

**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
ADJUDICATIVE SERVICE UNIT**

In the Matter of:)	
)	Docket No. 07-04-C-2000DW
CRAIG GRESHAM,)	Master Case No. M2008-117734
Water Works Certification)	
No. 008635,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW
Respondent.)	AND FINAL ORDER
)	(CORRECTION OF
)	SCRIBNER'S ERRORS)
)	

The Presiding Officer grants the Program's Motion to Correct Scribner's Errors. The Presiding Officer corrects the last sentence of the second paragraph of page 3 in the Procedural History. The change of date is in bold type. Next, the Presiding Officer corrected the spelling of Richard Sarver on page 9 of Paragraphs 1.8-1.9. For that reason, under the rationale of CR 60(a), the Corrected Order is entered and in bold face

APPEARANCES:

Craig Gresham, Respondent, pro se

Department of Health Drinking Water Program (Program), by

Office of the Attorney General, per
Dorothy H. Jaffe, Assistant Attorney General

PRESIDING OFFICER: Arthur E. DeBusschere, Health Law Judge

The Presiding Officer, on behalf of the Secretary of the Department of Health convened a hearing on April 21, 2008 and April 29, 2008 in Tumwater, Washington.

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Based upon the testimony presented, along with the admitted exhibits, the Presiding Officer issues the following. PROGRAM'S ORDER AFFIRMED.

ISSUE

Did the Respondent successfully complete the required 3.0 Continuing Education Units (CEUs) for his Water Works Operator's certification renewal?

The Program requests that the Health Law Judge issue an order upholding the Program's determination to inactivate the Respondent's Water Works Operator's certification, because the Respondent failed to accumulate the minimum number of CEUs. The Respondent maintains that he did accumulate enough course credits for certification renewal, and he requests that the Program reinstate his Water Works Operator's certification.

PROCEDURAL HISTORY

On April 3, 2007, the Program informed the Respondent that he had obtained 0.85 CEUs, and therefore, did not meet the required 3.0 CEU's, and that his operator certification would be inactivated. On April 15, 2007, the Respondent requested reconsideration, which would include a review by the Water Works Operator Certification Advisory Committee (the Advisory Committee). The Program had established this Advisory Committee, which is composed of Water Works Operators, to, in part, independently review training-related documents for CEU evaluation and make a recommendation. On May 9, 2007, the Respondent gave testimony at the Advisory Committee meeting. The Advisory Committee recommended denial.

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On June 1, 2007, the Program denied the Respondent's request for reconsideration. On June 20, 2007, the Respondent requested a Brief Adjudicative Proceeding (BAP). On July 27, 2007, Jim Hudson, the BAP Presiding Officer, issued a Notice of BAP and a Scheduling Order. On August 15, 2007, James Randall and Mark Peternell, Attorneys at Law, filed a Notice of Appearance on behalf of the Respondent. On August 29, 2007, the parties filed a Joint Motion to Convert the Brief Adjudicative Proceeding to a Full Adjudicative Proceeding. On **August 30, 2007**, the BAP Presiding Officer Jim Hudson granted the motion to convert.

On October 23, 2007, the Adjudicative Service Unit issued a Scheduling Order/ Notice of Hearing. Health Law Judge Arthur E. DeBusschere, Presiding Officer, was assigned to this case. On December 11, 2007, the Respondent's counsels withdrew. Health Law Judge DeBusschere conducted prehearing conferences and issued Prehearing Order Nos. 1-4. The hearing was held on April 21, 2008 and April 29, 2008.

SUMMARY OF THE PROCEEDING

During the hearing, the Program presented the testimony of Peggy Barton, Richard Sarver, and Denise Clifford. For the Respondent's case, the Respondent testified and presented the testimony of Daniel Kimbler, Glen Smith, and Bradley G. Gilmore.

The following exhibits were admitted at hearing:

Program Exhibits

P-1: Letter from Peggy Barton to Respondent, on or about January 2001, pp. 1-9.

