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New Castle, DE 19720
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May 5, 2020

**VIA FIRST CLASS MAIL
AND ELECTRONIC MAIL**

Secretary Shawn M. Garvin
Department of Natural Resources
and Environmental Control
Office of the Secretary
89 Kings Highway
Dover, DE 19901

RE: Application for Stay of Well Permits 267708 and 267709

Dear Secretary Garvin,

Please accept this application for a stay pursuant to 7 *Del. C.* § 6008(f) from the Lewes Board of Public Works (“BPW”) of the above-referenced well permits, which were issued on April 7, 2020.

The BPW appealed the issuance of the permits on April 23, 2020 and received confirmation of the appeal on May 4. The legal bases for the appeal are summarized briefly in the enclosed notice of appeal.

Besides being contrary to the applicable DNREC regulations, state law, and the BPW’s Charter, the proposed well poses a grave threat to the City of Lewes’s water supply and creates serious risk of salt water intrusion to the underground aquifers which serve as a water source for the City and its Board of Public Works.

A straightforward balancing of the equities strongly favors the issuance of a stay of the permit. The potential permanent, irreparable, and grave harm to the municipal water supply of an entire city if the stay is not issued greatly outweighs any harm to the permit applicant, who would at worst be delayed temporarily from drilling a well on a lot with no existing habitable structure if the stay is issued.

As such, the BPW is able to show good cause and requests that well permits 267708 and 267709 be stayed during the pendency of the BPW's appeal to the EAB. If you or any DNREC official should require anything further or have any questions regarding this application for a stay, the undersigned is available at DNREC's convenience.

Very truly yours,

/s/ Daniel F. McAllister

Daniel F. McAllister

DFM/sat
Enclosure

cc: Mr. Darrin Gordon, General Manager, Lewes BPW (via electronic mail)
D. Preston Lee, P. E., President, Lewes BPW (via electronic mail)
Glenn Mandalas, Esq., Lewes City Solicitor (via electronic mail)
Mr. Jerry Peter (via electronic mail)
Mike Hoffman, Esq. (via electronic mail)
Ms. Sascha Mohammed (via electronic mail)
Kayli Spialter, Esq. (via electronic mail)

Dan McAllister

From: Dan McAllister
Sent: Thursday, April 23, 2020 2:05 PM
To: Mohammed, Sascha (DNREC)
Cc: jfpeter@comcast.net; Spialter, Kayli (DOJ); Dean Holden; Maloney, Kevin (DOJ)
Subject: Appeal of well permit 267708
Attachments: Copier_20200423_140009.pdf

Ms. Mohammed,

Attached please find the Lewes Board of Public Works' appeal to the Environmental Appeals Board of well permit 267708. This appeal has also been sent by overnight mail today to the EAB with payment enclosed. If you have any questions or should required anything further, please do not hesitate to reach out to me.

Thank you and best regards,

Daniel McAllister, Esq.
Tarabicos Grosso, LLP
One Corporate Commons
100 West Commons Boulevard
Suite 415
New Castle, DE 19720
Direct: (302) 757-7816
Main: (302) 757-7800

<http://tarabicosgrosso.com/>



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April 23, 2020

**VIA OVERNIGHT MAIL
AND ELECTRONIC MAIL**

Environmental Appeals Board
89 Kings Highway, Dover, DE 19901
Attention: Administrative Assistant to the Environmental Appeals Board

RE: Appeal of Well Permit Application #267709

Dear Sir or Madam,

The Lewes Board of Public Works (the "BPW"), pursuant to 7 Del. C. sec. 6008 and Environmental Appeal Board 2.0, hereby appeals the issuance of Well Permit Application #267709 to Jerry Peter to construct a geothermal supply well on tax parcel number 3-35-09000-0009.00. The permit was issued on April 7, 2020. A copy of the permit is enclosed.

Enclosed is our firm's check number 6819 in the amount of \$50.00 made payable to the Environmental Appeals Board.

