

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SOUTHWEST FLORIDA WATER	)	
MANAGEMENT DISTRICT,	)	
	)	
Petitioner,	)	
	)	
vs.	)	CASE NO. 96-4161
	)	
EDWARD TANNER,	)	
	)	
Respondent.	)	
_____	)	

**RECOMMENDED ORDER**

A hearing was held in this case in Bartow, Florida on December 19, 1996, before Arnold H. Pollock, an Administrative Law Judge with the Division of Administrative Hearings.

**APPEARANCES**

For Petitioner:	Margaret M. Lytle, Esquire
	Southwest Florida Water
	Management District
	2379 Broad Street
	Brooksville, Florida 34609-6899
For Respondent:	Edward Tanner, <u>pro se</u>
	1137 Saint Anne Shrine Road
	Lake Wales, Florida 33853

**STATEMENT OF THE ISSUE**

The issue for consideration in this case is whether the Department should impose administrative penalties in the form of fines, costs and points assessment because of the matters alleged in the Administrative Complaint and Order entered herein.

### **PRELIMINARY STATEMENT**

By Administrative Complaint and Order dated August 9, 1996, the Southwest Florida Water Management District, (SWFWMD), seeks to assess administrative penalties against the Respondent herein, for his alleged failure to comply with the conditions for abandonment outlined in the permit issued to him on January 16, 1996, and his failure to file a completion report for the well within the time required by District rules 40D-3.531 and 40D-3.411(1)(a), Florida Administrative Code. Respondent thereafter requested formal hearing and this hearing ensued.

At the hearing, Petitioner presented the testimony of Brian Starford, a water use requirements manager for the District; Jerry W. McCrimmon, a property owner who has used Respondent's services in the past; Michael L. Phillippi, a hydrologist with the District; Bradley J. Wheless, a well construction permitting coordinator for the District; and Jim B. Calandra, a field services coordinator for the District. Petitioner also introduced Petitioner's Exhibits One through Sixteen. Respondent testified in his own behalf, presented the testimony of his son, Eric Parrish; William E. Lee and Mark Alford. The undersigned also officially recognized Chapter 373, Florida Statutes, and Chapters 40D-3, 62-524, 62-531, and 62-532, Florida Administrative Code.

A transcript of the proceedings was furnished. Subsequent to the receipt thereof, only counsel for Petitioner submitted

Proposed Findings of Fact which have been considered in the preparation of this Recommended Order.

### **FINDINGS OF FACT**

1. At All times pertinent to the issued herein, the Petitioner, SWFWMD, was the governmental agency responsible for the licensing of well contractors and the permitting of well drilling and abandonment within its jurisdictional area. Respondent, Edward Tanner, was a licensed water well contractor, holding license Number 2276 issued on July 21, 1982.

2. On January 16, 1996, SWFWMD issued Well Construction permit 575267.01 to Respondent for the abandonment of a four-inch diameter water well on property owned by Mr. McCrimmon located at Five Tera Lane in Winter Haven. The well, a domestic water well, had failed and Respondent applied for a permit to construct a new well at the site and abandon the failed well.

3. Stipulation Number Four of the permit issued to the Respondent provided that the well must be examined for debris or obstructions from the land surface to the original depth of construction, and further required that any debris or obstruction discovered be removed from the well prior to the commencement of abandonment. In addition, the stipulation called for the well to be plugged from bottom to top by an approved method of grouting. According to the permit, if any other method of abandonment was to be used, it must be approved in advance by specifically denoted District personnel.

4. Though Respondent did not utilize the approved method of abandonment in this project, he did not apply for a variance from the District. Had he done so, he would have been required to show some emergency or hardship which would have prevented him from properly filling the abandoned well with cement from top to bottom and justified an alternative method of abandonment.

5. In this case, Respondent plugged the well in issue, which was 210 feet in depth, from the land surface down to fifty five feet, utilizing six bags of portland cement. Deviation from the 210 foot plug required a variance to be granted by the District. Respondent did not seek this variance. Well abandonment is a regulated practice because, inter alia, improper abandonment may result in contamination of the aquifer. The well in question here is located in an area susceptible to contamination by ethylene dibromide, (EDB), recognized as a human carcinogen, which is known to be present in the area.

7. In addition to failing to properly abandon the well, Respondent also failed to file a well completion report within thirty days of completion of his abandonment effort. The required report was submitted on June 10, 1996, nearly four months after it was due.

8. Respondent relates that in January 1996, after he had worked on a well "commonly known" to be the subject of litigation, he was asked to try to fix the well in issue. When he saw the problem, he contends he repeatedly advised the

authorities that the well was leaking sand and could not be cleaned out to the bottom as the District required. Therefore, to preserve the integrity of the well, he plugged it at a point below the break in the well lining. At that time, he told Mr. McCrimmon what the situation was and advised him the well needed to be abandoned, but he, Tanner, did not do that type of work.

