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STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 621
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STAFF SUBMITTAL

for the meeting of the
COMMISSION ON WATER RESOURCE MANAGEMENT

February 21, 2008
Honolulu, Oahu

Beylik Drilling and Pump Service
APPLICATION FOR AFTER-THE-FACT PUMP INSTALLATION PERMIT
AND VIOLATION

Kukuihaele Well (Well No. 6734-03)
Pump Installation: 50 gpm for Municipal use
TMK: 4-8-008:026, 48-160 Mud Lane Road, Hawaii

APPLICANT:

Beylik Drilling and Pump Service
91-259A Olai Street
Kapolei, HI 96707

LANDOWNER:

County of Hawaii
Department of Water Supply
345 Kekuanaoa Street, Suite 20
Hilo, HI 96720

DESCRIPTION:

Location: (See Exhibit 1)

BACKGROUND:

On December 14, 2001, the Commission on Water Resource Management (Commission) issued a Well Construction Permit for exploratory well drilling for the Kukuihaele Well (well no. 6734-03) to the County of Hawaii, Department of Water Supply (DWS). At that time, the Commission was issuing permits to either landowners or drillers, and the process of issuing Well Construction Permits and Pump Installation Permits was bifurcated.

On November 20, 2003, a Well Completion Report Part I was submitted to the Commission. The Commission had not issued a Pump Installation immediately thereafter, because the original application was only for exploratory purposes.

On December 28, 2006, Beylik Drilling and Pump Service (Beylik) installed a pump in the well without a pump installation permit.

On January 25, 2007, Beylik turned in a Well Completion Report Part II to the Commission, which described the pump installation work.

On February 7, 2007, staff requested that Beylik turn in an after-the-fact Pump Installation Permit application.

On April 17, 2007, Beylik completed an after-the-fact Pump Installation Permit application and sent it to the DWS.

On October 15, 2007, Tom Nance Water Resource Engineering submitted an application to modify the well. Staff immediately followed up with a phone call to Beylik requesting the submission of an after-the-fact Pump Installation Permit.

On December 26, 2007, DWS sent Beylik's after-the-fact Pump Installation Permit application in, stating that the application was misfiled by the DWS.

WATER AVAILABILITY:

The well is located in the Honokaa Aquifer System Area with an estimated sustainable yield of 31 million gallons per day (mgd). There are only 10 other sources in the aquifer area with a total installed capacity of 3.38 mgd. Pump tests did not encounter any recharge boundaries, such as a stream. Therefore, risk to the resource is insignificant at this time.

ISSUES/ANALYSIS:

The sole issue with this after-the-fact application is the installation of a pump without an approved Commission permit. HAR §13-168-12(a) states that:

No well shall be constructed, altered, or repaired and no pump or pumping equipment shall be installed, replaced, or repaired without an appropriate permit from the commission.

No pump installation permit had been issued for well no. 6734-03 when the pump was installed on December 28, 2006, which is the only violation before the Commission in this submittal.

Knowledge of Permit Requirement; Driller Responsibility

In 2004, after the adoption of revisions to the Hawaii Well Construction and Pump Installation Standards, the Commission began stricter adherence to §174C-84 (a), which states that:

An application for a permit for installation of a pump and pumping equipment shall be made by the pump installation contractor who will install the pump and pumping equipment.

Prior to 2004, landowners, operators, and contractors were all required to sign applications and reports. Part of the reason to limit applicants to just the contractor was due to complaints from the well drilling community that required reports were being sent from the drillers to the well owners/landowners, who were then misplacing or not signing off on the reports, but fault was still being assessed on the drillers. Also, well owners, land owners and operators did not want to be burdened with construction details of the well and wanted it left to the contractors like other building permits. With the adoption of the updated Hawaii Well Construction and Pump Installation Standards, the Commission decided in 2004 that the contractor would from then on be solely responsible for the well permitting process.

As a result, staff feels that while the DWS should have known that a permit was required, the responsibility to obtain a permit was solely that of Beylik.

Further, §13-168-12 of the Hawaii Administrative Rules states that:

(e) Every well construction and pump installation permit shall direct the well driller or pump installation contractor to file a well completion report, as provided in §13-168-13. The permit shall be prominently displayed at the site of the well at all times until the well construction or the pump installation is completed. [emphasis added]

As such, this is a standard note at the top of all well construction permits and pump installation permits (see Exhibit 3) and is a standard condition 3 of all pump installation permits and standard condition 2 of all well construction permits. If Beylik attempted to comply with this routine standard permit condition at the time of the pump installation work, they would have known that they didn't have a permit.

Also, Beylik had been previously found to be in violation for not turning in Well Completion Reports Part II (the document that describes the pump installation) for the Enserch Wells (well nos. 6523-03 & -04) in August 15, 2001.

