

## 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

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.

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.

- 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

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.

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 were 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 were 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

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.

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.