STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH
REGULATORY SERVICES BRANCH

In re: Mark Kudlach, Sr. Petition No. 2006-0117-033-002

CONSENT ORDER

WHEREAS, Mark Kudlach, Sr. of Norwich, CT (hereinafter "respondent") has been issued license number 005377 to practice as a subsurface sewage disposal system installer by the Department of Public Health (hereinafter "the Department") pursuant to Chapter 393a of the General Statutes of Connecticut, as amended; and,

WHEREAS, the Department alleges that:

1. In or about January and/or February 2002, respondent was the licensed installer for the repair of a subsurface sewage disposal system at 294A Cassaduck Hill Road, North Stonington, CT (hereinafter "the property").
2. In or about January and/or February 2002, in connection with the repair of the subsurface sewage disposal system (hereinafter "the system") at the property, respondent:
   a. failed to submit a plan for the repair of the system, in violation of §19-13-B103e(e) of the Regulations of Connecticut State Agencies (hereinafter "the Regulations")[1];
   b. failed to make the repair in accordance with 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"), in that respondent failed to maintain the minimum separating distances required to be

[1] The Regulations of Connecticut State Agencies pertaining to subsurface sewage disposal systems were amended subsequent to the repair of the system on the property. Unless otherwise noted, all citations to the Regulations will be to those in effect in 2002.

maintained between any part of the system and the well water suction line on the property; and

c. failed to submit to the local Director of Health or his agent an as-built plan of the repaired system, as required by §19-13-B103e(g)(4) of the Regulations.

3. The above described facts constitute grounds for disciplinary action pursuant to the General Statutes of Connecticut, §20-341f(d), taken in conjunction with, without limitation, §§19-13-B103d(b), 19-13-B103e, 19-13-B103e(e), 19-13-B103e(g)(4) of the Regulations and/or Section II of the Technical Standards.

WHEREAS, respondent, in consideration of this Consent Order, has chosen not to contest the above allegations of wrongdoing but, while admitting no guilt or wrongdoing, agrees that for purposes of this or any future proceedings before the Department, this Consent Order shall have the same effect as if proven and ordered after a full hearing held pursuant to §§19a-10, 19a-14 and 20-341f of the General Statutes of Connecticut.

NOW THEREFORE, pursuant to §§19a-14, 19a-17 and 20-341f(d) of the General Statutes of Connecticut, respondent hereby stipulates and agrees to the following:

1. Respondent waives his right to a hearing on the merits of this matter.
2. Respondent's license number 005377 to practice as a subsurface sewage disposal system installer in the State of Connecticut is hereby reprimanded.
3. Respondent shall pay a civil penalty of five thousand dollars ($5,000) in accordance with the following schedule: two thousand and five hundred dollars ($2, 500) shall be payable at the time respondent submits the executed Consent Order to the Department and the balance shall be payable on or before April 1, 2007. Respondent shall make each payment

by certified or cashier's check payable to "Treasurer, State of Connecticut." Each check shall reference the Petition Number on the face of the check.

4. Respondent's license shall be placed on probation until he satisfies the following terms and conditions:

   a. During the probationary period, every local Director of Health in such districts in which respondent is conducting business shall be provided with a copy of this Consent Order within fifteen (15) days of its effective date. Such local Director(s) of Health shall provide written confirmation to the Department acknowledging receipt and review of the Consent Order.

   b. Respondent shall obtain at his own expense, the services of a licensed subsurface sewage disposal system installer, pre-approved by the Department (hereinafter "the monitor"), to conduct on-site inspections of all subsurface sewage disposal system projects undertaken by respondent until the monitor reports to the Department that respondent has successfully completed ten (10) such projects in compliance with the plans approved by the local Director of Health or his agent, all applicable statutes and regulations and the Technical Standards, as amended from time to time. In addition, respondent shall be subject to the following monitoring requirements:

      (1) Respondent shall provide a copy of this Consent Order to the monitor. The monitor shall furnish written confirmation to the Department of his or her engagement in that capacity and receipt of a copy of this Consent Order within fifteen (15) days of his or her engagement.

      (2) The monitor shall have the right to monitor respondent's work for each project by any means which he or she deems necessary.

      (3) Respondent shall fully cooperate with the monitor.

(4) Respondent shall provide the monitor with access to all original records for each subsurface sewage disposal system project.

(5) The monitor shall prepare and submit reports directly to the Department stating: (i) that the projects were reviewed and completed with reasonable skill and safety, (ii) that the projects were completed in compliance with the plans approved by the local Director of Health or his agent, all applicable statutes and regulations and the Technical Standards, and (iii) the dates, locations and duration of all site inspections and meetings with respondent for each project.

(6) If the monitor determines at any time that respondent is not in compliance with any plan approved by the local director of Health or his agent, applicable statutes and/or regulations, or the Technical Standards, the monitor shall immediately notify the Department.

