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DEPARTMENT OF PUBLIC HEALTH

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PUBLIC HEALTH HEARING OFFICE
DIVISION OF MEDICAL
QUALITY ASSURANCE

In Re: Department of Public Health
vs.
Louis DellaCamera, S.S.I.
License No. 004086

Petition No. 930825-33-003

To: Louis DellaCamera, S.S.I.
375 Bethmour Road
Bethany, CT 06524

FINAL MEMORANDUM OF DECISION

In accordance with Connecticut General Statutes Section 4-179, the attached Proposed Final Decision dated August 31, 1995 by hearing officer Linda J. Mead is hereby adopted as the final decision of the Commissioner of the Department of Public Health with the following modifications:

1. In paragraph 1 of the Proposed Final Decision on page 11, the word "count" is changed to "violation."
2. Paragraph 3 and all subparagraphs of paragraph 3 of the Proposed Order, on pages 12-13 of the Proposed Final Decision, are deleted.
3. Paragraph 4 of the Proposed Order on page 13 of the Proposed Final Decision is changed to add the word "and" after the word "penalty" and to delete the commas and the words "and Inspector Review Forms."

A copy of the Proposed Final Decision is attached hereto and incorporated herein, with the modifications made by this Final Memorandum of Decision.

Accordingly, Respondent is ordered to comply with paragraphs 1, 2 and 4 of the Proposed Order, as amended by this Final Memorandum of Decision.

22 Sept 95
Date


Stephen A. Harriman
Commissioner
Department of Public Health

cc: Phyllis Hyman, Assistant Attorney General
Warren Wollschlager, Jr., Bureau Chief
Stanley K. Peck, Director, MQA
Paul Schur, Director, Environmental Health
Donna Buntaine Brewer, Chief, PHHO
Kathie Pirolo, Board Liaison
Bonnie Pinkerton, Nurse Consultant, PHHO

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

Louis DellaCamera, S.S.I.
License No. 004086
375 Bethmour Road
Bethany, CT 06524

Petition No. 930825-33-003

PROPOSED FINAL DECISION

PROCEDURAL BACKGROUND:

On April 5, 1995, the Deputy Commissioner of Public Health and Addiction 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 Public Health and Addiction Services ("Department") issued a Statement of Charges against Louis DellaCamera, Subsurface Sewage Disposal System Installer, ("Respondent") dated March 17, 1995. (Department Exhibit 1). The Statement of Charges alleged in two counts that the Respondent violated §20-341f(d)(2) and/or §20-341f(d)(3) of the Connecticut General Statutes by incompetently or negligently performing work on subsurface sewage systems.

1/ Previously, this agency was known as the Department of Public Health and Addiction Services. Effective July 1, 1995, this agency became the Department of Public Health. Public Act No. 95-257.

Prior to the initiation of the instant charges, the Department offered the Respondent the opportunity to attend a compliance conference scheduled on September 28, 1994, to demonstrate that no adverse finding against him should be found. (Department Exhibit 3). The Respondent attended the compliance conference. (Transcript pp. 5-6).

The Department served the Notice of Hearing and Statement of Charges on the Respondent by certified mail, return receipt requested. (Department Exhibit 1). On April 13, 1995, the Department received the signed domestic return receipt card from the Respondent. (Department Exhibit 1). The Respondent did not file an Answer to the Statement of Charges.

The only administrative hearing on this matter was held as scheduled on June 21, 1995, in accordance with Chapter 54, Section 19a-2a, and Section 19a-14(c) of the Connecticut General Statutes; and §19-2a-1, et seq., of the Regulations of Connecticut State Agencies. All transcript references will refer to the June 21, 1995 hearing date. The Respondent did not appear at the hearing. John C. Golden, III, Esq., represented the Department.

The Department amended the Statement of Charges during the hearing, by withdrawing the Second Count. (Transcript p. 62).

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

ALLEGATIONS:

The Department alleged that the Respondent, holder of Connecticut subsurface sewage installer license number 004086, performed work on a subsurface sewage system at 314 Reeds Gap Road, Northford, Connecticut, during 1993.

