

# ADMINISTRATIVE MEMORANDUMS INDEX

As of January 26, 2016

*Please note that these Administrative Memorandums will include many memos that have become outdated due to changes in rules, statutes or current Department policy. Some memos have been amended or superseded by others, and some may no longer be applicable.*

## WELL DRILLERS

No.	Title	Signed	Amended or Superseded
1.	<a href="#">Issuance of Numbered Plates for Drill Rigs</a>	3-4-75	
2.	<a href="#">Well Driller License Procedures</a>	7-8-75	
3.	<a href="#">Revoking of Driller Licenses when Bond is Cancelled</a>	8-29-75	
4.	<a href="#">Issuance of Verbal Drilling Permits</a>	6-14-90	
5.	<a href="#">Well Drilling Enforcement Policy</a> (Superseded by Memo No. 6)	9-29-92	4-22-94 11-20-07
6.	<a href="#">Well Drilling Enforcement Policy</a> (Supersedes Memo No. 5)	11-20-07	

~~Well Driller No. 1~~  
Well Driller No. 1

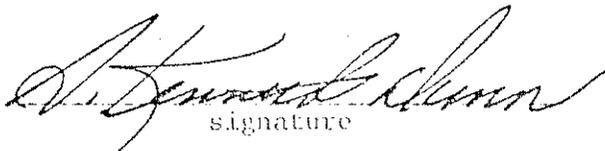
OPERATIONS DIVISION  
ADMINISTRATIVE MEMORANDUM

TO: Staff  
FROM: A. Kenneth Dunn  
DATE: March 4, 1975  
SUBJECT: ISSUANCE OF NUMBERED PLATES FOR DRILL RIGS

In the past, a driller with more than one piece of equipment was given plates with numerals added to his license number such as "-1", "-2" etc. This has created a lot of confusion for whatever small value it might have. (A driller who wants another plate usually fails to say if it is an additional one or a replacement, and if a replacement which plate is to be replaced.)

All plates issued from now on will carry only the license number. The Engineering Bureau should receive all requests for plates in writing from either the driller or a district office. The request should state whether the plate is an additional rig or a replacement so that Engineering can keep a record of how many plates are in circulation for a driller.

Whenever a well rig is inspected in the field and a plate is visible, the driller whose plate is present will be held responsible for the well (note on "Report of Well Drilling" form) regardless of the name on the rig or any other painted-on markings or numbers. This driller will be responsible for providing a log on the well unless he submits a satisfactory written statement explaining the presence of his plate on the rig and the true responsibility for drilling the well.

  
signature

OPERATIONS DIVISION  
ADMINISTRATIVE MEMORANDUM

TO: STAFF  
 FROM: A. KENNETH DUNN  
 DATE: July 8, 1975  
 SUBJECT: WELL DRILLER LICENSING PROCEDURES

## I. LICENSE PROCEDURE

## A. Initial Processing (District)

1. Check application for following needed information:
  - a. Name and address of applicant (Item 1)
  - b. Firm or individual license (Item 2)
  - c. If firm, name of licensed driller or drilling supervisor (Item 3)
  - d. Indication of desire to take exam  
 Note: Required to take exam unless an active Idaho license held within 2 years past, or is applying for a firm license and the official of the firm is not a qualified driller. (In this case skip Items 7 to 12.)
  - e. Class room study (Item 9)
  - f. Licensed in other states (Item 10)
  - g. Drilling experience (Item 11)
  - i. Signature  
 Note: Must match Item 1 and must indicate title, if a firm (Item 12)
  - j. \$25.00 fee  
 Note: If application is incomplete return, with fee, to applicant
2. Receipting - Stamp date of receipt in upper right hand corner of application, note date of fee receipt, receipt number, and initials just below date stamp.
3. Write for references and to other licensing states. References should not be submitted with the application. Letters to other states should inquire about written and/or oral examinations and years of experience.
4. Request applicant to have schools attended supply transcripts for classroom instruction claimed.

## B. Examination Procedure (District)

1. Written Exams - District offices shall schedule regular examining time at 1:00 P.M. on the first Monday of each month as required in the Rules and Regulations. Exams may be given at other times as well if District personnel are present to properly supervise the examination. Districts, at their discretion, may, and should when possible, waive the 20 day advanced application requirement if at least one reference is available confirming adequate experience.

Note: The 30 months experience in employ of a licensed driller shall be interpreted to mean experience on a full time employment basis. Experience to fulfill the 30 month requirement may include some drilling experience on oil wells, core drilling, etc. to meet some of the time required; however, such work, especially on an oil well, geothermal well, or other large project, must definitely be confirmed to involve actual drilling experience rather than just labor that provides no drilling knowledge.

Written exams are to be graded and scored by District personnel. Driller should not be present during grading. Exam should not be discussed if failed.

Graded exams (passing or failing), transcripts and references, with copies of letters requesting them, and the original application are to be forwarded to the State Office.

A copy of the application with the exam grade noted should be retained by the District until the license is issued or denied.

C. State Office Will:

1. Evaluate experience.
2. Determine if all well logs have been filed by applicant.
3. Notify applicant of intent to issue license upon submission of bond, and any missing logs, or notify applicant of denial of license.
4. Issue license or refund fee.
5. Keep District informed of status.

II. QUALIFYING OPERATORS

A. Initial Processing (Districts)

1. Review operator's information form for needed information:
  - a. Name of employing firm (Item 1)
  - b. Name and address of applicant (Item 2)
  - c. Examination date requested and location requested (Item 5)  
Note: Test required if applicant has not held operator's permit within 2 years past
  - d. Signature, including title - must agree with designated official in Department Item 6 records.
  - e. Signature of operator - Must agree with Item 2.
  - f. No fee required.

2. Testing

- a. Tests may be given at any time on an appointment basis. A completed information form should be submitted by the applicant prior to the test. If the information form has not been signed by the firm official, the test can be given if some evidence is available to show that the applicant is employed by the firm.

