

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF HEALTH

In the Matter of the Lowell Steffl  
and Lowell Steffl Well Drilling  
Penalty Order Dated June 14, 1995

FINDINGS OF FACT  
CONCLUSIONS AND  
RECOMMENDATION

The above-captioned matter came on for hearing before Administrative Law Judge Barbara L. Neilson, commencing at 10:30 a.m. on August 9, 1995, in Courtroom B of the Redwood County Courthouse in Redwood Falls, Minnesota. The hearing was held pursuant to a Notice of and Order for Hearing dated July 18, 1995. Susan A. Casey, Assistant Attorney General, 525 Park Street, Suite 500, St. Paul, Minnesota 55103-2106, appeared on behalf of the Well Management Unit of the Minnesota Department of Health ("the Department"). Kevin E. Passe, Attorney at Law, Ebbesen & Sarrazin, 301 East Third Street, Box 127, Redwood Falls, Minnesota 56283, appeared on behalf of Lowell J. Steffl and Lowell Steffl Well Drilling ("Steffl"). The record closed at the conclusion of the hearing on August 9.

This Report is a recommendation, not a final decision. The Commissioner of Health will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 144.991, subd. 5(e), the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least five days. Within those five days, the parties may comment to the Commissioner on the recommendations and the Commissioner must consider the comments in making her final decision. Parties should contact Anne Barry, Commissioner, Minnesota Department of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55414, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

The issues presented in this case are whether or not the Respondents failed to properly seal a well in accordance with applicable Minnesota statutes and rules and whether the Respondents filed a record with the Department that contained a false material representation, and, if so, whether the administrative penalty and corrective order imposed against the Respondents should be affirmed.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

1. Lowell J. Steffl is a licensed well contractor who does business under the name of Lowell Steffl Well Drilling in Comfrey, Minnesota. Steffl has been involved in well work for 50-55 years. Steffl sold his drilling rig in approximately 1991. During the past four years, he has subleased most of his well work, particularly that involving drilled wells, to Jeff Peterson of Jeff's Well Drilling, located in Sleepy Eye, Minnesota.

2. On August 23, 1994, Steffl (working with Jeff Peterson) drilled a new well on the property of Dale and Alice Martin in Raymond, Minnesota. Martin asked Steffl at that time if he could also seal an old well on the property and they agreed that the well would be sealed at a later date. Jeff Peterson's son, Shawn, jumped down into the pit of the old well and told Steffl that he thought the well casing was 5" in diameter.

3. Steffl called Mr. Martin and arranged to return to seal the well in October of 1994. During the telephone conversation, Martin told Steffl that he thought the well was 35 to 40 feet deep. Martin believed that the well was approximately that deep based upon the length of the water feed pipe that had been pulled out of the well a few years earlier.

4. Steffl returned to the Martin property in October of 1994, to seal the well. Steffl was alone. Martin was home that day. With the exception of a brief bathroom break and the fifteen to twenty minutes that it took Steffl to drive into Willmar for more supplies, Martin remained at the site of the old well with Steffl during the approximately three hours that Steffl was there.

5. Steffl removed the pump from the well and then dropped a weighted tape (a line with an attached crescent wrench and a magnet) into the well to measure the well. At approximately 30-40 feet, the tape hit something and paused, then continued downward. Steffl did not ask Martin if he knew what the obstruction was. Martin later told Department staff that the obstruction was a pipe or a pump rod. Ex. 3. Steffl did not ask Martin if he knew what the obstruction was, nor did Steffl determine what the obstruction was or attempt to remove the obstruction. Steffl then began sealing the well using Econoplug Bentonite Chips (Ex. 13) and Big Horn Bentonite (Ex. 14). Martin saved one empty bag of each of these types of materials. See Exs. 13-14. At one point, Steffl drove into Willmar to buy more material and returned with bags of another brand of bentonite chips that were slightly smaller in size than the Econoplug Bentonite Chips. Steffl also used these smaller chips to seal the well. When he reached the uppermost portion of the casing, Steffl "mixed up" the material he used and poured it into the casing. Martin did not observe Mr. Steffl shoveling any material into the well hole but merely saw him pouring material into the well.

6. Steffl placed a telephone call to the Minneapolis office of the Department of Health on October 14, 1994. During the call, he notified Mary Jo Connolly, an employee of the Department, that the well would be sealed on October 15, 1994.