The Department further alleged that the Respondent performed the work in an incompetent or negligent manner, and thereby violated Connecticut General Statutes §20-341f(d)(2) and/or §20-341f(d)(3), by:

- a. failing to ensure that the ground surface was graded so as to lead water away from the area;
- b. discharging sewage or allowing it to flow on the property, creating a nuisance or condition detrimental to health; and/or
- c. failing to cover the system within two days of the inspection.

FINDINGS OF FACT:

1. The Respondent is the holder of Connecticut subsurface sewage disposal system installer license number 004086. (Department Exhibit 2).
2. On March 3, 1993, Mr. James P. Niziolek accepted the terms of a contract offered by the Respondent to replace most of the subsurface sewage disposal system at his home at 314 Reeds Gap Road, Northford, Connecticut. (Department Exhibit 4).

3. The Respondent began working at the site in March 1993. Excavation for placement of the infiltrators was completed and on March 22, 1993, the East Shore District Health Department ("ESDHD") inspected and approved the work. (Department Exhibit 9).
4. Three rows of infiltrators were placed in the trenches that had been excavated. On April 30, 1993, the leaching field inspection was done and the work was approved by ESDHD. (Transcript pp. 15, 86-87; Department Exhibit 9).
5. Once the infiltrators were placed, a hole was dug for the pump chamber. At this point, the Respondent disconnected the original septic tank from the leaching fields. The contents of the septic tank, the sewage from the home, then emptied into the open hole prepared for the pump chamber. (Department Exhibits 6-1, 6-2, 6-3; Transcript pp. 14-15, 17-19, 31-32, 35, 63-65).
6. The Respondent attached a hose to the pump at the bottom of the open hole, ran it up to the lawn level and then through the backyard to the woods at the back of the lawn. The Respondent then pumped some of the sewage that was in the open hole through the hose to the wooded area that bordered Mr. Niziolek's property and that of his neighbor. (Department Exhibits 6-1, 6-2, 6-3, 6-11, 6-12, 6-13, 6-15, 6-17; Transcript 19-20, 38-39, 41-42, 70-72).

7. The discharge of sewage into the open hole and from the end of the pipe into the wooded area created a condition that was detrimental to public health. (Department Exhibit 8 at §19-13b-103c(f); Transcript pp. 64-65, 74-75).

8. Mr. Castellazzo, the Department expert, testified that the discharge of sewage into the open hole and from the end of the pipe into the wooded area is a violation of the Technical Code and did not meet professional practices and standards. (Department Exhibit 8 at §19-13b-103c(f); Transcript pp. 64-65, 74-75).

9. When the hole for the pump chamber was dug, the old septic tank was exposed and the Respondent told Mr. Niziolek that it needed to be replaced. A new polyvinyl tank was installed into the hole and the sewage from the house emptied into this tank. The polyvinyl tank remained in the hole, uncovered, for three to four weeks. The inlet valve of the pipe that brought sewage from the house into the tank did not fit tightly into the tank and sewage leaked from this valve into the open hole. Additionally, the tank had a hole in the side of it. (Department Exhibits 6-5 & 6-6; Transcript pp. 20-22, 35-36, 65-66, 69-70, 90).

10. Sometime between May 13, 1993 and July 21, 1993, use of the polyvinyl tank was abandoned and it was removed. The Respondent recommended replacement with a concrete septic tank and a second contract was signed by Mr. Niziolek and the Respondent. The new concrete tank was installed. (Department Exhibit 4; Transcript pp. 91-92).

11. Inspection of the concrete septic tank and the pump chamber was done by ESDHD on July 21, 1993. A permit to discharge was issued on August 3, 1993. (Department Exhibit 9; Transcript pp. 90-91).

12. By August 16, 1993, ESDHD, inspecting the system because of a request by the homeowner, found a partial collapse of the system. The infiltrators had to be uncovered and replaced. The replacement of the infiltrators was finally accomplished and the inspection of the work was done by ESDHD on October 4, 1993. A second permit to discharge was issued on October 20, 1993. Problems have continued, and as recently as March 24, 1995, septic discharge was observed at the site by ESDHD. (Department Exhibit 9).

13. Since August 1993, Mr. Niziolek has experienced puddles of water as well as wet spots on the leaching field area of his backyard. (Department Exhibit 6-18; Transcript pp. 26-27, 42-43).

