

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF ENVIRONMENTAL  
PROTECTION,

Petitioner,

vs.

Case No. 14-4142EF

CLASSIC HOMEBUILDERS  
INCORPORATED,

Respondent.

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SUMMARY FINAL ORDER

Petitioner filed a motion for summary final order based on its contention that there is no genuine issue as to any material fact regarding the Notice of Violation, Orders for Corrective Action and Administrative Penalty Assessment ("NOV") issued against Respondent. No response to the motion was filed by Respondent. An Order to Show Cause was then issued. In its response to the Order to Show Cause, Respondent states that it is financially incapable of defending against Petitioner's enforcement action and will be submitting a re-designed stormwater system for review by Petitioner.

APPEARANCES

For Petitioner: Margaret E. Seward, Esquire  
Department of Environmental Protection  
Mail Station 35  
3900 Commonwealth Boulevard  
Tallahassee, Florida 32399-3000

For Respondent: Gregory D. Smith, Esquire  
Gregory D. Smith, P.A.  
Post Office Box 12853  
Pensacola, Florida 32502

STATEMENT OF THE ISSUES

The issues to be decided in this case are whether Respondent is liable for the violations charged in the NOV, whether Respondent should pay the penalties assessed in the NOV, and whether Respondent should be required to take the corrective actions demanded in the NOV.

FINDINGS OF FACT

1. On August 7, 2014, Petitioner issued the NOV, charging Respondent with failure to maintain its stormwater facility in compliance with its permit and state law. Respondent filed an answer and request for a hearing. The matter was referred to the Division of Administrative Hearings.

2. Petitioner Department of Environmental Protection ("Department") is the state agency having powers and duties related to the regulation of stormwater facilities.

3. Respondent Classic Homebuilders Incorporated is a Florida corporation and holds a General Stormwater Permit issued by the Department for the construction and operation of a stormwater facility at 5100 Terra Lake Circle, Pensacola, Florida.

4. On April 9, 2013, Department staff inspected Respondent's stormwater facility and determined that the ponds do not percolate within 72 hours as required by the permit.

5. On July 23, 2014, Department staff inspected the facility again and determined that the percolation problem had not been corrected. Debris and silt were observed in the stormwater facility.

6. Respondent has not submitted an "as-built" certification.

7. The Department incurred \$500 in expenses associated with its investigation of this matter. That is a reasonable amount.

#### CONCLUSIONS OF LAW

8. The Department may initiate an administrative proceeding to establish liability for violations of the laws the Department administers. § 403.121(2), Fla. Stat. (2014).

9. Because the Department seeks to impose administrative penalties, a final order is issued by the Administrative Law Judge. § 403.121(2)(d), Fla. Stat. (2014).

10. The Department has the burden to prove by a preponderance of the evidence that Respondent is liable for the violations charged in the NOV.

11. A party may move for a summary final order when there is no genuine issue as to any material fact.

§ 120.57(1)(h), Fla. Stat. (2014). The Administrative Law Judge has determined from the pleadings and affidavits that there is no genuine issue as to any material fact.

12. Count I of the NOV charges Respondent with failure to properly maintain and operate a permitted stormwater facility as required by Florida Administrative Code Rules 62-4.160(6) and 62-4.540(12). Respondent is liable under Count I.

13. Section 403.121(4)(b), Florida Statutes, provides that the Department shall assess an administrative penalty of \$4,000 for failure to install, maintain, or use a required pollution control system.

14. Count II of the NOV charges Respondent with failure to timely file an as-built certification as required by rule 62-25.801(2)(e). Respondent is liable under Count II.

15. Section 403.121(4)(f) provides that the Department shall assess an administrative penalty of \$500 for failure to submit required reports.

16. Count III of the NOV seeks reimbursement of the Department's expenses of \$500 for investigating this matter.

17. Section 403.141(1) provides that the Department may recover its reasonable costs and expenses in controlling sources of pollution.

18. The corrective actions demanded in the NOV are reasonable.

DISPOSITION

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

ORDERED that:

1. Respondent shall pay \$4,500 in penalties and reimburse the Department \$500 for investigative expenses, in the manner described in the NOV. The deadline for payment shall be calculated from the date of this Summary Final Order.

2. Respondent shall comply with the Orders for Corrective Actions set forth in the NOV. The deadlines for actions shall be calculated from the date of this Summary Final Order.

DONE AND ORDERED this 30th day of April, 2015, in Tallahassee, Leon County, Florida.



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BRAM D. E. CANTER  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 30th day of April, 2015.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.