

IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA

IN THE MATTER OF ALLEGED VIOLATIONS)
OF THE CONTROLLING STATUTES OR)
REGULATIONS REGARDING THE DRILLING)
OF WATER WELLS BY WAYNE PARSONS,)
NEVADA LICENSED WELL DRILLER NO.)
1753.)

RULING

#5485

GENERAL

I.

By Notice dated April 1, 2005, the State Engineer provided Wayne Parsons with notification of the State Engineer's concern about the failure to follow the statutes and regulations applicable to the drilling of water wells in the State of Nevada, in regards to a well-drilling inspection at 51 Mason Pass Road, Lyon County, Nevada.¹ The State Engineer notified the driller that a public administrative hearing was being scheduled to receive testimony and evidence regarding compliance with the controlling statutes and regulations.

II.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held on April 19, 2005, in Carson City, Nevada, before representatives of the Office of the State Engineer.² At the administrative hearing, the driller was present and represented by counsel.³

III.

Records on file in the Office of the State Engineer show that Wayne Parsons is currently a licensed well driller in the State of Nevada under License No. 1753. The alleged violation consists of allowing an unlicensed person to drill a well for Parsons

¹ Exhibit No. 1, public administrative hearing before the State Engineer, April 19, 2005. Hereinafter, the exhibits will be referred to solely by the exhibit number or letter and the transcript will be referred to by page number.

² Transcript, public administrative hearing before the State Engineer, April 19, 2005.

³ Transcript, p. 2.

Drilling, Inc., without the supervision of a Nevada licensed well driller, an alleged violation of NRS § 534.160 and NAC § 534.330. A second violation of NAC § 534.380(8) was also alleged, but was dropped at the hearing.

FINDINGS OF FACT

I.

On March 29, 2005, a random well-drilling inspection was conducted at 51 Mason Pass Road in Lyon County, Nevada. On that date, it was observed that Parsons Drilling, Inc., was drilling a domestic well. The on-site driller was Clyde Douglas Minor, an employee of Parsons Drilling, Inc. Mr. Minor indicated that he had a temporary well-drilling license, License No. 1753-T. It was later discovered that Mr. Minor's temporary license had expired on February 24, 2005, and was no longer valid.⁴

The State Engineer may issue a temporary well-drilling license to an employee of a drilling contractor if the drilling contractor has insufficient personnel to complete existing contracts.⁵ The procedure for obtaining a temporary license is detailed in the Regulations for Water Well and Related Drilling (regulations).⁶ Essentially, a Nevada licensed well driller must sponsor the prospective temporary well-drilling licensee (temporary licensee). The temporary licensee is required to file an application to take the next scheduled well-driller's exam. The sponsor may then submit a letter to the Nevada Division of Water Resources (Division) requesting the temporary license. The letter must contain a statement that the sponsor will take full responsibility for the drilling performed by the temporary licensee and that the temporary licensee will comply with all regulations for drilling wells.⁷ The State Engineer evaluates the qualifications of the prospective temporary licensee and may issue a temporary license, which expires on the date of the next well-drilling examination.⁸ The temporary license authorizes the

⁴ Transcript, pp. 7-9.

⁵ NAC § 534.296(1).

⁶ Regulations for Water Well and Related Drilling, Nevada Division of Water Resources, 1998.

⁷ NAC § 534.296(2).

⁸ NAC § 534.296(3).

holder to conduct well drilling only for the sponsor who requested the license and is not transferable.⁹

On November 19, 2004, the State Engineer issued a temporary well-drilling license to Clyde Douglas Minor under the well driller's license of Wayne Parsons. The license number was 1753-T. This is the same license number as the sponsoring driller, 1753, with a "T" added to the number to denote the temporary nature of the license.¹⁰ The license expiration date was February 24, 2005. The temporary licensee was sent a license, similar in size to a driver's license, with his name, license number and expiration date.¹¹ The temporary licensee is required to have the license in possession and to display the license upon request when drilling.

By letter dated January 18, 2005, a notice was sent to all temporary licensees warning that if they failed to pass the written portion of the well-drilling examination, a new temporary license would not be issued.¹² The letter was described as a policy change that would be implemented from that date forward and would apply to those temporary licensees taking the well-drilling examination on February 24, 2005. It was stated that prior to this policy a temporary licensee may or may not receive a new temporary license after failing the written portion of the exam, at the discretion of the State Engineer.¹³

On February 24, 2005, Clyde Douglas Minor took and failed the written portion of the well-drilling examination. Simultaneously, his temporary drilling license also expired on that date. Mr. Minor stated that he was aware that his temporary drilling license had expired on February 24, 2005, and that he did not receive a new temporary license card from the Division after that date.¹⁴

The State Engineer finds that Clyde Douglas Minor knowingly drilled and performed work in connection with well drilling

⁹ NAC § 534.296(4).

¹⁰ See, Well Driller License Files 1753 and 1753-T, official records in the Office of the State Engineer.

¹¹ Exhibit No. 3.

¹² Exhibit No. 6.

¹³ Transcript, pp. 68-71.

¹⁴ Transcript, p. 111.

without a valid well drilling license on March 29, 2005, at 51 Mason Pass Road.

II.

