STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

WAYNE DEAN and RADON WIN, INC.,	)	
	)	
Petitioners,	)	
	)	
vs.	)	Case No. 97-4534
	)	
DEPARTMENT OF HEALTH,	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

Notice was provided and on December 8, 1997, a formal hearing was held in this case. Authority for conducting the hearing is set forth in Sections 120.569 and 120.57(1), Florida Statutes. The hearing location was the offices of the Division of Administrative Hearings, 1230 Apalachee Parkway, Tallahassee, Florida. The hearing was conducted by Charles C. Adams, Administrative Law Judge.

APPEARANCES

For Petitioner: Wayne Dean, pro se
1713 East Silver Springs Boulevard
Ocala, Florida 34478

Radon Win, Inc.
Wayne Dean, President
Post Office Box 4257
Ocala Florida 34478

For Respondent: Patricia A. Matthews, Esquire
Department of Health
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STATEMENT OF THE ISSUES

Is Wayne Dean (Dean) entitled to a radon mitigation specialist certificate issued by the Department of Health (the Department)? Is Radon Win, Inc. (Radon Win) entitled to a radon mitigation business certificate issued by the Department?

PRELIMINARY STATEMENT

On August 28, 1997, the Department notified Mr. Dean that his Radon mitigation specialist certificate, RO228, and the radon business mitigation certificate held by Radon Win, RB0251, were not being renewed. The authority for the decision to deny renewal was reported as Sections 404.056 and 404.162, Florida Statutes and Chapter 64E-5, Florida Administrative Code. As grounds for denying the renewal, the Department referred to alleged activities by the Petitioners in which the Petitioners installed radon mitigation systems after the expiration dates of the aforementioned certificates. In addition, the stated grounds for denying the renewal related to the alleged failure by the Petitioners to meet installation requirements of the Florida Standard for Mitigation of Radon in Existing Buildings, associated with projects installed after the expiration dates of the certificates and a project installed during the effective date of the pre-existing certificates. Petitioners contested the decision to deny renewal of the certificates. On October 1, 1997, the Division of Administrative Hearings received the case from the Department. The case was then assigned for purposes

of resolving disputes of fact existing between the parties concerning the preliminary decision to deny renewal of the certificates as described. The hearing that was conducted on December 8, 1997, was for purposes of the resolution of fact disputes and legal disputes between the parties.

At hearing Mr. Dean testified in his own behalf and as a witness for Radon Win. Petitioners' Exhibits 1-5, 15, and 20 were admitted. Petitioners' Exhibits 6-14 and 16-18 were denied admission. Ruling was reserved on the admissibility of Petitioners' Exhibit 19. That exhibit has been admitted. The Department presented the witnesses, William E. Reineking and Walter Klein. The Department's Exhibits A, B, F, G, H, I, J, L, M, N, O, and P were admitted. The Department's request to take official recognition of the Florida Standard for Mitigation of Radon in Existing Buildings, dated June 1, 1994, as adopted and incorporated by Rule 64E-5.1207, Florida Administrative Code; the General Statement of Policy and Procedures for Radon Enforcement Actions dated January 1993, adopted and incorporated in Rule 64E-5.1201, Florida Administrative Code; Section 553.06, Florida Statutes; Rule 9B-3.048, Florida Administrative Code; Chapter 404, Florida Statutes; and Rule 64E-5.12, Florida Administrative Code was granted. Responses to requests for admissions propounded from the Department to the Petitioners were accepted. To the extent that the responses admit those facts propounded, those admissions are available for fact finding.

A hearing transcript was filed on January 7, 1998. Subsequently, Petitioners filed a statement of the issues, findings of fact, and a recommended disposition in this case. The Department filed a proposed recommended order which included a statement of the issues, preliminary statement, findings of fact, conclusions of law, and a recommended disposition. Those submissions by the parties have been considered in preparing the recommended order.

