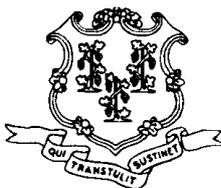


STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

Joxel Garcia, M.D., M.B.A.
Commissioner



John G. Rowland
Governor

Jerry M. Gualazzi
90 Walnut Street
Ivoryton CT 06442

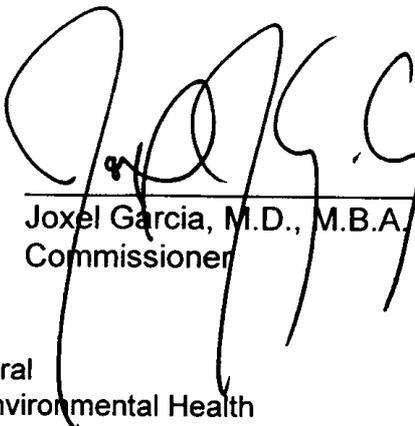
CMRRR#70001530000054280627

IN RE: Jerry M. Gualazzi, SSI, Petition No. 2000-0120-033-002

FINAL MEMORANDUM OF DECISION

In accordance with Connecticut General Statutes Section 4-180, the attached Proposed Memorandum of Decision issued July 31, 2001, by Hearing Officer Donald H. Levenson, is hereby adopted as the final decision of the Commissioner of the Department Health in this matter. A copy of the Proposed Memorandum of Decision is attached hereto and incorporated herein.

8-22-01
Date



Joxel Garcia, M.D., M.B.A.
Commissioner

- c: Richard J. Lynch, Assistant Attorney General
Thomas Furgalack, Director, Division of Environmental Health
Jennifer Filippone, Public Health Services Manager
Charles J. Irving, Esquire, CMRRR#70001530000054280634



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

Jerry M. Gualazzi
c/o Attorney Charles Irving
Irving, Dubicki and Camassar, LLP
New London, Connecticut 06320

Petition No. 2000-0120-033-002

July 31, 2001

PROPOSED MEMORANDUM OF DECISION

Procedural History

On September 23, 2000, the Department of Public Health ("the Department") filed a Statement of Charges ("the Charges") against Jerry M. Gualazzi ("respondent") notifying him that the Department was proposing to revoke or order other disciplinary action against his subsurface sewage disposal system installer's license ("the license"). H.O. Exh. 1.

On October 3, 2000, the Department issued a Notice of Hearing in which the Commissioner of the Department appointed this Hearing Officer to rule on all motions and to recommend findings of fact and conclusions of law. H.O. Exh. 1.

On October 26, 2000, respondent filed an Answer to the Charges denying the factual allegations in the Charges and, as a defense, asserting that the actions of the property owner were responsible for the alleged violations. H.O. Exh. 2

On November 20, 2000, January 31, 2001, and March 13, 2001, administrative hearings were held to adjudicate the Charges. The hearings were conducted in accordance with Chapter 54 of the Connecticut General Statutes (the Uniform Administrative Procedure Act) and §§19a-9-1, et seq. of the Regulations of Connecticut State Agencies ("the Regulations"). Attorney Charles Irving represented respondent and Attorney Linda Fazzina represented the Department at the hearing.

This Proposed Memorandum of Decision is based entirely on the record and sets forth this Hearing Officer's proposed findings of fact, conclusions of law, and 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 002507.
2. In paragraph 2 of the Charges, the Department alleges that in or about September 1998, respondent illegally, incompetently and/or negligently installed a subsurface sewage disposal system ("the system") at 83 Osprey Circle, Westbrook, Connecticut ("the property") in one or more of the following ways, in that he:
 - a. failed to cover the system within two working days following the local health department's final inspection and approval; and/or
 - b. failed to install the leaching galleries at the elevation(s) required in the plan designed by Thomas A. Stevens & Associates, Inc. ("Stevens"), thereby resulting in an undersized leaching system.
3. In paragraph 3 of the Charges, the Department alleges that subsequently, in or about the Fall of 1998, respondent failed to timely repair the system he illegally, incompetently and/or negligently installed on the property.
4. In paragraph 4 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to the §20-341f(d) of the Statutes taken in conjunction with §§19-13-B103d(b), 19-13-B103e(e)(2), 19-13-B103de(f)(1), 19-13-B103e(g)(1) of the Regulations, and §§VIII(A), VIII(D), VIII(F) of the Technical Standards for the Design and Construction of Subsurface Sewage Disposal Systems ("the Technical Standards").