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- P-2: Letter from Peggy Barton to Respondent, dated December 1, 2003, pp. 1-2.
- P-3: Letter from Peggy Barton to Respondent, dated June 14, 2006, p. 1.
- P-4: Letter from Respondent to Peggy Barton, dated September 20, 2006, pp. 1-12.
- P-5: Letter from Peggy Barton to Respondent, dated September 25, 2006, p. 1.
- P-6: Letter from Respondent to Peggy Barton with attachments, dated November 13, 2006, pp. 1-14.
- P-7: Letter from Respondent to Peggy Barton with attachments, dated November 20, 2006, p. 1.
- P-8: Documents sent to Peggy Barton on November 20, 2006, pp. 1-66.
- P-9: Letter from Respondent to Peggy Barton, dated November 30, 2006, p. 1.
- P-10: Fax from Richard Sarver to Respondent with attachments, dated February 6, 2007, pp. 1-69.
- P-11: Fax from Respondent to Richard Sarver with attachments, dated February 10, 2007, pp. 1-7.
- P-12: Fax and letter form Richard Sarver to Respondent's, dated February 12, 2007, pp. 1-2.
- P-13: Fax from Respondent to Richard Sarver with attachments, dated February 13, 2007, pp. 1-5.
- P-14: Relevancy Review Subcommittee's recommendations regarding Respondent, dated March 8, 2007, pp. 1-13.
- P-15: Fax from Respondent to Richard Sarver, dated March 26, 2007, with attachments, pp. 1-5.
- P-16: Letter from Denise Clifford to Respondent, dated April 3, 2007, pp. 1-2.
- P-17: Letter from Denise Clifford to Respondent, dated April 10, 2007, pp. 1-2.
- P-18: Fax from Respondent to Denise Clifford, dated April 15, 2007, p. 1.

- P-19: Letter from Denise Clifford to Respondent, dated June 1, 2007, p. 1.
- P-20: Respondent's Waters Operator Professional Growth Transcript, dated March 5, 2008, p. 1.
- P-21: Department of Health Fact Sheet: Relevancy of Training for Certified Water Works Operator, pp. 1-2.
- P-22: International Association of Continuing Education and Training (IACET) information, pp. 1-3.
- P-23: Department of Health's Newsletter on Training for Certified Water Works Operators, Reminder and Deadlines, pp. 1-8.

Respondent Exhibits.

- R-1: Phone record and Logs of Events, pp. 1-3.
- R-3: List of Documents to be Reviewed, Section 2, pp. 1-21.
- R-4: Referenced to Approved Classes, Section 3, pp. 1-25.
- R-6: Program's Exhibits as number above P-1 through P-23, and referred to in Program's Prehearing Statement.
- R-9: Water Distribution Specialist (WDS) Examination Information, pp. 1-2.
- R-11: Letter to Respondent from Denise Clifford, dated June 21, 2007, admitted only p. 1.
- R-13: Fax from the Respondent to Denise Clifford, dated April 15, 2007, admitted only p. 1.

The Presiding Officer ruled in Prehearing Order Nos. 3 and 4, and ruled on the record during the hearing that the following Respondent exhibits were not admitted:

- R-2: Cover sheet titled: "Craig Gresham Appeal."
- R-3: Fax from Richard Sarver to Respondent' dated February 6, 2007, with attached letter from Richard Sarver to Respondent dated February 12, 2006, pp. 1-2.
- R-5: Fax from Respondent to Peggy Barton with attachments, Section 4, dated June 10, 2007, pp. 1-8.

- R-7: Wellcare Information about Where Your Water Comes From, September 2003; Purpose of Agreement; Publication on Water Quality and Health, not dated; Section 5, pp. 1-7.
- R-8: E-mail from Denise Clifford to Senator Rockefeller, dated June 22, 2007, pp. 1-2.
- R-10: Q & A Regarding the Open Public Meetings Act, pp. 1-2.
- R-11: Letters to Respondent from Denise Clifford, dated April 3, 2007 and June 1, 2007.
- R-12: Water Works Operator Certification Advisory Committee Meeting, May 9, 2007, pp. 1-4.
- R-14: Letter from Dorothy Jaffe to Respondent's counsel, . October 15, 2007, pp. 1-4,
- R-15: Water Quality and Health Publication by American Chemistry Council, re: Walkerton – Five Years After, pp. 1-3.
- R-16: Letter from Joseph Finotti to Respondent dated January 18, 2007, and attachment, “Public Utility District No. 1 of Kitsap County Contract for Emergency Services,” pp. 1-8 [Marked in error at hearing as R-14].

I. FINDINGS OF FACT

1.1 Since water system operations have become more complex, certified Water Works Operators must maintain and upgrade their knowledge and skills in order to protect water quality, water supply, and public health. Water Works Operators must demonstrate their continued professional growth for certification renewal.

1.2 The Department of Health Office of Drinking Water (the Program) certified the Respondent as a Water Works Operator. In addition, the Respondent has other certifications and licenses. Kitsap County Health District certified the Respondent as a Water System Designer. The Washington State Department of Ecology (DOE) licensed the Respondent as a Water Well Driller. The Washington State Department of Labor

and Industries licensed the Respondent as a Pump Installer. The National Ground Water Association certified the Respondent for Well Drilling, Pump Installer, and Maintenance.