FINDINGS OF FACT

1. Radon gas is a radioactive gas that has been demonstrated to cause lung cancer and is a Class A carcinogen. It is odorless and colorless. Once the particles within the gas are inhaled, they are retained in the lung and irradiate lung tissue. Its health effects are not immediately manifested. Exposure over a long period of time increases the risk for contracting lung cancer.

2. Mr. Dean had been issued certificate number RO228 to act as a radon mitigation specialist. That certificate was issued by the Department. The certificate was effective from January 1, 1996, through December 31, 1996.

3. Mr. Dean is the President of Radon Win.

4. Radon Win had been issued certificate number RB0251 to act as a radon mitigation business. The Department issued the certificate. The period of that certificate was from January 10, 1996 through January 9, 1997.

5. Radon mitigation specialist certificates and Radon mitigation business certificates expire annually pursuant to Section 404.056, Florida Statutes, as reflected in the certificates held by Mr. Dean and Radon Win that have been described.

6. Ordinarily the Department notifies certificate holders of the need to renew the certificates. Notification occurs once prior to the expiration date of the certificates. Another occasion for notification follows the month in which it expired and a third occasion for notification occurs if the certificate holders have not responded before the issuance of the third notice.

7. More specifically, on March 3, 1997, the Department gave Mr. Dean notice to this effect:

> THIS IS A THIRD AND FINAL NOTICE. FAILURE TO RESPOND TO THIS NOTICE MAY INITIATE ENFORCEMENT ACTION.
>
> Performing radon services with an expired certification is a violation of the requirements of Florida Control of Radiation Hazards Regulations, Chapter 10D-91, Florida Administrative Code (F.A.C.).
>
> Department records show that you have not paid your annual radon certification renewal for the period January 01, 97 to January 01, 98 or notified this office of your intention to no longer provide radon measurement or mitigation services for financial or other remuneration.
>
> In accordance with the authority contained in section 404.056, Florida Statutes, you are hereby notified that if you are performing radon services after the expiration of your

> certificate, the department intends to impose an administrative fine of $250 against Wayne P. Dean, Jr., certification number RO228, for violation of the radon certification renewal requirements of section 10D-91.1304, F.A.C.
>
> You are further notified that you have thirty (30) days from the receipt of this notice in which to respond. If you are performing radon services you must remit the certification fee in the amount of $200. Otherwise, please provide written notice of your intention to no longer provide radon measurement or mitigation services for financial or other remuneration. If the department finds cause to issue an administrative complaint, you will be afforded the right to an administrative hearing.

8. In reference to the March 3, 1997 letter from Norman M. Gilly, Health Physicist Manager, Bureau of Environmental Toxicology, Radon and Indoor Air Quality within the Department, addressed to Mr. Dean, the reference to Rule 10D-91.1304, Florida Administrative Code, should correctly have been made to Rule 64E-5.1203, Florida Administrative Code. The latter rule was in effect when the correspondence was dated.

9. On March 12, 1997, Mr. Dean wrote a check to the Department for $600 which was intended to defray the cost of renewing the two certificates that have been described and a radon measurement specialist certification, certificate number R1121 related to the Radon Win business. The latter certificate is not at issue in this case in that the Radon measurement specialist certificate has been issued. The check in the amount of $600 was received by the Department on March 18, 1997.

10. Mr. Dean communicated with the Department on March 26, 1997, to advise that the $600 check might not be honored by the bank, in that there were insufficient funds in the bank account on which the check was drawn to cover the amount of the check.

11. On April 28, 1997, Mr. Dean spoke with Walter G. Klein by telephone. Mr. Klein was and is with the Office of Environmental Toxicology Radon and Indoor Air Quality, part of the Department. His present position is as an Environmental Specialist III. While conversing, Mr. Klein asked Mr. Dean if Mr. Dean had spoken with his bank to see if the $600 check for payment of the renewal of the certificates had cleared. Mr. Dean responded that the check had not cleared and indicated his belief that the check had "bounced." This refers to the fact that the check had been dishonored by the bank. Mr. Dean then told Mr. Klein that Mr. Dean would try to collect enough money to send a money order to pay for the three certificates.

