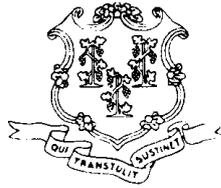


STATE OF CONNECTICUT

DEPARTMENT OF PUBLIC HEALTH

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



John G. Rowland
Governor

Douglas
Donald J. Goss, Jr.
7595 Post Road
North Kingston RI 02852

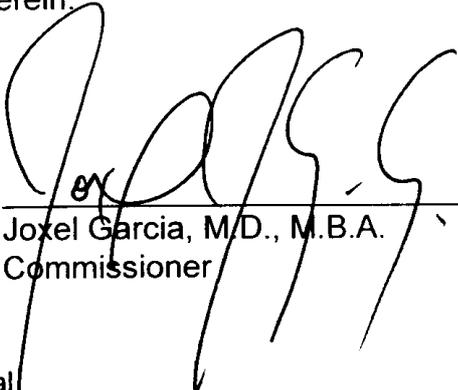
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IN RE: Donald J. Goss, Jr., SSI, Petition No. 2000-1122-033-014

FINAL MEMORANDUM OF DECISION

In accordance with Connecticut General Statutes Section 4-180, the attached Proposed Memorandum of Decision issued December 11, 2001, by Hearing Officer Donald Levenson, is hereby adopted as the final decision of the Commissioner of the Department of Public Health in this matter. A copy of the Proposed Memorandum of Decision is attached hereto and incorporated herein.

1-4-02
Date



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

- c: Richard J. Lynch, Assistant Attorney General
Cynthia Denne, Bureau Chief, Regulatory Services
Thomas Furgalack, Director, Environment Health
Stanley K. Peck, Director, Legal Office
Debra J. Turcotte, Director, Health Systems Regulation
✓ Jennifer Filippone, Public Health Services Manager



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

Douglas J. Goss, Jr.
7595 Post Road
North Kingston, RI 02852

Petition No. 2000-1122-033-014

December 11, 2001

PROPOSED MEMORANDUM OF DECISION

Procedural History

On August 16, 2001, the Department of Public Health (“the Department”) filed a Statement of Charges (“the Charges”) against Douglas J. Goss, Jr. (“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 August 31, 2001, 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. 2.

On October 4, 2001, the Department filed a Motion to Deem Allegations Admitted. H.O. Exh. 3. On October 12, 2001, the undersigned issued a Ruling on the Motion to Deem Allegations Admitted directing respondent to file an answer to the Charges on or before October 16, 2001. H.O. Exh. 4. Respondent having failed to comply with that Ruling, the Department’s Motion to Deem Allegations Admitted was granted on October 18, 2001. Tr. p. 3.

On October 18, 2001, an administrative hearing was 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”). Respondent failed to appear at the hearing and Attorney Linda Fazzina represented the Department.

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

First Count

1. In paragraphs one and six of the Charges the Department alleges that respondent is, and has been at all times referenced in the Statement of Charges, the holder of Connecticut subsurface sewage disposal system installer license number 005516.
2. In paragraph two of the Charges the Department alleges that on or about October 26, 2000, respondent applied for an approval to construct in connection with the repair of a subsurface sewage disposal system at 37 Dimmock Road, Waterford, Connecticut (hereinafter "the Waterford property").
3. In paragraph three of the Charges the Department alleges that in or about October 2000, the Town of Waterford Health Department approved the application described in paragraph two of the Charges.
4. In paragraph four of the Charges the Department alleges that respondent subsequently illegally, incompetently and/or negligently repaired the subsurface sewage disposal system at the Waterford property in one or more of the following ways, in that he:
 - a. failed to notify the local director of health at least twenty four hours prior to commencement of construction, as required by §19-13-B103e(f)(2) of the Regulations;
 - b. on or about October 31, 2000, failed to perform the repair himself and/or failed to supervise the work of his unlicensed workers who were repairing the system; and/or
 - c. on or about November 1, 2000, failed to perform the repair himself and/or failed to supervise the work of his unlicensed workers who were repairing the system.
5. In paragraph five of the Charges the Department alleges that the above described facts constitute grounds for disciplinary action pursuant to the *Conn. Gen. Stat.* §20-341f, including but not limited to, §20-341f(a) and/or §20-341f(b), taken in conjunction with of §19-13-B103e of the Regulations, including but not limited to §19-13-B103e(f)(2).

Second Count

6. In paragraph 7 of the Charges the Department alleges that in or about the Fall of 2000, respondent illegally, incompetently and/or negligently installed, repaired and/or modified a subsurface sewage disposal system at 65 Laurel Trail, Coventry, Connecticut (hereinafter "the Coventry property") in one or more of the following ways, in that he:
 - a. failed to secure a license prior to engaging in and/or offering to perform the work of a subsurface sewage disposal system installer;
 - b. failed to submit a plan prior to commencing the repair work, as required by §19-13-B103e(e) of the Regulations;
 - c. failed to secure, or failed to verify that the property owner had secured, an approval to construct prior to commencing the repair work, as required by §§19-13-B103e and 19-13-B103e(f) of the Regulations;
 - d. failed to notify the local director of health at least twenty four hours prior to commencement of construction, as required by §19-13-B103e(f)(2) of the Regulations;
 - e. failed to place the septic tank at least fifteen (15) feet from the building served, as required by Section II (C) of the Technical Standards for the Design and Construction of Subsurface Sewage Disposal Systems (hereinafter, "the Technical Standards");
 - f. failed to place the septic tank at least seventy-five (75) feet from a domestic well, as required by Section II(A) of the Technical Standards; and/or
 - g. failed to lay the building sewer to the septic tank in a straight line and/or on a uniform grade wherever feasible, as required by Sections I(H) and III(A) of the Technical Standards.