Findings of Fact

1. Respondent holds Connecticut subsurface sewage disposal system installer license number 002507. Tr. 1/31/01, p. 233.
2. On or about September 14, 1998, William and Judy Cibula, the owners of the property ("the owners"), contracted with respondent to install the system to service a new home the owners were constructing on the property. Dept. Exh. 2; Tr. 11/30/00, p. 23-24.
3. On or about September 30, 1998, respondent completed installing the system and requested the Westbrook Health Department ("Local Health") to inspect the system. Dept. Exh. 4; Tr. 1/31/01, p. 246.
4. On or about September 30, 1998, Local Health inspected the system, approved its installation, and gave respondent permission to backfill (*i.e.*, cover) the system with soil. Dept. Exh. 4; Tr. 11/30/00, pp. 87; Tr. 1/31/01, p. 68.

5. Respondent failed to backfill the system within two days of its inspection, or at any time thereafter. Tr. 1/31/01, pp. 134, 291 (admission); Tr. 3/13/01, p. 103.
6. On October 10, 1998, the owners paid respondent \$6,500 for installing the system. Dept. Exhs. 2, 3; Tr. 11/30/00, p. 75-76.
7. On or about November 24, 1998, Stevens inspected the system and informed the owners by telephone that the leaching galleries were installed approximately 7 ¾ inches too high and that the system, therefore, did not provide sufficient leaching capacity. Dept. Exh. 5; Tr. 11/30/00, pp. 91, 182-187, 190.
8. As installed by respondent, the system provided only 576 linear feet of leaching area. Pursuant to state regulatory requirements, the system was required to provide 600 linear feet of leaching area. Respondent's installation of the leaching galleries, therefore, resulted in a 13% decrease in the system's leaching capacity. Dept. Exhs. 1, 5, 14; Tr. 1/30/01, pp. 40, 54, 57, 214.
9. On November 30, 1998, William Cibula ("Cibula") called respondent and informed him that he had installed the system incorrectly because he had installed the galleries too high and that, therefore, the system failed to provide sufficient leaching capacity. Dept. 12; Tr. 11/30/00, pp. 186, 190; Tr. 1/321/01, pp. 270-271.
10. Sometime between December 3 and December 8, 1998, the owners requested Schumack Engineered Construction ("Schumack"), another subsurface sewage disposal system installer, to inspect the system and prepare an estimate of what it would cost to repair it. Tr. 11/30/00, p. 104,
11. On or about December 8, 1998, Schumack inspected the system and presented the owners with a proposal for its repair. Resp. Exh. C; Tr. 11/30/00, p. 103.
12. On or about January 8, 1999, Schumack repaired and backfilled the system. Dept. Exhs. 4, 8; Tr. 11/30/00, p. 47, 168; Tr. 3/13/01, p. 73.
13. After the November 30, 1998 conversation with Cibula, respondent failed to: (1) take any steps to ascertain if he had installed the system incorrectly; (2) clearly and unambiguously indicate to the owners his willingness to repair the system; or, (3) repair the system. Dept. Exh. 4; Tr. 11/30/00, pp. 42, 123, 188; Tr. 1/31/01, pp. 271, 272, 279, 283.

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); *Swiller v. Commissioner of Public Health*, No. CV 95-0705601 (Sup. Court, J.D. Hartford/New Britain at Hartford, October 10, 1995).

I. Failure to Cover the System

Section 19-13-B103d(b) of the Regulations requires subsurface sewage disposal systems to be installed in accordance with the Technical Standards. Section VIII.A. of the Technical Standards requires subsurface sewage disposal system installers (“installers”) to cover subsurface sewage disposal systems within two business days following their inspection by a local health department.¹ In paragraph 2a of the Charges, the Department alleges that respondent failed to cover the system within two days of its inspection by Local Health.

