

**STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC HEALTH  
PUBLIC HEALTH HEARING OFFICE**

*In Re:* Albert Dawley  
Subsurface Sewage Disposal System Installer  
License No. 002356

Petition No. 2004-0309-033-001

June 14, 2006

**AMENDED MEMORANDUM OF DECISION**

*Procedural History*

On February 7, 2005, the Department of Public Health ("the Department") filed a Statement of Charges against Albert Dawley ("respondent") notifying him that the Department was proposing to revoke or take other disciplinary action against his subsurface sewage disposal system installer's license ("the license"). Rec. Exh. 1.

On February 28, 2005, the Department issued a Notice of Hearing in which the Commissioner of the Department appointed Olinda Morales, Esq., as the Hearing Officer to rule on all motions and to recommend findings of fact and conclusions of law. Rec. Exh. 3.

On March 21, 2005, respondent filed an Answer to the Charges. Rec. Exh. 2. On May 5, 2005, the Department filed a Motion to Amend the Statement of Charges ("the Motion") along with the Amended Statement of Charges ("the Charges"). Rec. Exh. 5.

On May 9, 2005, an administrative hearing was held, and the Motion was granted. The hearing was conducted in accordance with Chapter 54 of the Connecticut General Statutes ("the Statutes") and §§19a-9-1, et seq. of the Regulations of Connecticut State Agencies ("the Regulations"). Respondent appeared *pro se*, and Attorney Linda Fazzina represented the Department at the hearing.

On September 2, 2005, a Proposed Memorandum of Decision was issued. On September 9, 2005, respondent's attorney, Beth A. Steele, filed an appearance and requested oral argument and the opportunity to file briefs and exceptions. On October 5, 2005, respondent filed his brief; on October 19, 2005, the Department filed its brief. On November 1, 2005, the undersigned was designated by the Commissioner of the Department to rule on all motions and determine findings of fact and conclusions of law, and issue a final decision. Oral argument was held on November 1, 2005. Attorney Linda Fazzina represented the Department, and Attorney Steele represented respondent at the oral argument.

On February 1, 2006, a Final Memorandum of Decision was issued. On February 14,

2006, respondent requested reconsideration on the grounds that a witness who was reasonably believed to be unavailable at the time of the hearing was, in fact, available to testify. On February 27, 2006, the Department filed an objection. On February 28, 2006, the request was granted, but respondent was also directed to submit a written offer of proof regarding the relevancy of certain testimony. On March 15, 2006, respondent filed its offer of proof; and, on March 29, 2006, the Department filed an objection. On April 19, 2006, a Ruling was issued, reserving the ruling on the relevancy of the testimony, until the hearing.

On April 25, 2006, an additional day of hearing was held to hear testimony from respondent's newly discovered witness, Mr. Birdo. This decision is based entirely on the record and sets forth findings of fact, conclusions of law, and a final order.

### *Allegations*

1. In paragraph 1 of the Charges, the Department alleges that respondent is, and has been at all times referenced in the Charges, the holder of Connecticut subsurface sewage disposal system installer license number 002356.
2. In paragraph 2 of the Charges, the Department alleges that in or about September 2002, respondent illegally, incompetently and/or negligently installed a subsurface sewage disposal system at 211 Pautipaug Hill Road, Baltic, CT in one or more of the following ways, in that he:
  - a. failed to install the building sewer at the grade required in §III(A) of the Technical Standards for the Design and Construction of Subsurface Sewage Disposal ("the Technical Standards");
  - b. failed to install the septic tank so that the outlet invert and the inlet invert were at the elevation(s) required by §V(A)(2) of the Technical Standards;
  - c. failed to use fill material that meets the gradation criteria of §VIII(A) of the Technical Standards; and/or,
  - d. failed to install the leaching galleries and/or distribution piping at the elevation(s) required in the engineering plan, thereby resulting in an undersized leaching system.
3. In paragraph 3 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to §2034(f)(b) of the Statutes, taken in conjunction with §§19-13B103d(b) and/or 19-13B103e(e)(2) of the Regulations and/or §§III(A), V(A)(2), VIII(A) and/or VIII(D) of the Technical Standards.

