

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH,)
)
 Petitioner,)
)
 vs.) Case No. 98-2010
)
 MICHAEL J. JEDWARE,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Notice was provided and on September 10, 1998, 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 Volusia County Courthouse, Grand Jury Room, 120 West Indiana, Deland, Florida. The hearing was conducted by Charles C. Adams, Administrative Law Judge.

APPEARANCES

For Petitioner: Charlene Petersen, Esquire
Department of Health
420 Fentress Boulevard
Daytona Beach, Florida 32114

For Respondent: Michael J. Jedware, pro se
Post Office Box 390073
Deltona, Florida 32739-0073

STATEMENT OF THE ISSUE

Should Respondent be fined \$500.00 for initiating repairs to an on-site sewage treatment and disposal system before obtaining a permit?

PRELIMINARY STATEMENT

In accordance with Section 381.065, Florida Statutes, and Chapter 64E-6, Florida Administrative Code, Petitioner cited Respondent for the aforementioned alleged violation. The citation was made on March 31, 1998. On April 10, 1998, Respondent requested an administrative hearing to contest material facts associated with the alleged violation. On April 30, 1998, the case was received by the Division of Administrative Hearings for the assignment of an administrative law judge to conduct a formal hearing. The case was initially assigned to Stephen F. Dean, Administrative Law Judge. The case was reassigned for purposes of the hearing.

At hearing, the Petitioner presented the testimony of William Vander Lugt and James McRae. Petitioner's Exhibits 1 and 2 were admitted. Respondent presented the testimony of Andy Trapp. Respondent's Exhibits 1 through 4 were admitted.

Petitioner's counsel requested that official recognition be made of Section 381.065, Florida Statutes; Chapter 489, Part III, Florida Statutes; and Rules 64E-6.003, 64E-6.015, and 64E-6.022, Florida Administrative Code. That request was granted.

No hearing transcript was prepared. The parties were granted through September 21, 1998, to present proposed recommended orders. Petitioner filed a proposed recommended order which has been considered. Respondent did not submit a proposed recommended order.

FINDINGS OF FACT

1. Respondent is engaged in the septic tank contracting business as a contractor licensed under Chapter 489, Part III, Florida Statutes. He does business as "Alpha."

2. In association with his business Respondent provided services to residents at 224 North Orange Avenue, Orange City, Florida. This was related to a failed on-site sewage treatment and disposal system at that residence.

3. To assist in providing repair service to the residence in Orange City, Florida, Respondent engaged Andy Trapp. Mr. Trapp's business is to assist septic tank contractors in obtaining necessary permits to perform septic tank contracting services. Mr. Trapp's occupation includes field work involving soil testing, measurements, and completion of necessary paperwork to assist the septic tank contractor in obtaining necessary permits.

4. As permitting agency, usually Petitioner would accept applications submitted by Mr. Trapp in relation to the application for a permit to repair on-site sewage treatment and disposal systems, in that Mr. Trapp is recognized by Petitioner as being sufficiently qualified to submit information in support of an application for permit.

5. On March 27, 1998, Mr. Trapp submitted an application for a permit to repair the on-site sewage treatment and disposal system at the Orange City, Florida, address, to include supporting information concerning the results of soil testing. That application was accompanied by the necessary fee to obtain a permit. The application was delivered to Petitioner's Daytona Beach, Florida, office as a matter of convenience to Mr. Trapp. Mr. Trapp realized that the actual processing of the permit application would be conducted by Petitioner's Deland, Florida, office. In that connection, Mr. Trapp realized that the application that he had submitted to the Daytona Beach office would be forwarded by interoffice transmittal to the Deland office, which would cause a delay in the processing of the application. In his experience Mr. Trapp has filed applications with the Daytona Beach office to be subsequently transmitted to the New Smyrna Beach office of the Petitioner, which ordinarily can be done late on the same day that the application was presented or by the next day.