14. Mr. Castellazzo, the Department expert, testified that it is the responsibility of the installer to grade the ground surface over the entire subsurface sewage disposal system to lead surface water away from the area after the installation of the system. (Department Exhibit 8 at p. 31; Transcript pp. 54-55, 74-77).

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DISCUSSION AND CONCLUSIONS OF LAW:

Sections 19a-14, 19a-17, and 20-341f(d) of the Connecticut General Statutes authorize the Department to take disciplinary action against licensed subsurface sewage system installers for: incompetent or negligent conduct by the license holder in his work; or violation of any provision of Title 20, Chapter 393a of the Connecticut General Statutes or any regulation adopted thereunder.

Connecticut General Statutes §20-341g limits fines assessed against the holders of subsurface sewage disposal system installers to not more than one hundred dollars for each violation.

The Department bears the burden of proof by a preponderance of the evidence in this matter.

With Regard to Paragraph 3a:

The Technical Standards for the Design and Construction of Subsurface Sewage Disposal Systems Pursuant to Section 19-13-B103, in effect during 1993, provide in pertinent part: "The ground surface over the entire subsurface sewage disposal system shall be graded and maintained to lead surface water away from the area."

The Department sustained its burden of proof with regard to Paragraph 3a of the Statement of Charges. Mr. Niziolek, the homeowner, was a credible and persuasive witness. He testified that in August 1993, after the initial replacement of the subsurface sewage disposal system by the Respondent, the area over the system had wet spots and

even puddles of water. A photograph, taken during August 1993 and showing a large puddle of water, was introduced into evidence. Problems with wet spots and the puddling of water have continued to the present.

It is the responsibility of the licensed installer to ensure the area over the system is graded properly so that surface water is led away from the system. Proper grading of the surface area was not done by the Respondent in this case. The failure to properly grade the surface area is a violation of the Technical Code as well as a failure to meet the professional standards of care. Accordingly, the Department may take action against the Respondent pursuant to Sections 19a-17 and 20-341 of the Connecticut General Statutes.

With Regard to Paragraph 3b:

Section 19-13-B103c(f) of the Connecticut Department of Health Services Public Health Code Regulations, in effect during 1993, provides in pertinent part: "No sewage shall be allowed to discharge or flow into any storm drain, gutter, street, roadway or public place, nor shall such material discharge onto any private property so as to create a nuisance or condition detrimental to health."

The Department sustained its burden of proof with regard to Paragraph 3b of the Statement of Charges. Mr. Niziolek provided credible testimony that the Respondent allowed sewage to collect in the open hole he had dug for the pump chamber. The Respondent also used the pump and the attached hose to remove that sewage out of the hole and

across the backyard to be discharged in a wooded area. Mr. Niziolek's testimony was corroborated by the photographs he took and by Mr. Castellazzo, a sanitary engineer for the Department, who identified the liquid in the photographs as either sewage or sewage mixed with water.

It is the responsibility of the licensed installer of the subsurface sewage disposal system to ensure there is no discharge of sewage onto private property which would create a condition detrimental to health. The discharge of raw sewage that occurred in this case created a condition that was detrimental to public health and is thus a violation of the Technical Code. Furthermore, the overall handling of the sewage by the Respondent did not meet professional standards of care. Accordingly, the Department may take action against the Respondent pursuant to Sections 19a-17 and 20-341 $\frac{1}{2}$ of the Connecticut General Statutes.

With Regard to Paragraph 3c:

The Technical Standards for the Design and Construction of Subsurface Sewage Disposal Systems Pursuant to Section 19-13-B103, in effect during 1993, provide in pertinent part: "The leaching system shall be properly covered within two (2) working days following the local health department's inspection and approval."

There was evidence presented that the first leaching field system installed by the Respondent was inspected and approved on April 30, 1993, but none of the witnesses could say when the system was covered

after this inspection. The inspection of the second leaching field installed by the Respondent was accomplished on October 4, 1993, but again, no one could state when the system was covered after this second inspection. Consequently, the Department did not meet its burden of proof with regard to Paragraph 3c of the Statement of Charges.

Additionally, Paragraph 3c of the Statement of Charges does not specify a particular inspection. We know from the Technical Code that the Department was probably focused on the inspection of the leaching system, but it should be noted that there were many inspections done throughout the installation of this system and the failure to specify a particular inspection renders this allegation vague.