There is no question that respondent failed to cover the system within two days of its inspection by Local Health.² FF 3-5. Respondent asserts, however, that he was specifically requested by the owners not to cover the system within the requisite time

¹ Section 19-13-B103e(g) of the Regulations requires local health departments to inspect a completed subsurface sewage disposal system prior to its covering.

² Respondent initially told representatives of the Department at a compliance conference that he had covered the system. At hearing, however, he denied making this statement to staff and, instead, admitted that he had failed to cover the system. Tr. 1/31/01, pp. 14, 134, 290, 291.

period because Cibula wanted to work on the system himself before it was covered.³ Tr. 1/31/01, pp. 247, 263. Cibula denies requesting respondent to delay backfilling the system and, instead, asserts that he made several unsuccessful attempts to get respondent to return to the property to backfill the system. Tr. 11/30/00, pp. 34-35, 49, 52, 86.

Respondent appears more credible on this point. Cibula was deeply and personally involved in both the construction of his house and its septic system.⁴ It was also in respondent's interest to backfill the system immediately after its inspection so he could perform the work while he still had his equipment on the site and so that he could get paid for his installation of the system. It is therefore, more likely than not that Cibula requested respondent to delay covering the system to allow him time to work on the system.

Cibula paid respondent in full for the installation of the system on October 10, 1998, ten days after Local Health inspected it and gave respondent permission to backfill. FF 6. He would likely not have paid respondent in full for installation of the system if he had doubts as to whether respondent would return to complete it. Cibula claims that he paid respondent in full because respondent promised to return and backfill the system at a later date. The more likely scenario is that Cibula requested respondent to delay backfilling the system, respondent acceded to that request, and Cibula paid him in full expecting respondent to return to cover the system after he had completed his work.

However, the standard of care for licensed installers required respondent to either backfill the system within the two days specified in the Technical Standards⁵ or to inform Local Health that the homeowner was preventing him from doing so. Tr. 1/31/01, pp. 117, 198; Tr. 3/13/01, pp. 56-57. Respondent clearly didn't backfill the system within two days of the inspection. While he claimed at hearing that he told Local Health at the

³ Cibula holds a Class P I contractor's (*i.e.*, plumber's) license and was, therefore, legally authorized to work on the system from the house to the septic tank. Tr. 11/30/00, p. 51.

⁴ Cibula was the general contractor for both projects. He staked part of the property and set a benchmark, installed the pipe from the house to the septic tank, and did some of the finish work on the house. Dept. Exh. 4; Tr. 11/30/00, pp. 50, 73, 140; Tr. 3/13/01, p. 30.

⁵ The Regulations require that a septic system be covered within two days of its inspection to reduce the risk to people walking the site, and to reduce the risk that the stones surrounding the system may become silted over and lose some of their leaching capacity. Because of respondent's failure to cover the system in the current case, the stones surrounding the galleries were contaminated with silt and had to be completely removed and replaced with new stones - at considerable expense to the owners. Resp. Exh. C; Tr. 1/31/01, pp. 41, 43.

time that the owners were preventing him from returning to the site to backfill the system, his testimony is not corroborated by the witness from Local Health and is not credible.⁶

Respondent should not have acceded to Cibula's request to delay backfilling the system beyond the period specified in the Technical Standards without informing Local Health. If he wanted to allow Cibula additional time to work on the system, and avoid violating the two day cover requirement, all he had to do was delay requesting an inspection from Local Health.⁷ Instead, he requested an inspection from Local Health and then failed to either cover the system within the requisite two days or inform Local Health that the property owner was preventing him from doing so. It is, therefore, concluded that respondent failed to cover the system within two days of its inspection by Local Health as alleged in paragraph 2a of the Charges.

2. *Failure to properly install the leaching galleries*

In paragraph 2b of the Charges, the Department alleges that respondent failed to install the leaching galleries at the elevations required by the engineering plans prepared by Stevens, thereby resulting in an undersized leaching system. Respondent admits that he did not install the galleries at the height specified in the Stevens' plan, but denies he installed an undersized leaching system.⁸ Respondent also denies that he ever received a copy of the Stevens' plans. Tr. 1/31/01, pp. 236, 237.

