

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT,

Petitioner,

vs.

Case No. 20-5557

WILLIAM D. GOING,

Respondent.

AMENDED FINAL ORDER

Administrative Law Judge John D. C. Newton, II, of the Division of Administrative Hearings (Division) heard this case by Zoom conference on January 27, 2021.

APPEARANCES

For Petitioner: Megan Albrecht, Esquire
Elizabeth M. Fernandez, Esquire
Southwest Florida Water Management District
7601 US Highway 301 North
Tampa, Florida 33637

For Respondent: Charles Dale Going, Qualified Representative
Going Irrigation of Central Florida, Inc.
3110 Grand Avenue
Pinellas Park, Florida 33782

STATEMENT OF THE ISSUES

A. Did Respondent, William D. Going, willfully and intentionally violate Florida Statutes and Southwest Florida Water Management District (District) rules regulating well construction?

B. If he did, what corrective action is appropriate?

PRELIMINARY STATEMENT

The District issued an Administrative Complaint and proposed order charging Mr. Going with willfully and intentionally constructing four wells without a required permit, failing to timely submit Well Completion Reports, and misrepresenting the wells' construction date on Well Completion Reports. The District proposed imposing \$3,000 in fines and assessing nine points against his license. Mr. Going disputed the proposed fines and points assessment and requested an administrative hearing. The District referred the matter to the Division to conduct the requested hearing. The parties moved for a summary hearing in accordance with section 120.574(1)(b), Florida Statutes (2020).¹

The undersigned conducted the summary hearing on January 27, 2021. The District presented testimony from Teri Rhodes and Samuel Rogers. Mr. Going testified on his own behalf. Joint Exhibits 1 through 11 were received into evidence. The Transcript was filed February 11, 2021. The parties timely filed proposed final orders. They have been considered in preparation of this Final Order.

FINDINGS OF FACT²

1. William Going is a licensed water well contractor. He has held License Number 1564 since 2007. Mr. Going is a managing member of Going Irrigation, Inc., and conducts business under that name.

2. Mr. Going constructed four sand point irrigation wells at a residential property in St. Petersburg, Florida. He did not have and had not applied for a Well Construction Permit (WCP).

¹ All citations to Florida Statutes are to the 2020 codification unless noted otherwise.

² The findings are based upon the evidence admitted at the hearing and the stipulations of the parties.

3. Mr. Going did not call or otherwise contact the District to request a WCP.

4. The District operates an online permitting system called the Water Management Information System (WMIS). The District will issue a WCP based upon a telephone call, an application on its website, a faxed application, a mailed application, or a hand-delivered application. The District routinely issues permits within two hours of receiving an application, often within ten minutes to half an hour. The District's application system operates from 7:00 a.m. to 10:00 p.m. It is infrequently offline for a few hours.

5. While quick, the process reviews significant information. It verifies that the well location is sufficiently distant from septic systems, verifies construction methods and materials, and verifies, if the well is for drinking water, that the well is not too close to a contamination site.

6. Mr. Going is a registered and experienced user of WMIS.

7. The District learned of the unpermitted wells on April 28, 2020, when it received an anonymous complaint.

8. On May 5, 2020, approximately ten days after he constructed the wells, Mr. Going submitted WCP Application 889173 for construction of the four already completed sand point irrigation wells. He did not disclose that they were already completed. He falsely represented them as proposed.

9. The District approved the application on May 6, 2020, and issued WCP 889173 to Mr. Going.

10. On June 11, 2020, Mr. Going submitted four Well Completion Reports for the wells, falsely representing that each was completed on May 7, 2020. This was more than 30 days after Mr. Going completed the wells.

11. Mr. Going claimed at the hearing that he tried to apply for a WCP for four or five days before constructing the wells but was locked out of the WMIS. Mr. Going said that his son usually obtained permits online for the company. He also claimed that he tried to apply online on April 24 and 25, 2019. His claims are not persuasive.

12. There is no question that Mr. Going knew the requirements for obtaining a permit and reporting completion. In 2009, in Order No. SWF 09-017, the District imposed a \$500.00 fine and assessed five points against his license for an almost identical offense.