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3. Following the completion of the one year suspension period, the Respondent shall commence a probationary period.

a. During this probationary period the Respondent is authorized to install five (5) subsurface sewage disposal systems under the following conditions:

(1) The Respondent is required to have the local health inspector ("inspector") evaluate his first five (5) subsurface sewage disposal system installations, at each stage of installation.

(2) Upon completion of each of these installations, the inspector will complete and sign an Installer Evaluation Form which the Department shall provide to the Respondent and which the Respondent is required to provide to the inspector.

(3) The completed Installer Evaluation Forms shall be submitted to the Department within ten (10) days of the completion of each installation.

b. Once the Respondent has safely and competently performed five (5) subsurface sewage disposal system installations and submitted the required five (5) forms to the Department, attesting to his competency, the Department will notify him that the terms of his probation have been successfully completed.

PROPOSED ORDER:

Based on the record in this case, the above findings of fact and conclusions of law, the Commissioner of the Department of Public Health orders the following in this case against Louis DellaCamera, S.S.I., Petition Number 930825-33-003:

1. The Respondent is assessed a civil penalty of one hundred dollars (\$100.00) per count, for a total of two hundred dollars (\$200.00). The two hundred dollar (\$200.00) penalty shall be paid by certified check, payable to "Treasurer, State of Connecticut," and sent to the Department within forty-five (45) days of the effective date of this Order. The certified check shall include the Department petition number on its face for identification purposes.

2. The Respondent's subsurface sewage disposal system installer's license, number 004086, is suspended for a period of one (1) year.

a. The Respondent shall surrender all copies of his license to the Department within ten (10) days of the effective date of the Order.

b. The Department shall retain the Respondent's license through the course of the suspension. At the end of the year of suspension, the Department will return all copies of the license to the Respondent.

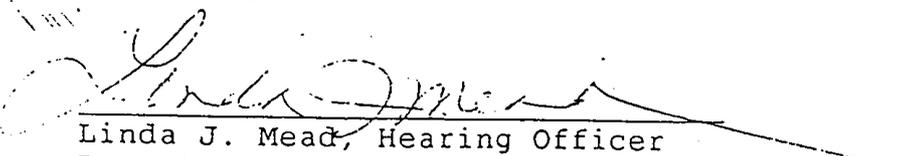
c. In the event the Respondent does not provide to the Department, within eighteen (18) months from the beginning of the probationary period, five (5) Installer Evaluation Forms that certify he has safely and competently installed five (5) systems, his license shall be revoked. The Respondent shall then resubmit all copies of his license to the Department.

4. The Respondent shall remit payment of the civil penalty, all copies of his license, and Inspector Review Forms to:

Bonnie Pinkerton
Department of Public Health
Public Health Hearing Office
150 Washington Street
Hartford, Connecticut 06106

5. A copy of this Order shall be sent to the On-Site Sewage Disposal Section of the Connecticut Department of Public Health.

Respectfully submitted,


Linda J. Mead, Hearing Officer
Department of Public Health

31 August 1995
Date

1200Q/22-34



STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

September 23, 1996

Mr. Louis Della Camera
375 Bethmour Road
Bethany, Connecticut 06524

Re: Memorandum of Decision
Petition No. 930825-33-003
License No. 004086
[REDACTED]

Dear Mr. Della Camera:

Please accept this letter as notice that you have completed the terms of the above-referenced Memorandum of Decision's Order, effective the date of this letter.

Notice will be sent to the Department's license and registration section to remove any restrictions from your license related to this action.

Very truly yours,

Bonnie Pinkerton
Nurse Consultant
Legal Office

cc: Attorney Felicia Suggs
Debra Tomassone



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STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

October 8, 1996

Louis Della Camera
375 Bethmour Road
Bethany CT 06524

Re: Connecticut Subsurface Sewage Installer License #004086

Dear Mr. Della Camera:

This office has received confirmation that the period of suspension of the above cited license has been completed. Therefore, you are eligible to renew such license.

Please complete and return the enclosed renewal application, with the requisite fee, within ten days of the date of this letter.

Please do not hesitate to contact this office should you have any questions.

Sincerely,

Debra J. Tomassone, Chief
Licensure and Registration

DJT:mjb
116200



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