

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER RESOURCES
)	
BINGHAM DRILLING, LLC)	
)	
RESPONDENT.)	CASE NO. DWS19-0030
)	
)	

DIRECTOR’S ORDER AND ASSESSMENT

NOW COMES Jennifer Dodd, Director of the Tennessee Division of Water Resources, and states:

PARTIES

I.

Jennifer Dodd is the duly appointed Director of the Tennessee Division of Water Resources (the “Division”) by the Commissioner of the Tennessee Department of Environment and Conservation (the “Department”). The Commissioner is responsible for administering the *Water Wells Act* (the “Act”), Tennessee Code Annotated (“Tenn. Code Ann.”) § 69-10-101 *et seq.*

II.

Bingham Drilling, LLC (hereinafter the “Respondent”) owns, operates and/or controls a water well drilling company doing business as Bingham Drilling, LLC in Tennessee. The Respondent is a registered for profit corporation in Kentucky. Roy E. Bingham is listed as the registered agent for Bingham Drilling, LLC but is deceased. John Bingham is a member of the corporation and has been assigned Tennessee Driller’s License Number 742. Process may be served on John Bingham at Bingham Drilling, LLC, 735 State Route 3305, Eddyville, Kentucky 42038.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of the Act has occurred, is occurring, or is about to occur, she is authorized to take corrective action pursuant to Tenn. Code Ann. §§ 69-10-106 and §§ 69-10-110 of the Act. Further, the Commissioner has authority to assess civil penalties and damages against any violator of the Act, pursuant to Tenn. Code Ann. §§ 69-10-106 of the Act. Rules governing water wells have been promulgated pursuant to Tenn. Code Ann. §§ 69-10-106 and are effective as the Tennessee Compilation of Rules and Regulations (“Tenn. Comp. R. & Regs.”) Chapter 0400-45-09. The Commissioner may designate the Director of Water Resources as her duly authorized representative to exercise the powers, duties, and responsibilities of the commissioner under the Act. David Salyers, Commissioner of the Department of Environment and Conservation, has delegated such authority to Jennifer Dodd.

IV.

Licensed well drillers are required to submit a Notice of Intent (“NOI”) to drill a water well prior to construction of the well under Tenn. Comp. R. & Regs. 0400-45-09-.10(1)(c). The licensed well driller is required to submit a drillers report on the construction of the well within 60 days after the completion of a well under Tenn. Comp. R. & Regs. 0400-45-09-.10(1)(b). A fee of \$75.00 is required to accompany either the NOI or the well construction report.

V.

The Respondent is a “person” as defined at Tenn. Code Ann. §§ 69-10-101(10) and a “well driller” within the meaning of Tenn. Comp. R. & Regs. 0400-45-09-.01 and as herein described, has violated the Act.

FACTS

VI.

The Respondent has failed to submit fees and driller reports for wells submitted at the locations given in the table below where Notices of Intent to Drill (NOI) had been submitted. In addition, the Respondent has drilled wells where there has been no NOI, drillers report or fee submitted. Two of the wells drilled without NOIs have had the drillers reports submitted beyond the 60 day requirement.

Location	NOI	DWR Staff Field Inspection	Report	Fee
310 Rivertrace Drive, Dover TN	6/20/2017	5/8/2018	None	None
780 Preston Baggett Rd. Cumberland City TN	No NOI submitted; drilled in 2016	Not inspected	Late submittal	Late submittal
692 Elk Creek, Dover TN	5/5/2016	5/8/2018	None	None
Driller tag # D0110457 Eagle Nest Court	No NOI submitted	7/30/2018	None	None
2981 Port Royal Road Adams TN	No NOI submitted	3/17/2019	Late submittal	None
180 Tangveray Ln, Bumpus Mills TN	2/21/2017	4/17/2019	None	None
221 Tobacco Port Rd., Bumpus Mills TN	9/30/2015	4/17/2019	None	None
104 Freeman Fielder Rd, Dover TN	5/21/2017	4/17/2019	None	None

The Division has issued Notices of Violations (NOVs) to the Respondent on June 13, 2018; August 24, 2018; October 16, 2018 for submittal violations. Division personnel performed surface inspections at the wells at 310 River Trace Drive, and 692 Elk Creek Drive to confirm

that the wells had been drilled prior to sending the October 16, 2018 NOV (not all NOIs result in a drilled well). Division personnel held a compliance review meeting with the Respondent on January 24, 2019.