- b. Tests should not be graded with the applicant present. Test questions should not be discussed with the applicant, if he fails the test.
- c. An applicant should not be allowed to retake the test on the same day if he fails it.
- d. When an applicant receives a satisfactory score on the test, all tests taken by the applicant and the completed operator's information form shall be forwarded to the State office.

B. State Office Will:

1. Send permit to drilling firm to give to operator.
2. Update list of operators and provide copy to Districts.
3. Retain information forms and tests in State files. (Tests to be retained for one year).

III. TERMINATION OF OPERATORS

A. District Office Will:

1. Forward written notice of termination of operator to State office. If notice of termination is made by phone, official of the firm will be requested by District office to confirm the termination by written notice.

B. State Office Will:

Remove operator's name from list of firm. Keep updated list of all terminations, and forward copies to Districts.

IV. RENEWAL OF INDIVIDUAL AND FIRM LICENSES

A. State Office Will:

1. Send renewal notices.
2. Process applications for renewal received in State office.
3. Issue licenses and permits.
4. Keep updated list of license renewals, and forward copies to Districts.

B. District Office Will:

1. Check renewal applications received in District office as follows:
  - a. Name and complete mailing address.
  - b. Names and complete addresses of operators, if firm.
  - c. Name and address of drilling supervisor.
  - d. Signature on application must be the same as on first line.
  - e. Bond: New or evidence of continuation of present bond. Name of firm on bond must agree with firm name on application. Continuation may be on our form or bonding company form. Copy of receipt for bond may be accepted as evidence that bond is in force, however, license will not be issued until bond is in

- State office. If cash bond is indicated no proof is necessary.
- f. \$10.00 renewal fee.

Note: If applicant did not hold a valid license during the past licensing year (July 1 to June 30) the fee is \$25.00.

## 2. Receipting

- a. If application is complete, receipt fee and stamp date of receipt in upper right hand corner of application, note date of fee receipt, receipt number and amount, and initials just below date stamp, and forward to State office.
- b. Incomplete Applications: If mailed in application is incomplete return to applicant, return fee if enclosed, noting that application will not be accepted until in complete form. If carried in, refuse to accept until complete.
- c. Operator permits will automatically be renewed for operators listed on firm renewal application.

## V. CHANGE IN STATUS FOR INDIVIDUAL OR FIRM LICENSE

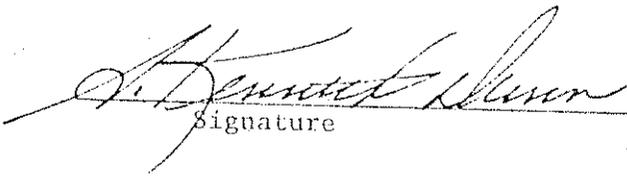
### A. Request for Change

1. Required any time status or name of company licensed is altered.
2. Request must be sent to District or State Office and be signed by licensed driller or official of firm.
  - a. Application form not required; however it may be advisable if change is significant enough to require significant additional information.
  - b. When status change is from individual license to firm license, the individual license is to be returned to State office and voided; firm license, indicating drilling supervisor, will replace it.
3. Request should be checked for completeness by office receiving it and forwarded to Engineering Bureau, if complete.
  - a. Require needed information from driller before forwarding if request not complete.
4. No additional fee required for the remainder of the time period existing on the current license.

### B. Bond Status if Change Involves a Corporation

1. A bond for an individual proprietorship or a partnership has no value if a company changes its status to that of a corporation, or vice versa.

- a. An individual, or member of a partnership, can only be bonded for his firm's liabilities as long as the firm remains under individual ownership.
  - b. A corporation is a separate entity and no individual (or individual's bond) is valid for action against a corporation; bond must be re-written.
  - c. Bond of one corporation does not automatically apply to another one.
2. Bonding company needs to notify Department that it approves any bond change if a corporation or corporate name is involved.

  
Signature

Well Driller No. 3

OPERATIONS DIVISION  
ADMINISTRATIVE MEMORANDUM

TO: Staff  
FROM: A. Kenneth Dunn  
DATE: August 29, 1975  
SUBJECT: REVOKING OF DRILLER LICENSES WHEN BOND IS CANCELLED

In order to fully comply with the provisions of Section 42-238, Idaho Code, it is essential that we properly notify a driller of his license revokation when we are informed that his bond is to be cancelled.

Upon receipt of a cancellation notice, a certified letter signed by me will be sent to the driller informing him that his license is revoked as of the cancellation date of the bond, unless he supplies the Department with a new bond prior to that date. We will also require that cancellation of a bond must only be after at least 30 days notice is given of such action.

  
signature

AKD:WRG

Well Driller No. 4



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720 -(208) 327-7900

CECIL D. ANDRUS

GOVERNOR

R. KEITH HIGGINSON

DIRECTOR

TO: Regional Managers

Date: June 14, 1990

FROM: Norm Young *Ney*

SUBJECT: Issuance of Verbal Drilling Permits

We have received a number of reports that well drillers after having been refused a verbal approval for a drilling permit from one Region for one reason or another, have immediately called an adjacent Regional Office or the State Office and received a verbal approval. And on at least one occasion an applicant for a drilling permit, after being refused an expedited approval prior to issuance of a water appropriation permit, approached another office of the Department seeking the expedited drilling permit.

Effective immediately, Regional Offices are not authorized to issue verbal drilling permits or expedited approval of drilling permits for wells being drilled outside their Regional boundaries. If for some reason a verbal permit is denied a driller, the Regional Office should immediately notify either Mark Slifka or Linda Tracy at the State Office to assure they don't issue a verbal to the driller if he should call. If the driller continues to call the State Office or other Regional offices when turned down by a Region, his verbal approval privileges will be withdrawn.

The State Office will begin encouraging drillers to get their drilling permits, verbal and written, at the Regional Offices in whose boundaries the wells are located.