7. Steffl filed a Well and Boring Sealing Record relating to the well on December 30, 1994. In the record, Steffl indicated that the well was sealed on October 5,

1994; the well was 86 feet deep and had a 5" steel casing from a depth of 6 feet to 86 feet; the well had no obstructions; and 4-1/3 bags of "Super Gel X" were used as the grouting material from 6 feet to 86 feet. Mr. Steffl identified himself as the person who sealed the well. Ex. 1.

8. Robert Nielsen, a Certified Professional Geologist who is employed by the Department as a Hydrologist in its Southwest District, reviewed Steffl's sealing record relating to the well in January, 1995. Nielsen knew from past experience with Steffl that he did not have the type of pumping or grouting equipment necessary to seal a well that was 86 feet deep and 5" in diameter. When Nielsen reviewed the sealing record, he became suspicious because he knew that it would be very difficult, if not impossible, to mix Super Gel X to the "recipe" required by the Department to seal a well, particularly if a contractor lacked pumping equipment. Nielsen went to the Martin's home to inspect the well site and learned that the well had in fact already been sealed. Alice Martin told Nielsen that Steffl had sealed the well by pouring in several bags of "rocks that expand." Ex. 2.

9. Nielsen called Steffl on February 6, 1995, and asked about how the old well on the Martin property was sealed. Steffl told Nielsen that Jeff Peterson sealed the well using Quick Gel pumped in through a tremie. Nielsen told Steffl that the Department's information indicated otherwise, and asked Steffl to come into his office to discuss the matter. Ex. 4.

10. Nielsen called Jeff Peterson on February 6, 1995, after he spoke to Steffl. Peterson told Nielsen that he and his son did not seal the Martin well. Ex. 5.

11. Later in the day on February 6, 1995, Steffl came to the Department's Marshall office and met with Nielsen and Tom Steffl, another Department employee. During the meeting, Steffl again stated that Jeff Peterson had assisted him in sealing the well and indicated that they had used a tremie line to pump the well full of Quick Gel. Nielsen told Steffl that he had contacted Jeff Peterson and that neither Jeff nor Shawn Peterson had any recollection of being involved in sealing the well. Steffl then "awkwardly recanted the claim that Peterson was involved." He told Nielsen and Tom Steffl that the well had only four or five feet of 5" casing and below that point it was actually a tile well with a 20" diameter. Steffl further stated that he shoveled 15 cubic yards of clay from the water line trench into the well through the 5" surface pipe. Steffl stated that he had used a combination of clay and "BenSeal" to seal the well and had used BenSeal alone to seal the steel-cased portion of the well. Steffl admitted that the Well and Boring Sealing Record submitted by him was inaccurate, and offered to amend the record. Nielsen told Steffl that the Department was interested in correcting actual problems in the field, not on paper. When Nielsen asked Steffl why none of his versions of what happened mentioned the use of the Econoplug Bentonite Chips or Big Horn Bentonite, Steffl did not respond directly, but said that it was okay to use the bentonite since it was a tile well. Steffl said that he might not be really sure what he had done at this well site since his "brain got hurt" in an accident. Nielsen told Steffl that he would receive a notice of violation in a few days. Ex. 6.

12. When a well is no longer in service or is in a state of disrepair, the well can act as a channel for contaminants to enter the aquifer. The aquifers in Sandstone County, where the Martin property is located, tend to be at the same depth. Thus, if one well was contaminated, it could potentially affect the quality of the water coming out of the other wells. In addition, if the well is not sealed properly, water may migrate from one level to another, which can potentially pose a problem if the water is of different quality. The sealing of a well prevents contaminants from entering the aquifer.

13. Conventionally drilled and conventionally cased wells that are 5" in diameter can be sealed with cement or a number of approved grouts. The approved options include a bentonite slurry, i.e., a mixture of a prepared bentonite product and water in a particular ratio to get optimum sealing. The Department's rules require that, at a minimum, 15% by weight of bentonite must be used in the slurry. There are many different bentonite products on the market. The Department provides well contractors with its suggested "recipe" for mixing the product with water. In addition, the manufacturer's suggested "recipe" is usually set forth on the bag. Although a bentonite grout or a high solids bentonite grout may be used to seal such a well, the only approved use for bentonite chips or pellets at the time the Martin well was sealed was as intermediate seals on monitoring wells, which are not sources of potable water. Thus, there was no approved use of Bentonite chips for sealing a 5" well. In June, 1995, the Department announced that contractors would be permitted to use bentonite chips or pellets under certain other circumstances. For example, well contractors may shovel or scoop in bentonite chips or pellets when the contractor is sealing a large diameter (16" or greater) tile well that is less than 200 feet deep and contains less than 20 feet of water.

