

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 99-2051  
 )  
 MICHAEL JEDWARE, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

Notice was provided and on October 28, 1999, a formal hearing was held in this case. The hearing location was the Department of Transportation, 719 South Woodland Boulevard, Deland, Florida. Authority for conducting the hearing is set forth in Sections 120.569 and 120.57(1), Florida Statutes. The hearing was conducted by Charles C. Adams, Administrative Law Judge.

APPEARANCES

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

For Respondent: Michael Jedware, pro se  
Post Office Box 390073  
Deltona, Florida 32738-0073

STATEMENT OF THE ISSUE

Should Petitioner fine Respondent for using contaminated spoil from the previous septic system to cover a new drainfield being installed?

PRELIMINARY STATEMENT

On April 20, 1999, Petitioner cited Respondent for allegedly using contaminated spoil for a drainfield repair, specifically to cover a new drainfield being installed. See Rule 64E-6.015(6), Florida Administrative Code. For the alleged violation Petitioner seeks to impose an administrative fine in the amount of \$500.00. See Rule 64E-6.022(1)(p), Florida Administrative Code. On April 26, 1999, Respondent contested this citation by requesting a hearing in accordance with Sections 120.569 and 120.57, Florida Statutes, in which Respondent disputed material facts in the citation.

On May 4, 1999, the Division of Administrative Hearings received Petitioner's request for the assignment of an Administrative Law Judge to conduct a hearing to resolve the fact disputes between the parties. Initially the case was assigned to Stephen F. Dean, Administrative Law Judge. The case was transferred to the undersigned.

At hearing Petitioner presented Leila Baruch and Scott Chambers as witnesses. Petitioner's Exhibit numbered 1 was admitted. Respondent testified in his own behalf.

Petitioner requested official recognition be made of Sections 381.0065 and 489.553, Florida Statutes, together with Rules 64E-6.015(6) and 64E-6.022(1)(p), Florida Administrative Code. The request was granted.

A hearing transcript was not prepared. The due date for submitting proposed recommended orders was November 8, 1999. See Section 120.57(1)(b), Florida Statutes and Rule 28-106.215, Florida Administrative Code.

Petitioner timely submitted a proposed recommended order which has been considered. Respondent made no submission.

#### FINDINGS OF FACT

1. Petitioner issues permits for the construction, installation, modification, or repair of onsite sewage treatment systems in accordance with Section 381.0065, Florida Statutes. Those repairs are conducted by septic tank contractors as qualified and registered by Petitioner, with the expectation that the registrants shall be subject to ethical standards of practice in their business as established by Petitioner's rules. See Section 489.553(3), Florida Statutes.

2. Respondent, whose address is Post Office Box 390073, Deltona, Florida 32738-0073, is registered by Petitioner as a septic tank contractor. Respondent does business as Alpha Environmental Services.

3. Respondent contracted with a customer at 1019 Pioneer Drive, Deltona, Florida to replace an onsite sewage treatment and disposal system at that address.

4. Petitioner issued a permit for the work related to the septic system. Leila Baruch, then of the Volusia County Florida Environmental Health Agency, certified by Petitioner in

inspecting septic systems, inspected the site before the work was performed.

5. On February 18, 1999, Ms. Baruch returned to the site for the purpose of examining the "easy way" drainfield which Respondent had installed over the natural soil at the bottom of the replacement system. The easy way drainfield is a system of pipes surrounded by pieces of styrofoam. At the time of this inspection, the cover that was to be placed over the top of the drainfield had not been arranged. Ms. Baruch observed the old contaminated material that had been excavated from the failed system (the spoil) located to the side of the new drainfield. The new drainfield had been left uncovered to allow the inspector to observe its placement depth.

6. As was the custom, the Volusia County Environmental Health Agency approved the installation of the drainfield concerning its relative depth and a call was made from Ms. Baruch to Respondent's business indicating that it would be acceptable to cover the drainfield following the more recent inspection. By this contact, it was not intended to grant permission to cover the drainfield with the spoil that had been removed from the failed system. This call to Respondent's business was made on February 18, 1999.

7. Later on February 18, 1999, Ms. Baruch spoke with Respondent. This contact was based upon remarks that had been made to Ms. Baruch by the customer homeowner during Ms. Baruch's

inspection of the site earlier on that date. The customer's remarks were to the effect that she understood that Respondent intended to use the spoil removed from the original septic system to cover the new system. In her conversation with Respondent, Ms. Baruch reminded Respondent that Respondent could not use the spoil to cover the new drainfield. In addition, Ms. Baruch read from Rule 64E-6.015(6), Florida Administrative Code, concerning the prohibition against the use of spoil material in covering the new drainfield.

8. Ms. Baruch returned to the job site two or three days later and observed that the spoil material from the failed septic system had been used to cover the new drainfield. Respondent was responsible for the placement of the spoil material as a cover for the new drainfield. This condition in which the spoil material had been placed over the new drainfield was also observed by Scott Chambers of the Volusia County Environmental Health Agency, who is registered as a sanitarian with the Florida Environmental Health Association and certified by Petitioner for inspection of onsite sewage and disposal systems.

9. As a consequence of the findings made by the inspectors, Petitioner cited Respondent for violation of Rule 64E-6.015(6), Florida Administrative Code, and seeks to impose a fine in accordance with Rule 64E-6.022(1)(p), Florida Administrative Code.

10. Respondent's contention in his testimony that the spoil material was not placed immediately on the new drainfield is rejected. A substantial portion, if not all, of the new drainfield was covered by the spoil removed from the failed drainfield.

#### CONCLUSIONS OF LAW

11. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action in accordance with Sections 120.569 and 120.57(1), Florida Statutes.

12. Petitioner has authority to issue permits for construction, installation, modification, or repair of on-site sewage treatment and disposal systems. See Section 381.0065, Florida Statutes. Additionally, Petitioner grants certificates of registration to persons who qualify as septic tank contractors and by rule adoption has established ethical standards of practice for those persons. See Section 489.553(3), Florida Statutes.

13. Respondent is a septic tank contractor subject to the requirements for ethical standards of practice.

14. In carrying out repairs at the job site in question, Respondent was subject to Rule 64E-6.015(6), Florida Administrative Code, which states:

Construction materials used in system repairs shall be of the same quality as those required for new system construction. Contaminated spoil from drainfield repairs

shall not be used in system repair in any manner. Any contaminated spoil material shall be disposed of in a sanitary landfill or shall be limed and stockpiled for at least 30 days. The resulting material shall not be used for drainfield repair. . . .

15. Rather than dispose of the spoil material in a sanitary landfill or lime and stockpile the spoil material, Respondent allowed it to be used in the system repair as cover in violation of Rule 64E-6.015(6), Florida Administrative Code. For this violation, Respondent is subject to the discipline found at Rule 64E-6.022(1)(p), Florida Administrative Code, calling for the imposition of a \$500.00 fine.

RECOMMENDATION

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

RECOMMENDED:

That a final order be entered which finds Respondent in violation of Rule 64E-6.015(6), Florida Administrative Code, and imposes a \$500.00 fine in accordance with Rule 64E-6.022(1)(p), Florida Administrative Code.

DONE AND ENTERED this 17th day of November, 1999, in  
Tallahassee, Leon County, Florida.

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CHARLES C. ADAMS  
Administrative Law Judge  
Division of Administrative Hearings  
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1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 17th day of November, 1999.

COPIES FURNISHED:

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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.