

**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 JIM BIFFLE,)
NEVADA LICENSED WELL DRILLER)
NO. 772.)

RULING

582 1

GENERAL

I.

By Notice dated January 8, 2008, the State Engineer provided Jim Biffle 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 work performed for Bright Holland Corporation on or about October 21, 2006, through November 1, 2006.¹ 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. In particular, Nevada Administrative Code § 534.500 provides that if a well driller accumulates 100 or more demerit points, the State Engineer may hold a hearing to determine whether or not to suspend the license of the well driller.

II.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held on February 7, 2008, in Carson City, Nevada, before representatives of the Office of the State Engineer and the State Well Driller's Advisory Board.²

III.

Records on file in the Office of the State Engineer show that Jim Biffle is currently a licensed well driller in the state of Nevada under License No. 772. The alleged violations are detailed in the Notice of Alleged Violation³ and involve four wells drilled

¹ Exhibit No. A, public administrative hearing before the State Engineer, February 7, 2008. Hereinafter, the exhibits will be referred to solely by the exhibit number and page number and the transcript will be referred to by page number.

² Transcript, public administrative hearing before the State Engineer, February 7, 2008.

³ Exhibit A, pp. 13-16.

by Welsco Drilling under Jim Biffle's license. The alleged violations consist of failure to submit notice of intent to drill, failure to notify the Nevada Division of Water Resources (Division) or obtain approval from the Division if drilling is suspended or drilling equipment is removed from the site before a well is completed or plugged, failure to secure the well to prevent contamination and/or unauthorized entry upon suspension of drilling, failure to file a well log within 30 days and in excess of 90 days, and failure to provide Global Positioning System (GPS) coordinates on the well log.⁴ Each of the violations could result in demerit points being assessed against the license of the well driller in accordance with Nevada Administrative Code § 534.500.

FINDINGS OF FACT

I.

The issues brought forth at the hearing involve four separate wells and, for clarity, the well sites were numbered sequentially and referred to in the transcripts as Well 1, Well 2, Well 3 and Well 4. These well numbers correspond to the well sites identified in the notice of alleged violations by the following legal descriptions:⁵

Well 1 - NW¼ SW¼ Section 23, T.33N., R.23E., M.D.B.&M.

Well 2 - NW¼ SE¼ Section 35, T.29N., R.19E., M.D.B.&M.

Well 3 – SE¼ NW¼ Section 35, T.29N., R.19E., M.D.B.&M.

Well 4 - NW¼ SE¼ Section 33, T.32N., R.20E., M.D.B.&M.

The first issue involves the late filing of the Well Driller's Report (well log). Each well log that is received by the Division is time and date stamped by the Division. For Well 1, a faxed well log was received on June 13, 2007. The date Well 1 was completed was filled in by the driller and is shown on the well log as November 1, 2006.⁶ For Well 2, Well 3, and Well 4, the respective well logs were received on August 13, 2007.⁷ For Well 2 and Well 3, the wells were completed on October 24, 2006.⁸ For Well 4, the well was completed on October 26, 2006.⁹

⁴ Nevada Administrative Code §§ 534.320, 534.370(5), 534.370(3), 534.340(2)(b)(2) and Nevada Revised Statute § 534.170(2).

⁵ Exhibit A, pp. 13-15.

⁶ Exhibit A, p. 24 and Transcript, p. 14.

⁷ Exhibit A, pp. 28, 32 and 38 and Transcript, p. 14.

⁸ Transcript, p. 15.

⁹ Transcript, p. 16.

Under Nevada Revised Statute § 534.170, the driller is required to submit the associated well log within 30 days after completion of the well. Under Nevada Administrative Code § 534.345, a well log is considered late if it is filed more than 30 days after the completion of the well but less than 90 days after that date. In addition, Nevada Administrative Code § 534.345(4)(b) states that any log received more than 90 days after the completion of the well shall be accepted by the Division, but the late submittal shall be deemed a failure to file the log. The associated demerit points for filing the log more than 90 days late is a maximum of 75 points.¹⁰

A comparison of the completion date and the date of receipt of all four well logs show that the logs were submitted more than 90 days late and, as such, is considered a failure to file the well logs.