1.3 The Program established under the rules that operators may choose one of three options for meeting the Water Works Operator Certification Program professional growth requirements:

- Option 1: Accumulate a minimum of three (3) Continuing Education Units (CEU) or college credits for training that is approved by the Department of Health and meets the following RELEVANCY requirement:
 - (1) Has an influence on water quality, water supply, or public health protection; and
 - (2) Is directly related to the operation or maintenance of a water system; or
 - (3) Is directly related to managing the operation or maintenance of a water system.
- Option 2: Advance by examination in the Water Works Operator Certification Program.
- Option 3: Achieve certification by examination in a different classification.

(See WAC 246-292-090(3)).

1.4 In this case, the Respondent attempted to achieve certification renewal through completion of Option 1. That is, the Respondent needed to complete 3.0 CEUs between January 1, 2004 and December 31, 2006. The completion of his approved course requirements during a specified professional growth period is called the Water Works Operators' Professional Growth Requirement. As stated above, the issue in this

case is whether the Respondent accumulated the 3.0 CEUs during his second professional growth period.

1.5 Before this second professional growth period in question, the Respondent had been, in January 2001, grandparented into the Washington Water Works Operator Certification Program. As a result, the Program notified the Respondent that he has a three-year period to satisfy his Professional Growth Requirement. His first three-year reporting period was from January 1, 2001 to December 31, 2003. Under Option 1 as stated above, the Respondent completed the 3.0 CEU requirements for his first three-year professional growth period.

1.6 The Program contracts with the Washington Environmental Training Center (WETRC) to award CEUs. The WETRC reviews courses submitted by Water Works Operators, determines whether the course meets approval criteria, and keeps a transcript of the accumulated courses. The WETRC is required to follow the training criteria established by the International Association of Continuing Education and Training (IACET). WETRC is located at Green River Community College, Auburn, Washington. Peggy Barton is the Associate Director of Certification Services.

1.7 The WETRC provided the Respondent numerous notices that he needed to complete his Professional Growth Requirements for re-certification. Peggy Barton notified the Respondent by letter on December 1, 2003. On June 14, 2006, Ms. Barton sent the Respondent another reminder letter. On September 25, 2006 and

November 20, 2006, Ms. Barton notified the Respondent by letter that the documents submitted were incomplete.

1.8 In addition to the WETRC review conducted by Peggy Barton, Richard **Sarver** also reviewed the Respondent's course submittals. Richard **Sarver** is the Manager, Water System Support Section, Drinking Water Program, Department of Health. On February 6, 2007, Mr. **Sarver** provided the Respondent a copy of the course materials the Respondent had already submitted, and explained why some of the Respondent's courses were not approved. Mr. **Sarver** also reminded the Respondent that he had until February 15, 2007, to submit any additional training related documents. The Respondent submitted additional documentation.

1.9 On March 19, 2007, Mr. **Sarver** and Denise Clifford met with the Respondent to discuss the Respondent's concerns. Denise Clifford is the Director of the Drinking Water Program, Department of Health, Washington State. The Respondent's documentation was also provided to a subcommittee of the Advisory Committee, which was described above in the Procedural History. On April 3, 2007, Denise Clifford notified the Respondent by letter that his certification as a Water Works Operator was inactivated, because he failed to meet the Professional Growth Requirement for renewal.

1.10 For his Professional Growth Requirement, the Respondent submitted a majority of his courses that were sponsored by the Washington State Ground Water Association (WSGWA). There were also courses sponsored by the Oregon Ground

Water Association (OGWA). These two organizations are basically associations for well-drillers. There was a course taken at a meeting of the Kitsap County Health District & Well Drillers. Finally, the Department of Labor and Industries sponsored a course for plumber certification, which the Respondent attended.

1.11 Consistent with the Paragraph stated immediately above, the Respondent submitted documents for courses he attended at the following conventions, seminars and meetings:

- (1) WSGWA Fall Convention, October 29-30, 2004;
- (2) WSGWA Fall Convention, October 7-8, 2005;
- (3) WSGWA Seminars held on March 24, 2006, March 25, 2006 and March 31, 2006, April 1, 2006;
- (4) Pump Installers and Domestic Well Class, September 28, 2006;
- (5) WSGWA Fall Convention September 29-30, 2006;
- (6) Fall 2006 Seminar, November 3, 2006;
- (7) Oregon Ground Water Association Fall Convention (OGWA), October 13-14, 2006;
- (8) Kitsap County Health District & Well Drillers Meeting, September 12, 2006; and
- (9) Department of Labor and Industries, Plumber Certification Training, February 9, 2007.

