

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SOUTHWEST FLORIDA WATER)
MANAGEMENT DISTRICT,)
)
Petitioner,)
)
vs.) Case No. 99-1609
)
TONY HOLT,)
)
Respondent.)
_____)

RECOMMENDED ORDER

This cause came on for formal hearing on July 9, 1999, in Brooksville, Florida, before the Division of Administrative Hearings, by its designated Administrative Law Judge, Suzanne F. Hood.

APPEARANCES

For Petitioner: Margaret M. Lytle, Esquire
Southwest Florida Water
Management District
2379 Broad Street
Brooksville, Florida 34609-6899

For Respondent: Tony Holt, pro se
6145 Durant Road
Durant, Florida 33530

STATEMENT OF THE ISSUES

The issues are whether Respondent violated Rule 62-532.500(2)(d)1., Florida Administrative Code, by failing to seat a well casing in a rock layer or other such consolidated formation, and if so, what penalty should be imposed.

PRELIMINARY STATEMENT

On December 9, 1998, Petitioner Southwest Water Management District (Petitioner) issued an Administrative Complaint and Order alleging that Respondent Tony Holt (Respondent) violated Rule 62-532.500(2)(d)1., Florida Administrative Code. That rule requires that a well casing be seated or sealed with neat cement grout into the rock layer or consolidated formation. Respondent requested a formal hearing by letter dated February 17, 1999.

On or about April 1, 1999, Petitioner amended its Administrative Complaint and Order to allege that Respondent violated Rule 62-532.500(2)(d)1., Florida Administrative Code, by failing to properly seat a well casing into the rock layer or consolidated formation. Respondent did not object to the amendment.

Petitioner referred the case to the Division of Administrative Hearings on April 5, 1999. The undersigned subsequently issued a Notice of Hearing, scheduling this matter for hearing on July 19, 1999.

At the hearing, Petitioner presented the testimony of four witnesses, two of whom were qualified as experts. Petitioner's Exhibits P1-P6 were officially recognized. Petitioner's Exhibits P7-P12, P14, and P17 were accepted into evidence.

Respondent testified on his own behalf and presented the testimony of two witnesses. Respondent did not offer any exhibits for admission into the record.

The court reporter filed the Transcript of the proceedings on July 28, 1999. Petitioner filed its Proposed Recommended Order on August 9, 1999. Respondent did not file a proposed recommended order.

FINDINGS OF FACT

1. Respondent is charged with the responsibility to conserve, protect, manage, and control water resources within its boundaries. Respondent's duties include the regulation of water wells and water well contractors.

2. Respondent is a water well contractor. As such, he holds Water Well Contractor License No. 2215.

3. On September 25, 1997, Petitioner issued Respondent Well Construction Permit No. 597679.01. The permit gave Petitioner permission to construct a water well, four-inches in diameter, on property owned by Rex Hobbs in Pasco County.

4. Respondent subsequently constructed the water well on the property owned by Mr. Hobbs, using the cable tool construction method. Respondent completed construction of the well on or about October 20, 1997.

5. After the well was constructed, Mr. Hobbs complained to Respondent on several occasions that the well was producing sand, rock, and other debris. Respondent made no attempt to repair the well.

6. In May or June of 1998, Mr. Hobbs filed a complaint with Petitioner regarding the construction of the well on his

property. Petitioner's subsequent field investigation did not reveal a significant amount of sediment in the well water.

7. Mr. Hobbs filed a second complaint with Petitioner in the summer of 1998, insisting that the water from his well contained an excess amount of sediment. Petitioner's second field investigation revealed an abnormal amount of sediment in the well water.

8. On July 9, 1998, Petitioner issued a Notice of Violation, advising Respondent that he had violated Rule 40D-3.037(1), Florida Administrative Code, by failing to seat the casing of the Hobbs well into a consolidated formation.

9. Water from the Hobbs well contains sediments including sand, rock, and other debris. These sediments interfere with the operation of plumbing, appliances, and irrigation devices, which utilize water supplied by the well. The quality of the well water produced by the Hobbs water well is unacceptable.

10. The total depth of the Hobbs well is 131 feet below land surface. The well is cased to 42 feet below land surface. The water pump is set at 84 or 86 feet below land surface. The static water level was 58.2 feet below the land surface.

11. The geologic formation at the end of the casing of the well contains gray clay, yellow clay, limerock, and sand. The end of the casing is not seated in a layer of rock or other consolidated formation. There is no persuasive testimony to the contrary.

12. The area in which the well is located is geologically unstable. Wells in that area generally require 84 feet of casing. Respondent admitted at the hearing that the well is producing sand and needs more "pipe."

13. Failure to seat a well casing into a consolidated formation is a major violation under the Florida Department of Environmental Protection's Water Well Contractor Disciplinary Guidelines and Procedures Manual.