14. The use of a tremie pipe (i.e., a pipe placed down to the bottom of the well) to pump grout from a mixing tank at the surface into the well ensures that the grout goes all the way to the bottom and seals all the way up.

15. If an obstruction remains in the casing when a well is sealed, the obstruction can create a channel in the grout or prevent the grout pipe from going all the way to the bottom.

16. As required by Minn. Stat. § 144.99, subd. 7, the Department's Division of Environmental Health prepared a plan for the use of its administrative penalty authority and cease and desist authority in December, 1993. An Administrative Penalty Order Penalty Calculation Worksheet was also developed by the Department for use in conjunction with the plan. Exs. 7-8.

17. Nielsen provided relevant documentation relating to Steffl's sealing of the Martin well to Jim Harris, who is the Enforcement Coordinator for the Department's Well Program. Harris decided that an administrative penalty order might be an appropriate response to the violations found based upon the fact that the violations appeared to reflect a serious and repeated violation of the Department's rules. Because there were two other incidents involving Steffl that were being investigated at approximately the same time, the Department considered combining them and taking adverse action against Steffl's license. Ultimately, the Department convened a forum (a group of supervisors within the Well

Management Unit of the Department) on May 23, 1995, to discuss the violation, the contractor's response, and the appropriate enforcement response.

18. The forum group concluded that there was sufficient evidence that Steffl had violated Minn. Rules pt. 4725.3850, subps. 1, 2, and 4 (relating to the use of improper materials and methods in sealing a well, failure to remove obstructions prior to sealing a well, and the use of improper sealing materials), as well as Minn. Stat. § 144.992 (relating to the making of a false material representation on a record). The Department elected to forego the inclusion of the latter violation in the penalty calculation. Steffl's use of improper material and an improper method of placement of the material, combined with the submission of false information on the well sealing record, was deemed by the forum group to constitute a serious violation of the well sealing requirements set forth in Minn. Rules pt. 4725.3850 based upon their view that there was a willful and flagrant disregard of the rule requirements despite clear establishment in rule and knowledge of the requirements by Steffl. The group determined that Steffl had "placed the property owner and groundwater at risk for the sole purpose of economic advantage and circumventing the rule requirement." The forum group also determined that the violation was repeated because the violation was nearly identical to a violation that Steffl was cited for in 1991. The forum group recommended the imposition of a \$3,000 nonforgivable penalty. The group found that there was a moderate potential for harm because Steffl's conduct placed the groundwater at risk due to potential contamination and also placed the property owners at risk, since their active well accessed the same aquifer. The forum group determined that there was a severe deviation from compliance since Steffl did not even mix the bentonite with water to make a grout and did not even attempt to pump the mixture into the well. Ex. 12.

19. The forum group applied the base penalty calculation matrix in the Department's Penalty Calculation Worksheet (see Ex. 8 at 4) to arrive at a range of \$2,000-5,000, and agreed upon a base penalty of \$2,000. The forum group determined that the base penalty amount should be enhanced by 50% (\$1,000) based upon the willfulness of the violation. The group agreed that no adjustment should be made to the base penalty amount based on similarity to previous violations, time elapsed since the last violation, number of previous violations, Steffl's response to the most recent previous violation, history of past violations, number of violations, economic benefit, or other factors. Ex. 12.

20. In accordance with the Department's Plan for Use of Administrative Penalty Authority and Cease and Desist Authority, the Department provided notice to Steffl of the alleged violation and an opportunity for response prior to issuance of the nonforgivable administrative penalty order. Ex. 7 at 12. The Department sent a letter to Steffl on June 2, 1995, in which it explained the alleged violations and underlying facts and requested Steffl to respond in writing within ten days of receipt of the letter and include any additional information that the Department should know. Ex. 9.

21. On June 12, 1995, the Department received a letter from Steffl responding to the Department's June 2, 1995, letter. In the letter, Steffl asserted that he used virgin yellow clay to seal the well and indicated, inter alia, that "we never encountered any

obstructions in the well but, casing could be rusted out at 40 ft. level . . . .” Steffl did not mention in this letter his opinion that the well casing increased in width beyond the 12-foot level.