Despite the lack of a permit, Beylik did submit a timely Well Completion Report Part II on their own volition. Beylik also turned in the after-the-fact Pump Installation Permit application, albeit to the wrong entity (DWS). Lastly, staff also understands that recent personnel changes within Beylik may have contributed to the oversight.

PENALTY POLICY (refer to attached Exhibit 2)

Basic component

The total daily fine can be calculated by a minimum of \$250 for a finding of violation, plus \$250 for a repeat violation.

Gravity component

According to the penalty policy G-01-01, gravity components can include items such as significant risk of or actual damage or harm to the water resources or the environment, multiple or repeat violations of the code or regulations (applicable in this case), evidence that the violator should have known about the violation (applicable in this case), refusal to correct the violation once noticed, failure to meet deadlines as set by the Commission or its staff. The two gravity components would suggest a fairly high gravity component. However, staff recognizes personnel changes at Beylik lent to confusion, and self reporting are evidence that Beylik did not willfully disregard the law. Because of this, staff feels that a gravity component of \$50 is warranted.

Mitigative component

Similarly, mitigative components can include insignificant impact on the resource (applicable in this case), attempt to remedy the violation without notice (applicable in this case by their submission of a Well Completion Report Part II), good faith effort to remedy violation once noticed (applicable in this case), self reporting in a timely manner (partially applicable in this case), and diligent and speedy effort to remedy the violation once noticed. Staff feels that the mitigative component should be - \$545 for these reasons.

Therefore, staff is recommending a total daily fine of $\$250 + \$250 + \$50 - \$545 = \$5$.

Duration calculation

To calculate the duration of the violation, in accordance with the penalty policy, the total duration of the violation can be brought down to one day if the applicant complies with the Commission's requirements within 30 days. The Penalty Policy describes that a start date for the duration of a fine can be the actual violation date or the Notice of Violation. Staff requested that the applicant submit an after-the-fact Pump Installation Permit application on February 7, 2007, which was a verbal Notice of Violation. Staff feels that a compliance date can be considered April 17, 2007, since this was the date that Beylik signed the application and sent it incorrectly to DWS, even though the DWS didn't send the application into the Commission until December 26, 2007. The duration from February 7, 2007 to April 17, 2007 amounts to 69 days. Therefore, staff is recommending that the total duration of the violation is 69 days.

For the purposes of discussion, the following table describes possible dates of the beginning and ending of the fine period:

Date	Description	Comments
12/28/2006	Beylik installs a pump in the well without pump installation permit	This is the actual date of the violation. This can be alternative start period (1) for the violation, though staff is not recommending it.
Elapsed time: 28 days (1)		
1/25/2007	Commission receives Well Completion Report Part II describing the pump installation	This is the date staff was first notified that a pump was installed.
Elapsed time: 41 days (1); 0 days (2)		
2/7/07	Commission contacts Beylik and requests that they submit an after-the-fact Pump Installation Permit application	This is the date that staff notified Beylik that they were in violation, and is another alternative date and the one that staff is recommending to start the fine period (2).
Elapsed time: 110 (1); 69 days (2)		
4/17/2007	Beylik sends an after-the-fact Pump Installation Permit application to the DWS	While Beylik should have turned the application in to Commission, they turned it into DWS on this date. <u>Staff recommends that this is the end of the fine period.</u>
Elapsed time: 363 days (1); 253 days (2)		
12/26/2007	DWS transmits after-the-fact Pump Installation Permit application to Commission	This can also be an end period for the violation, though staff is not recommending it.

Therefore, the total fine recommended is \$5/day * 69 days = \$345.

Alternative settlement

Staff is not recommending any alternative settlement.

AGENCY REVIEW:

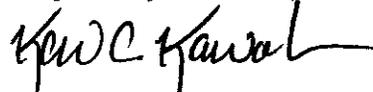
Copies of the application were sent to the Department of Health's Safe Drinking Water and Wastewater Branches. No comments or concerns were indicated.

RECOMMENDATION:

That the Commission:

- A. Find Beylik in violation of HAR §13-168-12(a).
- B. Impose a fine of \$345 on Beylik as summarized in Exhibit 2, payable within 30 days.
- C. That the Commission approve the issuance of an after-the-fact pump installation permit for the Kukuihaele Well (Well No. 6734-03) to Beylik, subject to the standard conditions in Exhibit 3, and the following special conditions:
 1. The well should not be used for drinking water unless it is properly tested and treated.
 2. That the permit will be issued after the fine described in Item B is paid by the applicant.
- D. Suspend any current, pending or future applications by Beylik until the fines are paid and Beylik completes the permit process for this well.

Respectfully submitted,



KEN C. KAWAHARA, P.E.
Deputy Director

- Exhibit(s):
1. (Location Map)
 2. (Penalty Policy G-01-01 and Calculation)
 3. (Standard Pump Installation Permit Conditions)

APPROVED FOR SUBMITTAL:



LAURA H. THIELEN
Chairperson