



# Oregon

Theodore R. Kulongoski, Governor

## Water Resources Department

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### MEMORANDUM

**TO:** Water Resources Commission

**FROM:** Barry Norris, Administrator, Technical Services Division

**SUBJECT:** Water Resources Commission Meeting  
Agenda Item I, January 13, 2005

#### **Consideration of Exceptions and Issuance of Final Order on Notice of Violation and Assessment of Civil Penalty for Dale L. Wymore, Water Well Constructor, License No. 1807**

#### **I. Issue Statement**

The Commission is asked to consider exceptions filed by Water Well Constructor Dale L. Wymore to a Proposed Order resulting from a well construction enforcement contested case hearing.

#### **II. Background**

On December 10, 2003, the Department served a Notice of Violation; Assessment of Civil Penalty; Proposed License Suspension; and Proposed Order and Opportunity for Hearing on Dale L. Wymore. The notice identified 22 wells that Mr. Wymore constructed or abandoned between October 2002 and August 2003.

Each of the 22 well reports were found to contain material misstatements of fact. In 21 of the well reports, Mr. Wymore indicated he had bored a 10 inch diameter hole to a depth of 18 feet and placed a bentonite seal to a depth of 18 feet (using 6 sacks of bentonite). In another well report for a well abandonment, Mr. Wymore indicated he removed 20 feet of 6 inch well casing and filled the cavity with 9 sacks of cement grout.

Staff conducted an on-site inspection of 4 of the 22 wells. One of the wells was found to have a bentonite seal that extended to 11 feet below land surface; one well had a seal that extended to a depth of 10 feet 4 inches below land surface; one well had a well seal that extended to a depth of 7 feet 9 inches below land surface and one well was an abandonment with cement grout to a depth of 2 feet below land surface.

According to the Commission's Administrative Rules for Water Well Construction, well seals must consist of a minimum 2 inch annular space surrounding the well casing and must extend at least 18 feet below land surface (OAR 690-210-0130 through 690-210-0150). The annular seal prevents surface water from seeping down along the well casing. Without the seal, the well casing acts as a wick, drawing surface water down where it can contaminate the ground water resource. To fill a 2 inch annular space to a depth of 18 feet requires over seven 50-pound sacks of bentonite.

ORS 537.747(7) authorizes the Department to suspend a water well constructor's license for making material misstatements of fact on a well report. The Department proposed to assess a 30-day license suspension for each occurrence. In addition, the Department may issue civil penalties for violation of the minimum well construction standards (ORS 537.747 to 537.795 and 537.992). A material misstatement of fact on a well log is a major violation; therefore, the Department proposed to assess a \$500 civil penalty for each occurrence (OAR 690-225-0110).

A hearing was held on July 15, 2004 at the Department's offices in Salem, Oregon. Administrative Law Judge Daina Upite of the Office of Administrative Hearings presided. The issue for hearing was whether Mr. Wymore made material misstatements of fact on his well logs during the period October 2002 through August 2003. Mr. Wymore was present, represented himself, and testified on this own behalf. The Department was represented by Juno Pandian, Agency Representative.

### **III. Proposed Order**

Administrative Law Judge Upite issued a Proposed Order on November 17, 2004, finding that: (1) the Department established that Mr. Wymore made material misstatements of fact on 22 separate well logs; (2) it was a reasonable and appropriate sanction to suspend Mr. Wymore's license for 660 days (30 days x 22 occurrences = 660 days); and (3) it was reasonable to assess civil penalties in the amount of \$11,000 for the material misstatements of fact (\$500 per material misstatement x 22 occurrences = \$11,000). A copy of the Proposed Order is Attachment 1.

### **IV. Exceptions**

Mr. Wymore timely filed exceptions to the Proposed Order on December 16, 2004, arguing that he is being treated unfairly (Attachment 2). This issue was not identified as an issue for the hearing. Exceptions are legal or factual arguments illustrating legal or factual error in the proposed order, as demonstrated by the record. Evidence not in the record may not be offered in exceptions. Other than attempting to raise this new issue, Mr. Wymore's exceptions do not take issue with the Proposed Order. Staff recommend the Commission deny Mr. Wymore's exceptions.

**V. Alternatives**

1. Deny Mr. Wymore's exceptions and issue a Final Order that is consistent with the ALJ's Proposed Order as provided in Attachment 3.
2. Request staff gather additional information and report back to the Commission at its April meeting.

**VI. Recommendation**

The Director recommends the Commission adopt Alternative 1 to deny Mr. Wymore's exceptions and issue a Final Order that is consistent with the ALJ's Proposed Order.

**Attachments:**

1. ALJ's Proposed Order
2. Dale Wymore's Exceptions
3. Draft Final Order Assessing Civil Penalties and Suspending License

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