22. On June 14, 1995, the Department issued an administrative penalty order to Steffl based on his failure to comply with the requirements of Minnesota Rules, Chapter 4725, when he sealed the well on the Martin property. The order included a nonforgivable monetary penalty of \$3,000 and required that the following corrective actions be taken: (1) the subject well must be drilled out to its original depth of 86 feet; (2) all obstructions must be removed from the well; (3) the well must be sealed in accordance with the requirements of Minnesota Rules, Chapter 4725; (4) a corrected well sealing record must be submitted to the Department; (5) all corrective work must be completed in the presence of personnel from the Department; and (6) Prior notice must be provided to the property owner before starting any corrective work. Steffl filed a timely appeal of the administrative penalty order, resulting in this contested case proceeding.

23. As of the date of the hearing, Steffl had not drilled out or properly sealed the subject well.

24. On May 21, 1991, the Commissioner of Health issued a prior Corrective Order to Steffl. The Corrective Order required Steffl to drill out and properly seal a well with a 5” casing located near Comfrey, Minnesota, which Steffl had previously dump-grouted. Pursuant to the Corrective Order, Mr. Steffl was to seal the well by June 14, 1991, or face an administrative penalty assessment of \$500. Mr. Steffl did not seal the well until June 21, 1991. After a hearing, the Commissioner issued an Order and Memorandum on April 20, 1993, in which Steffl was required to pay the \$500 assessment.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Commissioner of Health have jurisdiction herein and authority to take the action recommended pursuant to Minn. Stat. §§ 103I.701, subds. 3 and 4(b), 103I.705, subds. 1 and 2, and 14.50.

2. The Respondents received timely and proper notice of the hearing in this case and the Department has complied with all relevant substantive and procedural requirements of statute and rule.

3. Pursuant to Minn. Stat. §§ 144.989 - 144.993, the Department has authority to issue correction orders and assess administrative penalties for violations of applicable statutes or rules.. Section 144.99, subds. 1 and 4, authorize the Commissioner of Health to assess a nonforgivable administrative penalty in an amount up to \$10,000 for serious or repeated violations of Chapter 103I of the Minnesota Statutes and Chapter 4725 of the Minnesota Rules.

4. Pursuant to Minn. Rules pt. 1400.8603(C), the Department has the burden to establish by a preponderance of the evidence that the Respondents violated rules relating to wells and borings and are subject to the proposed penalty.

5. Minn. Rules pt. 4725.3850, subp. 1, provides as follows:

A well or boring must be sealed by filling the well or boring, including an open annular space, with grout. The grout must be pumped through a tremie pipe or the casing from the bottom of the well or boring upward to within two feet of the established ground surface or floor. The bottom of the tremie pipe must remain submerged in grout while grouting.

6. Minn. Rules pt. 4725.3850, subp. 2, requires that “[m]aterials, debris, and obstructions that may interfere with sealing must be removed from the well or boring.”

7. Minn. Rules pt. 2725.3850, subp. 4, imposes additional requirements applicable to the sealing of a well or boring in unconsolidated materials. Subpart A provides as follows:

The portion of a well or boring in unconsolidated material must be filled with bentonite grout, high solids bentonite grout, or neat cement grout. Concrete grout is approved for grouting only in the dry portion of the hole. The grout must be pumped through a tremie pipe or the casing from the bottom of the well or boring upward to within two feet of the established ground surface. Clean sand or cuttings equal to the volume of grout may be poured into the well or boring while the grout is pumped through a tremie pipe. The sand or cuttings must be poured at a rate which prevents bridging.

Subpart B of the rule provides that dug wells that are 16 inches or more in diameter and meet certain other requirements may be sealed by pouring in (1) uniformly mixed dry bentonite powder or granular bentonite and sand in a ratio of one part bentonite to five parts sand, (2) clean unconsolidated materials that meet certain permeability standards, or (3) concrete grout.

8. “Bentonite grout” is defined in Minn. Rules pt. 4725.0100, subp. 21c, as “water and a minimum of ten percent by weight of bentonite, with no additives to promote temporary viscosity; and . . . ten percent by weight of either washed sand, cuttings taken from the bore hole, or granular bentonite.”

