

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF HEALTH, )  
 )  
 Petitioner, )  
 )  
 vs. ) Case No. 05-0945  
 )  
 KEITHON M. PATTERSON, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

RECOMMENDED ORDER

On June 1, 2005, a formal administrative hearing in this case was held in Fort Myers, Florida, before Fred L. Buckine, Administrative Law Judge, Division of Administrative hearings.

APPEARANCES

For Petitioner: Susan Mastin Scott, Esquire  
Department of Health  
2295 Victoria Avenue, Room 206  
Fort Myers, Florida 33901

For Respondent: Keithon M. Patterson, pro se  
12610 Equestrian Circle, Suite 1604  
Fort Myers, Florida 33907

STATEMENT OF THE ISSUE

Whether Respondent violated Section 381.0065 and Chapter 489, Part III, Florida Statutes (2004), and Florida Administrative Code Chapter 64E-6, by engaging in septic tank contracting without registration as alleged by Petitioner in the

Administrative Complaint and Order to Cease Operations, dated January 26, 2005.

PRELIMINARY STATEMENT

On January 26, 2005, Petitioner, Department of Health, served on Respondent, Keithon M. Patterson, an Order to Cease Operations with regard to septic tank contracting. Petitioner alleged that Respondent was practicing septic tank contracting without being a registered septic tank contractor by performing the work to abandon two different septic tanks. Petitioner imposed a \$500.00 fine for each alleged violation, a total of \$1,000.00. Respondent timely filed a request for an administrative hearing. The cause was referred to the Division of Administrative Hearings on March 10, 2005, for assignment.

On June 1, 2005, the final hearing was held. At the final hearing, Petitioner presented the testimony of four witnesses. Accepted into evidence were Petitioner's Exhibits P-1 through P-4 and P-6 through P-12.<sup>1</sup> Rejected were Petitioner's Exhibits P-5 and P-13. Respondent made an opening statement, did not testify, and his two exhibits (R-1 and R-2) were accepted in evidence. No transcript was filed.

On June 22 and 23, 2005, Petitioner and Respondent, respectively, filed Proposed Recommended Orders that were considered in rendering this Recommended Order.

## FINDINGS OF FACT

Based upon observation and the demeanor of the witnesses while testifying, documentary materials received in evidence, stipulation of the parties, and evidentiary rulings during the hearings, and the record compiled, the following relevant and material facts are determined:

1. The Department of Health ("Department"), Lee County Health Department, is the state agency charged with enforcing the statutory provisions pertaining to the practice of septic tank contracting in Florida, pursuant to Chapter 489 Part II and Section 381.0065, Florida Statutes (2004). Violators of these laws are subject to penalty assessments of Section 381.0061, Florida Statutes, and Florida Administrative Code Rule 64E-6.002.

2. At all times relevant to these proceedings, Respondent, Keithon M. Patterson, has not been licensed as a plumber pursuant to Subsection 489.105(3)(m), Florida Statutes (2004).

3. All times relevant to these proceedings, Respondent was doing business using the business name Full Spectrum Home Improvement, Inc. (Full Spectrum). The business is not nor has it ever been licensed under Subsection 489.105(3)(m), Florida Statutes (2004).

4. All times relevant to these proceedings, the City of Cape Coral, Florida, has an ongoing utility expansion program

extending city water services and city sewer services to properties within the limits of the city. All homeowners are required to connect or hookup to city water/sewer systems when such services become available in their respective location within the city.

5. Each homeowner connection or hookup process to city-provided water and sewer, once completed, requires the homeowner to get the Department's abandonment permit to abandon their septic system after hookup to the city water/sewer system. Abandonment requires trenching from the street hookup to the water/sewer hookup. It requires disconnection from the home and the septic tank. It requires pumping or emptying of the septic tank followed by a crushing of the septic tank and filling in of soil.