14. Respondent has entered into three previous Consent Orders with Petitioner to resolve permitting and construction violations.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the parties and subject matter of this proceeding. Sections 120.569 and 120.57(1), Florida Statutes.

16. Petitioner has the burden of proving by a preponderance of the evidence that Respondent violated Rule 62-532.500(2)(d)1., Florida Administrative Code, by failing to seat a water well casing in a rock layer or other such consolidated formation. Ferris v. Turlington, 510 So. 2d 292 (Fla. 1987).

17. Section 373.302, Florida Statutes, states as follows in pertinent part:

The Legislature recognizes that the practice of constructing, repairing, and abandoning water wells, if conducted by incompetent contractors, is potentially threatening to the health of the public and to the environment.

18. Section 373.303, Florida Statutes, defines a water well contractor as a "person who is responsible for the construction, repair, or abandonment of a water well and who is licensed under this part to engage in the business of construction, repair, or abandonment of water wells."

19. Section 373.308, Florida Statutes, charges the Department of Environmental Protection as follows in pertinent part:

(1) The department shall authorize the governing board of a water management district to implement a program for the issuance of permits for the location, construction, repair, and abandonment of water wells.

(2) The department shall authorize the governing board of a water management district to exercise any power authorized to be exercised by the department under ss. 373.309, 373.313, 373.316, 373.319, 373.323, 373.329, and 373.333 and shall encourage the district to fully exercise such powers as soon as practicable.

20. Section 373.309, Florida Statutes, states as follows in pertinent part:

(1) The department shall adopt, and may from time to time amend, rules governing the location, construction, repair, and abandonment of water wells and shall be responsible for the administration of this part. With respect thereto, the department shall:

(a) Enforce the provision of this part and any rules adopted pursuant thereto.

(b) Delegate, by interagency agreement adopted pursuant to s. 373.046, to water management districts . . . any of its authority under this part in the

administration of the rules adopted hereunder

21. Section 373.323(1), Florida Statutes, states that "[e]very person who wishes to engage in business as a water well contractor shall obtain from the water management district a license to conduct such business."

22. Section 373.333, Florida Statutes, gives the Department of Environmental Protection and water management districts the following responsibilities regarding disciplinary guidelines, in pertinent part:

- (1) The department shall adopt by rule disciplinary guidelines which may be imposed by water management districts. . . . 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 violation from those which endanger public health, safety, and welfare or contaminate the water resources.

* * *

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. . . .

- (2) Whenever the water management district has reasonable grounds for believing that there has been a violation of this part or any rule or regulation adopted pursuant hereto, it shall give written notice to the person alleged to be in violation. . . .

* * *

- (4) The following acts constitute grounds for which disciplinary actions specified in

subsection (5) may be taken by a water management district:

* * *

(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.

* * *

(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 \$1,000 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.
- (e) Restriction of the licensee's authorized scope of practice.

23. Petitioner has adopted Rule 40D-3.037, Florida Administrative Code, which states as follows in pertinent part:

- (1) The regulations promulgated by the Department [of Environmental Protection] governing the construction of water wells as set forth in Chapter 62-532, [Florida Administrative Code,] . . . are hereby incorporated by reference and made a part of this rule and shall apply to all water wells constructed, repaired, modified or abandoned in the District.
- (2) The department's Water Well Contractor Disciplinary Guidelines and Procedures Manual and the department's Florida Unified Citations Dictionary for Water Well

Construction are hereby incorporated by reference and made a part of this rule.

24. Rule 62-532.500(2)(d)1., Florida Administrative Code, sets forth the following applicable water well construction standard:

(d)1. Casing for wells which obtain their water from a rock layer or other such consolidated formation shall, as a minimum, be seated or sealed with neat cement grout into that rock layer or other consolidated formation.

25. The greater weight of the evidence indicates that Respondent did not construct the Hobbs water well as required by Rule 62-532.500(2)(d)1., Florida Administrative Code. The water quality of the Hobbs well is unacceptable due to Respondent's failure to seat the well casing into the rock layer or other consolidated formation.

26. Pursuant to the Water Well Contractor Disciplinary Guidelines and Procedures Manual, October 1992, and the Florida Unified Citations Dictionary for Water Well construction, Revised September 1992, the appropriate penalty for violating Rule 62-532.500(2)(d)1., Florida Administrative Code, is an administrative fine in the amount of \$500 and the assessment of five points against Respondent's well water contractor's license.

27. There is no evidence that Respondent's penalty in this case should be accelerated based on the issuance of the prior three Consent Orders.

RECOMMENDATION

Based on the foregoing findings of fact and conclusions of law, it is

RECOMMENDED:

That Petitioner enter a final order requiring Respondent to pay an administrative fine in the amount of \$500 and assessing five points against his water well contractor's license.

DONE AND ENTERED this 18th day of August, 1999, in Tallahassee, Leon County, Florida.

SUZANNE F. HOOD
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of August, 1999.

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.