

STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

PUBLIC HEALTH HEARING SECTION

June 6, 2011

Richard Gamble
195 Allentown Road
Wolcott CT 06716

CMRRR# 91 7108 2133 3932 0601 6399
First Class Mail

Matthew Antonetti, Principal Attorney
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Department of Public Health
410 Capitol Avenue
P. O. Box 340308
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Interdepartmental Mail

**RE: Richard Gamble
Petition No. 2010-14**

Dear Mr. Gamble and Attorney Antonetti:

Enclosed please find a copy of the Final Memorandum of Decision rendered by Hearing Officer Olinda Morales in the above-referenced case.

Sincerely,

Janice E. Wojick, Hearings/Liaison
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c: Jewel Mullen, M.D., M.P.H., M.P.A., Commissioner
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**STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
PUBLIC HEALTH HEARING OFFICE**

Richard Gamble
Subsurface Sewage Disposal System Installer
License No. 005100

Petition No. 2010-14
June 6, 2011

MEMORANDUM OF DECISION

Procedural History

On January 5, 2011, the Department of Public Health (“the Department”) filed a Statement of Charges against Richard Gamble (“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”). Rec. Exh. 1.

On January 24, 2011, the Statement of Charges (“the Charges”) and the Notice of Hearing were sent to respondent by certified and first class mail. In the Notice of Hearing, the Commissioner of the Department appointed this Hearing Officer to rule on all motions and to recommend findings of fact and conclusions of law. Rec. Exh. 2.

On February 15, 2011, the Commissioner designated Alfreda Gaither as the Hearing Officer for the administrative hearing, thereby superseding the previous delegation to Joanne V. Yandow. Rec. Exh. 3. On February 28, 2011, the Commissioner designated Olinda Morales as the Hearing Officer for the administrative hearing, thereby superseding the previous delegation to Alfreda Gaither. Rec. Exh. 4.

On March 1, 2011, an administrative hearing was held to adjudicate the Charges. 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.

This 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 paragraphs 1, 4, and 7 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 005100.

First Count

2. In paragraph 2 of the Charges, the Department alleges that in or about November 2008, respondent illegally, incompetently, and/or negligently repaired a subsurface sewage disposal system at 18 Clark Road, Wolcott CT in that he failed to, and/or has continued to fail to:
 - a. provide the local director of health and/or his agent with an acceptable sieve analysis report, as required by §19-13-B103e(d)(6) of the Regulations and/or under Section VIII of the Technical Standards for the Design and Construction of Subsurface Sewage Disposal Systems established pursuant to § 19-13-B103d(b) of the Regulations (hereinafter “the Technical Standards”); and/or
 - b. submit to the local director of health and/or his agent an as-built report, as required by § 19-13-B103e(g)(4) of the Regulations and/or Section II(B) of the Technical Standards.
3. In paragraph 3 of the charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to §20-341f of the Statutes, including, but not limited to, §20-341f(d)(2).

Second Count

4. In paragraph 5 of the Charges, the Department alleges that in or about the Fall of 2007 and/or the Spring of 2008, respondent illegally, incompetently, and/or negligently repaired a subsurface sewage disposal system at 471 Woodtick Road, Wolcott, CT in that he failed to, and/or has continued to fail to, provide the local director of health and/or his agent with an acceptable sieve analysis report, as required by § 19-13-B103e(d)(6) of the Regulations and/or Section VIII of the Technical Standards.
5. In paragraph 6, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, § 20-341f, including but not limited to, § 20-341f(d)(2).

Third Count

6. In paragraph 8, the Department alleges that in or about August 2009, respondent illegally, incompetently and/or negligently repaired a subsurface sewage disposal system at 14 Maria Hotchkiss Road, Prospect, CT in that he failed to, and/or has continued to fail to:
 - a. provide the local director of health and/or his agent with an acceptable sieve analysis report, as required by § 19-13-B10e(d)(6) of the Regulations and/or Section VIII of the Technical Standards; and/or

- b. submit to the local director of health and/or his agent an as-built report, as required by § 19-13-B103d(g)(4) of the Regulations and/or Section II(B) of the Technical Standards.
7. In paragraph 9, the Department alleges that the above facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, § 20-341(f), including but not limited to, § 20-341f(d)(2).¹