Each of the above-submitted courses is reviewed in the below Paragraphs, which are numbered 1.12 through 1.39.

1.12 On October 29-30, 2004, the Respondent attended in Pasco, WA, the WSGWA Fall convention with the following courses:

Current Issues Affecting Our Industry
Tax Workshop

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Industry Happenings
In-stream Flow Assessment/ Watershed Planning
On-Site Emergency Management
Rig Maintenance & A Brief Look at Cable Tool
Geo-Thermal Panel Discussion
Non-Domestic Pump Tests: Why Consultants Run
Round Table Discussions

The above courses, taken on October 29-30, 2004, are not approved for training for Certified Water Works Operators, because the Respondent failed to provide supporting data or syllabus, i.e. a detailed course description or course content. The Respondent submitted only the course titles and verification that he attended the courses. There is insufficient information showing that the courses have an influence on water quality, water supply, or public health protection; and is directly related to the operation or maintenance of a water system; or is directly related to managing the operation or maintenance of a water system. Thus, the courses did not meet the relevancy requirement for Water Works Operator's CEU credit.

1.13 On October 7-8, 2005, the Respondent attended in Pasco, WA, the WSGWA Fall convention with the following courses:

Private Wells and Stream Flows
Well Efficiency Is Not a Myth
Current Issues Affecting Our Industry
Washington State Rules and Regulations
Work Site Hazards
Vehicle Load & Safety Inspection
Well Monitoring with Dataloggers
Round Table Discussion
Hanford Hazardous Waste Site

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The above courses, taken on October 7-8, 2005, are not approved for training for Certified Water Works Operators, because the Respondent failed to provide supporting data or syllabus. There is insufficient information showing that the courses have an influence on water quality, water supply, or public health protection; and is directly related to the operation or maintenance of a water system; or is directly related to managing the operation or maintenance of a water system. Thus, the courses did not meet the relevancy requirement for Water Works Operator's CEU credit.

1.14 On March 24, 2006, the Respondent attended in Tacoma, WA, the following courses offered by WSGWA:

- Regulations Update
- Water Resources Inventory Areas – Overview
- Well Rehabilitation; Diagnosing the Problem
- Electrical Safety for Drillers
- Well Completion and Testing
- Effective Air Drilling Techniques

The course, **Well Rehabilitation; Diagnosing the Problem**, was relevant for training for Certified Water Works Operators, and the Respondent should receive **one-hour credit time**.

1.15 The Respondent submitted information on three of the courses that he attended at the March 24, 2006 WSGWA Seminar. In the WSGWA course titled "Regulations Update," the instructor provided information regarding the latest change in well drilling and licensing statutes. In the course titled "Electrical Safety for Drillers," the instructor addressed how drillers can mitigate risk involving drilling near high voltage wires and utilities. In the course titled "Effective Air Drilling Techniques," the instructor

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provided information regarding specific technology of air drilling. These three WSGWA courses are not directly related to the operation or maintenance of a water system; or are not directly related to managing the operation or maintenance of a water system. Thus, the courses did not meet the relevancy requirement for Water Works Operator's CEU credit.

1.16 For the hearing, the Respondent provided a WSGWA course announcement for the course titled "Water Resource Inventory Areas (WRIA) – An Overview." For this course, the WSGWA announcement stated that the course would "deepen the well driller's understanding of the relationship between surface and ground water and the watershed planning process..." [*Emphasis added.*] Respondent Exhibit No. 3. This course may have some influence on water quality, water supply, or public health protection. However, there is insufficient information to demonstrate that the course is directly related to the operation or maintenance of a water system; or is directly related to managing the operation or maintenance of a water system. Thus, the course did not meet the relevancy requirement for Water Works Operator's CEU credit.