### *Findings of Fact*

1. At all relevant times, respondent has held Connecticut subsurface sewage disposal system installer license number 002356. Rec. Exh. 2.
2. On or about April 30, 2002, Joseph Ososwski, Ann Marie Ososwski, Todd Ososwski, and Loree Ososwski ("owners"), owners of the property at 11 Pautipaug Hill Road, Baltic, CT ("the property"), contracted with respondent to install a sewage disposal system ("the system") for a total of \$22,850.00. The owners paid respondent \$11,400.00 at the commencement of the project, and the remainder upon completion of the project. Dept. Exhs. 2, 3; Tr. 5/9/05, pp. 32.
3. The new system replaced an existing system. Tr. 5/9/05, p. 35, 41-42.
4. The system depended on gravity to move the waste, and required the installation of a building sewer,<sup>1</sup> a septic tank, distributing pipes, and two concrete galleries in a leaching field, each of which had an associated distribution box ("D-box"). Dept. Exh. 1; Tr. 5/9/05, pp. 54-57.
5. Sewage in the new system was intended to flow by gravitational force, downward from the structure, through the building sewer, to the septic tank inlet invert. There, the solid waste, floatable fats, oils and greases settle in the tank, to be pumped out periodically. The liquids exit the tank through the outlet invert. All tanks are designed so that when the tank is installed on a level, the inlet invert of the septic tank is three inches higher than the outlet invert. Tr. 5/9/05, pp. 49-53, 59-61.
6. After the liquid waste exits the tank, through the outlet invert, it flows through a distribution pipe to the leaching system which, in this case, consists of two concrete galleries, each of which has a D-box, and distribution piping. The galleries were required to be installed at differing elevations such that there is an upper gallery and a lower gallery. The D-box for each gallery distributes the liquid waste to its respective gallery. When the upper gallery is full, the upper gallery D-box also distributes waste to the lower gallery. The waste seeps from the galleries into the leaching fields. Tr. 5/9/05, pp. 49-53, 59-61, 76-77.
7. The Technical Standards require that leaching systems be installed at least 18 inches above the ground water level and ledges so that there is sufficient soil for liquid waste to permeate. In this case, in order to attain the minimum 18 inches separating distance, the leaching system was required to be installed at an elevation above ground level. Additionally, since topsoil is not sufficiently permeable to permit adequate drainage, the topsoil was required to be removed and replaced with fill. Tr. 5/9/05, pp. 51-57.

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1. Building sewer means a sewer pipe extending from the building served to the septic tank. *See*, Technical Standards §I(H).