The State Office will also begin the prompt mailing to the Regions, drilling permits issued for wells within their boundaries.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS  
GOVERNOR

R. KEITH HIGGINSON  
DIRECTOR

MEMORANDUM

TO: Water Management Division Staff

FROM: Norman C. Young  
Administrator *NCY*

DATE: April 22, 1994

SUBJ: WELL DRILLING ENFORCEMENT POLICY MEMORANDUM NO. 5  
(Supersedes Memo of September 29, 1992)

GENERAL

The well driller rules include a number of penalty and enforcement provisions. This memorandum provides guidance for the application of the enforcement and penalty provisions to provide uniformity. It is not intended that the application of this guidance be so rigid as to limit the discretion of the field specialists and region managers to resolve enforcement problems.

The following types of violations are addressed in this memo:

1. Construction of one or more wells in Idaho without first obtaining a proper Idaho well drillers license or operator's permit.
2. Construction of a well without: 1) first obtaining or verifying the existence of a written or verbal drilling permit; 2) securing a verbal drilling permit; 3) violating terms of conditions of the drilling permit.
3. Failure to properly prepare, sign and submit the well driller's report to the director within 30 days following the completion of the well.
4. Construction of a well in violation of the Well Construction Standards.
5. Construction of a low-temperature geothermal or geothermal well without proper bonding for the driller.

6. Knowingly submitting a well driller's report with inaccurate or false information.
7. Failure to keep a current written well driller's report at the drilling site describing well construction detail, water bearing zones, lithologic changes and other pertinent information [42-238(3)].
8. Miscellaneous provisions such as no plate or number on drill rig, and/or failure to have driller's license card or operator's permit card on site, and/or no proof of drilling permit or drilling permit number (verbal) at well site, and/or misrepresentation of information to the department.

#### REGION OFFICE RESPONSIBILITY:

Region office personnel are to document in writing and with evidence as necessary, to the driller's license file failures of a driller, operator, or owner to comply with statutes or regulations. Region staff has the discretion to issue a verbal or written warning for violations considered to be simple oversights that are of a non-repetitive and minor nature that do not pose a significant threat to the resource or the orderly enforcement of the driller licensing and well construction standards program. Verbal warnings should be documented by a memorandum to the driller's file.

If it is determined by region staff that one or more violations of items 1 through 8 have occurred that require more stringent enforcement, the region manager is authorized to initiate enforcement through either a warning letter, notice of violation, a cease and desist order, a late fee (refer to schedule in I.b.) or a suspension of privileges such as verbal permitting, drilling in a Ground Water Management Area or geothermal areas. Specifically, designated region staff are authorized to issue uniform citations to enforce violations of item 1 described above. The procedure for initiating these actions are hereafter described.

#### I. WARNING

##### A. Documentation

For self-reported, infrequent paper work violations and first-time violations, the region manager or his agent will make a documented verbal warning. A letter to the driller and driller's file may follow the verbal warning or may be sent instead of a verbal warning. The verbal warning or warning letter to the driller should clearly describe the infractions and require corrective action within a specified time. A written Cease and Desist Order should be considered a warning letter. Every effort should be made at this level of enforcement to assist the driller to avoid future violations and to build a rapport with the driller. Communication is a principle directive to encourage cooperation.

## B. Late Fees

Late fees should be sought for self reported violations such as late well driller's reports or late drilling permit applications and fees associated with verbal authorization of drilling permits. The region manager should seek the late fee, to be paid to the department, on or by a specified date, according to the following schedule:

### Late Fee Schedule (days after completion of well):

31 days or more past the date the well was completed - \$25/well driller's report.

31 days or more past the date the verbal permit was issued - \$25 + fee / drilling permit fee not paid.

No further enforcement action will be taken for self-reported late documents if late fees are paid at the time the late verbal drilling permit application and fee or driller's report is submitted within the time frame described above. If the late fees are not paid, a warning letter or notice of violation should be sent. The late fee may be waived if the driller has requested in writing within 30 days of completion of the well an extension of time within which to file a well driller's report and describes an acceptable reason for the delayed filing.

Late fees are only to be charged in the case of self-reported filing by the driller. If the department determines that a report has not been timely filed and requests it from the driller, a notice of violation can be issued and a penalty sought in addition to submittal of the drillers report within a specified time.

## C. Verbally Authorized Drilling Permits

The verbal drilling permit authorization is a convenience provided to the driller to assist service to the public. The verbal authorizations are to be given only to Idaho licensed well drillers and not to well owners. The driller is responsible for the timely submission of all drilling permit applications and fees relative to any verbally authorized drilling permits provided to the driller. If a driller, after being requested to pay a late fee, continues to send well documents into the department late, the driller should be sent a written warning. If the driller continues to send in delinquent drilling permit applications and fees, or refuses to submit the late fees, after receiving a written warning, the verbal authorization convenience should be suspended. A letter should be sent to the driller and a copy sent to the driller's file at the state office describing the cause for suspension and the terms. Suspension of the convenience should not be for less than 3 months. The driller must request reinstatement in writing after the suspension period, or suspension will continue. This suspension of privileges may be a provision of the notice of violation.

Authorization for other requested drilling activities, such as drilling for low temperature geothermal wells, geothermal wells, or areas of drilling concern, can be withheld if the prior activities of the driller or operator reveal a continued unwillingness or inability to comply with department rules or permit conditions or to protect the ground water resources.

## II. NOTICE OF VIOLATION

For serious<sup>1</sup>, repeated<sup>2</sup> or willful infractions the region manager is authorized to commence an administrative enforcement action by issuing a written notice of violation which will be sent to the driller by certified and regular mail or personal service.

- A. The notice of violation shall: 1) specify the alleged violation, the appropriate subsections of Idaho Code 42-238 and Rules that have been violated; 2) identify the appropriate corrective action; 3) provide opportunity for a compliance conference, and request a civil penalty to be paid in lieu of a civil enforcement action.<sup>3</sup>
- B. The driller has 15 days from receipt of the notice of violation to contact the region office and request in writing a compliance conference.
- C. If the driller submits a written request for a compliance conference within 15 days, the region manager will schedule the conference within 20 days unless a later date is agreed upon between both parties.
- D. If the driller and region manager come to an agreement during the compliance conference, they should enter into a consent order formalizing their agreement. The consent order may include provisions for payment of an agreed penalty to the department and other actions necessary to bring the well into compliance with standards and to avoid a repeat violation. Compliance with the agreement by the driller shall preclude the department from seeking a penalty through civil enforcement action for this alleged violation.