1.17 For the hearing, the Respondent provided a WSGWA course announcement for the course titled "**Well Completion and Testing.**" The WSGWA course announcement stated that the course would be a "Review of water well completion methods...[and] [d]iscuss the applicability of each method and help contractors identify when the added work of a more complex design will be beneficial to a client. Review various methods of well development and testing." Respondent

Exhibit No. 3. With this limited information, the Presiding Officer finds that this course may have influence about water supply, and the topic well testing is directly related to the maintenance of a water system. Thus, the course did meet the relevancy requirement for Water Works Operator's CEU credit and the Respondent should receive **a one-hour credit time.**

1.18 On March 25, 2006, the Respondent attended in Marysville, WA. the following courses offered by WSGWA:

- Regulations Update (duplicate course)
- Water Resource Inventory Areas (duplicate course)
- Types of Aquifers
- Electrical Safety for Drillers (duplicate course)
- Safety and Health Issues in the Drilling Industry
- Effective Air Drilling Techniques (duplicate course)
- Technology Update: Downhole Video Technology

For the seminar held on March 25, 2006, there were duplicate courses; that is, there were four courses that were the same courses offered at the March 24, 2008 WSGWA seminar. The four courses are (1) Regulations Update, (2) Water Resource Inventory Areas, (3) Electrical Safety for Drillers, and (4) Effective Air Drilling Techniques. The findings stated above regarding these four courses apply here as well.

1.19 The course titled **Technology Update: Downhole Video Technology** is relevant for training for Certified Water Works Operators and the Respondent should receive **one-hour credit time.**

1.20 For the course titled "Types of Aquifers," the Respondent for the hearing provided a WSGWA course announcement for this course. The WSGWA

announcement stated, “[t]his session will focus on Washington geology and hydrogeology as a key to understanding basic aquifer types and how they relate to drillers.” *Respondent Exhibit No. 3. (Emphasis added)*. With this limited description, the Presiding Officer finds that the course may address the topic of water supply, but is not directly related to the operation or maintenance of a water system; or is not directly related to managing the operation or maintenance of a water system. Thus, the course did not meet the relevancy requirement for Water Works Operator's CEU credit.

1.21 The course titled “Safety and Health Issues in the Drilling Industry” covers the types of injuries to drillers and the ways accident and injuries can be prevented. This course is not relevant for certification for Water Works Operators. The course may apply to the protection of well drillers, but does not apply to public health protection concerns. Moreover, the course does not have an influence on water quality or water supply, and is not directly related to the operation or maintenance of a water system; or is not directly related to managing the operation or maintenance of a water system. Thus, the course did not meet the relevancy requirement for Water Works Operator's CEU credit.

1.22 On March 31, 2006, the Respondent attended, in Spokane, WA, the following courses offered by WSGWA:

- Regulations Update (duplicate course)
- Geology/ Hydrogeology of the Region
- Effective Air Drilling Techniques (duplicate course)

- Electrical Safety for Drillers (duplicate course)
- Construction Worksite Safety; Worksite/ Well Site

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Water Resource Inventory Areas (duplicate course)
Drillers' Happenings

For the seminar held on March 31, 2006, there were duplicate courses; that is, there were four courses that were the same courses offered at the March 24, 2008 WSGWA seminar. The four courses are (1) Regulations Update, (2) Water Resource Inventory Areas, (3) Electrical Safety for Drillers, and (4) Effective Air Drilling Techniques. The findings that are stated in the above Findings regarding these four courses apply here as well.

1.23 The course titled **Geology/Hydrogeology of the Region** was relevant for training for Certified Water Works Operators and the Respondent received **one-hour credit time**.

1.24 For the March 31, 2006 WSGWA, there were two other courses that the Respondent attended, which were (1) Construction Worksite Safety; Worksite/ Well Site, and (2) Drillers' Happenings. The former course covered the various hazards that one may encounter at a well site, and an overview of WISHA (Washington Industrial Safety and Health Act). The latter course covered current and pending changes and issues in the well drilling industry. These two courses may apply to the protection of well drillers, but does not apply to public health protection concerns. Moreover, the two courses are not directly related to the operation or maintenance of a water system; or are not directly related to managing the operation or maintenance of a water system.

Thus, the courses did not meet the relevancy requirement for Water Works Operator's CEU credit.

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1.25 On April 1, 2006, the Respondent attended in Ellensburg, WA the following courses offered by WSGWA:

Regulations Update (duplicate course)
Well Completion and Testing (duplicate course)
Technology Update: Downhole Video Technology (duplicate course)
Electrical Safety for Drillers (duplicate course)

Effective Air Drilling Techniques (duplicate course)
Water Resource Inventory Areas (duplicate course)
Drillers' Happenings (duplicate course)

For the WSGWA seminar held on April 1, 2006, they were all duplicate courses; that is, they were the same courses that were offered by WSGWA in prior WSGWA seminars on March 24, 2006, March 25, 2006, and March 31, 2006. The findings that are stated in the above Findings regarding these courses attended by the Respondent apply here as well.