8. Since the leaching system was required to be elevated above ground level, the other parts of the system were necessarily located even higher than the leaching system to ensure the downward flow of sewage as it passed through the entire system by gravitational force. Tr. 5/9/05, pp. 53-57.
9. The building sewer was required to be positioned at 106.9 feet, with the septic tank at 103.5 feet. Thus, the building sewer pipe from the structure to the septic tank was required to slant downhill from 106.9 feet to 103.5 feet. Dept. Exh. 1.
10. One side of the upper gallery D-box was required to be positioned at 102.56, and the other side at 102.9 feet, with the upper gallery located at 102.4 feet. The lower gallery D-box was to be located at 101.56 feet with the gallery itself located at 101.4 feet. Dept. Exh. 1.
11. The proposed septic system, as designed, met the Technical Standards. Tr. 5/9/05, pp. 126-127.
12. In or about September 2002, respondent install the system. Dept. Exh. 2; Tr. 5/9/05, pp. 32, 191.
13. The Plan required that respondent connect the new building sewer to an existing building sewer. In order to do this, respondent first needed to excavate the site to locate the existing building sewer. Respondent also had to re-fill in the area with either soil or fill, and compact it. Tr. 4/25/06, pp. 68-69.
14. There is insufficient evidence to establish that in September of 2002, respondent failed to install the building sewer at the grade required by the Technical Standards.
15. The Plan also required that respondent remove an existing septic tank. Because the soil was "soft" where the old tank was removed, the standard practice required that respondent stabilize the area with properly compacted soil and/or fill. Tr. 5/9/05, p. 173; Tr. 4/25/06, p. 68.
16. The evidence is insufficient to establish that in September of 2002, respondent failed to install the septic tank so that the outlet invert and the inlet invert were at the elevations required by the Technical Standards.
17. A sieve analysis test is used to determine if fill is of the proper grade. The term, "fines," refers to small particles of, e.g., silt and clay, that pass through a sieve when performing a sieve analysis. Fill having too many fines may be unstable and lack permeability. For example, if fines absorb and retain liquid, the liquid will not permeate into the leaching field, and the system may fail. Tr. 5/9/05, pp. 67-70, 82-85, 97, 122, 212; Tr. 4/25/06, pp. 66-68, 72-74.
18. The Plan was consistent with the requirements of the Technical Standards, and required installation of select fill having only 0-5% of small particles pass through a

#200 sieve. In the fill installed by respondent, 9% of the small particles passed through the #200 sieve. Thus, the fill installed by respondent did not comply with the Plan and/or Technical Standards. Dept. Exhs. 1,4,5; Tr. 5/9/05, pp. 67-70, 82-85, 97, 122, 212.

19. Fill is installed in “lifts” which means that it is installed in layers. After each layer of fill is spread on a site, it is compacted with a bulldozer or other heavy construction equipment before the next layer is spread. Percolation tests are used to determine if a leaching field has the desired percolation by measuring the length of time required for water to seep through a hole in the compacted leaching field. Tr. 4/25/06, pp. 57-59.
20. The component parts of a septic system may fall out of grade when substandard fill is used and/or when fill and/or soil is not properly compacted. Tr. 4/25/06, pp. 59, 63, 65, 66, 67-68
21. In at least November of 2003, the portion of the building sewer by the septic tank was higher than the portion that was coming from the house (*i.e.*, it was pitched back towards the house), and a “belly” formed in the pipe in which solids and liquids may settle and cause clogging. Tr. 5/9/05, pp. 131-132.
22. In at least November of 2003, the outlet invert on the septic tank was higher than the inlet invert (*i.e.*, the opposite of what it should have been), and the tank failed to function properly. Tr. 5/9/05, pp. 82 and 97.
23. In at least October of 2004, the upper gallery D-box was out of level by several inches resulting in less than a 100% utilization of the upper gallery and burdening the lower gallery; the lower gallery was three inches lower than required by the design plan; and, there was five inches of fill over the ends of the lower gallery (the minimum should be 6 inches, and the Plan called for approximately 12 inches of fill). As a result, the system is deficient in size and unable to distribute waste sufficiently. Dept. Exh. 4, 5, and 6; Tr. 5/9/05, pp. 63, 82, 90, 97, 109-114, 132, 210.
24. There is insufficient evidence to establish that in September of 2002, respondent failed to install the leaching galleries and/or distribution piping at the elevations required in the engineering plan, thereby resulting in an undersized leaching system.
25. A properly designed and installed septic system can be expected to provide service for approximately 40 years. Tr. 5/9/05, p. 214.
26. Since at least the winter of 2004, respondent has been aware that the system was defective. Respondent did not excavate the system by July 2004, as requested, so that an inspector could view the D-box and lower gallery. Respondent’s attempted repairs were belated, minimal, and substandard. As of the day of the hearing, respondent had not made any further attempts to repair the system. Dept. Exh. 2; Tr. 5/9/05, pp. 90, 142.