Section VIII.F. of the Technical Standards specifies the requisite leaching area for residential septic systems. The specific amount of leaching area a particular septic

⁶ Although respondent testified that he notified the local health official, Paul D'Orio, that Cibula would not allow him to return to the property to backfill the system, D'Orio could not recall respondent having done so. Tr. 3/13/01, pp. 16, 61. It is also noted that respondent only offered this testimony after the Department's expert witness testified that the standard of care required installers to notify the relevant local health department if an owner prevented them from reentering a property to meet the two day cover requirement. It is further noted that Cibula testified that respondent never told him that the system had to be backfilled within two days. Tr. 11/30/00, p. 87.

⁷ There is no requirement that an installer or homeowner request an inspection within any set period of time following the completion of a septic system. Tr. 3/13/01, p. 79; *see also*, §19-13-B103e(g) of the Regulations.

⁸ The standard of care for licensed installers requires that they check the elevations of the trenches they are digging for the installation of leaching galleries periodically during their excavation, and that they check the final elevation of the galleries after they are installed. Tr. 1/31/01, pp. 174-176. Respondent admits, however, that he never personally checked the elevations of the galleries during their construction or after their installation, that he should have done so, and that, instead, he relied on his operator and Cibula to ensure that the galleries were installed at the correct elevation. Tr. 1/31/01, pp. 322, 330-331, 338; *see also*, Dept. Exh. 14.

system requires is dependent on the number of bedrooms in the house the system is designed to serve and the percolation rate of the soils into which the system is to be placed. Section VIII.D. of the Technical Standards specifies the amount of effective leaching area a particular size leaching gallery is considered to provide. Cibula's house required 660 linear feet of leaching area, but the leaching galleries installed by respondent provided only 576 linear feet of effective leaching area because they were installed approximately 7 ¼ inches too high. FF 7, 8.

Respondent argues that the system he installed would have complied with the Technical Standards if the volume of the septic tank he installed as part of the system were included in the leaching area calculation. Tr. 1/31/01, pp. 256, 258, 262. However, in order to include the septic tank in the leaching area calculation, the system would have to be designed and installed so that septage would be allowed to flow back into the septic tank from the leaching galleries. The Department's expert witness, Arthur Castellazzo,⁹ testified that if septage were allowed to flow back into a septic tank from the leaching galleries such septage could damage the tank and result in the system's premature failure. Tr. 1/31/01, pp. 49, 182; Tr. 3/13/01, pp. 108, 111. To avoid this possibility, the Technical Standards require leaching galleries to be installed so that the tops of the galleries are set below the outlet pipe of the septic tank. The Technical Standards also require the maintenance of an eight-inch air space between the top of the septic tank and the maximum septage level within the tank. *Technical Standards*, §V.A., VII.D.; see also, Tr. 1/31/01, p. 175; Tr. 3/13/01, p. 119. The galleries installed by respondent, therefore, did not comply with the Technical Standards.¹⁰

Although Cibula claims to have given respondent a copy of the Stevens plan, respondent denies receiving it. Tr. 1/31/01, pp. 236-237, 245-246. Instead, respondent asserts that he installed the system relying solely on the assistance of Cibula and the advice of D'Orio from Local Health. Tr. 1/31/01, pp. 237, 242-244, 310, 311, 322. Both

⁹ Mr. Castellazzo is a Sanitary Engineer with the Department with twenty-three years of experience as a registered sanitarian. He also holds degrees in both civil and industrial engineering. Tr. 1/31/01, pp. 200-207.

¹⁰ This conclusion is consistent with the testimony of two expert witnesses, Castellazzo from the Department and John Lalley, the licensed installer from Schumack Construction who ultimately repaired the system. It is also consistent with the conclusion reached by Stevens, the engineering firm that designed the system and first noticed respondent's incorrect installation of the galleries. Dept. Exhs..5, 6; Tr. 11.30/00, pp. 170-174; Tr. 1/31/01, pp. 52, 176; Tr. 3/13/01 p. 70.

Cibula and D'Orio, however, deny providing respondent such assistance. Tr. 11/30/00, p. 49; Tr. 3/13/01, pp. 39, 45. It is not believable that respondent would have installed the system without some detailed written plans.¹¹ Because respondent never developed any written plans of his own, respondent's claim that he never saw the Stevens plans before installing the system is not credible.