6. Vicki Adams lives in her home located at 3216 Southeast 1st Place, Cape Coral, Florida. When city services extended to her location, she was required to hookup to the city water/sewer system and have her septic tank system abandoned. To abandon a septic tank means to have a registered person, empty the septic tank, crush the septic tank, fill the septic tank space with clean fill, dig up the underground septic lines from the home to the septic tank, remove piping, and fill the trench with clean fill. For reasons of sanitation and

safety, a Departmental permit is required for each property owner before they can abandon their private septic tank system.

7. On or about November 22, 2004, Ms. Adams obtained her septic system abandonment permit from the Department.

8. At some undetermined date but subsequent to November 22, 2004, Ms. Adams, for promise of monetary payment, hired Mr. Patterson to connect her home to the city sewer and to abandon her septic tank.

9. When she was leaving for work, Ms. Adams observed Mr. Patterson doing trench work (i.e. digging, removing soil, hauling sod, etc.) and actually laying some pipe. Ms. Adams' son, Jeff, observed Mr. Patterson with a sledge hammer while in their front yard. Ms. Adams told Mr. Patterson where to park the trucks hauling the clean fill needed to fill the hole after the septic tank was crushed. Mr. Patterson rightly pointed out that neither Jeff nor Ms. Adams personally saw him crush the septic tank. However, when Ms. Adams returned home from work that afternoon she saw clean fill in the spot her crushed septic tank once occupied.

10. Ace Septic Service, Inc. (Ace), a Department authorized septic tank contracting company, removed all residue from Ms. Adams' septic tank by pumping the tank contents into its truck. It invoiced Ms. Adams for pumping her tank. Carlos Casanova, manager of Ace at the time, gave undisputed testimony

that his company only pumped out Ms. Adams' septic tank--they did not perform abandonment (i.e. crushing of the tank and filling the abandoned hole with fresh soil).

11. Ms. Adams paid Mr. Patterson \$790.00 for his work at her home, which included hooking-up her home to the city sewer line and abandoning her septic tank system. Mr. Patterson gave her a receipt indicating that she paid him in full, in cash, received by him, "K.M. Patterson's," on December 8, 2004, by his signature thereon.

12. The receipt, however, is from "Full Spectrum Home Improvement," and under the "Description" states: "50' trench excavation, 50'4 DWV PVC pipe w/fitting, 6" X4" PVC DWV WVE, trench backfill and restoration (w/out sod)."

13. It is abundantly clear from evidence of record that Ms. Adams' septic tank was abandoned, and, for the septic tank abandonment service rendered, Ms. Adams paid Mr. Patterson, who was not registered with the Department as required. Ace Septic Service, Inc. (Ace), a Department-authorized septic tank contracting company, did not abandon Ms. Adams' septic tank.

14. On January 5, 2005, Department inspector, Ms. Pickerill (no first name in the record), went to the Adams' residence to inspect and confirm proper septic tank abandonment. Her inspection included probing the area where the tank had been located, confirming that the tank had been crushed and that

clean fill was used to fill the hole. Satisfied by her inspection that Ms. Adams' septic tank had been properly abandoned, Ms. Pickerill signed the Department's abandonment permit for the Adams' property.

15. Nicola Verna's home is located at 4117 Southwest 20th Avenue, Capt Coral, Florida. City sewer and water had been extended to his home, and he was required to hookup to the city water/sewer system and to abandon his septic system. Mr. Verna obtained the Department's septic system abandonment permit on May 7, 2004. At some undetermined time before September 27, 2004, Mr. Verna hired Mr. Patterson to connect his home to the city water/sewer system and to abandon his septic system.

16. At his home site, Mr. Verna observed Mr. Patterson crush his septic tank with a sledgehammer and bring in a truckload of clean fill material that Mr. Patterson placed in the hole where he had crushed the septic tank.

17. The arrangements to have Mr. Verna's septic tank pumped by Ace were made by Mr. Patterson, for which Mr. Verna paid Ace \$165.00 for pumping only, evidenced by a September 27, 2004, invoice. As with Ms. Adams, Mr. Casanova gave undisputed testimony that his company only "pumped out the septic tank-- they did not perform septic tank abandonment," the issue in this cause.