### ***Discussion and Conclusions of Law***

Section 20-341f(d) of the Statutes provides, in pertinent part, that the Department may take action under section §19a-17 of the Statutes against an installer who engages in "illegal, incompetent or negligent conduct. . . in his work. . . ." In establishing such a violation the Department bears the burden of proof by a preponderance of the evidence. *Swiller v. Comm'r. of Public Health*, CV-950705601, Superior Court, J.D. Hartford/New Britain at Hartford, October 10, 1995; *Steadman v. SEC*, 450 U.S. 91, 101 S. Ct. 999, *reh'g den.*, 451 U.S. 933 (1981); *Bender v. Clark*, 744 F. 2d 1424 (10th Cir. 1984); *Sea Island Broadcasting Corp. v. F.C.C.*, 627 F. 2d 240,243 (D.C. Cir. 1980); all as cited in *Bridgeport Ambulance Service, Inc., v. Connecticut Dept. of Health Services*, No. CV 88 0349673-S (Sup. Court, J.D. Hartford/New Britain at Hartford, July 6, 1989).

In paragraph 2a of the Charges, the Department alleges that respondent negligently installed the building sewer by failing to install it at the grade required by §III(A) of the Technical Standards. This section requires that “. . . [t]he grade shall be at least one-quarter inch per foot for four-inch sewers and shall be not less than one-eighth inch per foot for larger sizes. . . .” Since the system required a four-inch building sewer, respondent was required to construct a system that sloped towards the septic tank at the pitch of at least one-quarter inch per foot. The Plan called for a three-foot drop in elevation between the point where the building sewer exits the house and the point where it enters the septic tank.

The Department’s case consisted of proof that in at least November 2003, approximately one year after the installation, the building sewer sloped downward from the tank towards the structure instead of *vice versa*, and contained a “belly” in which solids and liquids could settle and cause clogging.

Respondent denies installing the building sewer at the wrong elevation in September of 2002, and claims, among other things, that because the area consisted of “all soft material” (Tr. 5/9/05, p. 173) where the former tank was removed, the building sewer had “settled.”

The Department’s witness, Mr. Scully, testified that in order to attach the new building sewer to the existing building sewer as required by the Plan, respondent had to excavate the site. Mr. Scully further testified that when an area is excavated and a tank is removed, the area must be refilled with soil or fill, and compacted to support the new building sewer and

tank; and, failure to adequately fill or compact an area may result in “settling.”<sup>2</sup> While respondent testified repeatedly that the area was “soft,” he did not at any time state that he used additional soil or fill in the area or that he compacted the area. Based on the totality of the evidence, the Department failed to prove by a preponderance of the evidence that respondent negligently installed the building sewer in September of 2002, by failing to install it at the proper elevation.

Respondent’s other defenses to this and all of the other allegations are wholly without merit. These additional defenses will only be discussed once with reference to this allegation, but this discussion is applicable to all of the allegations. Specifically, respondent claims that: (1) the problems arose out of the homeowners’ use of water softener; (2) the system must have been installed correctly because the inspector approved it; and, (3) horses damaged the system by running on top of it

With regard to the homeowner’s alleged use of water softener, the Department presented sufficient rebuttal evidence to establish that this system was not damaged in the manner in which water softeners damage water systems. Thus, this defense is wholly unsupported by the record.<sup>3</sup>

The evidence is also insufficient to support respondent’s claim that the inspector approved the system. No inspection reports or approvals were submitted, and the inspector’s