On March 7, 2019, Division personnel determined during a site inspection that the Respondent had drilled a well at 2981 Port Royal Road in Adams, Tennessee sometime in June of 2018. The Respondent did not submit an NOI, drillers report or fee. On March 20, 2019, the Division sent an NOV to the Respondent regarding the violations, including improper well construction. The Respondent submitted a late report for the 2018 original construction of the well, on April 1, 2019. The Respondent reworked the 2981 Port Royal water well on April 5, 2019 to conform with regulation requirements by installing a 4-inch liner in the well.

On April 14, 2019, Division personnel performed surface inspections for the wells drilled at 180 Tangveray Lane, 221 Tobacco Port Road and 104 Freeman Fielder Road to confirm that the wells had been drilled. The Division issued an additional NOV to the Respondent on April 24, 2019.

As of the date of this Order, the Respondent owes \$525.00 in delinquent fees.

VIOLATIONS

VII.

By failing to submit NOIs prior to drilling 3 wells, failure to submit 6 well construction reports within sixty days upon completion of drilling, and late submittal of 2 well construction reports, the Respondent has on multiple occasions violated Tenn. Comp. R. & Regs. 0400-45-09-.10(1), which states:

- (1) Requirements
 - (a) No person shall construct, reconstruct, or repair, or cause to be constructed or reconstructed or repaired any water well; nor shall any person install, repair, or cause to be installed or repaired any pump, pumping equipment, water filter or water treatment device to be used on a water well except in

accordance with the provisions of the Wells Act (T.C.A. §§ 69-10-101 et seq.) and these rules.

- (b) Every well driller, within sixty (60) days after completion of a water well, shall submit a report on the construction or reconstruction of the well to the Department. The well completion report shall be made on a form provided by the Department or a reasonable facsimile approved by the Department.
- (c) A Notice of Intent to drill a water well must be submitted by the property owner or the licensed well driller to the Director in the manner prescribed by the Department, prior to commencement of drilling a water well in Tennessee. The licensed driller is required to have sufficient documentation that a Notice of Intent was submitted to the Division of Water Resources before beginning operations at a drill site. Sufficient documentation for a Notice of Intent being filed may include one of the following:
 - 1. Fee receipt of the Notice of Intent.
 - 2. Confirmation number of the Notice of Intent or other approved format approved by the Director and issued by the Department.
- (d) The Notice of Intent fee or copy of the receipt for a Notice of Intent fee shall accompany the submission of the driller's report. No well or borehole shall be drilled unless the driller has documentation that a Notice of Intent has been filed. All well reports shall be submitted with documentation of the Notice of Intent fee being paid. Documentation of the fee being paid shall consist of the receipt originating from a Notice of Intent or money collected and enclosed with the original driller's report by the driller for the Notice of Intent. A Notice of Intent and fee is not required for well closure, deepening or reworking any water well or closed loop geothermal borehole. The amount of the Notice of Intent fee shall be reviewed by the Department at least every five (5) years and shall currently be scheduled as follows:
 - 1. Water wells for production of water per property site - \$75

As of the date of this Order, the Respondent owes fees for 7 wells for a total of \$525.00 in delinquent fees.

ORDER and ASSESSMENT

VIII.

