

STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH AND ADDICTION SERVICES 1/  
BUREAU OF HEALTH SYSTEM REGULATION  
DIVISION OF MEDICAL QUALITY ASSURANCE

John L. Monahan, S.S.I.  
License No. 000638  
229 Bungay Hill Road  
Woodstock, CT 06281

Petition No. 910619-33-004

FINAL DECISION

PROCEDURAL BACKGROUND:

On June 4, 1993, the Commissioner of Health Services (the "Commissioner") appointed a Hearing Officer to hear this case, and to recommend findings of fact, conclusions of law, and a proposed order upon the conclusion of the hearing. (Hearing Officer Exhibit 1).

The Department of Health Services ("Department") brought a Statement of Charges against John Monahan, Subsurface Sewage Installer ("Respondent") dated June 3, 1993. (Department Exhibit 2). The Statement of Charges alleged in four counts that the Respondent violated Connecticut General Statutes §20-341f(d).

Prior to the initiation of the instant charges, the Department offered the Respondent the opportunity to attend a compliance

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conference scheduled on February 27, 1992 to show compliance with all lawful requirements for the retention of his license. (Department Exhibit 1). The Respondent attended the compliance conference without counsel.

The Department served the Notice of Hearing and Statement of Charges on the Respondent by certified mail, return receipt requested. (Department Exhibit 2). The Respondent did not file an Answer to the Statement of Charges.

The administrative hearing was held as scheduled on August 6, 1993 to adjudicate the Respondent's case. The hearing was conducted in accordance with Chapter 54 of the Connecticut General Statutes; and §19-2a-1, et seq. of the Regulations of Connecticut State Agencies. The Respondent appeared without counsel; Stephen Varga, Esq. represented the Department. Both the Department and the Respondent presented evidence and were given the opportunity to cross-examine witnesses.

A Proposed Final Decision based entirely on the record and setting forth the Hearing Officer's recommended findings of fact and conclusions of law, and proposed order dismissing the case against the Respondent was submitted to the Commissioner on April 13, 1994. On June 6, 1994, oral argument was held before the Commissioner. The Respondent was notified of the oral argument and did not attend or submit a brief. The Department presented oral argument.

FINDINGS OF FACT:

1. The Respondent is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut subsurface sewage installer license number 000638. (Department Exhibit 2; Transcript 8/6/93 pp. 66-67).

With Regard to the First Count:

2. In 1990, the Respondent installed or repaired a septic system at the premises of David Hancock, Brickyard Road, Woodstock, Connecticut. (Department Exhibit 2; Transcript 8/6/93 p. 67).
3. In the First Count of the Statement of Charges, the Department alleged that the Respondent violated Connecticut General Statutes §20-341f(d) because he acted incompetently or negligently in one or more of the following ways: (a) he did not timely obtain the required permit; (b) he did not properly follow the engineer's plan; and/or (c) he failed to timely notify the Northeast District Department of Health as required by Connecticut Public Health Code §19-13-B103e(f)(2).
4. With regard to each of the four Counts, Robert Scully, a Sanitary Engineer for the Department's On-site Sewage Disposal section, provided credible testimony regarding relevant statutory and regulatory mandates for subsurface sewage installers. (Transcript 8/6/93 pp. 54-58).

5. Linda South has been a sanitarian at the Northeast District Department of Health for over six years. She is currently head sanitarian. Ms. South indicated that her department issues permits to construct prior to any subsurface disposal system installations. (Transcript 8/6/93 pp. 16-18).
  
6. Ms. South indicated that she went on a site visit to the Hancock property, probably to view the well site, and noticed that the tank and the pump chamber were already installed. Ms. South ultimately remembered that she made this visit in October 1990. She initially testified that she didn't think a permit had been issued at that point. Ms. South later indicated that the Respondent's permit was taken out in June 1990. (Transcript 8/6/93 pp. 22-23, 27-28).
  
7. The Respondent testified that he had the permit long before he started this job. (Transcript 8/6/93 p. 32). The permit was approved on June 4, 1990. (Department Exhibit 4).
  