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<sup>2</sup> The only other witness who testified as to the installation of this system at the time it was installed, was Mr. Birdo who is specifically found to be wholly lacking in credibility. Therefore, his testimony was given no weight. In any event, Mr. Birdo, testified that he did not specifically remember viewing the elevations. Tr. 4/25/06, pp. 30-31. Mr. Birdo was found to be not credible for the following reasons: (1) he generally could not remember much; (2) he contradicted himself in several instances; (3) while he testified that he never determined elevations in any manner other than by using a transit (Tr. 4/25/06, p. 45-46), he also could not recall whether he used a transit to check the elevations (Tr. 4/25/06, p. 44), and he also made a prior inconsistent statement to Mr. Scully in a telephone conversation when he stated that he recalled checking the elevation using a hand level and placing it on the D-box, and that he did *not* use a transit or any type of surveying equipment (Tr. 4/25/06, p. 61); (4) he repeatedly testified that he conducted a perc test on the fill while it was sitting in a pile (Tr. 4/25/06, p. 31, 35, 38-39) – something that is very bizarre and not within the standard; (6) while acknowledging that it was not a normal practice, he testified that he determined the fill was appropriate by observing it sitting in a pile, and did not recall picking it up in his hands to determine the number of fines in the fill (Tr. 4/25/06, p. 48); in response to other questions, he testified that he had “touched” the fill (Tr. 4/25/06, p. 35, 51) and that he did pick it up (Tr. 4/25/06, p. 52-53); (7) he testified that he relied on perc tests (not sieve tests) to determine if the fill was the correct fill (Tr. 4/25/06, p. 48); and, (5) because he approved this wholly inadequate system, he had a motive to lie.

<sup>3</sup> In particular, Mr. Scully testified that the damage caused by water softeners includes: an excess of water passing through the system; a “black, gooey substance” in the distribution boxes; chlorides that effect the concrete in the system; iron and manganese that may settle in the septic tank; and, minerals that may seep into the leaching fields. Since the record is devoid of any evidence establishing that these conditions exist in this system, this defense lacks merit.

testimony lacked credibility. *See*, n. 2, *supra*. Moreover, an inspector's approval would not excuse the negligent installation of a septic system. Respondent, rather than an inspector, is responsible for his own compliance with the standards that govern his licensed practice.

Finally, respondent's claim that the system components moved as a result of horses running over the property was credibly rebutted by testimony from Mr. Scully that horses running over the property would not cause a properly installed system to "settle."<sup>4</sup>

In paragraph 2b of the Charges, the Department alleges that in September of 2002, respondent negligently installed the septic tank so that the outlet invert and the inlet invert were not at the elevations required by §V(A)(2) of the Technical Standards. This section requires that "[t]he outlet invert of the septic tank shall be three inches lower than the liquid level. The final positioning of the tank during installation shall result in an elevation change between the inlet invert and the outlet invert of 2 and four inches."

The Department proved that approximately one year after the installation, in at least

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<sup>4</sup> Mr. Scully credibly testified that a properly installed system would not fail as a result of horses running over the property. In particular, Mr. Scully testified:

I cannot see that the horses could cause a gallery row to sink down into the ground or change the distribution piping. All systems are covered with a certain amount of cover. When the leaching system is installed, the installer's responsibility is to use heavy equipment, like bulldozers, that puts the fill down in six-inch lifts and basically compacts it properly, so they can support the leaching structures to avoid settlement. So, no. I would not think that the horses could have caused these violations to appear.

Tr. 5/9/05, p. 122.

Mr. Scully further testified,

Q: . . . the word that I heard quite frequently throughout [Mr. Dawley's] testimony was everything settled, correct?

A: I did hear that for the explanation for the building sewer, the piping, the galleries.

Q: Is this something that you commonly see with septic systems that are installed in the State of Connecticut?

A: No. Clearly, the standard of practice for installing a septic system is to make sure that materials, like fill, are properly compacted, so that you have a nice stable fill package, so that you don't have settling.

Issues with piping, clearly the strength of these plastic piping lies in the backfill, the material that supports it, the material that's underneath it. If you're removing a septic tank and leaving a large void and they're going to be putting a new pipe through that area, clearly, you have to make sure that there is material that's filled the excavation, that is properly compacted, that the pipe is having the required support to avoid deformation of the pipe or even failure of the pipe.