9. “High solids bentonite grout” is defined in Minn. Rules pt. 4725.0100, subp. 30a, as “a fluid mixture of water and a minimum of 15 percent by weight of bentonite, with no additives to promote temporary viscosity.”

10. Minn. Stat. § 103I.205, subd. 9, requires that, within 30 days of sealing a well, the person doing the work must submit a record to the Department of Health containing the information prescribed by rule.

11. Minn. Stat. § 144.992 prohibits persons subject to any of the requirements listed in Minn. Stat. §144.99 from making a “false material statement, representation, or certification“ in a record required under Chapter 103I of the Minnesota statutes.

12. The Department has established by a preponderance of the evidence that the methods and materials used by Steffl in sealing the Martin well on October 5, 1994, did not meet the requirements of Minn. Rules pt. 4725.3850, subps. 1, 2, and 4, and that Steffl made a false material representation in the well sealing record he filed in December, 1994, relating to the Martin well, in violation of Minn. Stat. § 144.992. These violations were willful.

13. Pursuant to Minn. Stat. § 144.99, subd. 4, penalties must be forgivable “[e]xcept in the case of repeated or serious violations.” If the violations are repeated or serious, the Commissioner may issue a corrective order with a penalty that will not be forgiven even if corrective action is taken.

14. The rule violations noted in Conclusion 12 above were serious and repeated, thus warranting the imposition of a nonforgivable penalty. The Department complied with the provisions of Minn. Stat. §§ 144.99, subd. 4, and 144.991, subd. 1, in determining the unforgivable penalty assessed against Steffl. The Department properly considered the willfulness of the violations, the gravity of the violations, the history of past violations, the number of violations, and the economic benefit gained by allowing or committing the violation in calculating the penalty imposed upon Steffl. In addition, since Steffl had a previous violation, the Department properly considered the similarity of the most recent previous violation and the violation to be penalized, the time elapsed since the last violation, the number of previous violations, and Steffl’s response to his prior violation. Minn. Stat. § 144.991, subd. 1(b).

15. The nonforgivable penalty amount is reasonable for purposes of Minn. Stat. § 144.991, subd. 5(c). The corrective actions ordered were reasonable and appropriate.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED: that the Commissioner of Health issue an Order affirming in all respects the Nonforgivable Administrative Penalty Order and Corrective Order issued on June 14, 1995, against Lowell Steffl and Lowell Steffl Well Drilling.

Dated this 8th day of September, 1995.

/s/ Barbara L. Neilson  
BARBARA L. NEILSON  
Administrative Law Judge

## NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape-recorded (three tapes).

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## MEMORANDUM

This case arises under the Health Enforcement Consolidation Act of 1993, codified in Minn. Stat. §§ 144.989-144.993, and the provisions of Chapter 103I of the Minnesota Statutes and Minn. Rules Part 4725 relating to wells and borings. Under Minn. Stat. § 144.99, subds. 3 and 4, the Commissioner of Health is authorized to issue orders requiring the correction of violations of applicable statutes and rules and assess monetary penalties for those violations. The maximum penalty which may be imposed for all violations identified during an inspection or review is \$10,000. Minn. Stat. § 144.99, subd. 4. Except in the case of repeated or serious violations, penalties assessed must be forgiven if appropriate corrective steps are taken before the 31st day after the order was received. Serious or repeated violations may result in the assessment of a nonforgivable penalty. Id.

The Commissioner may consider the following factors when deciding the amount of a penalty:

- (1) the willfulness of the violation;
- (2) the gravity of the violation, including damage to humans, animals, air, water, land, or other natural resources of the state;
- (3) the history of past violations;
- (4) the number of violations;
- (5) the economic benefit gained by the person by allowing or committing the violation; and
- (6) other factors as justice may require . . . .

Minn. Stat. § 144.991, subd. 1(a). In addition, if there has been a previous violation, the Commissioner must also consider the following factors:

- (1) similarity of the most recent previous violation and the violation to be penalized;
- (2) time elapsed since the last violation;
- (3) number of previous violations; and

(4) response of the person to the most recent previous violation identified.

Minn. Stat. § 144.991, subd. 1(b). Under Minn. Stat. § 144.99, subd. 7, the Commissioner was required to prepare a plan governing the exercise of administrative penalty authority. The Commissioner has finalized such a plan, and the Department appropriately adhered to the provisions of the plan and the accompanying worksheet in reaching its decisions involving Mr. Steffl's sealing of the Martin well.