8. Ms. South indicated that there was a variance between the engineer's plan and the system construction. The location of the septic tank and the pump chamber was changed. (Transcript 8/6/93 p. 24).

9. Ms. South indicated that the Respondent made changes that were not in the engineer's original plan and that her department had no notification that there were changes to such plan. (Transcript 8/6/93 p. 31).
10. Ms. South testified that the Respondent did not provide her office with any evidence that the engineer authorized such variance. Ms. South testified that the engineer did not indicate to her that he had knowledge of the variance beforehand. (Transcript 8/6/93 p. 26).
11. The Respondent testified that the engineer was notified of the changes. The Respondent testified that the engineer was at the site before the Respondent installed the tank and the pump chamber. (Transcript 8/6/93 p. 30).
12. I find that there was conflicting testimony, and that the Department failed to provide sufficient credible evidence to establish the allegations of the First Count.

With Regard to the Second Count:

13. In 1990, the Respondent installed or repaired a septic system at the premises of Meribeth Mitchell, 577 Route 197, Woodstock, Connecticut. (Department Exhibit 2; Transcript 8/6/93 p. 69).
14. In the Second Count of the Statement of Charges, the

Department alleged that the Respondent violated Connecticut General Statutes §20-341f(d) because he acted incompetently or negligently in one or more of the following ways: (a) he did not timely obtain the required permit; and/or (b) he failed to timely notify the Northeast District Department of Health as required by Connecticut Public Health Code §19-13-B103e(f)(2).

15. Ms. South testified that she and her boss, Frank Singleton, responded to a call from the wetlands department and did a site visit at the Mitchell property. They witnessed a septic tank in the ground and a leaching system that was not quite completed. Ms. South testified that the Respondent arrived while they were still there. Ms. South testified that her office had no record of any contact from the Respondent regarding an emergency installation at that site. (Transcript 8/6/93 p. 35-36).
  
16. Ms. South indicated that normally, a system cannot be installed without prior knowledge or permission of the Northeast District Department of Health. However, she did testify that on many occasions, septic tanks but not leaching fields can go in if there is an emergency repair. Ms. South testified that if "it happens over the weekend or if nobody can get out there, the licensed installers are responsible people. They hold a license,

they should know what they're doing, and if there is a problem and an emergency with the septic system, like a tank failure or a cave in, something like that, they can go ahead and put in the septic tank and then call our office at the next available time and then we go out there and we'll go over the whole thing with them."

(Transcript 8/6/93 pp. 36-37).

17. Ms. South testified that the problem they had with this particular property was that the leaching field was installed without their knowledge and without soil testing to verify what type was out there. She testified that it looked like wetlands soils. (Transcript 8/6/93 p. 37).
  
18. The Respondent testified that he was at the site on a Tuesday afternoon<sup>2</sup> to clean up the barn and his truck fell through the metal septic tank. The Respondent testified that as he and other contractors worked on

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2/ The Respondent also testified, however, that he put the tank in the same day his truck fell through the septic tank and that it "was dark by the time I got it in Friday night ..." Transcript 8/6/93 at 39. The Respondent testified that he "put some sand in there that following next day, Saturday morning" and later stated that "they weren't going to come until Tuesday and this was on a Friday ...." Id. Therefore, I conclude that the Respondent was at the site on a Friday afternoon.

trying to get his truck out of the hole, Ms. Mitchell called the Northeast District Department of Health. The Respondent testified that, according to Ms. Mitchell, the woman who answered the telephone at the Northeast District Department of Health said it would be Tuesday before they could get there. The Respondent testified that Ms. Mitchell was upset and concerned. (Transcript 8/6/93 p. 38).