I mean these are plastic pipes, and, clearly lack of proper installation could lead to that. But, again, if you install piping, a gallery system if you install it correctly with proper backfill and bedding, no, we should not be having issues with settling.

Tr. 5/9/05, pp. 213-14.

November of 2003, the inlet and outlet inverts were not at the proper elevations. When invert elevations are incorrect, the tank will accumulate an excessive amount of liquid, which may then back up within the septic tank, causing clogging. For the reasons set forth in reference to the allegations in paragraph 2a, the Department failed to prove the allegation by a preponderance of the evidence. Respondent's defense that the tank had "settled" since the area where the new tank was installed was "soft," was sufficient to overcome the Department's proof, particularly in light of other evidence that such "soft" areas must be filled and compacted, or settling will occur. The mere fact that the tank was not properly positioned one year later, is insufficient, standing alone, to prove the allegation.

With regard to paragraph 2c of the Charges, the Department sustained its burden of proving that respondent used fill material that does not meet the gradation criteria of §VIII(A) of the Technical Standards. This section specifies the particle size of select fill material placed within the leaching area. In this case, the fill material prescribed in the Plan was consistent with the Technical Standards, requiring that no more than 0-5% of fines pass through a #200 sieve. A test performed on the fill used by respondent, revealed 9% of small particles passed through a #200 sieve. Thus, the Department met its burden of proof.

Respondent's claim that he believed he was purchasing and installing the correct fill, is not credible in light of more credible testimony from Mr. Scully that, given the "tremendous amount of fines" in this particular fill (Tr. 5/9/05, p. 217), respondent should have visually recognized that the fill did not comply with the Technical Standards. Respondent also claimed that another local health director permitted use of the fill he installed. This assertion is hearsay and is not supported by any direct evidence. Even if true, this claim does not constitute a cognizable defense since respondent, as a licensed septic system installer, is required to use fill that complies with the Technical Standards, regardless of what anyone else may be doing.

In paragraph 2d of the Charges, the Department alleges that respondent failed to install the leaching galleries and/or distribution piping at the elevations required in the engineering plan, thereby resulting in an undersized leaching system. Section VIII.F of the Technical Standards specifies that the requisite leaching area size for residential systems is dependent on the number of bedrooms in the house and the percolation rate of the soils into which the system is to be placed. *See*, Section VIII.D. In the instant case, the engineer designed the

galleries to be 12 inches high, which is the smallest system permitted by the Technical Standards for this five-bedroom house. Respondent was also required to install the gallery rows at the elevations specified in the Plan in order to ensure that the upper gallery would fill completely before effluent would be directed to the lower gallery.

The Department presented credible proof that by at least October of 2004, approximately two years after the system was installed, the upper gallery D-box and the lower gallery were not positioned as required by the Plan. Because the D-box was out of level by several inches, it directs effluent to the lower gallery before the upper gallery is full, resulting in less than 100% utilization of the upper gallery and placing a greater burden on the lower gallery. Moreover, the lower gallery is three inches lower than required by the Plan. These defects result in a system (which is already the smallest sized system permitted by the Technical Standards for the given parameters) that is undersized for the home.

Respondent denies the allegation, and again claims that the D-box and lower gallery have “settled.” These components of the system were located in the incorrect fill that respondent installed, and Mr. Scully credibly testified that use of incorrect fill may well result in “settling.”<sup>5</sup> Based on the totality of the evidence, the Department failed to sustain its burden of proving that, in September of 2002, respondent failed to install the leaching galleries and/or distribution piping at the elevation(s) required in the engineering plan, thereby resulting in an undersized leaching system.

Based on the foregoing, a preponderance of the evidence establishes only one of the allegations contained in the Charges, *i.e.*, that respondent installed the wrong grade of fill as alleged in paragraph 2c.

