

BEFORE THE ENVIRONMENTAL APPEALS BOARD

APPEAL OF THE DELMAR WATER COMMISSION

DECISION

The Board met on March 20, 1985. Present were Chairman Thomas Kealy, and Members Evelyn Greenwood and George Wharton and Holger Harvey. The Board was represented by Deputy Attorney General Barbara MacDonald. The appellant, Delmar Water Commission (Delmar) was represented by Jackson Dunlap, Esq. Jeffrey Homer, Esq. represented the applicants, Roger and Theresa States (States). Jeanne Langdon, Esq. represented the Department of Natural Resources and Environmental Control (Department).

Lester Meyer, a former employee of the Department, Karen Horseman, Delmar Town Manager, James L. Smith, Mayor of Delmar, applicants Roger and Theresa States and Phillip Cherry, a Department employee, testified.

Summary of the Evidence

The property of Roger and Theresa States is located within the service area of the Delaware Water Commission. Department Regulation No. II, §2.02 requires an applicant for a permit to dig a well within the service area of a public water supply system to present written approval of the application from the municipality. The application form used by the Department makes no reference to this requirement nor is it the practice of Water Resource Division employees to inform applicants of the requirement.

On December 28, 1983 Roger States applied for and was granted a permit to dig a well. He did not have, and was not informed of the need for, authorization from Delmar. Lester Meyer, who granted the permit, did not realize the property was located within Delmar's supply service area, nor did he notice that the States' property was part of a parcel of land for which the former owner, Mr. Joseph Corsi, had applied and been denied, a well permit.

Delmar officials noticed that a well had been dug on the parcel in late January or early February, 1984. They immediately contacted the Department, which investigated but made no decision until December 12, 1984, when it announced that it would not revoke the States' well permit. Delmar appears from that decision.

Jurisdiction

The Board finds that the December 12, 1984 letter is an appealable action by the Secretary of the Department under 7 Del. C. §6008. Delmar was not asking the Secretary simply to reconfirm his earlier action but to make a new decision, based on information which the Department did not have when it originally issued the permit, i.e., the fact that the States' property was located inside Delmar's service area. Therefore, the Board holds that the appeal is timely and that the Board has jurisdiction over it. The applicants' and DNREC's motion to dismiss is denied.

Findings of Fact

The Board finds that the States have acted in good faith and have complied in all respects with the DNREC's permit requirements. The evidence presented does not support a finding that the States knew of and purposefully ignored DNREC Regulation No. II, §2.02. The Board finds that, as conceded by DNREC, the Water Resources section erred in issuing the permit.

The Board further finds that the States justifiably relied on the facially correct permit issued by the Department. To order revocation of that permit now would impose an unfair hardship on the States.

The Board does not find merit in Delmar's contention that allowing the permit to stand in this case will set a precedent allowing other area residents to disconnect. On the contrary, the evidence is clear that had the Department known of the available water hook-up, it would not have issued the permit. There is no reason to believe that the Department will issue further erroneous permits.

ORDER OF THE BOARD

The decision of the Secretary is upheld not to revoke the permit is upheld.

Recommendations and Comments

The Board recommends that the form titled "Application for a Permit to Drill a Well" used by the Department be modified to require all applicants to state whether they live in the service area of a public water system and if so, to supply the affected municipality's approval of the application.

The Board sympathizes with Delmar's efforts to provide quality and low cost water service to persons in its jurisdiction and understands that such a system cannot exist when costs are not spread evenly over a large section of the population. However, in balancing the equities, the Board believes that Delmar is best able to bear the burden of this individual situation. As stated, the Board does not believe that this decision will enable other persons to disconnect from the Delmar system.

The Board thanks Delmar for pursuing this matter and hopes that this appeal will encourage the DNREC to carefully review all well permits.

APPROVED:

Thomas J. Keal
Chairman

Harold H. Long
Member

George A. Wharton
Member

Doyle P. Greenwood
Member

Clifton H. Walling
Member
4/4/85