12. On May 13, 1997, Janet M. Cooksey, Administrative Assistant II-C, Bureau of Radiation Control within the Department wrote to Radon Win, to the person concerned within that firm, to advise that the March 12, 1997 check to pay for the three certificates had been dishonored. That correspondence indicated that the concerned person at Radon Win had thirty days from the notice in the letter to tender payment in the full amount for the dishonored check plus a $30 service charge to address the dishonored check. According to the letter, the failure to pay

$600 plus the $30 service charge would promote the possibility that the Department might surrender the dishonored check to the State Attorney for filing a criminal and/or civil action. This notice to Radon Win indicated that the further payment should be by cashier's check, money order, or, if personally delivered, by cash. The notice indicated the person and the place for return of the $630 in payment and listed the name of an individual who could be consulted concerning any questions about the notice.

13. Subsequently, the Petitioners and the Department made an arrangement for Petitioners to submit a cashier's check in the amount of $880 which covered the renewal of the three certificates in the amount of $600; a $30 service charge for the dishonored check; and a level II administrative fine in the amount of $250, corresponding to the amount reflected in the March 3, 1997 letter from the Department to Mr. Dean concerning the penalty for performing radon mitigation services after Mr. Dean's radon mitigation specialist certificate had expired. The cashier's check was drawn on May 29, 1997, and received by the Department on May 30, 1997. Under the circumstances Ms. Cooksey returned the dishonored $600 check written on March 12, 1997, to Radon Win. The letter transmitting the dishonored check was written on June 9, 1997.

14. On June 17, 1997, Mr. Klein wrote to Mr. Dean to advise, among other matters, that with the receipt of the $880 check on May 30, 1997, the renewal applications for the three

certificates was considered complete as of May 30, 1997. The June 17, 1997 correspondence also indicated that other matters of concern that had been set forth in correspondence from Mr. Klein to Mr. Dean dated May 29, 1997, had been corrected. This May 29, 1997 letter stated grounds for denying renewal of the three certificates held by Petitioners. Nonetheless, the June 17, 1997 correspondence indicated that the Department continued to be concerned that Radon Win had installed previously unmentioned mitigation systems after certificates expired. The June 17, 1997 correspondence advised that the Department intended to inspect additional installations for compliance with Florida's mitigation installation standards before, what the correspondence described, as the deadline for issuing the renewal. This is read to mean before issuing or denying the three certificates sought by Petitioners.

15. On August 28, 1997, the Department wrote to Mr. Dean to advise him concerning the decision to grant the radon measurement specialist certification (certificate number R1121); to deny Mr. Dean his radon mitigation specialist certificate, RO228, and to deny Radon Win its radon mitigation business certificate, RB0251. The specific grounds for denial were stated as:

> 1. Wayne Dean and/or Radon Win, Inc. installed radon mitigation systems at the locations identified in a), b) and c) below, after the expiration dates of mitigation certificates RO228 and Radon Win, Inc.'s mitigation business certificate, RB0251. This determination is made under sections 404.056, and 404.162, Florida Statutes, and

the rules promulgated thereunder, chapter 64E-5, Florida Administrative Code and constitute level II administrative violations as identified in the department's 'General Statement of Policies and Procedures for Radon Enforcement Actions.'

a. On or about May 30, 1997, Wayne Dean and/or Radon Win, Inc. installed a radon mitigation system at 13465 N.E. 44th Court, Sparr, Florida.

b. On or about May 21, 1997, Wayne Dean and/or Radon Win, Inc. installed a radon mitigation system at 8435 N.W. 43rd Lane, Ocala, Florida.

c. On or about July 15, 1997, Wayne Dean and/or Radon Win, inc. installed a radon mitigation system at 4909 Buck Lake Road, Tallahassee, Florida.