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<sup>1</sup> A serious infraction is one that directly affects or may directly adversely affect the health and safety of humans or animals or causes or may cause violations of water quality standards.

<sup>2</sup> Repeat infraction - violation of the same item from the list of items on page 1 after receipt of a written warning, or a previous notice of violation.

<sup>3</sup> The director/department has no authority under the statutes to impose a fine, rather he may seek a civil penalty through the compliance conference in a consent order providing for payment of an agreed civil penalty. Absent an agreement or if the penalty is not paid as agreed, the department may collect the penalty through an action in district court.

If the driller and region manager are unable to reach an agreement during the compliance conference, the driller may request a hearing before the director.<sup>4</sup> The request for a hearing before the director must be submitted in writing to the director within 15 days of the date of the compliance conference.

- E. If the driller does not request a compliance conference within 15 days of receipt of the notice of violation, or an additional period of time as allowed by the region manager, for good cause, or if the consent order is not complied with, or if an agreement cannot be reached, the region manager will forward the file to the state office for action.
- F. If the driller submits a written request for a hearing before the director within 15 days of the date after the compliance conference is held by the region manager, the state office will schedule the hearing within 20 days of receipt of his written request.
- G. If the compliance conference does not resolve the violations and if the driller does not request a hearing before the director within 15 days after the scheduled compliance conference, the state office may initiate a civil enforcement action through the Attorney General to recover a civil penalty or may revoke the driller's license, or take other appropriate action as stipulated in 42-235 and 42-238, Idaho Code. The civil enforcement action must be commenced and prosecuted in the District Court in the county in which the alleged violation occurred.
- H. Recommended schedule of penalties to be sought by the department through notice of violation. The schedule is intended to provide uniformity, but the amount may be adjusted because of mitigating factors determined at the compliance conference or hearing. If a violation is particularly serious or flagrant, the notice of violation may include a higher penalty if provided by law and coordinated with the division administrator.
  - 1. Constructing one or more wells without a valid well driller's license or operator's permit. [42-238(2)] \$1,000/well
  - 2. Constructing a well without first verifying the existence of a valid written or verbal drilling permit. Refer to 42-351-352 (if non-domestic refer to Water Right also) [42-238(4) - Well Construction Standards - Rule 37.03.09.050] \$500/permit

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<sup>4</sup>The hearing before the director is to be scheduled only if agreement cannot be reached in the compliance conference, and the driller specifically requests it.

- 3. Failure to submit a well driller's report within 30 days following completion of drilling a well. (Completion of a well is defined as removal of the drill rig from the site. \$100/report  
(Can be grounds for civil penalties of up to \$10,000 & suspension of license until such time as the late or missing well driller's reports are submitted to the department.)
  
- 4. Well construction standards violation. \$100 to \$500/well,  
Suspension of license until such time as the construction violation is repaired.
  
- 5. Constructing a low temperature geothermal or geothermal well without proper bonding. (This does not apply if the encounter of water over 85° is accidental and the driller ceases drilling and immediately notifies the department.) \$1,000/well
  
- 6. Miscellaneous provisions (Examples: no plate or other identification identifying the driller's license number or firm name on the drill rig which is being used to construct a well; no proof of existing drilling permit or drilling permit number [verbal] at well site; drilling without a driller's license or operator's card at site; submitting drillers reports with incorrect legal description.) \$100/occurrence
  
- 7. Intentionally submitting false or inaccurate information on a driller's report. \*Civil Penalty/  
& suspension of license not to exceed 1 year.

\*or as provided for in 42-238(5) depending on circumstances.

	<u>Penalty</u>	<u>Suspension</u>
First Offense	\$2500	90 days
Second Offense	\$5000	6 months
Third Offense	\$10,000	year

- 8. Violation of a cease and desist order. \$1,000/day

### III. CEASE AND DESIST ORDERS

#### A. Administrative Action

For: 1) persons drilling without a license (particularly Idaho residents), 2) drilling without a drilling permit, 3) drilling with unidentified equipment (Driller's name or plate number will constitute identified), or 4) in well construction or operation situations involving immediate threat to the groundwater resource or public health, the region manager or his agent may issue an order to Cease and Desist. The order to Cease and Desist can be issued on a standardized form to allow for expeditious and proper notification and need not be issued with a notice of violation or written warning. A notice of violation or written warning should soon follow a Cease and Desist order. If a Cease and Desist Order is issued in a notice of violation, and the violation is not corrected, the offense will be considered a continuing violation in connection with which the department may seek a civil penalty of \$100.00 a day. In the case of immediate threat to groundwater or public health or safety associated with well construction or operation, the well driller and/or owner should be given no more than 24 hours from receipt of order to Cease and Desist. The order to Cease and Desist need not be signed by the driller. Region staff will make an effort to advise the driller in person or by phone of the order, but the Cease and Desist should be posted in a conspicuous place at the construction site and a copy mailed to the driller. (These Cease and Desist Order forms will be provided by the state office.)

- B. Civil Enforcement of Cease and Desist (Refer to VI. Civil Enforcement Action). A temporary restraining order or preliminary injunction can be sought through Civil Action in District Court when deemed necessary by the director in very serious or threatening situations.

#### IV. UNIFORM CITATION

In the case of a person drilling a well without a valid Idaho well driller's license, a region agent specifically designated by the division administrator or director has the option to issue an Idaho Uniform Citation, pursuant to Idaho Code Section 42-238(5).

## STATE OFFICE RESPONSIBILITIES

If the region manager determines that the driller has violated Idaho statutes and/or department Rules, and sends written warnings and/or notices of violation to the driller and the driller is uncooperative with the region office efforts to elicit willful compliance through those notices and compliance conferences, the region manager will forward a documented report describing the infractions to the state office for review and action. Willful compliance will mean the driller and the region manager have entered into an agreement of compliance or consent agreement and the driller has performed according to the terms of the agreement.