Pursuant to the authority delegated by the Commissioner under the provisions of the Act, I, Jennifer Dodd, hereby issue the following Order and Assessment:

1. Within 45 days of the receipt of this Order, the Respondent shall submit the Water well construction reports for the wells drilled at the following locations:
 - a) 310 Rivertrace Drive, Dover TN.
 - b) 692 Elk Creek, Dover TN
 - c) Driller tag # D0110457 Eagle Nest Court,
 - d) 180 Tangvarey Ln, Bumpass Mills TN
 - e) 221 Tobacco Port Rd., Bumpass Mills TN
 - f) 104 Freeman Fielder Rd., Dover TN

2. Respondent is hereby assessed a **CIVIL PENALTY OF EIGHT THOUSAND FORTY DOLLARS (\$8,040.00)** to be paid to the Division of Water Resources as follows:
 - A) The Respondent shall pay a CIVIL PENALTY in the amount of ONE THOUSAND SIX HUNDRED EIGHT DOLLARS (\$1,608.00) to the Division on or before the thirty-first (31st) day after receipt of this ORDER and ASSESSMENT.
 - B) If, and only if, the Respondent fails to comply with item 1 above, the Respondent shall pay a CIVIL PENALTY in the amount ONE THOUSAND FOUR HUNDRED THIRTY TWO DOLLARS (\$1,432.00), payable on or before the thirty-first (31st) day after default.

3. The Respondent shall hereafter submit NOIs prior to the commencement of drilling all water wells, construct the wells in compliance with Division regulations and submit the well construction reports and the associated fee within 60 days of the completion of the wells. For a period of two years after the receipt of this Order, the Respondent shall pay a CIVIL PENALTY in the amount of TWO HUNDRED FIFTY DOLLARS (\$250.00) for each NOV that is issued not to exceed FIVE THOUSAND DOLLARS (\$5,000.00), payable within 30 days of the receipt of an NOV.

The Director of the Division of Water Resources may, for good cause shown, extend the compliance dates contained within this Order and Assessment. To be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of 30 days in advance of the compliance date. The request must include sufficient detail to justify such an extension, the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension request must be made in writing.

Further, the Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Failure to comply with any of the requirements of this Order and Assessment could lead to further enforcement actions which may include revocation of license(s), additional civil penalties, assessment of damages, and/or recovery of costs.

This Order and Assessment shall be considered closed no later than December 31, 2021, provided all requirements of the Order and Assessment have been met, any outstanding penalties have been paid, and Respondent is in substantial compliance with the Water Well Act.

RESERVATION OF RIGHTS

In issuing this Order and Assessment, the Department does not implicitly or expressly waive any provision of the Act or the regulations promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against the Respondent(s). The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/or damages, and to pursue further enforcement action including, but not limited to, monetary and injunctive relief. Compliance with this order will be considered as a mitigating factor in determining the need for future enforcement action(s).

NOTICE OF RIGHTS

Under Tenn. Code Ann. §§ 69-10-110, the Respondent may secure review (appeal) of this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing before the Commissioner must be RECEIVED by the Commissioner within THIRTY (30) DAYS of the date the Respondent received this Order and Assessment or it will become final (not subject to review).


If an appeal is filed, an initial hearing of this matter will be conducted by an administrative law judge (“ALJ”) as a contested case hearing pursuant to the provisions of Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and Tenn. Comp. R. & Regs. 1360-04-01 *et seq.* (the Department of State’s Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies). Such hearings are legal proceedings in the nature of a trial. Individual Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore

may only pursue an appeal through an attorney licensed to practice law in Tennessee. Low income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.

At the conclusion of a hearing, the Commissioner has the authority to affirm or modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines (from \$50.00 to \$5,000.00 per day per violation). Furthermore, the Commissioner has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and court reporter.

Any petition for review (appeal) must be directed to the Commissioner of the Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa Parks Avenue, 2nd Floor, Nashville, Tennessee 37243. Payments of the civil penalty and/or damages shall be made payable to the "Treasurer, State of Tennessee" and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa Parks Avenue, 10th Floor, Nashville, Tennessee 37243. Technical questions and other correspondence involving compliance issues should be sent to Jessica Murphy, State of Tennessee, Division of Water Resources, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 11th Floor, Nashville, Tennessee 37243. Attorneys should contact the undersigned counsel of record. **The case number, DWS19-0030, should be written on all correspondence regarding this matter.**

Issued by the Director of the Division of Water Resources, Tennessee Department of Environment and Conservation, on this 2nd day of May, 2019.



Jennifer Dodd
Director, Division of Water Resources
TN Department of Environment and Conservation

Reviewed by: 

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