2. The radon mitigation systems identified in a), b) and c) below, installed by Wayne Dean and/or Radon Win, Inc., failed to meet all of the installation requirements of the Florida Standard for Mitigation of Radon in Existing Buildings. This standard is adopted and incorporated by reference by rule 64E-5.1207, Florida Administrative Code. Therefore, each failure to comply is a violation of rule 64E-5.1207 and, constitutes a level II administrative violation as identified in the departments 'General Statement of Policies and Procedures for Radon Enforcement Actions.'

a. In December 1995, Wayne Dean and/or Radon Win, Inc. completed installation of approximately 124 radon mitigation systems at Doral Pointe Apartments, whose offices are at 4630 N.W. 97th Court, Miami, Florida while in possession of a valid certificate. These mitigation systems do not have a 'soil gas system' labels or system monitoring devices to automatically indicate system failure to the system occupants, as required by sections 602.3, 4, 602.2, and 502.3 of the Florida Standard for Mitigation of Radon in Existing Buildings.

b. The radon mitigation system installed on or about May 30, 1997, by Wayne Dean and/or Radon Win, Inc. at 13465 N.E. 44th Court, Sparr, Florida lacked the required spacing of 'soil gas system' labels and lacked proper system sealing, as required by sections 602.3.1 amid section 602.3.4 of the Florida Standard for Mitigation of Radon in Existing Buildings.

c. The radon mitigation system installed on or about May 21, 1997, by Wayne Dean and/or Radon Win, Inc. at 8435 N.W. 43rd Lane, Ocala, Florida lacked system monitoring devices to automatically indicate system failure to the system occupants, contained unapproved vent piping material and did not gasket a 'crawlspace' door as required by section 502.3, 602.3.1, and 404.3 of the Florida Standard for Mitigation of Radon in Existing Buildings.

16. Dr. Kaiss Al-Ahmady, an employee of the Department, in a conversation held with Mr. Dean at Mr. Dean's office, reminded Mr. Dean not to install radon mitigation systems without a license. This conversation took place on March 20, 1997.

17. After sending the $600 on March 12, 1997, Mr. Dean advised Mr. Klein that he was installing a radon mitigation system at 8435 Northwest 43rd Lane, Ocala, Florida.

18. On or about May 1997, Petitioners installed a radon mitigation system at 8435 Northwest 43rd Lane, Ocala, Florida.

19. Mr. Klein had been advised by the owner of the residence in Sparr, Florida, which is the subject of this case, that Mr. Dean was going to install a radon mitigation system at that residence. Mr. Klein knew of the progress of the job and was aware when the system had been completely installed.

20. On or about May 30, 1997, Petitioners installed a radon mitigation system at 13465 Northeast 44th Court, Sparr, Florida.

21. On or about June 1997, Petitioners installed a radon mitigation system at 4909 Buck Lake Road, Tallahassee, Florida.

22. In December 1995, while in possession of valid certificates issued by the Department, Petitioner's completed the installation of approximately 124 radon mitigation systems at Doral Pointe Apartments at 4630 Northwest 97th Court, Miami, Florida.

23. In July 1997, Mr. Klein performed an inspection of the radon mitigation systems installed by Petitioners at the Doral Pointe Apartments, 4630 Northwest 97th Court, Miami, Florida. The inspection revealed that the systems were missing labels contemplated by the Florida Standard for Mitigation of Radon in Existing Buildings, effective: June 1, 1994 (the Florida Standard). In particular that requirement is set forth in Section 602.3.4. of the Florida Standards. In addition, the inspection revealed that the mitigation system lacked a system monitoring device as called for by Sections 502.3 and 602.2, of the Florida Standard.

24. Mr. Klein performed an inspection of the radon mitigation system installed by Petitioners at 13465 Northeast 44th Court, Sparr, Florida. This inspection was performed on June 12, 1997. The labeling for the "soil gas system" was deficient, in that the labels were more than three feet apart.

The problem with labeling was in contravention of Section 602.3.4, of the Florida Standard.

25. On July 3, 1997, Mr. Klein inspected the radon mitigation system which Petitioners had installed at 8435 Northwest 43rd Lane, Ocala, Florida. The radon mitigation system that had been installed at the Ocala address was not a soil depressurization system as addressed in Chapter 6 of the Florida Standard. The system which Petitioners had installed at the Ocala address was not a mitigation system referred to as "crawl space depressurization." The Ocala radon mitigation system that Mr. Klein inspected did not have a system monitoring device called for in Section 502.3, of the Florida Standard.

