324, 1325 (Fla. 2d DCA 1991), rev. denied, 583 So. 2d 1035 (Fla. 1991); *Alles v. Dept. of Professional Regulation*, 423 So. 2d 624 (Fla. 5th DCA 1982) (Agency may reject a hearing officer's conclusion of law).

## IV. District's Exception No. 4

The District takes exception to the Hearing Officer's Conclusions of Law 33 that the request for hearing entitled Respondent to a hearing on both the Notice of Violation and the license suspension and that the District's action on the license deprived Respondent of his due process rights. For the reasons stated below, the exception is granted.

The record is clear that Respondent was provided notice of the proposed action to suspend his license and he failed to file a petition requesting a hearing on the suspension. See Findings of Fact 18 and 19. Therefore, Respondent was not denied a right to a hearing on the suspension and the District did not deny Respondent of his due process rights. The Hearing

Officer's Conclusion of Law No. 33 is inconsistent with Findings of Fact and, therefore, is rejected as a matter of law. See Subsection 120.57(1)(b)10., F.S.; Harloff v. City of Sarasota, 575 So. 2d 1324, 1325 (Fla. 2d DCA 1991), rev. denied, 583 So. 2d 1035 (Fla. 1991); Alles v. Dept. of Professional Regulation, 423 So. 2d 624 (Fla. 5th DCA 1982) (Agency may reject a hearing officer's conclusion of law)

#### V. District's Exception No. 5

The District takes exception to the Hearing Officer's Conclusions of Law 35 that section 120.57(1)(b)3., F.S., prohibits the District from taking action on the license suspension because the Notice of Violation was referred to the Division of Administrative Hearings (DOAH) for a formal hearing. For the reasons stated in the ruling on District's Exception No. 4, this exception is granted. Section 120.57, F.S., is irrelevant as to the license suspension because the DOAH did not have jurisdiction over the license suspension. Since no petition was filed on the notice of intended agency action to suspend Respondent's license, no action or petition was referred to the DOAH for a hearing. Therefore, the District did not violate section 120.57(1)(b)3., F.S., by taking action on the license suspension.

However, the Hearing Officer concluded that Respondent's license should be suspended. See Findings of Fact 16-18. The Hearing Officer recommended that the suspension be imposed pursuant to the Technical Staff Report and ending six months thereafter, without regard to whether Respondent has repaired the three Sundance Ridge wells or ever repairs them. See Recommended Order, page 13. Therefore, Respondent has been provided a hearing on the license suspension and unresolved issues with regard to the license suspension are resolved by the Recommended Order.

#### VI. District's Exception No. 6

In its Exception No. 6, the District takes exception to the Hearing Officer's Conclusion of Law No. 36 that the District initiated a second disciplinary actions against Respondent. In this case, Respondent filed a request for formal hearing on the Notice of Violation which was the subject of the administrative hearing. Therefore, no penalty was imposed by the District on the Notice of Violation due to the pendency of this administrative hearing. See 120.57(1)(b)3., F.S. The Notice of Violation is an enforcement action and for the reasons stated in the Ruling on District Exception No. 1, this exception is granted.

Furthermore, the Hearing Officer's Conclusion of Law No. 37 is contrary to the Disciplinary Guidelines. Pursuant to the Disciplinary Guidelines, penalties for violations of the water well construction standards may range from \$100 to \$1000 for each separate violation. The Disciplinary Guidelines are adopted by rule in chapters 17-531 and 40C-3, F.A.C. See sections 17- 531.450 and 40C-3.037, F.A.C. Therefore, a penalty of at least \$100 must be imposed in order to be conformance with the rules of the district. The Citations Dictionary of the Disciplinary Guidelines standardizes the penalties using the category of the violation and severity determinations. The Citations Dictionary provides consistency among the water management districts for certain violations of water well construction standards.

The Governing Board may increase the recommended penalty in the Recommended Order by a complete review of the record and by stating with particularity its reasons there for by citing to the record in justifying the action. See

120.57(1)(b)10., F.A.C. In Criminal Justice Standards and Training Commissions v. Bradley, 596 So. 2d 661 (Fla. 1992), the Court held that the agency, Governing Board, has the discretion to increase the recommended penalty provided the guidelines for imposing penalties are established, the Governing Board complies with section 120.57(1)(b)10., and the increased penalty falls within the guidelines established by its statute and rules.