9. Respondent contends, supported by his son, that on January 16, 1996, while he was at Mr. McCrimmon's property, he was told by Mr. Wheelus and Mr. Lee, both District officials, that Mr. Calandra, also a District official had said he, Tanner, had to pull a well abandonment permit or Calandra would not sign off on the new well.

10. At that point, Respondent claims, he went to the District's Bartow office to argue with Mr. Calandra, and asked Mr. Calandra to show him the law which supported Calandra's position. Calandra persisted in his position and even, according to Respondent, bet with another District employees that Respondent had to do what he was told. This other employee does not recall any such bet.

11. Therefore, under protest and only so he could get paid for the work he had done on the new well, Respondent agreed to pull the abandonment permit. At that time, he claims, he asked the District personnel in charge how many bags of concrete would be required to abandon the well and was told, "six".

12. When the time came to do the actual work, Respondent

called for the required observer to be present from the District office, but because no one was available at the time, he was granted permission to do it without observation. He did the job as he felt it had to be done, and thirty days to the day after that, was served with the notice of violation.

13. Respondent contends either that the witnesses for the District are lying in their denials of the coercive statements he alleges, or the situation is a conspiracy to deprive him of his civil rights. He does not believe a well contractor should be required to stay current regarding all the District rules regarding well construction and abandonment because the rules change so often.

14. Respondent admits, however, that the rules in existence at the time in question required the filling of a well all the way down and that he did not do that nor did he seek a variance., He knew he was required to comply with the conditions of a permit. He also admits that a completion report was due within thirty days of work completion. In that regard, however, he contends that when the issue went into litigation, he felt the district would advise him of what he had to do. In this he was mistaken, but he was not misled into believing so by anything done or said by District personnel.

15. Taken together, the evidence does not demonstrate that anyone from the District staff coerced Respondent into abandoning the well. He was issued a permit to drill the new well for Mr.

McCrimmon with no conditions thereon. By the same token, the abandonment permit he obtained did require the complete clearing and total plugging of the abandoned well, and this was not done.

16. The costs incurred by the District in the investigation and enforcement of this alleged violation totaled in excess of \$500.00.

#### **CONCLUSIONS OF LAW**

17. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in this case. Section 120.57(1), Florida Statutes.

18. The Southwest Florida Water Management District has been granted the authority to regulate water well contractor and water well construction under a delegation agreement with the Department of Environmental Protection authorized by Chapter 373, part III, Florida Statutes, and Rules 40D-3.524, .531 and .532, Florida Administrative Code.

19. Consistent with the terms of Rule 40D-3.301(2), Florida Administrative Code, the SWFWMD may impose conditions on permits issued by it under such reasonable conditions as are necessary to protect the water resources in issue and insure the permitted activity will conform to District objectives. In that regard, Rule 40D-3.531 requires all abandoned and incomplete wells be plugged with grout from top to bottom. In addition Rule 40D-3.411(1)(a) requires that a completed well report be submitted to

the District within thirty days of completion of the work authorized by the permit.

20. In the instant case, the evidence clearly indicates, and Respondent admits, that he did not properly abandon the well in issue. Instead of filling it from top to bottom as required, he plugged it down to a depth of only fifty five feet, claiming he was prevented from plugging further by a sand leakage. This partial closing might have been acceptable if Respondent had sought and secured a variance from the requirements, but by his own admission, he failed even to seek such a variance. His claim that he sought and received advice as to how much cement would be required to fill down to fifty five feet does not constitute the necessary variance. Further, Respondent also admits he did not file the necessary report in a timely manner.

21. Respondent's claim that he was coerced into taking on the job of closing the well in issue is not supported by the evidence of record. Not only does no one, save his son, confirm his claim, the evidence also shows that a permit was issued to Respondent to drill the new well, and that well was approved upon completion notwithstanding the fact that the abandonment of the other well was not accomplished properly.

#### **RECOMMENDATION**

Based on the foregoing Findings of Fact and Conclusions of Law, it is recommended that the Southwest Florida Water Management District enter a final order finding Respondent,



Edward Tanner, guilty of improperly abandoning the well in issue and failing to file the required report in a timely manner, and assessing enforcement costs in the amount of \$500.00 in addition to an administrative fine of \$250.00.

**DONE and ENTERED** this 29th day of January, 1997, in Tallahassee, Florida.

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**ARNOLD H. POLLOCK**

Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 29th day of January, 1997.

**COPIES FURNISHED:**

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**NOTICE OF RIGHT TO SUBMIT EXCEPTIONS**

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.