Findings of Fact

1. At all relevant times, respondent holds Connecticut subsurface sewage disposal system installer license number 005100. Tr. p. 7.
2. In or about November 2008, respondent repaired a subsurface sewage disposal system at 18 Clark Road in Wolcott, Connecticut (“the Clark Road property”). Respondent failed to submit to the Local Health Director an acceptable sieve analysis report, and an as built report.² Dept. Exh. 1, pp., 1, 3, 4-9; Tr. pp. 52-53.
3. In or about the Fall of 2007 and the Spring of 2008, respondent repaired a subsurface sewage disposal system at 471 Woodtick Road in Wolcott, Connecticut (“the Woodtick Road property”). Respondent failed to provide the Local Health Director or his agent with an acceptable sieve analysis report. Dept. Exh. 1, pp. 2-3, 16-19, 52-53.
4. In or about August 2009, respondent repaired a subsurface sewage disposal system at 14 Maria Hotchkiss Road, in Prospect, Connecticut (“the Prospect property”). Respondent failed to provide to the Local Health Director an acceptable sieve analysis report, and submit an as built report. Dept. Exh. 1, pp. 2-3, 20-26, 52-53.
5. An as-built report is required to be submitted to the Local Health Department in order to issue the permit to discharge to the property owner. Without an as-built report, the Local Health Department cannot issue the permit to discharge to the property owner which is required to legally use the septic system. Tr. pp. 44-46.
6. A sieve analysis is a test of the sand that is used to construct the leaching system. Proprietary systems must be installed per the manufacturer’s specifications. The systems in question were constructed by the Eljen Company, which requires that only sand meeting their specification and ASTM C 33 specification be used in the constructing the leaching system. Tr. pp. 33-35

¹ During the hearing, the Department orally made a motion to add paragraph 9 to the Charges, respondent did not object. Therefore, the motion was granted. Tr. p. 11.

² “As built report” refers to a record plan or a drawing of a system after it is built and completed in the ground. It provides information about the sewage disposal system including the distances from set structures on the property, so that the system can be located.

7. On February 28, 2011, respondent submitted “the missing documents” to the Local Health Director. Rt. Exh. 1; Tr. pp. 32, 52-54.

Discussion and Conclusions of Law

Pursuant to sections 19a-14 and 19a-17(a) of the Statutes, the Department has the authority to discipline a subsurface sewage installer’s license including, but not limited to, the authority to revoke said license. Furthermore, under section 19a-17(a)(6), the Department may assess a licensee a civil penalty up to \$25,000 per incident.

The Department alleges in the Charges that respondent violated § 20-341f(d) of the Statutes by failing to conform to § 19-13-B103e(d)(6) of the Regulations and/or Section VIII of the Technical Standards. Section 20-341f(d) of the Statutes provides that the Department may take action 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. *Goldstar Medical Services, Inc., et al. v. Department of Social Services*, 288 Conn. 790 (2008); *Swiller v. Comm’r. of Public Health*, No. CV-950705601 (Sup. Court, J.D. Hartford/New Britain at Hartford, Oct. 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).

The preponderance of the evidence establishes that respondent who holds Connecticut subsurface sewage disposal system installer license number 005100, installed subsurface sewage systems in three different properties; the Clark Road property in or about the Fall of 2007; the Woodtick Road property in or about the Fall of 2007 and/or the Spring of 2008; and the Prospect property in or about August 2009. With regard to all the properties, respondent failed submit to the Local Health Director an acceptable sieve analysis report. With regard to the 18 Clark Road and the Prospect properties, respondent failed to submit an as-built report to the Local Health director.

1. ***As-Built Requirement***

In paragraphs 2b, and 8b, the Department alleges that respondent failed to submit to the local director of health and/or his agent an as-built report as required by § 19-13-B103e(g)(4) of

the Regulations and/or Section II(B) of the Technical Standards. Section 19-13-B103e(g)(4) of the Regulations states that “[a] record plan of the sewage disposal system, as built, shall be required by the local director of health.” The Technical Standards Part II(B) adds that “[f]ollowing system installation and final inspection, a record plan of the subsurface sewage disposal system, as built, must be prepared . . . [and] . . . submitted in a *timely manner* to avoid delays in permit issuance by the local director of health in accordance with PHC Section 19-13-B103e(k).” Emphasis added. No statutory definition of “timely manner” exists in the section, but common parlance by the Connecticut Environmental Engineering Program considers 30 days to be a timely manner. Tr. p. 39.

During the hearing, respondent stated that he already submitted the “missing documents” to Local Health the night before the hearing, on February 28, 2011 (Tr. pp. 4, 37), and that Local Health “asks that the formal petition against Mr. Gamble’s subsurface sewage disposal system license be dismissed.” Res. Ex. 1; Tr. p. 4. However, there is still some doubt as to the actual contents of the documents submitted, as well to which properties they apply. Tr. pp. 45-48. Regardless of whether the proper documents were submitted, the issue remains whether the time that had already elapsed between the repairing of subsurface disposal systems and the date of the hearing renders the eventual submission of the reports “untimely” and noncompliant with the regulatory requirement.