Even if respondent never saw the Stevens plans, his argument is misplaced. As a licensed installer he was required to install the system in conformance with the Regulations and the Technical Standards. He obviously failed to do so. Whether the system he installed was also consistent with the Stevens plan is irrelevant and, therefore, whether he received a copy of the Stevens' plans is immaterial.

Respondent also argues that he did not install the system in violation of the Regulations because he was not given a reasonable opportunity to repair his incorrect installation of the galleries. The Regulations, however, do not permit installers to install septic systems incorrectly if they correct their mistakes within a reasonable period of time. If the Regulation did so, installers would have little incentive to install septic systems correctly, and the public interest in the installation of safe and reliable septic systems would not be served.¹² The Department may, from an enforcement perspective, be more concerned with installers that refuse to correct their mistakes after they are discovered than it is with installers that make mistakes and then correct them. However, the incorrect installation of a system is clearly a violation of the Regulations in and of itself. See Tr. 1/31/01, pp. 80, 148, 191, 194; Tr. 3/13/01, p. 140.

It is, therefore, concluded that respondent installed the system incorrectly as alleged in paragraph 2b of the Charges.

3. *Failure to repair the system*

In paragraph 3 of the Charges, the Department alleges that respondent failed to repair the system in a timely manner. Respondent denies this allegation and, instead,

¹¹ The standard of care for licensed installer required installers to have a written plan for a system before installing it. To do so might, itself, be a violation of the Regulations and the Technical Standards. Tr. 1/31/01, p. 187; see also, §19-13-B103e(e) of the Regulations.

¹² Because subsurface septic systems are, by definition, installed under ground, many defects in the installation of such systems do not become apparent until the system fails or suffers some other major malfunction.

asserts that the actions of the owners prevented him from making timely repairs to the system.

By the end of September of 1998, respondent had completed his installation of the system, except for the backfilling issue discussed above. Since the system had been inspected and approved by Local Health, and Cibula had paid him in full for its installation soon thereafter, respondent had no reason at that time to believe that he had installed the system incorrectly.

Cibula first learned of the incorrect installation of the galleries during a telephone conversation with Stevens on or about November 24, 1998. During that conversation Stevens informed Cibula that the galleries had been installed too high and that the system did not provide sufficient leaching area. FF 7. Cibula first notified respondent that there were problems with the system's installation during a telephone conversation with him on November 30, 1998. Both Cibula and respondent agree that during that conversation Cibula told respondent that the galleries had been installed too high and that the system did not supply sufficient leaching area. FF 9. Cibula also claims that during that November 30th conversation respondent refused to return to repair the system. Tr. 11/30/00, pp. 42, 123, 188. Respondent denies telling Cibula that he would not return to make the repair and, instead, he claims that he told Cibula to get back to him with further details about the problem before he would attempt a repair. FF 13.

It is unclear who, if anyone, is telling the truth regarding the November 30th conversation. What is clear, however, is that by November 30, 1998, respondent knew that the owners were asserting that he had installed the system incorrectly and that he failed to take any affirmative steps to ascertain the status of the system until his conversation with D'Orio from Local Health on or about January 5, 1999.¹³ What is also clear is that respondent failed to express clearly and unambiguously his willingness to the owners to make the requisite repairs or, in fact, to make those repairs. FF 9-12.

¹³ During the last week of December of 1998, D'Orio left respondent a voice mail message requesting that respondent call him to discuss his installation of the system. Tr. 3/13/01, p. 27. Respondent returned that call on his first day back from vacation and informed D'Orio that he was willing to fix his mistake, but that Cibula would not allow him back on the property to do so. Tr. 3/13/01, p. 21. D'Orio told respondent that it was too late for him to make the repair because Cibula had already contracted with Schumack to do so. Tr. 1/31/01, p. 277. Schumack completed its repair of the system on or about January 8, 1999. FF 10-12.

It was respondent's responsibility to ensure that he had installed a system in compliance with the Technical Standards. Two expert witnesses testified that once respondent was put on notice that he might have installed the system incorrectly, the standard of care for licensed installers required that he take affirmative steps to determine whether or not he had installed the system correctly. Tr. 1/31/01, pp. 132, 161; Tr. 3/13/01, p. 55-57. Respondent does not claim that he took such affirmative steps. Instead, he attempts to shift the responsibility for his failure to repair the system from himself to the owners by arguing that the owners failed to provide him detailed information on the condition of the system. He also attempts to excuse his delay in investigating the condition of the system by arguing that there were no exigent circumstances that required the systems immediate repair. Respondent's arguments, however, miss the point.