1.26 On September 28, 2006, the Respondent attended a course titled "Pump Installers & Domestic Well," which was offered and sponsored both by the WSGWA and the Washington State Department of Labor and Industries. This course covered new requirements for pump installers recently incorporated into law, information about the National Electrical Code, and information about requirements for electrical contractors. This course may have an influence on water supply, but is not directly related to the operation or maintenance of a water system; or is not directly related to managing the operation or maintenance of a water system. Thus, the course did not meet the relevancy requirement for Water Works Operator's CEU credit.

1.27 On September 29, 2006, the Respondent attended in Pasco, WA, the following courses offered by WSGWA:

Accident Prevention Program
CPR

The Accident Prevention Program Course addressed requirements for implementing an accident prevention plan, a hazards communication plan and “Lock-Out Tag-Out Plan.” The CPR course involved watching and practicing CPR. These two courses may have an influence on public health protection. They are not, however, directly related to the operation or maintenance of a water system; or directly related to managing the operation or maintenance of a water system. Thus, the courses did not meet the relevancy requirement for Water Works Operator's CEU credit.

1.28 On September 30, 2006, the Respondent attended in Pasco, WA, the following courses offered by WSGWA:

Regulations Update (duplicate course)
The Basic Drill Rig for Your Geology
State of Art Well Disinfection
Facing the Challenges of the Future
Legislative Process

The course titled Regulations Update had already been considered above, and the same findings apply.

1.29 The course titled **State of Art Well Disinfection** was relevant for training for Certified Water Works Operators and the Respondent received **one and one-half hour credit time.**

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1.30 The other three WSGWA courses, (1) The Basic Drill Rig for Your Geology, (2) Facing the Challenges of the Future, and (3) Legislative Process, were not relevant for training for Certified Water Works Operators. In the course titled “Basic Drill Rig for Your Geology,” the instructor addressed how to view your drilling rig in relation to the geology in which the driller would be working. In the course titled “Facing the Challenges of the Future,” the instructor addressed profitable drilling, how to sell your services, government regulations, and a look at the big picture. In the course titled “Legislative Process,” the instructor covered recent ground water legislation, how to contact your legislators, and what methods to use with your legislator. Thus, these three WSGWA courses are not directly related to the operation or maintenance of a water system; or are not directly related to managing the operation or maintenance of a water system.

1.31 On November 3, 2006, the Respondent attended in Tacoma, WA, the following courses offered by WSGWA:

- Regulations Update (duplicate course)
- Drilling in Contaminated Sites
- State of Art Well Disinfection (duplicate course)
- Facing the Challenges of the Future (duplicate course)
- Legislative Process (duplicate course)

There are four duplicate courses, which the Respondent had already attended. The same findings stated above apply to these same courses. On November 3, 2006, the Respondent attended the WSGWA course titled “Drilling in Contaminated Sites.” In this course, the instructor provided information on how to manage and plan a drilling

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operation at a contaminated or potentially contaminated site. This course may address the topic of public health protection. The course, however, is not directly related to the operation or maintenance of a water system; or is not directly related to managing the operation or maintenance of a water system. Thus, the course did not meet the relevancy requirement for Water Works Operator's CEU credit.

1.32 On October 13-14, 2006, the Respondent attended courses in Hood River, Oregon, the following courses offered by the (OGWA) Fall Convention:

When Training, Learning & Generations Collide – Safely Managing Today's Workforce in the Ground Water Industry
Technology Update: Downhole Video Technology in 2006 (duplicate course)
Wisbo Pex Tubing – Use & Applications in the Pump Industry
Electrical Submittal of Start Cards using Credit Cards & Update on Electronic Submittal of Well Logs
Chemical Injection: Why, What, Where & How
Groundwater Regulations; Lost Opportunity?
Submersible Pump Operation & Installation – Water Systems Council (WSC)
Introduction to Pump Curves – WSC
Developing Countries Water Supply
Water Level Reading Technology – Pump Testing & Level anagement

1.33 The following below courses, taken at the October 13-14, 2006 OGWA Fall Convention, were relevant for training for Certified Water Works Operators and the Respondent received for each course **one-hour credit time (for a total of five hours)**:

Wisbo Pex Tubing – Use & Applications in the Pump Industry
Chemical Injection: Why, What, Where & How
Submersible Pump Operation & Installation – Water Systems Council (WSC)
Introduction to Pump Curves – WSC
Water Level Reading Technology – Pump Testing & Level Management

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For the WSGWA course titled Technology Update: Downhole Video Technology in 2006, the Respondent had already attended this presentation, and the findings stated above apply to this duplicate course.