On November 7, 2019, the BPW wrote to DNREC at DNREC's request advising that the BPW opposed the well permit application because of the well's threat to the municipal water supply and because the Applicant, Jerry Peter, could easily connect to the municipal water supplied by the BPW.

On January 7, 2020, the Secretary correctly denied the application on the basis that the BPW had opposed the permit application. The Applicant appealed the denial and the BPW moved to intervene. Without explanation, the Secretary then reversed course and issued the permit before any hearing was held.

The BPW has a substantial interest in the proper enforcement of 7 Del. Admin. C. § 7301, subsection 3.12.7, which the Secretary acknowledged applies here when he solicited the BPW's position on the permit application and then denied the permit after receiving correspondence from

the BPW opposing the application. Further, the BPW has an interest in enforcing the terms of its charter that the issuance of the permit violates. Finally, the BPW has an interest in preserving and protecting Lewes's municipal water supply, to which the proposed well poses a substantial threat.

The well permit was incorrectly issued in violation of the applicable regulations and the BPW's charter.

First, the well permit was incorrectly issued because subsection 3.12.7 requires that where, as in this instance, a well permit application is in the service area of a municipality, the Applicant must provide a written statement of approval from the municipality. Not only did the Applicant fail to provide a statement of approval, the BPW actually voiced its disapproval of the permit.

Second, the BPW's charter authorizes the BPW to require any and all premises within its service area to connect to the municipal utility. The BPW has required the Applicant to connect to municipal water. The Applicant therefore cannot have a well, and the applicable Well Permit Regulations recognize this; when read in conjunction with the BPW's charter, the regulations require that the permit be denied. To the extent they do not, they are preempted by the charter.

As the BPW's General Manager set forth more fully in his correspondence to DNREC, the Applicant's proposed well poses a serious threat of saltwater intrusion in the coastal City of Lewes's municipal water supply. The BPW's policies have been enacted to prevent this, and the applicable DNREC regulations contemplate that local factors will require denial of a permit application. In this case, the permit was first correctly denied, and then incorrectly issued. It should now be overturned.

The BPW expects to call no more than 3-4 witnesses and to require no more than two hours to make any presentation to the board. Please do not hesitate to contact me with any questions regarding this appeal.

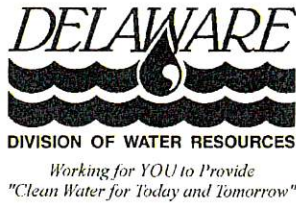
Very truly yours,

/s/ Daniel F. McAllister

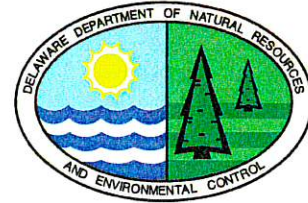
Daniel F. McAllister

DFM/sat
Enclosure

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Mr. Dean Holden (via electronic mail)
Mr. Jerry Peter (via electronic mail)
Kevin Maloney, Esq. (via electronic mail)
Kayli Spialter, Esq. (via electronic mail)
Mike Hoffman, Esq. (via electronic mail)



**PERMIT
267708**



Tax Map Number: 3-35-08.00-0009.00

DRILLER COPY

Pursuant to provisions of Title 7, Delaware Code, Chapter 60, permission is hereby granted to:

**Peter, Jerry
116 Front Street Unit 16, Lewes, DE 19958 US**

to construct, operate and maintain 1 Geothermal Supply Well in a total of 1 boring

This permit is only valid for construction upon obtaining an Authorization Number from Delaware DNREC.

Construction must be completed on or before 4/7/2021, one year from permit issuance date.

A permit extension can be obtained on or before the date above by contacting Delaware DNREC.

Construction must be done by a person duly licensed by the Delaware DNREC for such activity.

All current regulations governing well construction shall be followed.

All attached permit conditions shall be complied with.