Clearly, Cibula wanted respondent to return and repair the system or he would not have bothered to call him on November 30th to inform him of Steven's oral report and of the problem with the installation of the galleries. The owners' speed in securing another installer indicated that it was important to them to have the system repaired promptly. FF 10-12. Certainly, the owners would have preferred to have respondent backfill and repair the galleries for free rather than paying Schumack \$4,600, as they did, to repair a system they had already paid respondent \$6,500 to install properly. Resp. Exh. C.

Respondent had several options available to him to ascertain the true condition of the system: he could have called Cibula back for more information about his "alleged" mistake; he could have asked for the name of the firm that discovered his mistake and contacted them directly; or, he could have contacted Local Health to determine what they knew about the situation. Instead, he did nothing. If respondent had taken any of the above steps, he would have quickly learned of the problem with the galleries and would have had ample opportunity to correct his mistake. His lack of opportunity to fix the galleries, therefore, resulted from his own lack of initiative in following up his November 30th conversation with Cibula and not from any lack of information from the owners.

Similarly, it really doesn't matter how quickly the system needed to be repaired. What mattered was how slowly respondent acted to investigate his mistake and how long it took him to express his willingness to effectuate its repair. The Department's expert

witness testified that the thirty five day period from respondent's November 30, 1998 phone call with Cibula to his January 5, 1999 phone call to D'Orio was more than a reasonable period for a licensed installer to determine whether he had installed a system incorrectly and, once he had determined that he had done so, to clearly express his willingness to effectuate its repair. Tr. 1/31/01, pp. 132-133.

It was respondent's responsibility to repair his mistake within a reasonable period of time and he failed to do so. The Department, therefore, substantiated the allegation set forth in paragraph 3 of the Charges.

4. *Penalty*

The Department has requested that respondent be assessed a civil penalty of \$3,000. Tr. 11/30/00, p. 19. The facts of this case support that request. Respondent failed to backfill the system within two days of its inspection by Local Health as required by the Technical Standards. Respondent also failed to install the system in compliance with the Technical Standards when he placed the leaching galleries too high and then failed, contrary to the standard of care for licensed installers, to correct that mistake within a reasonable period of time. Respondent, therefore, illegally, incompetently, and negligently installed a subsurface sewage disposal system at the property in violation of §20-341f(d) of the Statutes, §19-13-B103d(b) of the Regulations,¹⁴ and §§ VIII.A., VIII.D., and VIII.F. of the Technical Standards as alleged in the Charges.

The actions of the owners may have contributed to some extent to respondent's inability to backfill the system within two days or to effectuate the repair of the galleries within a reasonable period of time. However, respondent is the one who holds a license from this Department and, therefore, it is respondent and not the owners who must comply with the requirements of that license. It is also true that respondent's incorrect installation of the galleries was not an uncommon mistake and that it could have been corrected relatively easily if addressed soon after it occurred. But, as discussed above, responsibility for respondent's lack of opportunity to correct his mistake lies with

¹⁴ In the Charges, the Department also alleged that respondent's conduct violated §§19-13-B103e(e)(2), 19-13-B103e(f)(1), and 19-13-B103e(g)(1) of the Regulations. These regulatory provisions were not addressed in the factual allegations of the Charges, nor were they addressed directly during the evidentiary

respondent and not the homeowners. Therefore, a civil penalty of \$3,000 is fair and reasonable under all the circumstances of this case.

Proposed Order

Based on the record in this case, the above Findings of Fact and Conclusions of Law, this Hearing Officer respectfully recommends to the Commissioner that, pursuant to §19a-17(a)(6), he order respondent to pay a civil penalty of \$3,000, within thirty days of the date of the final order.



Donald H. Levenson, Esq.
Hearing Officer

7-31-01

Date

portion of these proceedings. The Department, therefore, failed to sustain its burden of proof as to these particular allegations.