In the instant case, the Citations Dictionary recommends a penalty of \$500 for violation of paragraph 40C-3.512(7)(a), F.A.C. (Failure to install casing to or below the static water level of the producing zone), which the Hearing Officer found did, in fact, occur (Findings of Fact 7-10, 29). Therefore, the penalty of \$2000 for the four violations (\$500 per violation), as proposed in the Notice of Violation, is established by guidelines in the Citations Dictionary of the Disciplinary Guidelines, is supported by the record in the Hearing Officer's Findings of Fact, and is within the range of \$100 to \$1000 as provided by rule in the Disciplinary Guidelines.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. The Hearing Officer's recommended findings of fact, conclusions of law, and recommendation contained in Exhibit A are adopted and incorporated herein, except as modified in this Final Order; AND

2. Respondent shall pay a penalty of \$2,000.00 for the four violations of section 40C-3.512(7)(a), F.A.C., AND

3. Respondent shall pay costs and attorney's fees in the amount of \$186.40, AND

4. Within 30 days of entry of this Final Order, Respondent shall correct, or hire a water well contractor to correct, the wells on Lots 51, 62, and 64 at Sundance Ridge, Lake County, Florida, in a manner consistent with the minimum well construction standards of chapter 40C-3, F.A.C., AND

5. Within 15 days of correction of the wells, Respondent shall submit completion reports for each well.

DONE AND ORDERED this 11th day of May 1994, in Palatka, Florida.

ST. JOHNS RIVER WATER  
MANAGEMENT DISTRICT

BY: \_\_\_\_\_  
PATRICIA HARDEN, CHAIR

RENDERED this 12th day of May, 1994.

BY: \_\_\_\_\_  
PATRICIA C. SCHULTZ  
DISTRICT CLERK

NOTICE OF RIGHTS

1. Any substantially affected person who claims that final action of the District constitutes an unconstitutional taking of property without just compensation may seek review of the action in circuit court pursuant to Section 373.617, Florida Statutes, and the Florida Rules of Civil Procedures, by filing an action within 90 days of the rendering of the final District action.

2. Pursuant to Section 120.68, Florida Statutes, a party who is adversely affected by final District action may seek review of the action in the district court of appeal by filing a notice of appeal pursuant to Fla. R. App. P. 9.110 within 30 days of the rendering of the final District action.

3. A party to the proceeding who claims that a District order is inconsistent with the provisions and purposes of Chapter 373, Florida Statutes, may seek review of the order pursuant to Section 373.114, Florida Statutes, by the Land and Water Adjudicatory Commission (Commission) by filing a request for review with the Commission and serving a copy on the Department of Environmental Regulation and any person named in the order within 20 days of the rendering of the District order. However, if the order to be reviewed is determined by the Commission within 60 days after receipt of request for review to be of statewide or regional significance, the Commission may accept a request for review within 30 days of the rendering of the order.

4. A District action or order is considered "rendered" after it is signed by the Chairman of the Governing Board on behalf of the District and is filed by the District Clerk.

5. Failure to observe the relevant time frames for filing petition for judicial review as described in paragraphs #1 and #2 or for Commission review as described in paragraph #3 will result in waiver of that right to review.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing NOTICE OF RIGHTS has been furnished by United States Mail to:

C. L. HICKS  
PO BOX 105  
OKAHUMPKA FL 34762

at 4:00 PM this 12th day of MAY, 1994.

CERTIFIED MAIL # P 400 907 325

---

PATRICIA C. SCHULTZ  
DISTRICT CLERK  
St. Johns River Water  
Management District  
Post Office Box 1429  
Palatka, Florida 32178-1429  
(904)329-4233

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing FINAL ORDER was filed with the DISTRICT CLERK of the St. Johns River Water Management District, Post Office Box 1429, Palatka, Florida 32178-1429 this 12th day of May 1994; and one true and correct copy was forwarded by United States Mail this same day to the following parties of record:

ROBERT MEALE, HEARING OFFICER  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, FL 32399-1550;

Clare E. Gray, Esquire  
Attorney for St. Johns River  
Water Management District  
P.O. Box 1429  
Palatka, FL 32178-1429

C. L. Hicks, pro se  
P.O. Box 105  
Okahumpka, FL 34762

---

NANCY BARNARD  
P.O. BOX 1429  
PALATKA, FL 32178-1429