

16-20-00

STATE OF FLORIDA
DEPARTMENT OF HEALTH

FILED

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DIVISION OF
ADMINISTRATIVE
HEARINGS

Department of Health, Flagler
County Health Department,
Petitioner,

AT

Rendition No.: DOH-04- 1062 -FOF-HST
Case no.: 00-0695

vs.

DRA-CWS

Anthony Massaro,
Respondent.

FINAL ORDER

A recommended order having been received, this matter is before Department of Health for the entry of a final order. The Petitioner is cited for a violation of section 381.0065(4), Florida Statutes (1999); which required an annual permit for the operation of an aerobic sewage treatment unit. At issue is whether a five hundred dollar (\$500) fine should be imposed for this violation.

The Administrative Law Judge (ALJ) recommends adjudicating the Respondent guilty of the cited violation, but recommends that no penalty be imposed because of mitigating circumstances. Counsel for the Department filed exceptions opposing the penalty recommendation. The following considerations are weighed on the penalty issue: first, the mitigating circumstances found by the ALJ, second,¹ the passage of over four years since the date of the hearing, and third,² the Respondent no longer owns the subject property and the house has been unoccupied for over a year. I concur with the ALJ's recommendation that no penalty be imposed. The exceptions are denied.

¹ An inadvertent processing error accounts for the delay in the entry of a final order.

² The undersigned was notified of these changed circumstances by advisory staff as authorized in section 120.66(1), Florida Statutes.

The recommended order of June 20, 2000 is adopted and incorporated by reference.

Based on the foregoing, the Respondent, Anthony Massaro, is adjudged guilty of the cited violation, failure to obtain an annual permit to operate his aerobic sewage treatment unit.

DONE and **ORDERED** this 3rd day of September 2004,
in Tallahassee, Leon County, Florida.

JOHN O. AGWUNOBI, M.D., M.B.A., M.P.H.
Secretary, Department of Health

By: Bonita J. Sorensen, M.D., M.B.A.
Bonita J. Sorensen, M.D., M.B.A.
Deputy State Health Officer

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. A REVIEW PROCEEDING IS GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. A REVIEW PROCEEDING IS INITIATED BY FILING A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF HEALTH AND A COPY ACCOMPANIED BY THE FILING FEE WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES OR THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE FILING DATE OF THIS FINAL ORDER.

Copy furnished to each of the following:

Charlene Petersen
Department of Health
1955 U.S. 1, South
Suite 100
Saint Augustine, Florida 32086

Gerald Briggs, Bureau Chief
Department of Health
Onsite Sewage Program
4052 Bald Cypress Way, bin A08
Tallahassee, Florida 32399-1713

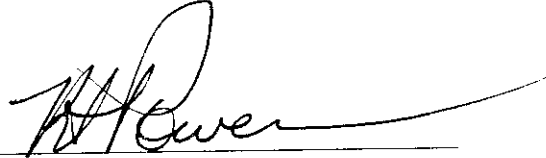
Hon. Donald Alexander
Administrative Law Judge
Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Dr. Anthony Massaro
3402 North Oceanside Boulevard
Flagler Beach, Florida 32136

FALR

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing FINAL ORDER has been served by ordinary mail via the United States Postal Service, inter-office mail, or by hand delivery to each of the above-named persons this 9th day of September 2004.



R. Samuel Power
Agency Clerk
Department of Health
4052 Bald Cypress Way, Bin A02
Tallahassee, Florida 32399-1703
phone: (850) 245-4005