### I. SUSPENSION AND REVOCATION OF DRILLER'S LICENSE BY STATE OFFICE

- A. Administrative action by the State Office may include, but is not limited to:
- 1) Utilization of bond for reconstruction, abandonment or securing information.
  - 2) Suspension of driller's license for:
    - 1) Failure to submit a properly prepared and signed well report to the department within 30 days;
    - 2) failure to construct a well that meets minimum well construction standards.
      - a) Term or suspension - Suspension of driller's license can remain in effect only until such time as the driller has submitted the late or missing well reports or the driller has repaired or reconstructed the well so the well meets the minimum well construction standards.
  - 3) Revocation of driller's license for a period not to exceed 1 year for drillers who intentionally submit false or inaccurate information on a driller's report.
- B. If action against the driller's license is determined to be warranted, the state office will send the driller an order describing the cause for suspension, revocation or non-renewal of his driller's license and the terms.
- C. Prior to the driller's license being suspended, revoked or not renewed, the driller will be entitled to a hearing before the director. The driller will have 15 days from receipt of the order to make a request in writing for a hearing. If after 15 days no request for a hearing is made, the order shall become immediately effective. The order will inform the driller of his right to a hearing.

- D. Drillers whose licenses have been suspended or revoked may apply for reinstatement no sooner than the report(s) are properly corrected and on file, or other well construction violations are resolved.

## II. CIVIL ENFORCEMENT ACTION

The director (state office) may, when deemed in the public interest, initiate civil enforcement action through the Attorney General as provided for in the Groundwater Protection Act of Idaho Code and shall not be required to initiate an administrative action before initiating the civil enforcement action [42-238(b) Idaho Code].

ADMINISTRATOR'S MEMORANDUM

To: Water Management Division  
From: Gary Spackman *Gary Spackman* Well Drilling Memorandum #6  
Date: November 20, 2007  
Re: Well Drilling Enforcement Policy

This memorandum explains the Departments policy concerning well drilling enforcement of the Idaho Well Construction Standards Rules, Well Driller Licensing Rules and Idaho Code. This memorandum supersedes Well Drilling Memorandum #5 dated April 22, 1994.

References: Idaho Code 42-235, 42-237a, 42-238, and 42-1701B. Rules IDAPA 37.03.09 and IDAPA 37.03.10.

Purpose: This policy provides guidance to achieve consistent application of, and compliance with, the Laws and regulations of the state for the protection and development of groundwater; for the regulation and licensing of well contractors and operators; and for the regulation of well construction standards. It does not address the handling of all water related violations of Idaho Code or Rules.

Application: This policy applies to all Idaho Dept. of Water Resources (IDWR) staff when enforcement actions are taken against a public or private party.

Authority: Authority for the Idaho Department of Water Resources to protect and develop ground water is contained in the above referenced statutes. This authority includes the power to regulate and control withdrawal of water; to prevent wasteful practices and protect the groundwater resources from contamination or commingling; and to achieve compliance through administrative orders, civil penalties, and criminal prosecution for violation of the laws, regulations, permits, and orders issued hereunder.

Authority to regulate and license well contractors and operators and to enforce state well construction standards is contained in the above referenced statutes. This authority includes the power to issue, deny, suspend, or revoke well driller licenses; to establish standards for the construction of wells; prevent the waste and contamination of any ground water; and to issue administrative orders and assess civil penalties for violation of the laws, regulations, permits, and orders issued hereunder.

Authority to enter upon lands for the purpose of inspecting any wells; casings, pipes, and fittings to direct the suspension of well use until necessary corrections are completed, are contained in the above referenced statutes.

1. Enforcement overview

a. Water Resources staff will encourage voluntary compliance through education and informal enforcement actions. Education will include presentations to the drilling community and notifying the regulated drilling companies of the current policy and where to obtain a copy. In addition, the enforcement approach will strive for general oversight for all drillers with focus on those drillers that, through their actions, have demonstrated a lack of understanding of the Idaho Code and administrative rules or a willingness to ignore Idaho Code and/or rules. When voluntary compliance is not achieved, formal enforcement actions shall be used to assure compliance. All enforcement actions should be timely, well documented, and pursued in an escalating manner until the violation is resolved.

b. Informal enforcement action is the first step in documenting and creating a historical record of a violation (see section 5). Options for informal enforcement action:

- Field Issued Warning
- Warning letters/Notice of Non-Compliance
- Suspension of Start Card Privilege

SCANNED  
NOV 21 2007

c. Formal enforcement action is based on statutory authority (see section 6 and IC 42-1701B). Formal enforcement actions are for serious, repeated, or willful infractions of IC 42-235 and/or IC 42-238, and will be presented to the driller as a Notice of Violation (NOV). Formal enforcement actions include:

Field Issued Notice of Violation  
Notice of Violation  
Cease and Desist Order  
Civil Enforcement Actions  
Suspension of Start Card Privilege  
Suspension or revocation of well driller's license  
Court injunctions or orders  
Criminal prosecution.

d. Enforcement actions are most effective when taken in a timely manner. Informal enforcement actions should be initiated within 10 days from the date the department becomes aware of the violation in an effort to allow prompt and effective correction. This recommended timeframe for initiating action in no way is intended to infer or establish any "statute of limitation" whereby if not achieved prevents the department from exercising its mission of well construction enforcement. Formal enforcement actions should be initiated within 15 days of the department becoming aware of violation.

e. Enforcement actions shall be pursued for violations committed by public agencies, as well as private parties. Enforcement procedures for public agencies may differ from private entities but the goal of compliance shall not be subordinated to other considerations.

## 2. Selecting enforcement response

Selecting an appropriate response to a documented violation is accomplished by first classifying the magnitude of the violation.

a. Level 1 violation – a violation of regulatory requirements, which does not create an actual or imminent threat to human health or the groundwater resource.

b. Level 2 violation – a violation having the potential to create, or actually creating, a threat to human health or the environment, or a repetitive of three or more Level 1 violations, or intentional violation of the well construction rules that would have been identified as a Level 1 violation. Penalties generally are monetary, but may be "enhanced" to include special conditions and/or requirements to ensure that drillers understand well construction requirements and are sure that they are following these requirements. These enhancements may include suspension of start card privileges, special competency testing (at the driller's expense), retaking the driller licensing exam, direct oversight with designated IDWR field staff prior to initiating various stages of work, or other requirements to show that the driller understands the rules and intends to comply with them.

c. The magnitude of the violation, along with the following discretionary factors will be the basis for selecting the appropriate enforcement response:

Economic advantage gained by non-compliance  
Violator's cooperation to resolve the violation  
History of previous violations.