18. For services rendered (hooking-up home to city water, irrigation services, to city sewer, and abandoning the septic tank), Mr. Verna paid Mr. Patterson a total of \$1,073.00. Mr. Patterson gave Mr. Verna two receipts. One August 16, 2004, receipt from Full Spectrum "for '120' trench for 120' water and irrigation lines, \$619.00 paid in full ch# 1083 rec'd by K.M. Patterson." The second September 27, 2004 receipt "for '1 40' trenching sewer line" for a total of \$454.00, with notation at the bottom, "deposit ch# 1086, Balance of \$200.00 Rec'vd by K. Patterson ch# 1088."

19. Mr. Verna is certain that the two receipts represented his payments to Mr. Patterson for a part of the work he performed in abandoning his sewer system, because Mr. Patterson is the only person who performed those services for him.

20. As with Ms. Adams, Ms. Pickerill went to Mr. Verna's home on December 27, 2004, to conduct her inspection and to confirm Mr. Verna's septic system was abandoned properly. Her probing the area where the tank was located confirmed that it had been crushed and clean fill had been used to fill the hole. Satisfied by her inspection that Mr. Verna's septic tank had been properly abandoned, Ms. Pickerill signed the Department's abandonment permit for the Verna's property.

21. The Department has taken previous enforcement actions for engaging in septic tank contracting without registration



against Mr. Patterson. On June 4, 2004, the Department served an Administrative Complaint on Mr. Patterson seeking to impose a \$1,500.00 fine for three separate episodes of tank contracting without being a registered septic tank contractor.

22. Mr. Patterson settled the complaint for septic tank contracting without being a registered septic tank contractor with the Department by his agreement to pay a \$750.00 fine. The Department memorialized the agreement in its Final Order Number DOH-04-1071-S-HST of September 15, 2004. Mr. Patterson paid his fine of \$750.00 in January 2005, but not before the filing of the instant Cease Order entered by the Department in this proceeding.

23. Based upon the above allegation of septic tank contracting without being a registered septic tank contractor with the Department, in the instant proceeding are "repeat violations" for penalty purposes as provided in disciplinary guidelines of Florida Administrative Code Rule 64E-6.002.

24. The Department demonstrated by clear and convincing evidence that Mr. Patterson, did on two separate occasions violate Section 381.0065, and Chapter 489, Part III, Florida Statutes (2004), and Florida Administrative Code Chapter 64E-6, by engaging in septic tank contracting abandonment without registration as alleged by the Department in the Administrative Complaint and Order to Cease Operations, dated January 26,

2005. Mr. Patterson's protestations to the contrary are without merit and unworthy of belief.

CONCLUSIONS OF LAW

25. The Division of Administrative Hearings has jurisdiction over the parties hereto and the subject matter hereof. §§ 120.569 and 120.57(1), Fla. Stat. (2004).

26. Proceedings involving the levying of administrative fines are penal in nature. Petitioner, as the party seeking affirmative relief, has the burden of proof in this proceeding. Petitioner must prove the allegations against Respondent in the Administrative Complaint by clear and convincing evidence. § 120.57(1)(j), Fla. Stat. (2004); Department of Banking and Finance v. Osborne Stern and Company, 670 So. 2d 932 (Fla. 1996).

27. The Department is the state agency responsible for regulation of septic tank systems and registration and discipline of registered septic tank contractors.

28. Subsections 498.551(2), (3), and (4), Florida Statutes (2004), define those who must register as follows:

(2) "Master septic tank contractor" means a septic tank contractor whose services are unlimited in the septic tank trade who has had at least 3 years' experience as a Florida-registered septic tank contractor or a plumbing contractor certified under part I of this chapter who has provided septic tank contracting services for at least 3 years and who has the experience, knowledge, and skills

to install, maintain, repair, close repairs of, and alter all types of onsite sewage treatment and disposal systems, to design onsite sewage treatment and disposal systems, where not prohibited by law, to perform and submit soil evaluations, when determined to meet site-evaluation expertise established by rule, and to use materials and items used in the installation and maintenance of all types of onsite sewage treatment and disposal systems.