1.34 There were two WSGWA courses that the Respondent attended at the October 13-14, 2006 OGWA Fall Convention that were not relevant for training for Certified Water Works Operators. In the course titled “When Training, Learning & Generations Collide – Safely Managing Today’s Workforce in the Ground Water Industry,” the instructor taught about different training and learning styles with a focus on safety in the workplace. In the course titled “Developing Countries Water Supply,” the instructor provided an overview of recent international organizations activities related to water supply in developing countries.

1.35 There were two courses that the Respondent failed to submit a course syllabus or supporting data: (1) Electronic Submittal of Start Cards using Credit Cards & Update on Electronic Submittal of Well Logs, and (2) Groundwater Regulations; Lost Opportunity? The Respondent submitted only the course titles and verification that he attended the courses. There is insufficient information showing that the courses have an influence on water quality, water supply, or public health protection; and is directly related to the operation or maintenance of a water system; or is directly related to managing the operation or maintenance of a water system. Thus, the courses did not meet the relevancy requirement for Water Works Operator's CEU credit.

1.36 On September 12, 2006, the Respondent attended a Kitsap County Health District and Well Drillers Meeting. The meeting lasted one and one-half hour and all matters discussed related to drilling water wells. The meeting was not directly related to the operation or maintenance of a water system; or is directly related to managing the operation or maintenance of a water system. Thus, the course did not meet the relevancy requirement for Water Works Operator's CEU credit.

1.37 On February 9, 2007, the Respondent attended a Plumber Certification Continuing Education sponsored by the Department of Labor and Industries:

- Contractors Certification Requirements
- Licensing 101
- Accident Prevention/ Safety
- Risk Management
- Plumbing Code Training

These courses were not completed during the required professional growth period, which was January 1, 2004 through December 31, 2006. This training, which the Respondent attended, can not be considered for credit for Water Works Operator certification renewal for this period.

1.38 Under IACET guidelines, ten clock hours of instruction (60 minutes equals one clock hour) is needed for one CEU. For completion of his Professional Growth Requirement, the Respondent needed to complete 3.0 CEUs, which would be 30 clock hours of instruction. Based on the attendance verification Respondent provided, the Respondent can be awarded 0.1 CEU for each contact hour of training completed at a WSGWA course. So, in this case, the Respondent completed only 1.05 CEUs of his

Professional Growth Requirement for the period January 1, 2004 through December 31, 2006. Thus, the Respondent did not meet the minimum 3.0 CEUs required for renewal of his certification as a Water Works Operator.

1.39 The Program fully supports the workplace safety programs overseen by the Department of Labor and Industry. The Program also supports the well drilling program overseen by DOE. Further, there may be some overlap in course content for water works operators, water well drillers, pump installers, and water well designers. Nevertheless, courses on well drilling or pump installation standing alone as the entire course content would not be relevant or be approved for renewal certification for Water Works Operators. Here, the majority of the Respondent's training records submitted for CEUs credits for his professional growth period in question were related to the important work of well drilling and well construction, and were not relevant to the maintenance of a public water system. The Program cannot accept continuing education courses in workplace safety and well drilling as substitutes for the important training needed by the public Water Works Operators to safely and properly operate and maintain a public water system.

II. CONCLUSIONS OF LAW

2.1 The Secretary of Health has jurisdiction over the Respondent and his competency to operate a public water system. RCW 70.119.010 and RCW 70.119.050.

2.2 The Program has the burden of proof under WAC 246-10-606. Further, under this same rule, the standard of proof is preponderance of the evidence. In

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Prehearing Order No. 4, the Presiding Officer considered the holding in *Ongom v. Dept. of Health*, 159 Wn. 2d 132 (2006), *cert. denied* 127 S. Ct. 2115 (April 2007). In

Prehearing Order No. 4, the Presiding Officer concluded that the standard of proof in this proceeding should be the preponderance of evidence standard. Nevertheless, the Presiding Officer will grant the Department's request to consider both standards, proof by preponderance of the evidence and proof by clear and convincing evidence.

2.3 Under Chapter 70.119 RCW, Public water supply systems — operators, the Department of Health has the authority to issue and renew certificates for Water

Works Operators under RCW 70.119.100, which provides in relevant part:

The issuance and renewal of a certificate shall be subject to the following conditions:

...