(7) During the period of probation, respondent is prohibited form engaging in any subsurface sewage disposal system project if the monitor is unavailable to monitor such project.

c. Respondent shall successfully complete, at his own expense and within eighteen (18) months from the effective date of this Consent Order, the following course: the preparation course offered by the Connecticut On-Site Wastewater Recycling Association (hereinafter "COWRA) for new subsurface sewage disposal system installers, titled COWRA Septic Installers School. Within thirty (30) days of the completion of such coursework, respondent shall provide the Department with proof, to the Department's satisfaction, of the successful completion of such coursework, including, but not limited to, a copy of the passing examination submitted by the instructor to the Department.

d. In addition to the coursework identified in paragraph 4(c) above, respondent shall take and pass, at his own expense and within eighteen (18) months from the effective date of this Consent Order, the State exam relative to Connecticut General Statutes §20-341e, taken in conjunction with the Regulations, §§19-13-B100, 19-13-B103 and 19-13-B104, as amended from time to time, and the Technical Standards.

e. Respondent shall comply with all statutes and regulations applicable to his licensure including, but not limited to:

(1) filing a written plan at the office of the local Director of Health prior to commencing any installation, modification, extension or repair of a subsurface sewage disposal system, except when applicable statutes and/or regulations require a plan be submitted by a licensed professional engineer. When applicable statutes and/or regulations require that a licensed professional engineer prepare a plan, respondent shall review said plan prior to commencing any installation, modification, extension or repair of a subsurface sewage disposal system;

(2) acquiring all requisite permits and/or approval to construct as required by regulation; and,

(3) notifying the local Director of Health or his/her agent twenty-four (24) hours prior to commencing performance on any installation, modification, extraction or repair contract.

5. All correspondence and reports are to be addressed to:

Yolanda Rich, Environmental Analyst
Department of Public Health
410 Capitol Avenue, MS #51EHS
P.O. Box 340308
Hartford, CT 06134-0308

6. All reports required by the terms of this Consent Order shall be due according to a schedule to be established by the Department of Public Health.

7. Respondent shall comply with all state and federal statutes and regulations applicable to his licensure.

8. Respondent shall pay all costs necessary to comply with this Consent Order.

9. Any alleged violation of any provision of this Consent Order may result in the following procedures at the discretion of the Department:

   a. The Department shall notify respondent in writing by first-class mail that the term(s) of this Consent Order have been violated, provided that no prior written consent for deviation from said term(s) has been granted.

   b. Said notification shall include the acts or omission(s) which violate the term(s) of this Consent Order.

   c. Respondent shall be allowed fifteen (15) days from the date of the mailing of notification required in paragraph 9a above to demonstrate to the satisfaction of the Department that he has complied with the terms of this Consent Order or, in the alternative, that he has cured the violation in question.

   d. If respondent does not demonstrate compliance or cure the violation within the fifteen (15) days specified in the notification of violation to the satisfaction of the Department, he shall be entitled to a hearing before the Department which shall make a final determination of the disciplinary action to be taken.

   e. Evidence presented to the Department by either the Department or respondent in any such hearing shall be limited to the alleged violation(s) of the term(s) of this Consent Order.

10. In the event respondent violates any term of this Consent Order, respondent agrees immediately to refrain from practicing as a subsurface sewage disposal system installer, upon request by the Department, for a period not to exceed 45 days. During that time period, respondent further agrees to cooperate with the Department in its investigation of the violation. Respondent further agrees that failure to cooperate with the Department in its investigation during said 45 day period shall constitute grounds for the Department to seek a summary suspension of respondent's license. In any such summary action, respondent stipulates that failure to cooperate with the Department's investigation shall constitute an admission that his conduct constitutes a clear and immediate danger as required pursuant to the General Statutes of Connecticut, sections 4-182(c) and 19a-17(c).

11. In the event respondent violates any term of this Consent Order, said violation may also constitute grounds for the Department to seek a summary suspension of his license before the Department.

12. Legal notice shall be sufficient if sent to respondent's last known address of record reported toPractitioner Licensing and Investigations Section of the Healthcare Systems Branch of the Department.

13. This Consent Order is effective on the first day of the month immediately following the date this Consent Order is accepted by the Department.

14. Respondent agrees that this Consent Order shall be deemed a public document, and the Department's allegations as contained in this Consent Order shall be deemed true in any subsequent proceeding before the Department in which his compliance with this Consent Order or with Chapter 393a of the General Statutes of Connecticut, as amended, is at issue.

15. Any extension of time or grace period for reporting granted by the Department shall not be a waiver or preclude the Department from taking action at a later time. The Department shall not be required to grant future extensions of time or grace periods.

16. This Consent Order and terms set forth herein are not subject to reconsideration, collateral attack or judicial review under any form or in any forum. Further, this Order is not subject to appeal or review under the provisions of Chapters 54 or 368a of the General Statutes of Connecticut, provided that this stipulation shall not deprive respondent of any rights that he may have under the laws of the State of Connecticut or of the United States.

17. This Consent Order is a revocable offer of settlement which may be modified by mutual agreement or withdrawn by the Department at any time prior to its being executed by the last signatory.

18. Respondent permits a representative of the Legal Office of the Healthcare Systems Branch to present this Consent Order and the factual basis for this Consent Order to the Department. Respondent understands that the Department has complete and final discretion as to whether this executed Consent Order is approved or accepted.

19. Respondent understands and agrees that he is responsible for satisfying all of the terms of this Consent Order during vacations and other periods in which he is away from his residence.

20. Respondent has the right to consult with an attorney prior to signing this document.

21. The execution of this document has no bearing on any criminal liability without the written consent of the Director of the Medicaid Fraud Control Unit or the Bureau Chief of the Division of Criminal Justice's Statewide Prosecution Bureau.

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I, Mark Kudlach, Sr., have read the above Consent Order, and I stipulate and agree to the terms as set forth therein. I further declare the execution of this Consent Order to be my free act and deed.

Mark Kudlach, Sr.

Subscribed and sworn to before me this 5th day of February 2007.

Notary Public or person authorized
by law to administer an oath or affirmation

LINDA L. LYNC
NOTARY PUBLI
COMMISSION EXPIRES MAR.

The above Consent Order having been presented to the duly appointed agent of the Commissioner of the Department of Public Health on the 7th day of February 2007, it is hereby accepted.

Suzanne Blancaflor, M.S., Section Chief
Environmental Health Section
Regulatory Services Branch

s:llf/Kudlach/Generlco.rev