## 3. Responsibility for and Coordination of enforcement actions

a. Regional staff shall coordinate enforcement actions with the Groundwater Section of the State Office. Occasionally enforcement of well licensing and construction standards (IDAPA 37.03-10 & IDAPA 37.03.09) may affect the concerns and responsibilities of other regions, agency programs, or state and federal agencies. In these instances, the Groundwater Section (or Resource Protection Bureau) will take the lead.

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b. Regional Manager is responsible for resolving all informal enforcement actions and all Level One formal enforcement actions.

c. Regional Manager shall coordinate proposed enforcement action on all Level Two violations with Groundwater Section Manager. Lead on resolving Level Two violations will be determined by Regional Manager and Groundwater Section Manager. Regional Manager's office retains responsibility for collecting and documenting field information relevant to any alleged violation.

d. The Groundwater Section Manager shall lead all enforcement actions involving driller licensing, well construction, and geothermal issues when asked by a Regional Manager to take lead due to temporary lack of available resources to complete the enforcement action in a timely fashion and to assist the Attorney General's office with preparation of an enforcement action. The Groundwater Section Manager will also develop and present enforcement training opportunities to all staff that recommend, review, or sign enforcement actions. In addition, the Groundwater Section Manager is responsible for developing policies and procedures that maintain the continuity of the enforcement program.

#### 4. Setting standards for enforcement

a. All enforcement actions will be prepared using an approved department format. The use of an approved department format will help ensure that enforcement actions follow an efficient and consistent process as outlined in this policy. Certain required legal language, such as statutory cites and appeal process, will not be modified by field inspectors. Paragraphs describing the particulars of the violation will be written by the field staff and inserted into the document as the outline indicates.

b. The well driller, drilling contractor, and property owner may be held responsible for violations of well construction standards. Enforcement action against a property owner can be taken when it is not possible or appropriate to act against the well driller for violations of well construction standards IDAPA 37.03.09. This generally results when problems occur more than one year after the well has been constructed or the well has obviously been modified after it was constructed. The well owner shall receive a copy of any order or penalty issued to a well driller resulting from improper construction of a well.

#### 5. Informal enforcement actions

Informal enforcement actions will be taken to provide the violator with an opportunity to voluntarily comply with the rules. The Department will not process any new or pending drilling permits or start cards for the violating driller/company until the violation(s) are corrected. Actions include:

a. *Field Issued Warning* identifies specific actions or corrections to resolve observed violations at a well construction site. The driller must advise the issuing Water Resource Agent within five (5) days that they have satisfactorily corrected the violation. An extension may be granted upon Department approval. Failure to provide such notice to the Water Resource Agent will cause the violation to immediately become a formal enforcement action.

b. *Warning letter or Notice of Non-Compliance* to inform the recipient that a violation has occurred and outlines the steps necessary for compliance. If not corrected within the timeframe specified, the violation immediately becomes a formal enforcement action.

c. *Suspension of Start Card Privilege*. Requires the driller to apply for and receive permit prior to commencing any drilling activities. Suspension of Start Card Privilege can result from any formal enforcement action and will remain in effect until the driller has provided evidence that they understand and are willing to follow the well construction and driller licensing rules.

#### 6. Formal enforcement actions

Formal enforcement action may be initiated if either informal action does not achieve compliance or if a more severe violation has occurred. A memorandum prepared by the field staff documenting the alleged violation, supported by field notes, photos, and other material form the basis for recommended formal enforcement actions that is submitted to and approved by Regional Office manager. A drillers start card privileges maybe suspended pending resolution of any formal enforcement action.

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- a. *Field Issued Notice of Violation* (F-NOV) identifies the Idaho Code or Rule that was violated by the driller and provides specific actions or corrections to achieve compliance. The F-NOV is prepared on a standard F-NOV form or detailed on Department letterhead and the original handed to the driller or posted on the drilling equipment. If not given directly to the driller, a copy of the F-NOV will be provided to the driller's address of license record within five (5) days. The F-NOV will be sent to the driller by both certified and regular mail. In addition, the Department field staff initiating the formal enforcement action will attempt to contact the driller through the business phone or email address provided on the driller's licensing application (see section 8).
- b. *Notice of Violation* (NOV) documents the alleged violation and identifies specific actions or corrections to achieve compliance and timeframe to complete these actions and the amount of any penalties being imposed due to these violations. It provides guidance on how a driller may appeal the NOV (see section 8).
- c. *Cease and Desist Order* is an order to stop drilling operations due to an imminent threat to the State's groundwater resource posed by the drilling operation, lack of drilling permit, failure to follow conditions of drilling permit, lack of driller's license, or other specific requirements of Idaho Code or Rules (See section 8).
- d. *Civil Enforcement Actions* are restraining orders or preliminary injunctions through civil action in district court of the county where drilling is performed (see section 8).
- e. *Suspension and/or revocation of a license* provides for well driller's license to be suspended or revoked when escalated enforcement actions have failed to achieve compliance and the violation continues (see section 7).
- f. *Court injunctions* or orders result after escalated enforcement action has failed to achieve compliance and action is taken to correct initiated through Attorney General's Office.
- g. *Criminal Prosecution* is taken when the county prosecutor initiates a criminal complaint in district court for a violation of IC 42-238(2) and 42-238(13).

7. Violation Guidelines for Formal Enforcement Actions

a. Level 1 Violations.