19. The Respondent indicated that he finished putting the tank in by Friday night. The Respondent indicated that raw sewage went everywhere when the truck fell into the tank and that "it was just a mess." The Respondent testified that he put more fill in and got ready to put "a thing" in, because the Northeast District Department of Health wasn't going to come until Tuesday, this was a Friday, and the health department had "a habit sometimes of making you wait." (Transcript 8/6/93 p. 39).
20. I find that it is likely the Respondent was speaking of a leaching field when he referred to "a thing" above.
21. The Respondent testified that he "put the system in illegally, if you want to call it that." He testified that he did ultimately get a permit, but he waited until Tuesday for the Northeast District Department of Health to come, as promised. (Transcript 8/6/93 p. 39).

22. The Respondent indicated that he performed the work he did on this system to keep the sewage from running into the brook. (Transcript 8/6/93 p. 62).
23. Mr. Scully indicated that when a truck damages a septic tank, "[i]t is obviously something that needs to be taken care of, addressed quite quickly." Mr. Scully indicated that the licensed installer should still contact the local health department, explain what happened, and expedite the process to get it approved. (Transcript 8/6/93 pp. 57-58).
24. Mr. Scully testified that there is no provision in the Public Health Code to authorize a subsurface sewage installer to install leaching fields under an emergency situation. (Transcript 8/6/93 p. 58).
25. The Respondent acknowledged that he acted incompetently or negligently by failing to notify the Northeast District Department of Health, as required by the Connecticut Public Health Code, prior to installing a septic tank and a leaching field (Transport 8/6/93 p. 69-70).
26. I find that the Respondent's replacement of the septic tank for this system was an emergency repair. As such, in accordance with previous practice by the Northeast District Department of Health, prior approval of the

installation of the septic tank is excused. However, the Department provided sufficient credible evidence to establish the allegations of the Second Count as they pertain to installation of the leaching field.

With Regard to the Third Count:

27. The Department alleged that in 1991, the Respondent installed or repaired a septic system at the premises of Richard Benoit, 10 State Street, South Woodstock, Connecticut. (Department Exhibit 2).
  
28. In the Third Count of the Statement of Charges, the Department alleged that the Respondent violated Connecticut General Statutes §20-341f(d) because he acted incompetently or negligently in one or more of the following ways: (a) he did not timely obtain the required permit; and/or (b) he failed to timely notify the Northeast District Department of Health as required by Connecticut Public Health Code §19-13-B103e(f)(2).
  
29. Ms. South testified that she received an anonymous tip that a septic tank had been installed behind Mr. Benoit's workshop. Ms. South went to the site and spoke to Mr. Benoit. Ms. South testified that Mr. Benoit told her that the Respondent talked him into putting it there in case he wanted to put a sink or toilet in his workshop at a later date. Ms. South testified that there was no

permit for the septic tank installation. (Transcript 8/6/93 pp. 41-42).

30. The Respondent denied that he installed or repaired such system; he testified that he wasn't there. The Respondent testified that Mr. Benoit worked construction for many years and wanted to rent the Respondent's backhoe. The Respondent testified that he rented his backhoe to Mr. Benoit. The Respondent testified that he left the backhoe there on a Friday and returned on Monday morning to hook up a water pipe. (Transcript 8/6/93 pp. 43-44, 70-71).

31. I find that there was conflicting testimony, and that the Department failed to provide sufficient credible evidence to establish the allegations of the Third Count.

With Regard to the Fourth Count:

32. In 1992, the Respondent installed or repaired a septic system at the premises of David Balanceau, 359 Station Road, Hampton, Connecticut. (Department Exhibit 2; Transcript 8/6/93 p. 72).

33. In the Fourth Count of the Statement of Charges, the Department alleged that the Respondent violated Connecticut General Statutes §20-341f(d) because he acted incompetently or negligently in one or more of the

following ways: (a) he did not timely obtain the required permit; and/or (b) he failed to timely notify the Northeast District Department of Health as required by Connecticut Public Health Code §19-13-B103e(f)(2).