With reference to the allegations that respondent failed to install the system at the correct elevations, the Department proved that the system was out of elevation one or two years after the installation; and, respondent claimed he installed it at the correct elevation, but that the system had “settled.” Absent an “act of God” such as a hurricane or earthquake, there are only three explanations for a septic system to be located at the wrong elevations, one or two years after installation: (1) the system was initially installed at the wrong elevations; (2)

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<sup>5</sup> Mr. Scully also testified that failure to adequately compact the fill may also result in “settling.” Since there is no allegation regarding a failure to compact the fill, however, no finding is made regarding compaction.

substandard fill was used, permitting the system to “settle;” and/or, (3) the fill or soil was not adequately compacted, permitting the system to “settle.” The Department pleaded only the first of these possibilities. Since the Department, however, also proved an alternative explanation for the condition of the system (*i.e.*, that substandard fill was used that could permit settling), the Department failed to prove the first explanation by a preponderance of the evidence.

While respondent has no prior disciplinary action, he previously received a formal warning from the Department, following months of communications, upon his agreement to correct violations and complete the installation of another system. Tr. 5/9/05, pp. 142-143.

In this case, when the Department requested in March of 2004, that respondent make corrections, respondent first denied any responsibility for the defective system. When respondent was requested in July of 2004, to excavate the upper gallery D-box and the lower gallery so that the inspector could view the system, he failed to do so. It was not until October of 2004, nearly a year after the system was known to have significant problems, that an inspection was successfully conducted that identified problems with the distribution system. Respondent has only made one unsuccessful attempt, to correct the slope of the building sewer and the levels of the inverts. He has made no other efforts to correct the system. To date, none of the problems have been corrected. At the conclusion of the hearing, respondent stated that he takes responsibility for parts of the system that are not level, but he refuses to take responsibility for using the wrong fill. The record is silent as to whether respondent has made any restitution. Thus, there is no substantial mitigating evidence.

Despite the condition of the entire system, this proceeding has resulted in a finding of only one instance of neglect. However, this single instance of neglect may well have a widespread impact since the use of substandard fill not only results in an unstable base to support the system, but will likely prevent sewage from seeping adequately through the leaching fields.<sup>6</sup> This system which should have lasted for approximately 40 years and cost the owners \$22,850.00, is failing after two years, and will cost the property owners a substantial additional sum to repair.

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<sup>6</sup> There were other explanations offered regarding the elevations of the D-box and lower gallery, as well as the building sewer and tank (*e.g.*, respondent’s possible failure to compact the fill and soil), but these possible claims were not charged, and no other findings are made.

The Department requests a \$20,000 civil penalty and a two-year probation with certain terms and conditions. However, §19a-17(a) of the General Statutes only permits a maximum penalty of \$10,000 per violation. In this case, there is only one finding of neglect. Therefore, the civil penalty cannot exceed \$10,000. Considering the potentially widespread effect of this single instance of neglect, respondent's wholly inadequate and belated efforts to repair the system, his failure to make any restitution, and his continued disavowal of responsibility for using substandard fill, the maximum penalty should be ordered. Respondent's license should also be placed on suspension for period of time with a concurrent probation so that he may complete coursework prior to commencing any further work as a septic installer. Finally, respondent's license should be placed on probation for a period of time to ensure compliance with plans and Technical Standards.

### *Order*

Based on the record in this case, the above Findings of Fact and Conclusions of Law, and pursuant to §19a-17(a), subsurface sewage disposal system installer license number 002356 of Albert Dawley is subject to the following disciplinary action:

1. Respondent shall pay a civil penalty of \$10,000 by certified or cashier's check payable to "Treasurer, State of Connecticut." The check shall reference the Petition Number on its face, and shall be payable within thirty days of the effective date of this decision.
2. Respondent's license shall be suspended for a period of one year from the effective date of this decision. All originals of respondent's license shall be surrendered to the Department within ten days of the effective date of this decision.
3. Concurrent with the period of suspension, respondent's license shall be placed on probation until he satisfies the following terms:
  - a. During the first year of the probationary period, respondent shall complete, at his own expense, the following courses:
    - The sewage component of Phase I of the Environmental Health Program Course at Southern Connecticut State University offered annually every spring and fall
    - The Connecticut On-site Wastewater Recycling Association installer preparation course.