The following acts generally constitute minor (Level 1) violations if not satisfactorily resolved in any informal enforcement action:

1. Constructing a well without first obtaining or verifying the existence of a written or start card permit.
2. Not having proof of drilling permit or start card permit at the well site.
3. Submitting a start card with incorrect information, e.g. start card submitted as a single family domestic well when well will be used for other domestic use.
4. Failure to properly prepare, sign, and submit the well driller's report to IDWR within 30 days following completion of well construction.
5. Not having plate or number on drill rig.
6. Failure to have driller's license card or operator's permit card on site.
7. Failure to properly attach the IDWR issued well tag to the well casing.
8. Refusing IDWR representative access to wells or well equipment or blocking IDWR representative access to well or well equipment.
9. Submitting a well report with inaccurate information.
10. Submitting an operator or driller license application with inaccurate information.
11. Other acts that the Regional Manager and/or Groundwater Section Manager determine to not exceed Level 1 violation criteria because the act does not create an actual or imminent threat to human health or the groundwater resource nor reflect repeated or willful intent of the driller.

Penalties for Level 1 violations are:

First violation:	\$250.00 + timely correction of violation
Second violation	\$500.00 + timely correction of the violation
Third violation	Equivalent to level 2, first violation

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A second violation is defined as any violation of IDAPA 37.03.09, IDAPA 37.03.10, or IC 42-235 or IC 42-238 that occurs within two (2) years of the first Level 1 violation. The third violation is defined as any violation of the Well Construction Standards of Idaho Code that occurs within two (2) years of the second Level 1 violation. Level 1 Penalties may be adjusted downward or withdrawn following receipt of clear evidence that:

1. The alleged violation did not occur, or
  2. The corrections or changes required from the enforcement action are in the best interest of protection of the resource and the State of Idaho and because of unique conditions the penalty may affect the ability of the driller to correct the violation(s).
- b. Level 2 Violations.  
The following acts generally constitute major (Level 2) violations:
1. Construction of well in Idaho without obtaining a proper well driller's license or permit.
  2. Construction of a well without having a start card drilling permit or drilling permit in possession of driller prior to commencement of construction.
  3. Construction of a well in violation of the terms and conditions of a drilling permit.
  4. Construction of a well in violation of the Well Construction Standards Rules IDAPA 37.03.09 and Well Driller Licensing Rules IDAPA 37.03.10, e.g. proper casing, seals, well screen, etc.
  5. Constructing a low-temperature geothermal or geothermal well without proper bonding.
  6. Failure to keep a current written well driller's report at the drilling site describing well construction detail, water bearing zones, lithologic changes, and other pertinent information.
  7. Failure to obtain any necessary waiver to rules prior to commencing work.
  8. Violation of Cease and Desist Order
  9. Falsification of a well driller's report provided to IDWR.
  10. Other acts that the Regional Manager and/or Groundwater Section Manager determine as meeting Level 2 violation criteria because they create an actual or imminent threat to human health, the Ground water resource, or reflect repeated or willful intent of the driller.

Penalties for Level 2 violations are:

First violation:	\$1,000.00 + timely correction of violation
Second violation	\$2,500.00 + timely correction of violation
Third violation	\$10,000.00 + Civil Suit for injunction and damages, including cost to correct violation by another licensed driller, court costs, etc. Suspension of driller's license for a period of not less than one or more than five years.

A second violation is defined as any violation of IDAPA 37.03.09, IDAPA 37.03.10, or IC 42-235 or IC 42-238 that occurs within five (5) years of the first Level 2 violation. The third violation is defined as any violation of the Well Construction Standards or Idaho Code that occurs within five (5) years of the second Level 2 violation.

Some Level 2 violations may be of such magnitude and/or the result of willful intent to gain an economic advantage to warrant maximum penalty regardless of prior compliance history. The Director shall be briefed prior to issuing penalties for these Level 2 violations.

Level 2 Penalties may be adjusted downward or withdrawn following receipt of clear evidence that the alleged violation did not occur.

c. Suspension of a Driller's License. The Department has the authority to suspend or revoke the driller's license or to refuse to renew a license for failure to comply with the provisions of Idaho Code Section 42-238(11). Grounds for suspension or revoking of a license include:

1. Failure to maintain a current well log at the drilling site that captures pertinent information regarding well construction or abandonment activities or to maintain this record for one year;
2. Failure to submit a properly prepared and signed well report to the Department within 30 days following removal of drill rig from site;
3. Failure to construct a well that meets the minimum well construction standards IDAPA 37.03.09;
4. Falsification of a well driller's report provided to IDWR.

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Terms of suspension – Suspension of a driller’s license can remain in effect until the driller has submitted the late or missing well reports, or the driller has repaired or reconstructed the well so the well meets the minimum well construction standards or the well is properly abandoned, or the driller corrected the falsified well driller’s report(s). If action against the driller’s license is determined to be warranted, the state office will send the driller an order describing the cause for suspension, revocation, or non-renewal of the driller’s license and the terms and conditions for reinstatement. Prior to the driller’s license being suspended, revoked, or not renewed, the driller will be entitled to a hearing before the director, as detailed in the Administrative Appeals Process. Drillers whose license has been suspended or revoked may apply for reinstatement no sooner than the report(s) are properly corrected and on file, and/or other well construction violations are resolved. If the director, after consulting with the Driller’s Advisory Committee, determines that the compliance history of the applicant (driller) includes significant violations of the well construction laws and/or rules, including well construction standards, the director may deny the license application for a period of up to one (1) year.

8. Notice of Enforcement Action

a. Field Issued Notice of Violation

The Department’s Water Resource Agent can issue a Field NOV (F-NOV) for violations of Idaho Code or IDAPA Rules that are personally observed in the performance of their well inspection duties. The F-NOV shall follow the Department’s Well Drilling enforcement policy as published on the Department’s web site. The F-NOV shall identify the alleged violation(s) and specify each provision of the permit, rule, order, or statute that has been violated and be signed by the Water Resource Agent. The F-NOV shall state any demand to cease and desist and describe those remedies necessary to correct the violation(s). The F-NOV may provide a proposed agreed to civil penalty. The F-NOV will be handed to the driller or, if the driller is not on site, it will be posted on a clearly visible portion the drilling equipment. A memorandum shall be promptly prepared by the Water Resource Agent to document the alleged violation(s) supported by field notes, photos, and other evidence and a copy of this memorandum shall be placed in the driller’s and drilling company’s license file in the state office. A copy of the F-NOV will be mailed to the drilling firm and to the principle driller.