34. Ms. South testified that the Respondent applied for and paid for a permit, but that her office never released the permit. Ms. South testified that Mr. Singleton was supposed to address some questions the Respondent had, but that Mr. Singleton never went out to the site and they never issued a permit. (Transcript 8/6/93 p. 47).
35. Ms. South testified that the Respondent did notify her office that he was installing the tank. (Transcript 8/6/93 p. 47).
36. Ms. South testified that Mr. Singleton issued the Respondent a permit to construct on the day of the final inspection. (Transcript 8/6/93 p. 48).
37. The Respondent testified "It's error on their part. I paid for it and the deal was, Tom [Walgren] and Frank [Singleton] went there and they would get back to me with the paperwork. And it was alright [sic] to do the system and I went, everything was all perfect until the last day when she [Ms. South] came out there and said, no, that I

didn't have a permit. And that was between Frank and Tom." (Transcript 8/6/93 p. 49).

38. I find that there was conflicting testimony, and that the Department failed to provide sufficient credible evidence to establish the allegations of the Fourth Count.

DISCUSSION AND CONCLUSIONS OF LAW:

Connecticut General Statutes §20-341f(d) provides in pertinent part:

The department [of public health and addiction services] may take action under section 19a-17 for any of the following reasons: ... (2) illegal, incompetent or negligent conduct by a license holder in his work....

In addition, Connecticut Public Health Code §19-13-B103e(f)(2) requires that a licensed subsurface sewage installer shall notify the local director of health at least twenty-four hours prior to commencement of construction of each subsurface sewage disposal system.

The Department did not sustain its burden of proof with regard to the First, Third, and Fourth Counts. Repeatedly, Ms. South and the Respondent provided conflicting testimony as to whether or not he complied with appropriate procedure. I find that Ms. South appeared confused during portions of her testimony, which affected her overall credibility. The Respondent provided credible testimony.

With regard to the Second Count, Mr. Scully and Ms. South provided relevant testimony regarding emergency installations. Although the Public Health Code does not specifically authorize the installation of a leaching field in an emergency, both Mr. Scully and Ms. South indicated that when a truck damages a septic tank, the situation should be addressed quickly. In this instance, the Respondent was trying to avoid having sewage run into a brook. Accordingly, I find that the Respondent's decision to install the septic tank was reasonable and appropriate.

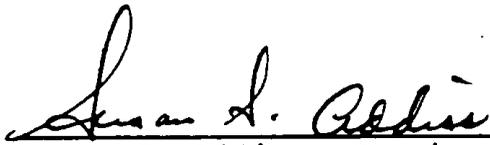
However, the Respondent could have installed the septic tank on an emergency basis without also installing a leaching field. There was no evidence presented by the Respondent as to why the Respondent determined it was necessary to also install a new leaching field in order to address the emergency situation. There was evidence presented by the Department that a new leaching field was not necessary as an emergency measure.

The Department presented insufficient evidence to demonstrate that the Respondent's behavior with regard to Counts One, Three and Four violated Connecticut Public Health Code §19-13-B103e(f)(2). The Department presented sufficient evidence to demonstrate that the Respondent's behavior alleged in Count Two as to the leaching field violated Connecticut Public Health Code §19-13-B103e (f)(2). Such failure

represents illegal, incompetent, or negligent conduct by a license holder in his work. Accordingly, the Respondent is reprimanded for such conduct.

ORDER:

Based on the record in this case, the above findings of fact, and conclusions of law, I order that the Respondent, John Monahan, be formally reprimanded as to that portion of Count Two of the Statement of Charges concerning the installation of a leaching field without the required permit.

  
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Susan S. Addiss, Commissioner  
Department of Public Health and  
Addiction Services

9/12/94  
Date

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# STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH AND ADDICTION SERVICES  
BUREAU OF HEALTH SYSTEM REGULATION

TO: Susan S. Addiss, MPH, MURs, Commissioner  
VIA: Stanley K. Peck, Director, DMQA  
Stephen A. Harriman, Bureau Chief, BHSR  
FROM: Catherine A. Hess, Hearing Officer *CAH*  
DATE: April 13, 1994  
RE: Department of Public Health and Addiction Services v.  
John L. Monahan, S.S.I.