(3) "Onsite sewage treatment and disposal system" means a system that contains a standard subsurface, filled, or mound drain field system; an aerobic treatment unit; a gray water system tank; a laundry wastewater system tank; a septic tank; a grease interceptor; a dosing tank; a solids or effluent pump; a waterless, incinerating, or organic waste-composting toilet; or a sanitary pit privy that is installed or proposed to be installed beyond the building sewer on land of the owner or on other land to which the owner has the legal right to install a system. This term does not include package sewage treatment facilities and other treatment works regulated under chapter 403.

(4) "Septic tank contractor" means a contractor who has the experience, knowledge, and skill to install, maintain, repair, alter, perform site evaluations for repairs, when determined to meet site-evaluation expertise established by rule, and use material and items used in the installation and maintenance of all kinds of onsite sewage treatment and disposal systems.

29. Registration is required for persons engaged in or performing work on septic tanks. Section 489.552, Florida Statutes (2004), requires registration of persons who hold themselves out to and/or does perform acts on septic tank to

include--"install, maintain, repair, alter, perform site evaluations for repairs--of all kinds of onsite sewage treatment and disposal systems," to be registered as required by Section 498.551, Florida Statutes.

30. Subsection 489.552, Florida Statutes (2004), states:

A person shall not hold himself or herself out as a septic tank contractor or a master septic tank contractor in this state unless he or she is registered by the department in accordance with the provisions of this part. However, nothing in this part prohibits any person licensed pursuant to s. 489.105(3)(m) in this state from engaging in the profession for which he or she is licensed.

31. Subsections 489.105(3)(m) and (6), Florida Statutes (2004), states:

(m) "Plumbing contractor" means a contractor whose contracting business consists of the execution of contracts requiring the experience, financial means, knowledge, and skill to install, maintain, repair, alter, extend, or, when not prohibited by law, design plumbing. A plumbing contractor may install, maintain, repair, alter, extend, or, when not prohibited by law, design the following without obtaining any additional local regulatory license, certificate, or registration: sanitary drainage or storm drainage facilities; venting systems; public or private water supply systems; septic tanks; drainage and supply wells; swimming pool piping; irrigation systems; or solar heating water systems and all appurtenances, apparatus, or equipment used in connection therewith, including boilers and pressure process piping and including the installation of water, natural gas (excluding liquid petroleum gases), and storm and sanitary

sewer lines; and water and sewer plants and substations. The scope of work of the plumbing contractor also includes the design, when not prohibited by law, and installation, maintenance, repair, alteration, or extension of air-piping, vacuum line piping, oxygen line piping, nitrous oxide piping, and all related medical gas systems; fire line standpipes and fire sprinklers to the extent authorized by law; ink and chemical lines; fuel oil and gasoline piping and tank and pump installation, except bulk storage plants; and pneumatic control piping systems, all in such a manner as to comply with all plans, specifications, codes, laws, and regulations applicable. The scope of work of the plumbing contractor shall apply to private property and public property, shall include any excavation work incidental thereto, and shall include the work of the specialty plumbing contractor. Such contractor shall subcontract, with a qualified contractor in the field concerned, all other work incidental to the work but which is specified herein as being the work of a trade other than that of a plumbing contractor. Nothing in this definition shall be construed to limit the scope of work of any specialty contractor certified pursuant to s. 489.113(6). Nothing in this definition shall be construed to require certification or registration under this part of any authorized employee of a public natural gas utility or of a private natural gas utility regulated by the Public Service Commission when disconnecting and reconnecting water lines in the servicing or replacement of an existing water heater.