The three sewage systems identified in the Charges were installed by respondent between September 2007 and September 2009. Dep. Exh. 1 pp. 4, 7, 9, 13, 17-18, 20, 23-24. Subsequently, on October 23 and December 23, 2009, Local Health and the Department, respectively, sent a letter to respondent informing him that Local Health was waiting for the as-built and sieve reports from the Clark Road property, the sieve report for the Woodtick Road property, and the as-built and sieve reports for the Prospect property. Respondent claims that he never received the letter. On June 9, 2010, another letter was sent from the Department, Environmental Engineering Department, informing respondent that due to his non-responsiveness to the Local Health inquiries, the Department was commencing a formal investigation, and respondent had 15 days in which to respond or the case would be referred for disciplinary action. Dept. Exh. 1 p. 28. Respondent again claims not to have received this letter; however, during the hearing, he admitted that the signature on the certified mail receipt was his

wife's. Tr. p. 53-54; Dept. Exh. 1 p. 30. Respondent still denies reading or remembering that he read the contents of that letter. Tr. p. 53. Respondent's denials lack credibility.

Local Health and the Department were in constant contact with the respondent over the course of over three years, offering him several opportunities to correct any misunderstanding surrounding his missing reports. Respondent, however, did not take advantage of a single opportunity. Instead, he chose to do nothing until the night before the hearing, when he finally submitted additional paperwork to Local Health. Tr. p. 37; Res. Exh. 1. By the time respondent submitted the documents, over three and a half years had elapsed since he started the first sewer installation in question, and even the most recent sewer system repair had been completed well over a year prior to the hearing. Even if those documents contained all of the missing information, respondent did not submit them "in a timely manner."

Based on the foregoing, a preponderance of the evidence establishes the allegations contained in paragraphs 2(b) and 8(b) of the Charges, i.e. that the respondent failed to submit an as-built report, as required by § 19-13-B103e(g)(4) of the Regulations and/or Section II(B) of the Technical Standards for the Clark Road property, and the Prospect property.

2. *Sieve Analysis Reports*

In paragraphs 2a, 5, and 8a of the Charges, the Department alleges that the respondent failed to provide the local director of health and/or his agent with an acceptable sieve analysis report, as required by § 19-13-B103e(d)(6) of the Regulations and/or Section VIII of the Technical Standards. Technical Standards Part VIII(a) stipulates the specifications the sand used to construct the leaching system must meet. This sand is tested using a sieve analysis. Technical Standards Part VIII(e) requires that the sand used for proprietary leaching systems be installed per the manufacturers specifications. Section 19-13-B103e(d)(6) of the Regulations requires that in "areas of special concern . . . the local director of health may require from the applicant whatever further testing or data necessary to assure that the sewage disposal system will function properly." The section further notes that "[s]uch tests may include . . . sieve analysis or compaction tests of natural soil." Regulations § 19-13-B103e(d)(6).

All three of the systems respondent installed were proprietary systems, specifically, Eljen Mantis systems. Tr. pp. 29. The Eljen Company requires that sand meeting their specifications and ASTM C 33 specifications be used in the construction of the leaching system, including the sides and bottom to a distance of six (6) inches. Technical Standards Part VIII(e)(2)

(2009); Tr. p. 29. Respondent failed to submit sieve analysis reports in a timely manner for all three properties. Dept. Exh. 1. pp. 13, 23-24; Tr. pp. 38-39. While respondent performed a sieve analysis at the Clark Street property, it was unacceptable to Local Health because it had a 31.4% gravel component for the number 4 sieve, while the manufacturer requires no more than 5.2% retention. Technical Standards Part VIII(e)(2); Dept. Exh. 1 p. 12; Tr. p. 35.

Regulation 19-13-B103e(h)(1) states that “[n]o permit to discharge shall be issued until *all required forms are completed* and an approved as-built plan or record drawing is received.” (emphasis added). As discussed above, the sewage repair required that the sand used for proprietary leaching systems be installed per the manufacturers specifications, and that the local director of health may require from the applicant whatever further testing or data he deemed necessary to assure that the sewage disposal system will function properly. A permit to discharge indicates that the septic system has been designed, constructed, installed, and given a final inspection to verify that it meets all legal requirements. Tr. pp. 45-46. It grants the installer the ability to backfill the system once the final inspection is complete, and provides the homeowner with documentation to establish that the system installation and/or repair was performed according to the regulatory requirements. *Id.* Furthermore, for new constructions, a permit to discharge is required in order to obtain an occupancy permit to use the house; in repair situations, the permit to discharge is required to sell the house, as well as to allow use the septic system. Tr. pp. 44-45. Since Local Health identified the sieve analysis as being missing from all three properties, no permit to discharge could be issued for any of the septic systems in question for over three years.