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Attached please find my Proposed Final Decision in the above referenced matter and the related correspondence sent to the Respondent.

Please be advised that a copy of the Proposed Final Decision, related correspondence, and this memo will be sent by certified mail to Mr. Monahan, and hand delivered to all other persons listed below.

cc: John L. Monahan, S.S.I.  
229 Bungay Hill Road  
Woodstock CT 06281

CM RRR P054 081 912

Stephen J. Varga, Staff Attorney, PHHO  
Donna Buntaine Brewer, Chief, PHHO  
Richard Lynch, AAG  
Debra Tomassone, Board Liaison

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# STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH AND ADDICTION SERVICES

BUREAU OF HEALTH SYSTEM REGULATION

VIA CERT. MAIL - RETURN RECEIPT REQUESTED P054 081 912

April 18, 1994

John L. Monahan, S.S.I.  
229 Bungay Hill Road  
Woodstock, Connecticut 06281

RE: Department of Public Health and Addiction Services v.  
John L. Monahan, S.S.I., Proposed Final Decision

Dear Mr. Monahan:

Enclosed please find a copy of my Proposed Final Decision in the above referenced matter. Pursuant to Connecticut General Statutes §4-179, you have an opportunity to file briefs and exceptions and present oral arguments to the Commissioner of Public Health and Addiction Services.

If no such request is received by the Commissioner within two (2) weeks of the date of this letter, she shall consider these rights to be waived and shall render a final decision in this matter.

Very truly yours,

Catherine A. Hess  
Hearing Officer

Enclosure: Proposed Final Decision

cc: Stephen J. Varga, Staff Attorney, Public Health Hearing Office  
Susan S. Addiss, Commissioner  
Stephen A. Harriman, Bureau Chief  
Stanley K. Peck, Director, Medical Quality Assurance  
Donna Buntaine Brewer, Chief, Public Health Hearing Office  
Richard Lynch, Assistant Attorney General  
Debra Tomassone, Board Liaison

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STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH AND ADDICTION SERVICES 1/  
BUREAU OF HEALTH SYSTEM REGULATION  
DIVISION OF MEDICAL QUALITY ASSURANCE

John L. Monahan, S.S.I.  
License No. 000638  
229 Bungay Hill Road  
Woodstock, CT 06281

Petition No. 910619-33-004

PROPOSED FINAL DECISION

PROCEDURAL BACKGROUND:

On June 4, 1993, the Commissioner of Health Services appointed this Hearing Officer to hear this case, and to recommend findings of fact, conclusions of law, and a proposed order upon the conclusion of the hearing. (Hearing Officer Exhibit 1).

The Department of Health Services ("Department") brought a Statement of Charges against John Monahan, Subsurface Sewage Installer ("Respondent") dated June 3, 1993. (Department Exhibit 2). The Statement of Charges alleged in four counts that the Respondent violated Connecticut General Statutes §20-341f(d).

Prior to the initiation of the instant charges, the Department offered the Respondent the opportunity to attend a compliance

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This Proposed Final Decision is based entirely on the record and sets forth this Hearing Officer's recommended findings of fact and conclusions of law, and proposed order.

FINDINGS OF FACT:

1. The Respondent is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut

subsurface sewage installer license number 000638.  
(Department Exhibit 2; Transcript 8/6/93 pp. 66-67).

With Regard to the First Count:

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currently head sanitarian. Ms. South indicated that her department issues permits to construct prior to any subsurface disposal system installations. (Transcript 8/6/93 pp. 16-18).

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that the licensed installer should still contact the local health department, explain what happened, and expedite the process to get it approved. (Transcript 8/6/93 pp. 57-58).

24. Mr. Scully testified that there is no provision in the Public Health Code to authorize a subsurface sewage installer to install leaching fields under an emergency situation. (Transcript 8/6/93 p. 58).
25. I find that the Respondent's work on this system was an emergency repair, and that the Department failed to provide sufficient credible evidence to establish the allegations of the Second Count.