CONCLUSIONS OF LAW

26. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties in this case in accordance with Section 120.57(1), Florida Statutes.

27. Section 440.56(3)(a), Florida Statutes, creates the authority for the Department to certify the Petitioners as a radon mitigation specialist and a radon mitigation business, respectively.

28. Section 440.56(3)(f), Florida Statutes, creates the authority for the Department to charge and collect fees for the certification and annual recertification of Petitioners. The renewal of the certificates is a ministerial function.

29. Section 440.56(3)(g), Florida Statutes, creates the authority for the Department to deny uncertified persons or entities a certificate. It further creates the authority for the Department to suspend, revoke, or fine a certificate holder for the violation of any provision of Section 404.056, Florida Statutes, and any rule promulgated pursuant to that section.

30. Section 404.162, Florida Statutes, creates additional authority for the Department to modify, suspend, or revoke a license or registration or impose an administrative fine of certificate holders (such as Petitioners) based upon a violation of the provisions of Chapter 404, Florida Statutes, rules promulgated in accordance with Section 404.162, Florida Statutes, or terms or conditions of a license or registration that is issued by the Department. Section 404.162, Florida Statutes, creates the further opportunity for the Department to deny a license or registration to an unlicensed or unregistered person or entity. Finally, Section 404.162, Florida Statutes, gives guidance concerning the amount of fine to be levied for a violation of disciplinary provisions contemplated by that section.

31. Rule 64E-5.1203(3), Florida Administrative Code, sets forth criteria for certification where it states:

> (3) No certificate shall be approved unless the applicant demonstrates to the department that the following conditions are met:

> (a) The applicant has not been found to be in violation of Chapter 404, F.S., or this part, and has not be decertified;
>
> (b) The applicant has filed an accurate and complete application with the application fee describing compliance with the relevant certification requirements.

32. In pertinent part, Rule 64E-5.1203(4), Florida Administrative Code, identifies the appropriate conduct for a certificate holder during the pendency of his, her, or its certification where it states:

> (4) Requirements for continued certification shall include the following conditions:
>
> (a) The certified person shall conduct his activities as described in the approved certification and shall remain in compliance with Chapter 404, F.S., and this part. . . .

33. Rule 64E-5.1203(6), Florida Administrative Code identifies the effective period of a certificate and the consequences of the untimely renewal of a certificate where it states:

> (6) A certification will be valid for 1 year following the date of issuance. If renewal is requested more that 90 days after an expired certification, a new application must be submitted for recertification. . . .

34. Rule 64E-5.1203(7), Florida Administrative Code, sets forth the amount of fee to be paid and when read in context of Rule 64E-5.1203(6), Florida Administrative Code, and the expectation in Section 404.056(3)(f), Florida Statutes, that the certificate renewal is ministerial, certificates will be annually

renewed unless untimely sought. In that instance, a new application for certificate must be made in accordance with the statutory and rules requirements incumbent upon persons or entities seeking an initial certificate.

35. Rule 64E-5.1207(11), Florida Administrative Code, requires that the installation of radon mitigation systems be in accordance with the Florida Standard and Chapter 9B-53, Florida Administrative Code, which includes Rule 9B-3.048, Florida Administrative Code, pertaining to the State Minimum Plumbing Code.

36. Neither Mr. Dean nor Radon Win renewed their annual certificates expiring on December 31, 1996, and January 9, 1997, respectively, within the time contemplated by Section 404.056(3)(f), Florida Statutes, and Rule 64E-5.1203(6), Florida Administrative Code.