13. In that case, Mr. Going also constructed a well without a permit from the District or applying for a permit. In that case, like this one, he sought to excuse failure to apply for a permit by claiming difficulties with the website. In that case he blamed his wife's unfamiliarity with computers, rather than his own, for failure to apply. In that case, like this one, he applied for and obtained a permit after constructing the well.

14. Mr. Going knowingly and willfully constructed four unpermitted wells, filed a WCP application more than thirty days after he completed the wells, and misrepresented the dates of completion in the WCP completion reports that he filed with the District.

15. Mr. Going tries to characterize his after-the-fact misrepresentations as mitigation. But they were not. Mitigation would have been contacting the District to advise it of the wells' unpermitted construction and the asserted justification for it. Furthermore, his misrepresentations deprived the District of the chance to prevent construction of the wells using improper materials or near a septic tank or contaminated location.

CONCLUSIONS OF LAW

16. Sections 120.569 and 120.57(1), Florida Statutes, grant the Division jurisdiction over the parties and the subject matter of this case.³ The District must prove its charges by clear and convincing evidence. *Nair v. Dep't of Bus. & Prof'l Reg., Bd. of Medicine*, 654 So. 2d 205, (Fla. 1st DCA 1995).

17. The Complaint charges Mr. Going with willful violation of Florida Administrative Code Rule 40D-3.041 by submitting WCP application 889173

³ The Division and the District have contracted for the Division to provide administrative law judges to conduct hearings for the District.

for the four wells after they had been constructed. Rule 40D-3.041(1) requires that a permit be obtained from the District before construction, repair, modification, or abandonment of any water well. The District proved by clear and convincing evidence that Mr. Going willfully and intentionally violated this rule.

18. The Complaint also charges that Mr. Going violated rule 40D-3.411 by intentionally misrepresenting the date that he completed the wells in the four well completion reports he filed for them. Rule 40D-3.411(1)(a) requires a contractor to submit a form entitled "State of Florida Well Completion Report," Form No. LEG-R.005.02, incorporated by reference in the rule, within 30 days of completing construction of the well. Item four of that form requires providing the completion date for the well. The District proved by clear and convincing evidence that Mr. Going willfully and intentionally violated this rule.

19. The District adopted both rules under the authority of, and in order to implement, chapter 373, Part III, Florida Statutes.

20. The District assesses fines and points for violations of the rules in accordance with the Florida Department of Environmental Protection's "Water Well Construction Disciplinary Guidelines and Citations Dictionary, June 2014" (Guidelines).⁴ Section II(f) of the Guidelines identifies willful and repeated violation of chapter 373 as an unlawful act. Section III(A)(d) makes violating a District rule grounds for disciplinary action. Section III(A)(e) makes constructing a well without obtaining a permit grounds for disciplinary action. Mr. Going's actions are grounds for disciplinary action under both provisions.

21. Section III(C) of the Guidelines provides for assessment of fines and license points for violations of the rules. Table I of the section establishes a matrix range of fines and license points for violations ranging from minor to

⁴ Florida Administrative Code Rule 62-531.450(1) adopts the Guidelines by reference, although the pre-hearing stipulation states that Rule 62-531.300 adopts them.

major. The District's proposed fine of \$1,000 and assessment of four points for untimely filing of the reports falls within the range of sanctions for even a minor second offense. The District's proposed fine of \$2,000 and imposition of five license points for failure to obtain a permit also falls within the range of sanctions for even a minor second offense.

22. Section III(C)(iii) identifies mitigating and aggravating circumstances. The evidence does not prove any mitigating circumstances. The evidence proves the aggravating circumstances of a willful violation and a repetitive violation.

23. The proposed fines of \$3,000 and assessment of nine points are well within the permissible range of sanctions and are appropriate in this case.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Respondent, Southwest Florida Water Management District, impose a fine of \$3,000 on Petitioner, William D. Going, and assess nine points against his license.

DONE AND ORDERED this 26th day of April, 2021, in Tallahassee, Leon County, Florida.



JOHN D. C. NEWTON, II
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of April, 2021.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Amended Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the Amended Final Order, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the district court of appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.