With Regard to the Third Count:

26. The Department alleged that in 1991, the Respondent installed or repaired a septic system at the premises of Richard Benoit, 10 State Street, South Woodstock, Connecticut. (Department Exhibit 2).
27. In the Third Count of the Statement of Charges, the Department alleged that the Respondent violated Connecticut General Statutes §20-341f(d) because he acted incompetently or negligently in one or more of the following ways: (a) he did not timely obtain the required

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29. The Respondent denied that he installed or repaired such system; he testified that he wasn't there. The Respondent testified that Mr. Benoit worked construction for many years and wanted to rent the Respondent's backhoe. The Respondent testified that he rented his backhoe to Mr. Benoit. The Respondent testified that he left the backhoe there on a Friday and returned on Monday morning to hook up a water pipe. (Transcript 8/6/93 pp. 43-44, 70-71).
30. I find that there was conflicting testimony, and that the Department failed to provide sufficient credible evidence to establish the allegations of the Third Count.

With Regard to the Fourth Count:

31. In 1992, the Respondent installed or repaired a septic system at the premises of David Balanceau, 359 Station Road, Hampton, Connecticut. (Department Exhibit 2; Transcript 8/6/93 p. 72).
  
32. In the Fourth Count of the Statement of Charges, the Department alleged that the Respondent violated Connecticut General Statutes §20-341f(d) because he acted incompetently or negligently in one or more of the following ways: (a) he did not timely obtain the required permit; and/or (b) he failed to timely notify the Northeast District Department of Health as required by Connecticut Public Health Code §19-13-B103e(f)(2).
  
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37. I find that there was conflicting testimony, and that the Department failed to provide sufficient credible evidence to establish the allegations of the Fourth Count.

DISCUSSION AND CONCLUSIONS OF LAW:

Connecticut General Statutes §20-341f(d) provides in pertinent part:

The department [of public health and addiction services] may take action under section 19a-17 for any of the following reasons: ... (2) illegal, incompetent or negligent conduct by a license holder in his work....

In addition, Connecticut Public Health Code §19-13-B103e(f)(2) requires that a licensed subsurface sewage installer shall

notify the local director of health at least twenty-four hours prior to commencement of construction of each subsurface sewage disposal system.

The Department did not sustain its burden of proof with regard to the First, Second, Third, and Fourth Counts. Repeatedly, Ms. South and the Respondent provided conflicting testimony as to whether or not he complied with appropriate procedure. I find that Ms. South appeared confused during portions of her testimony, which affected her overall credibility. The Respondent provided credible testimony.

With regard to the Second Count, Mr. Scully and Ms. South provided relevant testimony regarding emergency installations. Although the Public Health Code does not specifically authorize the installation of a leaching field in an emergency, both Mr. Scully and Ms. South indicated that when a truck damages a septic tank, the situation should be addressed quickly. In this instance, the Respondent was trying to avoid having sewage run into a brook. Personnel in Ms. South's office indicated that it would be a full week before they could respond. Accordingly, I find that the Respondent's decision to install the septic tank and begin the installation of the leaching field was reasonable and appropriate.

The Department presented insufficient evidence to demonstrate that the Respondent's behavior with regard to these four Counts

violated Connecticut Public Health Code §19-13-B103e(f)(2). The Department presented insufficient evidence to demonstrate that the Respondent's behavior represented illegal, incompetent, or negligent conduct by a license holder in his work, or that he violated Connecticut General Statutes §20-341f(d) in any other manner. Accordingly, it is recommended that no disciplinary action be taken against the Respondent.

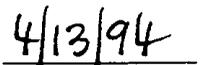
PROPOSED ORDER:

Based on the record in this case, the above findings of fact, and conclusions of law, I respectfully recommend to the Commissioner that she dismiss the case against John Monahan and take no disciplinary action against his subsurface sewage installer license.

Respectfully submitted,



Catherine A. Hess, Hearing Officer  
Department of Public Health and  
Addiction Services



Date