37. As envisioned by Rule 64E-5.1203(6), Florida Administrative Code, within ninety days of the date of expiration of the radon mitigation specialist certificate and radon mitigation business certificate, Petitioners requested renewal of the certificates by paying the fees through a check written by Mr. Dean on March 12, 1997, but that check was dishonored for insufficient funds. The fees in support of the renewal requests were subsequently paid on May 29, 1997, beyond the ninety-day grace period for attaining renewal of the certificates by the payment of fees. This means that Petitioners' requests to be

certified for the future must be made upon the submission for recertification, a process that brings into play Rule 64E-5.1203(3), Florida Administrative Code, which is applicable to persons re-applying for certification, as well as persons applying for certification in the first instance. This allows the Department the opportunity to consider the requests by Petitioners on the merits, in accordance with Rule 64E-5.1203(3), Florida Administrative Code, in the same manner as an original applicant for certification. Communications by Department personnel with Mr. Dean concerning the payment of the annual fees for renewal of the certificates, and awareness that Petitioners were performing radon mitigation services with expired certificates did not estop the Department from enforcing Rule 64E-5.1203(6), Florida Administrative Code, in the expectation that persons who do not request renewal within ninety days after expiration of a certificate must submit a new application before being re-certified. Mr. Dean was not misled to his detriment and the detriment of Radon Win concerning the process of renewal of the certificates. Mr. Dean presented a check that was insufficient to meet the obligation for payment of the renewal fees and the consequences of that choice controls the outcome in the attempt to extend his activities and that of Radon Win, not the Department's interest in obtaining the necessary fees, be those fees in support of a renewal or in support of a new application by the respective Petitioners.

38. The re-application for the certificates was complete on May 30, 1997, when the Department received the fees supporting the application by the Petitioners. The Department timely responded to that re-application by its notice of intent to deny issued on August 28, 1997. See Section 120.60, Florida Statutes.

39. The effect of the August 28, 1997 notice provided to the Petitioners in relation to the radon mitigation specialist certificate and radon mitigation business certificate, was to state the grounds for denying the new applications to be certified. The reasons for denial fell into two categories: first, the performance of radon mitigation work at a time that the certificates held by the Petitioners were not active; and second, based upon substandard performance in the provision of radon mitigation services, some services performed at a time that the certificates were not active and some work done under the authority of active certificates.

40. The first category of denial is premised upon the mere act of performing services without the benefit of certificates. The second category for denying the re-application for certificates is in relation to the actual performance of the mitigation services.

41. Concerning the first category, the March 3, 1997 correspondence from the Department to Mr. Dean alerted Mr. Dean to the possibility that the Department might impose a fine of $250 against Mr. Dean in association with his radon mitigation

specialist certificate if he was performing services as a radon mitigation specialist beyond the expiration date of this certificate number RO228, which expired on December 31, 1996. (The record does not reflect a similar warning being given to Radon Win for conducting business under the radon mitigation business certificate RB0251 beyond the expiration date of that certificate which was January 9, 1997.)

42. Mr. Dean did perform the work of a radon mitigation specialist beyond the expiration date of his certificate. The work was in relation to the jobs performed at 13465 Northeast 44th Court, Sparr, Florida; 8435 Northwest 43rd Lane, Ocala, Florida; and 4909 Buck Lake Road, Tallahassee, Florida.

43. As contemplated by the March 3, 1997 correspondence an administrative fine was imposed in the amount of $250, which was paid by Mr. Dean on May 29, 1997, and received by the Department on May 30, 1997, as acknowledged in the correspondence of June 17, 1997, directed to Mr. Dean. This arrangement for the payment of a level II administrative fine by Mr. Dean satisfies the concerns expressed in the August 28, 1997 letter of denial of the new applications by the Petitioners in association with the first category for denying the certificates at issue.

44. When Mr. Dean paid the $250 administrative fine, this set aside the impediment to the grant of new certificates in association with the performance of any radon mitigation services without a certificate whenever they may have been discovered by

the Department. This conclusion is reached in recognition that the Department had made its choice concerning the treatment of that conduct and accepted the payment of the administrative fine to satisfy its concerns about the conduct.