Both Local Health and the Department attempted to secure the missing information by sending reminders to and scheduling conferences with respondent. However, respondent did not respond, produce the missing documentation, or appear as requested. Tr. p. 36.

In his defense, respondent submitted into evidence a letter from the Health Department stating that the missing documents were provided to that office on February 28, 2011, the day before the administrative hearing. Rt. Exh. 1. Respondent admitted that it was the first time those documents had been submitted to the local health agent. Tr. pp. 49-54. Respondent asserts, however, that this submission nullifies all of the allegations against him. The issue to be decided therefore becomes whether the documents produced during the hearing have any bearing on

respondent's alleged illegal, incompetent, and/or negligent repairing of the subsurface sewage disposal systems at these three addresses.

Respondent's actions single-handedly prevented the issuance of the permits to discharge for three properties, preventing the owners from being able to properly show documentation of their septic repairs for a time period ranging from one to over three years. By having a license, respondent was granted certain duties in addition to his privilege to practice as a sewer installer. Respondent failed to abide by those duties and conform to numerous requests from Local Health and the Department.

Respondent claimed during the proceedings that the reason that he failed to submit the reports in question was because the owners of the three properties did not compensate him for his work. Tr. pp. 48-49. Respondent cites his lack of a written contract with the owners as the reason he was prevented from bringing a case against them, stating "I just work off the handshake and I don't have paperwork and all this stuff and I'm not like that." Tr. p. 55. He also identifies these three instances as the first time that he has not been compensated for his work. *Id.* While, if true, this may have placed respondent in a difficult situation, the fact remains that he, nevertheless, has a professional and legal duty not to engage in incompetent and/or negligent work; and, there were numerous legal options available to him, including small claims court, through which he could have sought to recover the money allegedly owed to him. Respondent admits that he did not pursue any of these (Tr. p. 57); therefore, respondent's justification for withholding the reports is not acceptable, especially given the constant correspondence from Local Health and the Department and respondent's failure to respond to them.

Based on the foregoing, a preponderance of the evidence establishes the allegations contained in paragraphs 2(a), 5, and 8(a) of the Charges, *i.e.* that the respondent failed to provide the local director of health and/or his agent with an acceptable sieve analysis report, as required by § 19-13-B10e(d)(6) of the Regulations and/or Section VIII of the Technical Standards for the Clark Road, Woodtick Road, and Prospect properties.

Proposed Order

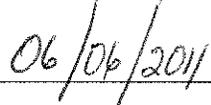
Based on the record in this case, the above Findings of Fact and Conclusions of Law, this Hearing Officer respectfully recommends that the subsurface sewage disposal system installer license number 005100 of Richard Gamble be subject to the following disciplinary actions:

Within ninety days of the effective date of this decision, respondent shall pay a civil penalty of \$5,000 by certified or cashier's check payable to "Treasurer, State of Connecticut." In the alternative, respondent may pay \$3,500 by certified or cashier's check within sixty days of the effective date of the decision. If respondent pays \$3,500 within sixty days of the effective date of the decision, that payment shall fully satisfy this order and no further payment shall be necessary. All checks submitted to satisfy this Order shall reference the Petition Number on the face of the check and shall be addressed to the following:

Robert Scully
Department of Public Health
Environmental Health Section
450 Capitol Ave., MS#51SEW
P.O.Box 340308
Hartford, CT 06134-0308



Olinda Morales, Esq.
Hearing Officer



Date

CERTIFICATION

I hereby certify that, pursuant to Connecticut General Statutes Section 4-180(c), a copy of the foregoing Final Memorandum of Decision was sent this 6th day of June 2011 certified mail return receipt requested and first class mail to:

Richard Gamble
195 Allentown Road
Wolcott CT 06716

CMRRR# 917108 2133 3932 0601 6399
First Class Mail

and Interdepartmental Mail to:

Matthew Antonetti, Principal Attorney
Legal Office, MS#12LEG
Department of Public Health
410 Capitol Avenue
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Janice E. Wojick, Hearings Liaison