Nevada water law provides that a person shall not drill a well for water without having first obtained a well-drilling license. If any licensed driller who owns rents, leases or has a contract to purchase a well-drilling rig allows an unlicensed person to drill or perform any work in connection with well drilling, except under the supervision of the licensed well driller, his license must be revoked or not reissued.¹⁵

In this case it is alleged that Wayne Parsons, principle of Parsons Drilling Inc. and sponsor of the temporary license issued to Clyde Douglas Minor, allowed Mr. Minor to drill a well at 51 Mason Pass Road without a valid license.

In defense, there were numerous relevant issues brought forth at the administrative hearing; the sponsoring driller was not aware of the policy change notice of January 18, 2005, the sponsoring driller was not noticed that the temporary licensee failed the written exam, the sponsoring driller believed that a new temporary license was issued, and the Notice of Intent Card (NOI) accepted by the Division for this drilling job had Mr. Minor's name listed as the licensed on-site driller.

The policy change notice was sent to all temporary license holders scheduled to take the next well-driller's examination. The testimony indicated that the notices were not sent to the sponsoring drillers.¹⁶ An examination of the records on file in the Office of the State Engineer show that, Mr. Minor was informed on the day of the examination, that he failed the written portion of the exam and therefore, could not proceed to the next two stages of the examination.¹⁷

¹⁵ NRS § 534.160

¹⁶ Transcript, p. 69.

¹⁷ Well Driller's License File Nos. 1753 and 1753-T, official records in the Office of the State Engineer.

Testimony was offered regarding a telephone conversation between the office of Parson's Drilling, Inc. and the Division regarding the temporary license of Mr. Minor. Parsons Drilling, Inc. believed that the temporary license had been or would be reissued subsequent to this conversation. However, the substance of the conversation could not be verified and it appears that Parsons Drilling, Inc. was confusing the well-drilling application process with the temporary license process.¹⁸ In any case, the NOI card sent to the Division clearly indicated that Mr. Minor would be the licensed on-site driller and this apparently bolstered the belief by Parson's Drilling, Inc. that the temporary license of Mr. Minor was renewed.¹⁹

Before a well can be drilled in the state of Nevada, the regulations require that the driller submit an NOI card. The NOI card must be submitted at least 3 days in advance of the commencement of the drilling activity and must contain the approximate start date, the type of work, the client name, the location, and the names of the drilling company and licensed driller.²⁰ On March 16, 2005, the Office of the State Engineer received an NOI card from Parsons Drilling, Inc. The NOI card indicated that Clyde Douglas Minor, under License No. 1753-T, would be drilling a domestic well at 51 Mason Pass Road.²¹ One purpose of submitting the NOI card is to allow the Division an opportunity to review the information and inform the driller or contractor of any Division concerns in advance of the commencement of drilling. In this case, the fact that the licensed driller on the NOI card had an expired temporary license was missed in the review.

In considering whether to revoke or refuse to re-issue a well driller's license, the State Engineer must not only determine what violations occurred but why those violations occurred and the seriousness associated with each violation.

¹⁸ Transcript, pp. 45-67.

¹⁹ Transcript, p. 112.

²⁰ NAC 534.320.

²¹ Exhibit No. 4.

The alleged violation of NAC § 534.380(8) was dropped during the administrative hearing.²² The only remaining violation is the issue of Wayne Parsons allowing an unlicensed driller to drill or perform work in connection with well drilling. Mr. Parsons indicated that he felt the violation was an honest mistake brought about by miscommunication with our office.²³

The State Engineer finds that Wayne Parsons allowed an unlicensed person to drill or perform work in connection with well drilling in violation of NRS § 534.160 and NAC § 534.330; however, the seriousness of the violation is somewhat mitigated by the aforementioned circumstances.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and subject matter of this action and determination.²⁴

II.

The State Engineer concludes that Clyde Douglas Minor was knowingly drilling or performing work in connection with well drilling with an expired temporary well-drilling license and in violation of the regulations on March 29, 2005; at 51 Mason Pass Road.

III.

Wayne Parsons, as principle for Parsons Drilling, Inc., was responsible to ensure the driller sent to the job site was properly licensed. The evidence showed that the driller sent to the job on 51 Mason Pass Road had an expired temporary license. Therefore, a violation of NRS § 534.160 and NAC § 534.330 occurred. The evidence and testimony revealed that the violation was unintentional and may have occurred due to miscommunication with the Division. Under the laws and regulations governing well drillers, the State Engineer has discretionary authority to determine the seriousness of any violations and to determine an appropriate course of action.

²² Transcript, p. 23.

²³ Transcript, pp. 116-117.

²⁴ NRS chapter 534 and NAC chapter 534.

The State Engineer concludes that, under the specific circumstances of this case, the violations, by Wayne Parsons, of the laws and regulations governing the drilling of wells in the State of Nevada, although serious, do not rise to the level of revocation or refusal to re-issue well driller Wayne Parsons' license.

RULING

The State Engineer hereby rules that the well-drilling license of Wayne Parsons will not be revoked; however, a copy of this ruling and an accounting of the violations by Wayne Parsons will be maintained in his Well Driller's License File No. 1753 and he will not be allowed to sponsor temporary licensed well-drillers for a period of 1 year from the date of this ruling.

Respectfully submitted,



HUGH RICCI, P.E.
State Engineer

HR/TW/jm

Dated this 1st day of
June, 2005.