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 JOE BOGGIO, JR., NEVADA LICENSED WELL DRILLER NO. 1807.	)	**RULING** **#6321**

GENERAL

I.

Joe Boggio, Jr., is currently a well driller in the state of Nevada holding License No. 1807. Mr. Boggio timely filed for renewal of his driller's license for the period of July 1, 2015 through June 30, 2016. As part of the license renewal process, Nevada Administrative Code (NAC) § 534.2925 allows the State Engineer to consider the actions of a well driller during the five-year period preceding the date on which the renewal application of the well driller is received by the Division.

II.

On July 6, 2015, Mr. Boggio was notified that the State Engineer had concerns regarding the failure of Mr. Boggio to follow the statutes and regulations applicable to the drilling of water wells in the state of Nevada. The alleged violations cited in the State Engineer's July 6th letter occurring within the five-year period preceding the stated renewal period include Mr. Boggio's improperly placing the annular seal less than the required 50 feet in depth, failure to place an annular seal, failure to submit and/or receive approval of notice of intent to drill (multiple), failure to obtain permits or waivers for the drilling of two domestic wells, and failure to timely submit well driller's reports.[1] While each of the violations had the potential to result in demerit points being assessed against his license, not every violation was assessed demerit points, and the current demerits assessed against Mr. Boggio's license at the time the administrative hearing commenced was 395 points.[2]

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[1] The specifics of each alleged violation and resulting demerit points are detailed in exhibits admitted at the administrative hearing. *See* public administrative hearing before the State Engineer, August 4, 2015, Exhibit No. 1, pp. 000-132. Hereinafter, exhibits and transcripts will be referred to by exhibit number or transcript volume and page.

[2] Transcript, p. 64.

III.

Nevada Administrative Code § 534.500 provides that if a well driller accumulates 100 demerit points or more, the State Engineer may hold a hearing to determine whether or not to suspend the license of the well driller indefinitely. In the July 6th letter, the State Engineer notified Mr. Boggio that a public administrative hearing was being scheduled to receive testimony and evidence regarding compliance with the controlling statutes and regulations. In addition, the State Engineer advised Mr. Boggio that if he was found to have an unacceptable history of noncompliance, the Division may deny renewal, refuse renewal for a specified period of time or renew his license with appropriate conditions.

IV.

After all parties of interest were duly noticed by certified mail, an administrative hearing was held on August 4, 2015, in Carson City, Nevada, before representatives of the Office of the State Engineer and the State Well Driller's Advisory Board.[3]

FINDINGS OF FACT

I.

The evidence presented at the administrative hearing concerned violation notices or documented actions of Mr. Boggio that occurred within the five-year period preceding the instant renewal period.[4]

The first issue involved the "Crone" well. Based on an investigation by the Division on May 29, 2015, it was determined that there was no sanitary seal around the well and the soil had sloughed away from the well exposing the casing to at least a depth of 25 feet. A review of records on file in the Office of the State Engineer failed to locate a Well Driller's Report for the original installation of the well; however, the owner of the well had documentation in the form of receipts indicating the work was performed by LBJ Drilling (Joe Boggio, Jr., owner). At some point after May 29, 2015, Mr. Boggio attempted to repair the well seal and a broken pitless adapter. Mr. Boggio failed to file a notice of intent card for the repair work. The failure to file a notice of intent card prevented the State Engineer's office from observing and authorizing the repairs made to the well.[5]

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[3] *See generally*, Transcript and Exhibit No. 2.
[4] Exhibit No. 1.
[5] Exhibit No. 1, pp.78-104 and Transcript, pp. 11-16.

In his defense, Mr. Boggio was unable to explain the absence of a sanitary seal and original well driller's report and admitted that he could not guarantee that the repair of the sanitary seal re-established a 2-inch seal completely around the casing to a depth of 50 feet, as required by regulation.[6]

The State Engineer finds that the driller failed to submit a well driller's report and failed to place a sanitary seal on the Crone well. The State Engineer finds that the well driller failed to submit and have approved a notice of intent card for the repair work conducted on the Crone well. The State Engineer finds that the maximum demerit points for these violations are 75 points for failure to place the sanitary seal, 75 points for failure to file a Well Driller's report, and 25 points for failure to submit a notice of intent card for a total of 175 demerit points.

II.

The next issue involves the drilling of two domestic wells at 540 Yellow Brick Road and 26 Yellow Brick Road in Battle Mountain, Nevada. LBJ Drilling submitted a notice of intent to drill card for each of the locations seeking permission to drill domestic wells at each property. The notice of intent cards were held, and not approved by the State Engineer's office because a domestic well waiver is required to drill at these locations, and a request for such waiver was not submitted with the notice of intent to drill card. Accordingly, although the notice of intent to drill cards were submitted, they were not approved by the State Engineer's office and the driller did not have the approval necessary to proceed with the drilling of the wells. On February 24, 2015, the State Engineer's office received a telephone call from a realtor requesting the well driller's report for the well at 540 Yellow Brick Road. This prompted the State Engineer's office to investigate the area, which lead to the discovery that both wells had been drilled. The violation for failure to have approved notice of intent cards, failure to obtain domestic well waivers, and failure to file well driller's reports, more than 90 days past, resulted in the assessment of 220 demerit points.[7]

Mr. Boggio initially indicated that he did not drill either well on the two properties; however, he later indicated that he did drill one of the wells but there was no well on the other property. At one point during the hearing, Mr. Boggio indicated that he drilled the well on 26 Yellow Brick Road and then later said that there was no well at that location but that he drilled the well on 540 Yellow Brick Road. He also indicated that he relied on the developer to obtain the necessary waivers for the properties and that he believed it had been taken care of by the developer.[8]

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[6] Transcript, pp. 17-31.
[7] Exhibit No. 1, pp. 105-122 and Transcript, pp. 32-35.
[8] Transcript, pp. 35-45.