The driller can acknowledge and accept the violations, the proposed agreed civil penalty, and complete the corrective actions necessary to comply with the F-NOV. The Water Resource Agent will follow-up with the driller and confirm that specific corrective actions where completed to assure compliance. If the driller does not agree with the alleged violations provided in the F-NOV, the driller can appeal to the Regional Manager indicated on the F-NOV through the appeal process described in Section 9.

b. Notice of Violation (Formal)

The Department’s Water Resource Agent can issue a formal written Notice of Violation (NOV) for violations of Idaho Code or the IDAPA Rules that are observed in the performance of their well inspection duties. The NOV shall follow the Department’s Well Drilling enforcement policy. The NOV shall identify the alleged violation(s) and specify each provision of the permit, rule, order, or statute that has been violated. The NOV shall state any demand to cease and desist and describe those remedies necessary to correct the violation(s). The NOV may provide a proposed agreed to civil penalty. The regional manager, bureau chief, or Groundwater Section Manager will sign the NOV. A memorandum shall be promptly prepared by the Water Resource Agent to document the alleged violation(s) supported by field notes, photos, and other evidence and a copy of this memorandum shall be placed in the driller’s and drilling company’s license file in the state office. A copy of the NOV will be mailed to the drilling firm and to the principle driller.

The driller can accept the violations, the proposed agreed civil penalty, and complete the corrective actions necessary to comply with the NOV by consenting to an order issued by the Department. The Water Resource Agent will follow-up with the driller and confirm that specific corrective actions where completed to assure compliance. If the driller does not agree with the alleged violations provided in the NOV and is unable to enter into a consent order at the compliance conference, the driller may request a hearing pursuant to IC 42-1701(3).

c. Cease and Desist Order (Administrative Action)

Persons determined to have drilled a well without a license, or without a valid drilling permit, or drilling with unidentified equipment, or construction of a well, failure to follow conditions of drilling permit, operation of a well that poses a threat to the ground water resource or public health, or other specific requirements of Idaho Code or Rules

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may be issued a Cease and Desist Order. The Cease and Desist Order may be issued verbally provided it is followed up in writing and need not be issued with a NOV or other written warning. If the action(s) that are the subject of the Cease and Desist Order continues, the offense will be considered a continuing violation, which the department may seek additional penalties of \$150 per day until violation and damage done as a result of violation are corrected or the department may seek injunctive relief through the courts as described in subsection "d" below. In the case of an

immediate threat to the ground water or public health with well construction or operation, the well driller and/or owner should be given no more than 24 hours from receipt of the Cease and Desist Order to completely stop all operations that do not clearly lead to correction of the damage and/or elimination of threat. The driller need not sign the Cease and Desist Order. The Department's Water Resource Agent will make an effort to advise the driller in person or by phone of the order, but the Cease and Desist Order posted in a conspicuous place at the construction site shall be deemed as served and received. A copy of the Cease and Desist Order will be provided to the drilling firm and the principal driller.

d. Cease and Desist Order (Civil Enforcement of Cease and Desist Order).

A temporary restraining order or preliminary injunction can be sought through Civil Action in District Court to stop the driller from causing irreparable injury to the ground water resources of the state.

e. Uniform Citation

In the case of a person drilling a well without a valid Idaho well driller's license, a regional agent specifically designated by the division administrator or director has the option to issue an Idaho Uniform citation, pursuant to Idaho Code Section 42-1701B. The Uniform Citation will be submitted to the district court in the county maintaining jurisdiction together with an investigation report prepared for the county prosecutor .

9. Compliance Conference Process

The driller has 14 days from the receipt of the F-NOV or NOV to request, in writing, that the regional manager hold a compliance conference. The regional manager will schedule the conference within 21 days of request unless both parties agree upon a later date. If the driller and regional manager come to an agreement during the compliance conference, they will enter into a consent order formalizing their agreement. The consent order will include corrective actions necessary to bring the well into compliance with the current standards, date when corrective actions must be completed, and details regarding payment of an agreed civil penalty to the Department. The agreement should also state how to avoid a repeat violation. Compliance with the consent order by the driller shall preclude the Department from seeking a penalty through a civil action for the alleged violation.

If the driller and regional manager are unable to reach an agreement during the compliance conference, the driller may request a hearing before the Director pursuant to IC 42-1701A.

If the compliance conference does not resolve the violation(s), the state office may initiate a civil enforcement action through the Idaho Attorney General to recover a civil penalty and may revoke the driller's license, or take other appropriate action as provided in 42-235 and 42-238, Idaho Code. The civil enforcement action may be commenced and prosecuted in the District Court with jurisdiction.

The recommended schedule of penalties to be sought by the Department through the F-NOV or NOV process is provided in section 7 of this policy. The schedule is intended to provide consistency throughout the state. The penalty amount may be reduced because of mitigating factors determined at the compliance conference or hearing. If the violation is serious or flagrant, the NOV may include a higher penalty if provided by law and coordinated with the Division Administrator.

10. Tracking enforcement actions

Informal enforcement action shall be tracked at the regional level. Regions will establish their own methods for tracking informal enforcement actions, for example, an enforcement database or memorandums to file. Copies of all formal enforcement actions shall be provided to the state office and a copy will be included in the driller's and drilling company's license file.

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11. Educating the regulated community

Knowledge of and compliance with the state of Idaho's statutes and regulations is the responsibility of those engaged in activities regulated by the laws of the state. The Department will conduct training regarding well construction rules, Idaho Code and Department policies at IGWA conferences and other conference opportunities. The regulated community will also be informed of changes in IDWR policies by mail and the Department's web site.

12. Training requirements

Water Resources enforcement staff are required to participate in formal enforcement training every two years. State office staff, including the Groundwater Section Manager, will coordinate this training. Water Resource personnel who recommend, review, or sign enforcement actions will attend this enforcement training.

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