The applicant is responsible for obtaining all additionally required permits and approvals.

Should the well identification tag become detached and irrecoverable from the well(s), the property owner is responsible to contact the Water Supply section of DNREC at 302-739-9944 for a replacement.

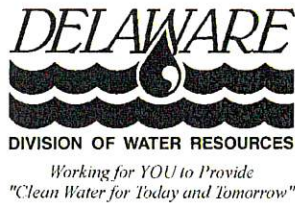
4/7/2020

AUTHORIZED SIGNATURE

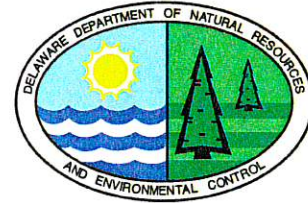
DATE

Authorization Number:

To obtain authorization please call toll free: 1-866-276-2353



**PERMIT
267708**

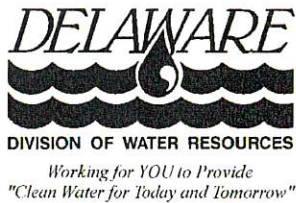


Well Driller Responsible Conditions

- §16 The well(s) shall be adequately developed.
- §24 The identification tag, supplied by the Department, shall be properly attached to the upper terminus.
- §45 No heat pump recharge well or closed loop heat pump loop shall be constructed within 50 feet of any identifiable potential or existing source of contamination.
- §50 At such time when this well must be abandoned, an abandonment report, signed by the well driller in responsible charge of the work, must be submitted to the Water Supply Section within 30 days of abandonment of the well(s).
- §62 The Water Supply Section shall be notified at least 24 hours prior to the construction of this well at (302) 739-9944.
- §63 A well completion report shall be submitted to the Water Supply Section within 30 days of completion of well construction.
- §87 The well driller or well driver is required to have at the drilling site an approved authorization number that must accompany the approved well permit.
- §104 The well driller or well driver is required to have at the drilling site a copy of the signed well permit or, in the case of verbal permits, the permit number.

Owner/Well Driller Combined Responsibility Conditions

- §1 The approval of this permit does not relieve the responsible party from the requirement for obtaining all permits that are required by federal, state, county, and local governments. The responsible party shall comply with any and all federal, state, county, and local statutes, ordinances, zoning procedures, orders, regulations, rules, as a condition of the issuance of this permit.
- §2 The issuance of this permit does not guarantee the performance of the permitted well to the standards required by the project. The Department has no knowledge of subsurface conditions or of the constructability of the proposed well.
- §3 This permit is valid only for the specific operations and processes applied for and indicated on the application form and attached drawings. Any unauthorized deviations from the approved project or violations of permit conditions may constitute grounds for revocation. Upon revocation, the well will be ordered abandoned.
- §12 The well casing shall be finished and maintained at least 12 inches above grade.