At the hearing in this matter, Mr. Steffl admitted that his well sealing record contained false information in that he did not, in fact, fill the entire portion of the casing running from 6 feet to 86 feet with Super Gel X. Mr. Steffl's position was not always clear and his testimony contained several contradictions. He appeared to contend, however, that he initially shoveled into the well a mixture of yellow clay and Econoplug Bentonite Chips. He gave no evidence as to the ratios he allegedly used in the mixture. He then asserted that he placed several bags of Big Horn Bentonite into the well (although it was unclear whether he contended that he merely poured the Big Horn in or again mixed the material with clay). Finally, he claimed that he used a mixture of Super Gel X and water to fill the top 8 feet of the casing.

Dale Martin provided persuasive testimony concerning the materials and methods used by Mr. Steffl. The Administrative Law Judge is convinced that Mr. Martin was present during virtually all of the time that Mr. Steffl worked on sealing the well and was in a position to observe Mr. Steffl's actions. Unlike Mr. Steffl, Mr. Martin gave straightforward answers to the questions posed to him, and his responses were consistent with the information he had previously provided to Department staff. He saved empty bags of some of the materials used by Mr. Steffl and was able to provide them to the Department and produce them as exhibits at the hearing. Although Mr. Steffl asserted that Mr. Martin was lying, he did not provide any reason why Mr. Martin would do so, and the Judge is unable to discern any motive Mr. Martin would have for fabricating any of the information he provided. His testimony with respect to the information he conveyed to Mr. Steffl regarding the well and the approach used by Mr. Steffl to seal the well thus has been credited.

Mr. Steffl's primary contention at the hearing was that the well did not, in fact, have a 5" casing from 6 feet to 86 feet. Instead, he claimed that the well casing was 5" in diameter only to a depth of about twelve feet, and then widened to a diameter of 18" or more. (See Ex. 15.) He thus contends that, because the well was a large diameter well, he had much more latitude in the sealing materials he could properly use under the Department's rules.

Mr. Steffl's theory about the construction of the Martin well was simply not plausible. It is significant that Mr. Steffl has offered several conflicting versions of the manner in which the well had been sealed, including the now discredited claim that Jeff Peterson in fact sealed the well and Mr. Steffl's claim, recanted at the hearing, that he had shoveled 15 cubic yards of yellow clay (approximately two dump-truck loads) into the 5" casing without Mr. Martin noticing. Mr. Steffl failed to include information on the well sealing record reflecting the view he asserted at the hearing that the well casing widened after a few feet, and also did not assert this claim in his response to the Department's June

2, 1995, letter. The inconsistencies in Mr. Steffl's various versions of what happened, and the inconsistencies in his testimony at the hearing itself, greatly weaken his credibility on this issue. Mr. Steffl also has undermined the credence that may be given to the information he has provided concerning the methods he used to seal the well by confessing in Exhibit 10 and at the hearing in this matter that he didn't know what he was doing and can't remember much regarding this job due to a head injury he sustained sometime during 1994. See also Ex. 6. Because Mr. Steffl did not provide any detailed testimony concerning when this injury occurred and the extent of the injury, the Administrative Law Judge is unable to conclude that the injury diminished the willfulness of the rule violations or otherwise should be taken into account as a mitigating factor.

In addition, Mr. Nielsen testified in a convincing manner that the well construction urged by Mr. Steffl (narrower at the top and wider as the well becomes deeper) was highly unlikely. As Mr. Nielsen convincingly explained, it is obviously necessary to bring the largest diameter of the hole to the surface when drilling a well. Thus, if a 18" hole is to be drilled, a 18" auger or bit must be used and brought back up to the surface. It would not be possible to insert an auger or bit that size through a 5" opening. Mr. Nielsen admitted that it was possible that a steel or concrete plate could be placed over the tile at some depth below the surface of a well so that part of the well could be filled in and the rest of the casing would extend outward. However, Mr. Nielsen has only seen such an approach when a pitless unit has been installed, and the Martin well was not a pitless unit.

Based upon a careful review of the entire record in this case, it is evident that the Department has established the asserted violations of rule and statute by a preponderance of the evidence and has further demonstrated that the administrative penalty and corrective orders are justified, particularly where it is clear that Mr. Steffl committed a virtually identical violation of the same rule provision just four years ago.

B.L.N.