7. In paragraph eight of the charges the Department alleges that respondent subsequently failed to timely repair the subsurface sewage disposal system that he illegally, incompetently and/or negligently installed, repaired and/or modified on

the [Coventry]¹ property. Said failure included and/or includes, without limitation, the following:

- a. failure to lay the building sewer to the septic tank in a straight line and/or on a uniform grade wherever feasible, as required by Sections I(H) and III(A) of the Technical Standards;
 - b. failure to place the septic tank at least fifteen (15) feet from the building served, as required by Section II(C) of the Technical Standards; and/or
 - c. failed to provide surface cleanout(s), as required by Section III(A) of the Technical Standards.
8. In paragraph nine of the charges the Department alleges that the above facts constitute grounds for disciplinary action pursuant to the *Conn. Gen. Stat.* §§20-341a and 20-341f, taken in conjunction with the Regulations of Connecticut State Agencies, §§19-13-B103d(b), 19-13-B103e, 19-13-B103e(e), 19-13-B103e(f) and with Sections I(H), II(A), II(C) and III(A) of the Technical Standards.

Findings of Fact

1. The Notice of Hearing was served on respondent by certified mail at his last known address of record on file with the Department. Therefore, the Department made all reasonable efforts to locate respondent and service of the Notice of Hearing was sufficient. H.O. Exh. 2.
2. The Department's Motion to Deem Allegations Admitted having been granted, all of the above allegations are deemed admitted and true. H.O. Exhs. 3, 4; Tr. p. 3.
3. Respondent's violations posed a serious potential to pollute the groundwater of the State and private potable water supplies. Tr. p. 6.
4. Respondent's violations delayed the sale of the Coventry property for several months. Tr. p. 8.

¹ Paragraph eight of the Charges does not refer specifically to the Coventry property. Reading paragraph eight in conjunction with paragraph seven, it is clear that the allegations in Paragraph eight refer to the Coventry property.

Discussion and Conclusions of Law

The Department alleged in the Charges that respondent's conduct violated Conn. Gen. Stat. §20-342f and various provisions of the Regulations. In establishing such violations the Department bears the burden of proof by a preponderance of the evidence. *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).

The Department alleged that respondent's conduct violated *Conn. Gen. Stat.* §20-341f including but not limited to §§20-341f(a) and/or (b). Section 20-341f(a) prohibits any person from performing the work of a subsurface sewage disposal system installer without a license. The allegations of the Charges, which have been deemed admitted, are inconsistent in this regard. Paragraphs one and six allege that respondent was the holder of a subsurface sewage disposal system installer license "at all times referenced in" the Charges. Paragraph 7a. of the Charges alleges that respondent "failed to secure a license prior to engaging in and/or offering to perform the work of a subsurface sewage disposal system installer." In view of the absence of any evidence in the record to resolve this inconsistency, it is concluded that the Department failed to establish a violation of Section 20-341f(a) as alleged in the Charges.

The Charges contain no allegations that appear to violate any of the provisions of §20-341f(b). Therefore, the Department has also failed to establish a violation of that section as well.

Section 20-341f(d) of the Statutes provides, in pertinent part, that the “Department may take action under section 19a-17 for any of the following reasons: . . . (2) illegal, incompetent or negligent conduct by a license holder in his work; or (3) violation of any provision of . . . any regulation adopted hereunder” The Department alleged in the Charges that respondent illegally, incompetently, and negligently installed, repaired and/or modified subsurface sewage disposal systems at two properties. The Department also alleged that respondent violated several sections of the Regulations pertaining to subsurface sewage installers. The factual allegations of the Charges, which have been deemed admitted, support these alleged violations. Accordingly, respondent violated §20-341f(d) of the Statutes as alleged in the Charges.

The Department has requested the revocation of respondent’s license and the assessment of a civil penalty of \$3,000. Tr. p. 5. Respondent’s conduct failed to conform to the requirement of the Regulations, posed a threat to the public health and safety, and delayed the sale of one of the properties affected by his conduct. In addition, respondent failed to fully correct some of the problems caused by his actions despite being given the opportunity to do so. Tr. pp. 7, 8. The remedy requested by the Department, therefore, is fully justified by the facts 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, he order that respondent's license no. 005516 be revoked and that respondent pay a civil penalty of \$3,000 by certified or cashier's check payable to "Treasurer, State of Connecticut." The check shall reference the Petition Number on the face of the check, shall be payable within thirty days of the date of the final order, and shall be addressed to the following:

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



Donald H. Levenson, Esq.
Hearing Officer

12-11-01

Date