- b. Within thirty days of the completion of such coursework and prior to the expiration of the one year period of suspension, respondent shall provide the Department with proof, to the Department's satisfaction, of the successful completion of such courses, including but not limited to a copy of the passing examination submitted by the instructor to the Department.
- c. Commencing with the second year of probation, after respondent has satisfied the one year period of suspension and the requirements of paragraphs 3a and 3b, respondent shall submit to the Department, prior to commencement of all septic installations, a copy of the Town's permit authorizing the installation.
- d. Commencing with the second year of probation, after respondent has satisfied the one year period of suspension and the requirements of paragraphs 3a and 3b, respondent shall obtain at his own expense the services of a licensed subsurface sewage installer pre-approved by the Department ("the monitor"), to conduct on-site inspections of all septic projects undertaken by respondent until the monitor reports to the Department that respondent has successfully completed ten such projects in compliance with the Plans, all applicable statutes and regulations, and the Technical Standards.
  - i. The monitor shall have the right to monitor any and all work on the projects by any means that he or she deems necessary;
  - ii. Respondent shall cooperate fully with the monitor;
  - iii. Respondent shall provide the monitor with the original records maintained on each septic project;
  - iv. The monitor shall prepare and submit directly to the Department a written report stating briefly: (a) that the projects were reviewed and completed with skill and safety and in compliance with the Plan, and applicable statutes and regulations, and (b) the dates, locations, and duration of all site inspections and meetings with respondent;
  - v. If the monitor determines at any time that respondent is not in compliance with the Plan, applicable statutes and/or regulations, or the Technical Standards, the monitor shall immediately notify the Department; and,

- vi. During the period of probation, respondent is prohibited from engaging in any septic project if the monitor is unavailable to monitor such project.
4. Respondent's probation shall terminate when the monitor reports to the Department that respondent has successfully completed the ten projects described above.
5. Respondent shall bear all costs associated with compliance with this Order.
6. This decision does not dispose of any criminal liability unless respondent receives or has received a written agreement from the director of the Medicaid Fraud Control Unit or the Bureau Chief of the division of Criminal Justice's Statewide Prosecution Bureau stating that this decision resolves any such liability.
7. The civil penalty, and all permits, reports, and other correspondence shall be sent to:

Robert Scully, Supervising Sanitary Engineer  
State of Connecticut, Department of Public Health  
450 Capitol Avenue, MS#51AIR  
P.O. Box 34038  
Hartford, Connecticut 06134-0308

8. This Order shall be effective immediately upon signature.

6/14/06  
Date

  
\_\_\_\_\_  
Donna Buntaine Brewer, Esq.  
Hearing Officer

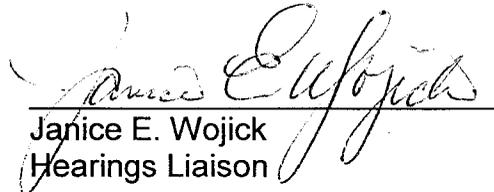
## CERTIFICATION

I hereby certify that, pursuant to Connecticut General Statutes Section 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 14<sup>th</sup> day of June by certified mail, return receipt requested to:

Beth A. Steele, Esq.  
DiFrancesca & Steele, P.C.  
811 Boswell Avenue  
Post Office Box 548  
Norwich CT 06360

*and by Interdepartmental Mail to:*

Stanley K. Peck, Director  
Legal Office – MS#12LEG  
Department of Public Health  
410 Capitol Avenue  
Hartford CT 06134-0308

  
Janice E. Wojick  
Hearings Liaison