(2) Every certificate shall be renewed annually upon the payment of a fee as established by the department under RCW 70.119.160 and satisfactory evidence is presented to the secretary that the operator has fulfilled the continuing education requirements as prescribed by rule of the department.

(3) The secretary shall notify operators who fail to renew their certificates before the end of the year that their certificates are temporarily valid for two months following the end of the certificate year. Certificates not renewed during the two month period shall be invalid and the secretary shall so notify the holders of such certificates.

...

RCW 70.119.100(2) and (3).

2.4 The Department has prescribed rules for fulfilling continuing education requirements for Water Works Operators under WAC 246-292-090, which provide in relevant part:

Renewal of Certificates

- (1) The operator must renew his or her certificate by January 1st of each year.
- (2) The department shall renew an operator's certificates when the operator:
 - (a) Pays the applicable renewal fee; and
 - (b) Demonstrates completion of required professional growth in accordance with subsections (3) and (4) of this section. The operator must provide evidence of professional growth acceptable to the department within the designated professional growth reporting period as described in the department guideline titled, *Water Works Certification Program Guideline*.
- (3) To demonstrate professional growth, a holder of WDM, WTPO, WDS, BTO or CCS certification shall accomplish one of the following activities during each professional growth reporting period:
 - (a) Accumulate a minimum of three continuing education units (CEU), or college credits for training that:
 - (i) Has an influence on water quality, water supply, or public health protection; and
 - (ii) Is directly relevant to the operation, or maintenance of a water system; or
 - (iii) Is directly relevant to managing the operation, or maintenance activities of a water system;
- ...
- (5) If an operator fails to renew his or her certificate, the department shall notify the operator by December 31st, that the certificate is temporarily valid for two months beginning January 1st.
- (6) If an operator fails to renew the certificate within the two-month period, the certificate is invalid. The department shall notify the operator in writing of an invalid certificate.

(7) An operator who fails to renew his or her certification may reapply for certification, but must meet the requirements for a new applicant.

WAC 246-292-090(1), (2)(a) & (b), (3)(a), (5), (6), and (7).

2.5 The Program rules require that a certified operator of a public water system accumulate a minimum of 3.0 CEUs during each professional growth reporting period and that such training meet the requirements of WAC 246-292-090(3)(a)(i)(ii) and (iii).

2.6 Based upon the above Findings of Fact, Paragraphs 1.1 through 1.39, the Program proved, both by a preponderance of the evidence and by clear and convincing evidence, that the Respondent did not accumulate the minimum 3.0 CEUs of relevant training for the professional growth period of January 1, 2004 through December 31, 2006. An order should be entered affirming the Program's determination to inactivate Respondent's Water Works Operator certification.

III. ORDER

Based upon the above, the Presiding Officer ORDERS that the Respondent's Water Works Operator's Certification, No. 008635, in the state of Washington is INVALID; accordingly, the Program's determination to inactivate the Respondent's Water Works Operator Certification, No. 008635, is AFFIRMED. Within ten days of the date of this order, the Respondent shall send to the Department of Health, Office of

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Drinking Water, all official documentation, wall and wallet copies, showing certification as a Water Works Operator, State of Washington.

Dated this 28 day of August, 2008.

/s/

ARTHUR E. DeBUSSCHERE, Health Law Judge
Presiding Officer

NOTICE TO PARTIES

This order is subject to the reporting requirements of RCW 18.130.110, Section 1128E of the Social Security Act, and any other applicable interstate or national reporting requirements. If discipline is taken, it must be reported to the Healthcare Integrity Protection Data Bank.

Either party may file a **petition for reconsideration**. RCW 34.05.461(3); 34.05.470. The petition must be filed within 10 days of service of this order with:

Adjudicative Service Unit
P.O. Box 47879
Olympia, WA 98504-7879

and a copy must be sent to:

Office of Drinking Water
Department of Health
PO Box 47822
Olympia, WA 98504-7822

The petition must state the specific grounds for reconsideration and what relief is requested. WAC 246-11-580. The petition is denied if the Presiding Officer does not respond in writing within 20 days of the filing of the petition.

A **petition for judicial review** must be filed and served within 30 days after service of this order. RCW 34.05.542. The procedures are identified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. A petition for reconsideration is not required before seeking judicial review. If a petition for

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reconsideration is filed, the above 30-day period does not start until the petition is resolved. RCW 34.05.470(3).

The order is in effect while a petition for reconsideration or review is filed. "Filing" means actual receipt of the document by the Adjudicative Service Unit. RCW 34.05.010(6). This order is "served" the day it is deposited in the United States mail. RCW 34.05.010(19).