\* \* \*

(6) "Contracting" means, except as exempted in this part, engaging in business as a contractor and includes, but is not limited to, performance of any of the acts as set forth in subsection (3) which define types of contractors. The attempted sale of

contracting services and the negotiation or bid for a contract on these services also constitutes contracting. If the services offered require licensure or agent qualification, the offering, negotiation for a bid, or attempted sale of these services requires the corresponding licensure. However, the term "contracting" shall not extend to an individual, partnership, corporation, trust, or other legal entity that offers to sell or sells completed residences on property on which the individual or business entity has any legal or equitable interest, if the services of a qualified contractor certified or registered pursuant to the requirements of this chapter have been or will be retained for the purpose of constructing such residences.

32. There is nothing in the above statutes that prevents any person in this state from engaging in the profession for which he or she is licensed pursuant to Subsection 489.105(3)(m), Florida Statutes (2004).

33. Subsection 381.0065(4), Florida Statutes (2004), specifically forbade septic tank involvement by persons not "registered" under Part III of Chapter 489, Florida Statutes, and provides:

PERMITS; INSTALLATION; AND CONDITIONS.--A person may not construct, repair, modify, abandon, or operate an onsite sewage treatment and disposal system without first obtaining a permit approved by the department. The department may issue permits to carry out this section, but shall not make the issuance of such permits contingent upon prior approval by the Department of Environmental Protection. A construction permit is valid for 18 months from the issuance date and may be extended by the

department for one 90-day period under rules adopted by the department. A repair permit is valid for 90 days from the date of issuance. An operating permit must be obtained prior to the use of any aerobic treatment unit or if the establishment generates commercial waste.

34. Florida Administrative Code Rule 64E-6.019 mandates registration by persons "if he or she contracts or advertises to provide services to the public or holds himself or herself out as being capable of performing services related to any of the following activities in the onsite sewage treatment and disposal industry regulated by the Department: . . . (f) Abandonment of an onsite sewage treatment and disposal system."

35. Florida Administrative Code Rule 64E-6.011(1) requires that whenever the use of an onsite sewage treatment and disposal system is discontinued, it shall be abandoned within 90 days.

36. Florida Administrative Code Rule 64E-6.011(1),(2), and (3) state:

(1) Whenever the use of an onsite sewage treatment and disposal system is discontinued following connection to a sanitary sewer, following condemnation or demolition or removal or destruction, of a building or property, or discontinuing the use of a septic tank and replacement with another septic tank, the system shall be abandoned within 90 days and any further use of the system for any purpose shall be prohibited. However, if the Department of Environmental Protection or its designee approves the use of the retention tank where the tank is to become an integral part of a sanitary sewer

system or storm water management system, the septic tank need not be abandoned.

(2) The following actions shall be taken, in the order listed, to abandon an onsite sewage treatment and disposal system:

(a) Property owner or agent shall apply for a permit from the department to abandon the existing onsite sewage system and submit the required fee. Upon receiving a permit:

(b) The tank shall be pumped out.

(c) The bottom of the tank shall be opened or ruptured, or the entire tank collapsed so as to prevent the tank from retaining water, and

(d) The tank shall be filled with clean sand or other suitable material, and completely covered with soil.

(e) An inspection of the system abandonment shall be conducted by the department or by the local utility or plumbing authority performing the system abandonment.

(3) The permitting provisions of paragraph 64E-6.011(2)(a), F.A.C., are not required if a local utility or local plumbing authority performs a system abandonment program which requires the completion of those steps listed in paragraphs 64E-6.011(2)(b), (c), (d), and (e), F.A.C. If the system abandonment is performed by a local utility or local plumbing authority, the local utility or local plumbing authority performing the abandonment program shall maintain a log of all inspections performed and shall forward the log to the County Health Department on a monthly basis.

37. Subsection 381.0061(1), Florida Statutes (2004), authorizes the Department to impose a fine not to exceed \$500.00 for each violation of Section 381.0065, Florida Statutes, and Part III of Chapter 489, Florida Statutes.