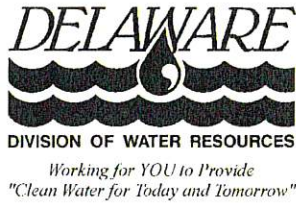


**PERMIT
267708**

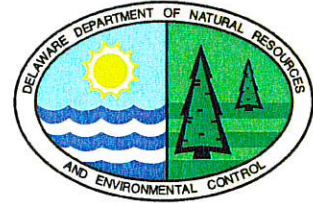


Owner/Well Driller Combined Responsibility Conditions

- §14 Upon completion, the well and appurtenances shall be disinfected in conformance with the Regulations Governing the Construction and Use of Wells.
- §15 The annular space of this well shall be pressure grouted from the top of the gravel pack to ground surface with a slurry of neat cement, bentonite cement or bentonite and water, in accordance with the Regulations Governing the Construction and Use of Wells.
- §44 All water obtained from well(s) for the operation of a heat pump system shall be injected into the aquifer from which it came.
- §46 No corrosion inhibitors, water softening, or other additives shall be added to the water that will eventually be returned into the ground.
- §52 If identifiable contamination is detected during construction, and the contamination was not anticipated or evaluated during the permit application and approval process, the well driller shall cease work and notify the Emergency Response Hotline immediately by calling 1-800-662-8802, followed by the Water Supply Section 302-739-9944.
- §54 Representatives of DNREC, the Delaware Geological Survey or the U.S. Geological Survey may inspect the well and/or conduct tests such as but not limited to geophysical logging and sampling, at any reasonable time after serving advance notice.
- §99 Public wells shall be located at least seventy- five (75') feet from a gravity sewer and a sewer force main. Domestic wells shall be located at least fifty (50') feet from a gravity sewer and a sewer force main. Non-potable wells shall be located at least ten (10') feet from a gravity sewer line, and shall be at least fifty (50') feet from a sewer force main.



**PERMIT
267708**



Tax Map Number: 3-35-08.00-0009.00

OWNER COPY

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Construction must be completed on or before 4/7/2021, one year from permit issuance date.

A permit extension can be obtained on or before the date above by contacting Delaware DNREC.

Construction must be done by a person duly licensed by the Delaware DNREC for such activity.

All current regulations governing well construction shall be followed.

All attached permit conditions shall be complied with.

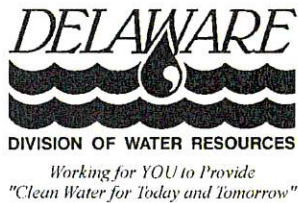
The applicant is responsible for obtaining all additionally required permits and approvals.

Should the well identification tag become detached and irrecoverable from the well(s), the property owner is responsible to contact the Water Supply section of DNREC at 302-739-9944 for a replacement.

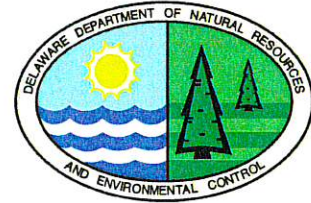
4/7/2020

AUTHORIZED SIGNATURE

DATE



PERMIT 267708

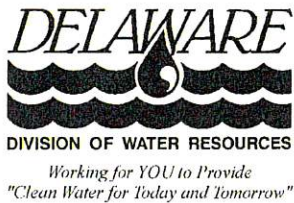


Owner/Well Driller Combined Responsibility Conditions

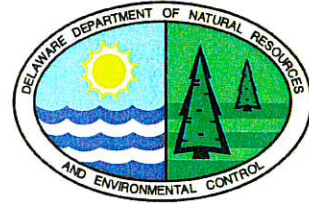
- §1 The approval of this permit does not relieve the responsible party from the requirement for obtaining all permits that are required by federal, state, county, and local governments. The responsible party shall comply with any and all federal, state, county, and local statutes, ordinances, zoning procedures, orders, regulations, rules, as a condition of the issuance of this permit.
- §2 The issuance of this permit does not guarantee the performance of the permitted well to the standards required by the project. The Department has no knowledge of subsurface conditions or of the constructability of the proposed well.
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Owner Responsible Conditions

- §25 The well(s) shall be capped securely at all times.
- §64 This permit and all conditions shall transfer to future owners of this property, identified by Tax ID# 3-35-08.00-0009.00.



**PERMIT
267708**



§110 The Department recommends having water from this well sampled. Sample kits are available from the Division of Public Health, Office of Drinking Water at the following locations:

New Castle County:
University Office Plaza - Chopin Building
258 Chapman Road, Suite 105
Newark, DE 19702
(302) 283-7110

Kent County:
Thomas Collins Building, Ste.5
540 S. DuPont Hwy.
Dover, DE 19901
(302) 744-1220

Division of Public Health Laboratory
30 Sunnyside Road
Smyrna, DE 19977
(302) 223-1520

Sussex County:
Georgetown State Service Center
546 S. Bedford Street
Georgetown, DE 19947
(302) 856-5496