The State Engineer finds that, despite Mr. Boggio's confusion over which well was drilled, he did admit to drilling one well without the proper approval from the State Engineer's office and that he failed to file a well driller's report for this well, resulting in a maximum possible 110 demerit points.

III.

On May 6, 2014, a field investigation discovered by the State Engineer's office that LBJ Drilling was operating a rig at a drill site with a driller whose temporary well drilling license had expired. The driller was ordered to cease work until a licensed driller could be on-site. Mr. Boggio indicated that he believed the driller's license to be valid at the time and was unaware that the temporary license had expired.[9]

The State Engineer finds that this violation was not pursued further at the time and no demerits were assessed; however, this is demonstrative of a history of noncompliance with the regulations.

IV.

In regard to a history of noncompliance, an additional issue was raised regarding a complaint in 2013, referred to as the Hilltop Well. This complaint was investigated by the State Engineer's office and involves LBJ Drilling installing a substandard 40-foot sanitary seal on the Hilltop Well. Further investigation discovered numerous additional violations, such as not plugging the original well before leaving the property.[10] The investigation culminated with a notice of alleged violation whereby Mr. Boggio faced up to a maximum 375 demerit points.[11] Mr. Boggio returned to the property, corrected the deficiencies and was granted a waiver for the sanitary seal; therefore, no demerit points were assessed.[12]

The State Engineer finds that this violation was not pursued further at the time and no demerits were issued; however, this is demonstrative of a history of noncompliance with the regulations.

V.

Well drillers are required to earn 8 continuing education units (CEUs) each 1-year renewal period. Mr. Boggio's renewal application for the period July 1, 2015 - June 30, 2016, was submitted showing only 7 CEUs completed.[13] Mr. Boggio indicated that he later submitted a 2-hour class for approval to make-up the missing credit.

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[9] Exhibit No. 1, pp. 57-60 and Transcript, pp. 52-55.
[10] Exhibit No. 1, pp. 11-26 and Transcript, pp. 60-61.
[11] Exhibit No. 1, pp. 27-36.
[12] Exhibit No. 1 pp. 54-55 and Transcript, pp. 62-63.
[13] Exhibit No. 1, pp. 123, 129.

The State Engineer finds that the class completed by Mr. Boggio is sufficient to meet the CEU requirements for the current renewal period.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and subject matter of this action and determination.[14]

II.

It has been found that licensed driller Joe Boggio 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 may be assessed against his license. In accordance with the above findings, the State Engineer concludes that the maximum demerit points that may be assessed against Mr. Boggio's license is 295.

The State Engineer further concludes that less than the maximum of 295 points may be assessed, and the State Engineer determines that 99 demerit points are appropriate in consideration of all the facts and evidence presented at the hearing; however, the reduction in demerit points is contingent upon conditions based, in part, on the recommendations of the Well Driller's Advisory Board as detailed below.

III.

If a well driller has an unacceptable history of noncompliance, the Division may deny renewal, refuse renewal for a specified period of time or renew the license with appropriate conditions. The State Well Driller's Advisory Board made the following recommendation at the hearing to the State Engineer concerning Mr. Boggio's license:[15]

1. Reinstatement of the license under the following conditions,[16]
    a. Suspension of Mr. Boggio's license for a specified period of time, which the Board considered the suspension as having been served from July 1, 2015, to present;
    b. LBJ Drilling, Joe Boggio, must provide at least 24 hours notice before placing any sanitary well seal to provide the Division with an opportunity to inspect the installation of the seal;

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[14] Nevada Revised Statutes Chapter 534 and Nevada Administrative Code Chapter 534.
[15] Transcript, pp. 104-105.
[16] Because the administrative hearing was set on August 4, 2015, which was after the expiration of the last renewal period ending June 30, 2015, Mr. Boggio's license necessarily expired on June 30, 2015. Thus, the Board was called upon to determine whether to both reinstate and renew Mr. Boggio's license at the hearing.

c. Take the written exam and appear before the Board in October, 2015; and,
d. Reduce demerits to fewer than 100 points by next renewal period (June 30, 2016).

The State Engineer concludes that Joe Boggio, Jr., has committed numerous violations; however, his license will be reinstated and renewed with appropriate conditions. The conditions of approval are those recommended by the Well Driller's Advisory Board; however, the time for taking the well driller's examination will be extended through the next renewal period such that Mr. Boggio must take and pass the well driller's exam, including an oral examination by the Well Driller's Advisory Board, prior to June 30, 2016, which is the next renewal period. Failure to comply with said conditions may result in denial of future requests to renew this license and may result in additional disciplinary action. Demerits will be administratively reduced to 99 points to allow Well Driller License No. 1807 to be renewed for the period of July 1, 2015, through June 30, 2016.

RULING

Well Driller License No. 1807 is hereby reinstated and renewed for the period July 1, 2015, to June 30, 2016, under the following conditions:

1. Take and pass the well driller's exam prior to June 30, 2016,
2. Give twenty-four (24) hours notice before placing any sanitary well seal, and
3. File all outstanding Well Driller Reports within thirty (30) days of the date of this ruling.

Failure to comply with said conditions may result in denial of future requests to renew Well Driller License No. 1807 and may result in additional disciplinary action.

Respectfully submitted,

P.E.

JASON KING, P.E.
State Engineer

Dated this 2nd day of

October, 2015.