38. Florida Administrative Code Rule 64E-6.022, Standards of Practice and Disciplinary Guidelines, provides:

(1) It shall be the responsibility of persons registered under this rule to see that work for which they have contracted and which has been performed by them or under their supervision is carried out in conformance with the requirements of all applicable Florida Statutes and Chapter 64E-6, F.A.C. The following actions by a person included under this rule shall be deemed unethical and subject to penalties as set forth in this section. The penalties listed shall be used as guidelines in disciplinary cases, absent aggravating or mitigating circumstances and subject to other provisions of this section.

(a) Providing contracted services without obtaining registration from the department, failure to obtain a certificate of authorization for a firm which provides contracted services, acting under a name not registered or authorized by the department. First violation, letter of warning or fine up to \$500; repeat violation, \$500 fine, or revocation.

(b) Permit violations.

1. Contractor initiates work to install, modify, or repair a system when no permit has been issued by the department. A permit is issued after construction is started but prior to completion of the contracted work. No inspections are missed. First violation, letter of warning or fine up to \$500; repeat violation, \$500 fine and 90 day suspension or revocation.

2. Contracted work is completed without a permit having been issued, or no permit application is received until after contracted work was completed, resulting in missed inspection or inspections. First

violation, letter of warning or fine up to \$1000; repeat violation, revocation.

(c) Contracting with a delinquent registration. First violation, letter of warning or fine up to \$500; repeat violation, \$500 fine or revocation.

(d) Failure to call for required inspections. First violation, letter of warning or fine up to \$500; repeat violation, letter of warning or fine up to \$500 and 90 day suspension or revocation.

(e) False payment statements which are the result of assessing charges to a customer for work not performed. First violation, letter of warning or fine up to \$500; repeat violation, \$500 fine and one year suspension or revocation.

(f) Failure to reasonably honor a written warranty. First violation, letter of warning or fine up to \$500; repeat violations, \$500 fine and one year suspension or revocation.

(g) Abandoning for 30 consecutive days, without good cause, a project in which the contractor is engaged or under contractual obligation to perform. First violation, letter of warning or fine up to \$500; repeat violation, revocation.

(h) Aiding or abetting evasion of Chapter 489, F.S. First violation, letter of warning or fine up to \$500; repeat violation, \$500 fine and one year suspension or revocation.

(i) Obtaining registration through fraud or misrepresentation. Revocation and \$500 fine.

(j) Convicted or found guilty of a crime relating to contracting. Use penalty for violation most closely resembling the act

underlying the conviction; repeat violation, revocation.

(k) Practicing fraud or deceit, making misleading or untrue representations. First violation, letter of warning or fine up to \$500; repeat violation, revocation.

(l) Gross negligence, incompetence, or misconduct which:

1. Causes no monetary or other harm to a customer, or physical harm to any person. First violation, letter of warning or fine up to \$500; repeat violation, \$500 fine and 90 day suspension or revocation.

2. Causes monetary or other harm to a customer, or physical harm to any person. First violation, letter of warning or fine up to \$500 and 90 day suspension; repeat violation, \$500 fine and revocation.

(m) Operating a seepage disposal service without a valid department operating permit. First violation, letter of warning or fine up to \$500; repeat violation, revocation.

(n) Failure to properly treat or properly dispose of seepage, holding tank waste, portable restroom waste, or food service sludge. First violation, letter of warning or fine up to \$500 per violation of Rule 64E-6.010, F.A.C.; repeat violation, revocation.

(o) Failure to maintain completed records of seepage treatment and disposal activities. First violation, letter of warning or fine up to \$500; repeat violation, \$500 fine and 90 day suspension or revocation.

(p) Installation, modification, or repair of an onsite sewage treatment and disposal system in violation of the standards of Section 381.0065 or 381.00655, F.S., or Chapter 64E-6, F.A.C. First violation, letter of warning or fine up to \$500 per

specific standard violated; repeat violation, 90-day suspension or revocation.

(q) Creation or maintenance of a sanitary nuisance as defined by Section 386.041, F.S. First violation, letter of warning or fine up to \$500; repeat violation, 90-day suspension or revocation.