45. In relation to the installation of a radon mitigation system at 4630 Northwest 19th Court, Miami, Florida, the radon mitigation systems that were installed were subject to the requirements set forth in Chapters 5 and 6 within the Florida Standard. The systems failed to provide the system monitoring device called for by Sections 502.3 and 602.2, within the Florida Standard. Those Sections state:

> 502.3 System Monitoring Device Any engineered system must have a mechanism installed to automatically indicate failure of the system to building occupants, which shall be either a visual device conveniently visible to building occupants, or a device that produces a minimum 60 db audible signal.
>
> * * *
>
> 602.2 System Monitoring Device The soil depressurization system shall include a system monitoring device which shall be either a visual device, conveniently visible to building occupants, or a device that produces a minimum 60 db audible signal, activated by the loss of pressure or flow in the vent pipe.

Moreover, the Miami, Florida, project, performed in December 1995 under existing certificates held by the Petitioners, did not have the necessary labels for the "Soil Gas System." The requirement for labeling is set forth in Sections 602.3.4, of the Florida Standard. That labeling requirement states:

> 602.3.4 Labeling All exposed components of the soil depressurization system shall be labeled "Soil Gas System" to prevent accidental damage or misuse. Labels shall be on a yellow band, two inches wide and spaced three feet apart on all components.

46. The project that was performed by the Petitioners at 13465 Northeast 44th Court, Sparr, Florida, failed to meet the spacing requirements for labels in the "Soil Gas System" called for by Section 602.3.4, within the Florida Standard. In relation to the Sparr project, performed at a time when Petitioners' certificates had expired, reference is made in the notice of denial of the applications for new certificates to Section 602.3.1, within the Florida Standard. That section states:

> 602.3.1 Material Piping material shall be of any type approved by locally adopted codes for plumbing vents.

Specifically, the Department claims that there were leaks in the pipes and that the pipes in the system were not sealed appropriately. Section 602.3.1, refers to piping material, and the need to utilize piping material that has been approved by locally adopted codes for plumbing vents. That provision does not speak in terms of the installation of those pipes and the performance of the pipes as part of the system. Therefore, it has not been shown that the Petitioners have violated Section 602.3.1.

47. Petitioners installed a radon mitigation system at 8435 Northwest 43rd Lane, Ocala, Florida, at a time when the certificates were expired. The system failed to have the

monitoring devices called for by Section 502.3, of the Florida Standard applicable to all radon mitigation systems. The system that was installed was not subject to the requirements for soil depressurization systems at Chapter 6 within the Florida Standards. Consequently, the allegation that the system contained unapproved vent piping material in contravention of Section 602.3.1, within the Florida Standard is inapplicable and does not form the basis for denying the request by the Petitioners to be provided certificates through the re-application process. Likewise, reference to Section 404.3, within the Florida Standard does not pertain to the system that was installed for the Ocala project, such that the failure to gasket a "crawlspace" door would promote grounds for denying Petitioners' certificates under the re-application process. Section 404.3, relates to a radon mitigation system called "crawlspace depressurization," a system unlike the system installed in Ocala by the Petitioners. Section 404.3, states:

> 404.3 Doors When a door is located in a wall between a crawlspace and the conditioned space, it shall be fully weatherstripped or gasketed.

48. Consideration of the grounds for denying the certificates based upon the installation of the several systems that are mentioned in the denial letter has been made upon the preponderance of the evidence. The Department must have shown by the preponderance of the evidence that these allegations are true to warrant denial of the applications. See Department of Banking

and Finance v. Osborne Stern & Co., 670 So. 2d 932 (Fla. 1996). To the extent that the allegations concerning substandard performance in the provision of the services in those projects has been proven, that proof was not only made by a preponderance of evidence, it was made by clear and convincing evidence.

49. Sufficient reasons exist to deny the grant of new certificates to the Petitioners.

RECOMMENDATION

Based upon the facts found and the conclusions of law reached, it is

RECOMMENDED:

That a Final Order be entered which denies the request by the Petitioners to be granted a radon mitigation specialist certificate and a radon mitigation business certificate for Mr. Dean and Radon Win, respectively.

DONE AND ENTERED this 5th day of March, 1998, in Tallahassee, Leon County, Florida.

CHARLES C. ADAMS
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of March, 1998.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.