6. James McRae is an environmental supervisor for the Volusia Health Department, Environmental Health Office in Deland, Florida. It is his office that had ultimate responsibility for considering, and if appropriate, issuing a permit allowing Respondent to conduct necessary repairs of the failed on-site sewage treatment and disposal system at the Orange City, Florida address. Mr. McRae confirmed that the permit application, as

submitted by Mr. Trapp for the repairs, had been received by the Deland office on March 30, 1998. In addition, the accompanying \$57.00 fee had been transferred from the Daytona Beach office to the Deland office, as was customary, the custom being that the funds in support of an application would ultimately be received in the office from which the application would be processed and a permit number assigned, as applicable. Upon receipt of the application in the Deland office, a receipt was generated. Information concerning the permit application was placed in the computer. Assessment of the application was assigned to William Vander Lugt, Environmental Specialists II, who is part of the field staff for the Petitioner's Deland office.

7. Beyond Mr. Vander Lugt's assignment to consider the application for the permit for the Orange City, Florida project, it was expected that he would do any necessary field work involving an inspection and any necessary soil analysis. If satisfied that the site was appropriate to effect repairs to the failed on-site sewage treatment and disposal system, Mr. Vander Lugt would issue a permit subject to approval by Mr. McRae.

8. Mr. McRae identified that the usual turn around time for issuing permits is two to three days, assuming that the permit was applied for at Petitioner's office which would be responsible for assessing the application. In this instance the permit had

been applied for at another office which delayed consideration of the permit application by the Deland office. The permit was approved on April 2, 1998, within three days of its receipt by the Deland office.

9. Before the permit was issued, Respondent, through his employees, had commenced the repairs at the Orange City, Florida, address. The commencement of repairs was verified by an on-site inspection performed by Mr. Vander Lugt, on March 31, 1998.

Although the supporting information presented by Mr. Trapp was in order and the fee had been paid, and there was no indication that any other problems existed which would prohibit the repairs from being conducted, Respondent was premature in commencing the work before the permit issued, and was unjustified in that choice.

CONCLUSIONS OF LAW

10. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this case consistent with Sections 120.569 and 120.57(1), Florida Statutes.

11. Petitioner seeks to impose a \$500.00 fine against Respondent for violation of Rule 64E-6.022(1)(b), Florida Administrative Code, for initiating work to repair the on-site sewage treatment and disposal system at the Orange City, Florida address, before a permit had been issued by Petitioner. To impose the fine, Petitioner must prove the violation by a preponderance of the evidence.

12. Respondent is a septic tank contractor licensed in accordance with Chapter 489, Part III, Florida Statutes. As such, Respondent is subject to the prohibition against initiating repairs of the system without a permit.

13. Moreover Rule 64E-6.015, Florida Administrative Code, makes it necessary to notify and obtain an approval from the Petitioner through the county health department having jurisdiction over the system before effecting repairs. That request from the appropriate health department can be made either directly by the property owner, or lessee, or through an agent. In this instance the request was made by an agent.

14. The expectation is that the department shall make every effort to issue the permit within two working days after receiving an application for the system repair. This is in accordance with Rule 64E-6.015(5), Florida Administrative Code. That intention is aspirational. The failure to comply with that expectation does not automatically grant a permit to the applicant, nor allow the septic tank contractor to proceed without obtaining a permit.

15. Finally, Rule 64E-6.003(1), Florida Administrative Code, makes it necessary to obtain an on-site sewage treatment and disposal system construction permit before repairing any portion of an on-site sewage treatment and disposal system.

16. Petitioner has shown that necessary approval and issuance of an on-site sewage treatment and disposal system

construction permit was not obtained for the repairs at the Orange City, Florida address before Respondent proceeded with the repairs. This constituted a violation of Rule 64E-6.022(1)(b), Florida Administrative Code, and subjects the Respondent to a \$500.00, fine for this first violation.

RECOMMENDATION

Upon consideration of the facts found and conclusions of law reached, it is

RECOMMENDED:

That a final order be issued which imposes a \$500.00 fine against Respondent for initiating a repair of an on-site sewage treatment and disposal system without first obtaining a permit to do the work.

DONE AND ENTERED this 24th day of September, 1998, in Tallahassee, Leon County, Florida.

CHARLES C. ADAMS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847

Filed with the Clerk of the
Division of Administrative Hearings
this 24th day of September, 1998.

COPIES FURNISHED:

Charlene Petersen, Esquire
Department of Health

420 Fentress Boulevard
Daytona Beach, Florida 32114

Michael J. Jedware
Post Office Box 390073
Deltona, Florida 32739-0073

Angela T. Hall, Agency Clerk
Department of Health
2020 Capital Circle, Southeast
Bin A02
Tallahassee, Florida 32399-1703

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.