(r) Falsifying an inspection report or covering a system in violation of the standards of Rule 64E-6.003, F.A.C. First violation, letter of warning or fine to \$500; repeat violation, 90 day suspension of master septic tank contractor privileges or revocation of registration.

(s) Performing service on an onsite sewage disposal system that is clearly not necessary to improve the function or design of the system without notifying the property owner that such work is optional. First violation, letter of warning or fine up to \$500; repeat violation, \$500 fine and one year suspension or revocation.

(t) The absence of any violation from this section shall be viewed as an oversight, and shall not be construed as an indication that no penalty is to be assessed.

(2) Circumstances which shall be considered for the purposes of mitigation or aggravation of penalty shall include the following:

(a) Monetary or other damage to the registrant's customer, in any way associated with the violation, which damage the registrant has not relieved, as of the time the penalty is to be assessed.

(b) Actual job-site violations of this rule or conditions exhibiting gross negligence, incompetence or misconduct by the contractor, which have not been corrected as of the time the penalty is being assessed.

(c) The severity of the offense.

(d) The danger to the public.

(e) The number of repetitions of the offense.

(f) The number of complaints filed against the contractor.

(g) The length of time the contractor has practiced and registration category.

(i) The effect of the penalty upon the contractor's livelihood.

(j) Any efforts at rehabilitation.

(k) Any other mitigating or aggravating circumstances.

(3) As used in this rule, a repeat violation is any violation on which disciplinary action is being taken where the same licensee had previously had disciplinary action taken against him or received a letter of warning in a prior case. This definition applies regardless of the chronological relationship of the violations and regardless of whether the violations are of the same or different subsections of this rule. The penalty given in the above list for repeat violations is intended to apply only to situations where the repeat violation is of a different subsection of this rule than the first violation. Where the repeat violation is the very same type of violation as the first violation, the penalty set out above will generally be increased over what is shown for repeat violations.

(4) Where several of the above violations shall occur in one or several cases being considered together, the penalties shall normally be cumulative and consecutive.

(5) The provisions of this section shall not be construed so as to prohibit civil action or criminal prosecution as provided in Part III of Chapter 489, F.S., and Section 381.0065, F.S., or for a violation of any provision of Part I of Chapter 386, F.S. No provision of this section shall be construed as to limit the ability of the department to enter into binding stipulation with the accused party per subsection 120.57(4), F.S.

39. There are no mitigating circumstances of the Standard of Practice and Disciplinary Guidelines of Florida Administrative Code Rule 64E-6.002.

40. The aggravating circumstances in this proceeding are:

(a) four repetitions of the same offense;

(b) two Administrative Complaints filed against

Respondent;

(c) the penalty for the two initial violations were less than the maximum penalty per violation by rule;

(d) the repeated violation are the very same type of violations as the first violations.

(e) Respondent was paying the first penalty for violations when he committed the same violations a second time,

(f) no efforts at rehabilitation, and

(g) Respondent knew registration was required before engaging septic tank homeowners in contractual relationships for hookup with the city water and sewer system.

Mr. Patterson's argument that his company and his "actual work" at each home site was technically "not abandoning septic tanks" but rather land, yard, and grass care in preparation for and/or after abandonment by someone registered is contrary to undisputed evidence.

41. Pursuant to the rule, the aggravating circumstances surrounding these repeated violations should increase the penalty over what is shown for repeat violations.

42. Relief sought by Respondent in his request for an Administrative Hearing is denied.

#### RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Department of Health enter a final order affirming its January 26, 2005, Order to Cease Operations and imposing a \$1,000.00 fine against Respondent, Keithon M. Patterson.

DONE AND ENTERED this 28th day of July, 2005, in  
Tallahassee, Leon County, Florida.



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FRED L. BUCKINE  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 28th day of July, 2005.

ENDNOTE

1/ Petitioner's Exhibit 1 was the deposition testimony of  
Nicholas Verna taken on May 9, 2005.

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.