In defense, the driller indicated that he recalled submitting the well log per statute “but due to some unexplained reason they were never received by NDWR.”¹¹ The driller also stated, “I contend that I sent the logs, realizing that it’s a contention. I have no way of proving that. I don’t know why I wouldn’t.”¹² However, the driller also admitted to being very busy during this time at a geothermal drilling site where significant problems were encountered and indicated that this may have contributed to his attention being diverted.¹³ It was also noted that for the well logs submitted, each was returned for correction on December 14, 2007, and as of the date of the hearing corrected well logs had not been returned to the Division. Corrected well logs are also required to be submitted within 30 days of return and on the day of the hearing it was estimated that 50 to 52 days had already passed.¹⁴ When asked to explain, the driller responded “You know, that was embarrassing. I didn’t turn them back. That was put in the like a pile you got too I know on your desk, a to-do pile. It’s probably still right there.”¹⁵

The State Engineer finds that the driller submitted well logs more than 90 days after the well logs were due for Well 1, Well 2, Well 3, and Well 4. The State Engineer finds that the maximum demerit points for these violations are 75 points each for a total of 300 demerits. The State Engineer further finds that the well logs were sent for correction

¹⁰ Nevada Administrative Code § 534.500.

¹¹ Exhibit A, p. 11.

¹² Transcript, p. 55.

¹³ Transcript, p. 56.

¹⁴ Transcript, p. 43.

¹⁵ Transcript, p. 60.

and not returned in a timely manner; however, that issue was not noticed and no determination on additional demerits for this violation can be made at this time.

II.

In June of 2006, the well drilling regulations instituted a requirement that GPS be supplied on all well logs submitted to the Division.¹⁶ The maximum number of demerit points for failing to provide that information is 10 demerits per violation.¹⁷ A review of the well logs show that no GPS coordinates were supplied on the logs for Well 1, Well 2, Well 3, and Well 4.¹⁸ The driller indicated that he collected the GPS data and wrote it in his daily logs and apparently forgot to put the information on the well logs.¹⁹ He later indicated once again that he collected the GPS information but he again admitted to not putting it on the well logs.²⁰ In the driller's response to the notice of alleged violations, the driller indicated that he thought GPS coordinates were optional prior to June 2007.²¹

The submitted well logs were returned for correction on December 14, 2007, so that the driller could place the appropriate GPS coordinates on the well logs. As of the date of the hearing, the well logs with the required GPS coordinates have not been resubmitted to the Division.

The State Engineer finds that the driller failed to supply GPS coordinates on the four well logs as required. The State Engineer finds that the maximum demerit points for these violations are 10 points each for a total of 40 demerits.

III.

Nevada Administrative Code § 534.320 provides that a driller shall notify the Division before drilling, reconditioning or plugging a well by submitting a Notice of Intent to drill card. The regulations require that a Notice of Intent card must be submitted at least 3 working days before the well rig is to be set up and the drilling commenced.

¹⁶ Transcript, p. 23 and Nevada Administrative Code § 534.340(2)(b)(2).

¹⁷ Nevada Administrative Code § 534.500.

¹⁸ Exhibit A, pp. 24, 28, 32 and 38.

¹⁹ Transcript, p. 60.

²⁰ Transcript, p. 63.

²¹ Exhibit A, p. 12.

Testimony was provided that there was no evidence of a Notice of Intent card ever being filed for Well 1.²² For Well 1, the driller also admitted that a Notice of Intent card was not submitted as required.²³

The State Engineer finds that the Notice of Intent card was not filed for Well 1. The State Engineer finds that the maximum demerit points for this violation are 25 points.

IV.

