

STATE OF FLORIDA
DEPARTMENT OF HEALTH

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Department of Health,
Petitioner,

vs.

Robert J. Hoag,
Respondent.

Rendition no.: DOH-06-0777-FOF-HST
Registration no.: SR0911053
Case no.: 05-4355

FILED
2006 MAY -5 AM 11:20
DIVISION OF
ADMINISTRATIVE
HEARINGS

FINAL ORDER

A recommended order having been received, this matter is before the Department of Health (Department) for disposition. At issue is the citation of the Respondent, a registered septic tank contractor, for two violations of Rule 64E-6.022, F.A.C., **Standards of Practice and Disciplinary Guidelines**. The citation charges two violations, subsections (l) and (q) of the Rule; and assesses a fine of five hundred dollars (\$500) for each violation. The factual basis for the alleged violations is the Respondent's failure to take necessary precautions in replacing a septic tank to avoid the creation of a sanitary nuisance, an open accumulation of raw sewage.

The duty to regulate and register septic tank contractors is given to the Department of Health (hereinafter the Department) by Chapter 489, **Contracting**, Part III, **Septic Tank Contracting**, sections 489.551 through 489.558, Florida Statutes. The Department's regulatory and disciplinary rules for septic tank contractors are found in Chapter 64E-6, Part III, sections 64E-6.019 through 64E-6.023, F.A.C.

The Administrative Law Judge (hereinafter the ALJ) looks to Chapter 386, **Particular Conditions Affecting Public Health**, Part I, **Sanitary Nuisances**, sections 386.01 through 386.051, Florida Statutes, in making his recommendation that the citation at issue herein be dismissed. Pursuant to section 386.03, Florida Statutes, the Department notifies the person creating or maintaining a sanitary nuisance to remove or abate it within a specified time. Failure to timely comply results in liability for the costs incurred by the Department to remove or abate

the nuisance.¹ The ALJ concludes that a registered septic tank contractor cannot be fined for creating a sanitary nuisance without giving the contractor the section 386.03 notice and a specified time within which to abate the nuisance. Counsel for the Department excepts to this conclusion. I concur with counsel. Chapter 386, Part I is applicable to **any person** creating a sanitary nuisance; Chapter 489, Part III is applicable to the regulation and registration of **septic tank contractors**. In this proceeding the issue is discipline of a registered septic tank contractor, not responsibility for the cost of abatement of the sanitary nuisance. Whether the section 386.03 notice was given is irrelevant; thus, the ALJ's recommendation the citation be dismissed is rejected.

As to the findings of fact, counsel excepts to the finding in paragraph 6 that the Respondent asked the occupants of the affected residences to refrain from using their sanitary facilities pending his completion of installation of the new septic tank. The finding is not supported by competent substantial evidence; therefore, the exception is granted.² The remaining facts found by the ALJ constitute a factual basis for the violations charged in the citation; therefore the Respondent is adjudged guilty of each violation.

The entire record of this proceeding has been reviewed pursuant to section 120.57(1)(l), Florida Statutes. The recommended order of February 15, 2006, as modified by this final order, is adopted and incorporated by reference. I conclude mitigation is appropriate considering the Respondent's timely clean-up of the sanitary nuisance.

Based on the foregoing, a fine of five hundred dollars (\$500) is imposed on the Respondent, Robert J. Hoag, for the violation of Rule 64E-6.022(1)(q). As to the violation of Rule 64E-6.022(l), this final order constitutes a letter of warning. Payment in full of the fine is due no later than 30 days after the filing date of this final order. If requested by the Respondent, the Duval County Health Department may authorize payment by up to four equal installment payments over the next four months.

¹ It is noted that a person is subject to criminal prosecution under section 386.051, Florida Statutes, for creating or maintaining a sanitary nuisance.

² The ALJ did not have the benefit of the transcript of the final hearing in preparing his recommended order as it was not ordered until after the filing of the recommended order. The rejected factual finding is asserted by the Respondent in his letter to the ALJ dated February 5, 2006 and filed February 8, 2008, which is in essence, is a plea for mitigation of the penalty.

DONE and ORDERED this 3^d day of May 2006 in Tallahassee, Leon County,
Florida.

M. Rony François, M.D., M.S.P.H., Ph. D.
Secretary, Department of Health

By: Bonita J. Sorensen MD
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:

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Gerald Briggs, Bureau Chief
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✓ Hon. Harry L. Hooper
Administrative Law Judge
Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

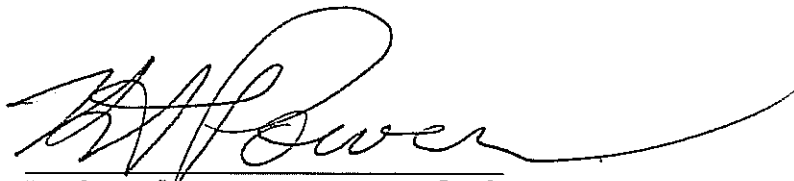
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Duval County Health Department
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FALR

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 4th day of May 2006.

A handwritten signature in black ink, appearing to read "R. Samuel Power", with a long horizontal flourish extending to the right.

R. Samuel Power, Agency Clerk
Department of Health
4052 Bald Cypress Way, bin A02
Tallahassee, Florida 32399-1703
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