In regards to Well 1 only, it is alleged that the driller failed to notify or obtain approval from the Division if drilling is suspended or drilling equipment is removed from the site before a well is completed or plugged.²⁴ The Division inspected Well 1 on February 4, 2008. The condition of the well was described as a six-inch casing, approximately 3 feet above the ground, with a compression style cover sitting on the casing but not properly installed. A camera was placed down the casing and the casing ended at a depth of about 60 feet where it appears that the formation had collapsed. In the annular space, between the casing and the bore hole, there was no evidence of a sanitary surface seal, which is a requirement for all completed wells. Additionally, there was no evidence of any attempt to properly plug and abandon the well. The testimony indicated that there was no evidence that the driller gave notice or received approval from the Division to leave the site prior to completing or plugging the well.²⁵

In his defense, the driller indicated that he knew Well 1 needed to be plugged but thought that it would save the client money to plug the well after he came back to the same property to drill at a nearby location due to the distance required to bring a cement truck from Fernley, about 112 miles away. The driller admitted he realized that it was not the right thing to do, but that was his thinking at that time.²⁶

The relationship between the client and the driller was dissolved after a dispute over the drilling charges for the work already completed. As a result, the driller did not return to the site to do additional drilling as anticipated. Consequently, Well 1, which should have been completed or plugged before the well drilling equipment left the site remains uncompleted and unplugged at this time.²⁷

²² Transcript, p. 26.

²³ Transcript, p. 63.

²⁴ Nevada Administrative Code § 534.370(5).

²⁵ Transcript, pp. 26-28.

²⁶ Transcript, p. 72.

²⁷ Transcript, pp. 65-73.

The State Engineer finds that the driller violated Nevada Administrative Code § 534.370(5) by failing to complete or plug Well 1 and by failing to notify or obtain approval from the Division when drilling was suspended and the drilling equipment was removed from the site. The State Engineer finds that the maximum demerits for this violation are 75 points.

V.

The remaining alleged violations consist of a failure to submit a Notice of Intent card for Well 2, failure to secure Well 1, and a failure to file a well log for Notice of Intent card No. 57225. A review of the evidence and testimony indicates a failure of the driller to correctly fill out the locations of at least one intent card and the driller failed to make clear which intent card went with each well and at least one intent card appears to have expired prior to the commencement of drilling; however, the ambiguities combined with the driller's claim that a card was filed make pursuing this violation useless. The failure to secure Well 1 was not pursued at the hearing, and no well was drilled under Notice of Intent card No. 57225; therefore, no well log is required.

The State Engineer finds that these remaining violations will not be pursued and no related demerit points will be assessed.

CONCLUSIONS

I.

The State Engineer has jurisdiction over the parties and subject matter of this action and determination.²⁸

II.

It has been found that licensed driller Jim Biffle failed to comply with the controlling statutes and regulations regarding well drilling and plugging in the state of Nevada. In accordance with said rules and regulations, each violation carries a maximum number of demerit points that must be assessed against his license. In accordance with the above findings, the maximum assessed demerits total 440 points.

The State Well Driller's Advisory Board, in attendance at the hearing, offered the following recommendation to the State Engineer:

²⁸ NRS chapter 534 and NAC § chapter 534.

Recommendation that Biffle's license be suspended, that Mr. Biffle acquire 40 hours of continuing education and pass all three parts of the well drillers examination before his license will be reinstated. That is our recommendation to the State Engineer's office.

The driller did point out his long record as a licensed contractor for over 40 years in Nevada, California, Oregon and Utah and indicated that he has had no major issues over that time period amongst all of those states. The driller implicitly requested that the State Engineer consider assessing less than the maximum demerit points, in part due to his long record and experience.²⁹

The State Engineer concludes that well driller Jim Biffle has committed numerous violations that could result in a maximum of 440 demerit points being assessed against his drilling license. The State Engineer further concludes that less than the maximum points may be assessed and has determined that 95 demerits are appropriate in consideration of all the facts and evidence; however, the reduction in demerit points is contingent upon the driller resolving all outstanding issues associated with Wells 1 through 4 to the satisfaction of the Office of the State Engineer and prior to his scheduled license renewal on June 30, 2008. Failure to comply with said conditions by June 30, 2008, will result in non-renewal of the driller's license.

RULING

Well Driller License No. 772 held by Jim Biffle is hereby assessed 95 demerit points. In addition, the driller must resolve all outstanding issues associated with Wells 1 through 4 to the satisfaction of the Office of the State Engineer and prior to June 30, 2008.

Respectfully submitted,



TRACY TAYLOR, P.E.
State Engineer

TT/TW/jm

Dated this 11th day of
March, 2008.

²⁹ Transcript, pp. 54 and 55.