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JUL 31 2015

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

JOSEPH MORROW,
Petitioner,

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K. Westray
Kevin Westray, Legal Assistant

v.

Docket No.: OSAH-DPH-SSM-1558056
-69-Howells

GEORGIA DEPARTMENT OF PUBLIC
HEALTH,
Respondent,

INITIAL DECISION

The Petitioner, Joseph Morrow, requested a hearing to contest the decision of the Georgia Department of Public Health (“Department” or “Respondent”) to decertify him as a septic tank contractor. The hearing was held before the undersigned administrative law judge on July 17, 2015. Petitioner appeared *pro se*. The Department was represented by Victoria L. Kizito, Esq. For the reasons set forth below, Respondent’s decision is **AFFIRMED**.

I. FINDINGS OF FACT

1.

Petitioner Joseph Morrow was certified as a septic tank contractor by the Georgia Department of Public Health. (Exhibit R-1; see Testimony of Mr. Terry.)

2.

On-Site Sewage Management Systems

An on-site sewage management system is a wastewater treatment system used to treat wastewater generated by a home, where central public sewage treatment is not available. The system consists of the house plumbing with plumbing vent pipes, a septic tank and a drainfield. The system is “on-site” because the sewage treatment and disposal is accomplished entirely on

the homeowner's property. A system that is not properly functioning can discharge raw sewage containing viruses and bacteria to the surface or into the groundwater. (Testimony of Mr. Terry.)

3.

Wastewater from the house travels to the septic tank. Most of the solids remain in the tank and liquid waste, or black water, is released into the drainfield. The drainfield is generally a series of pipes. There are different types of drainfields. The typical type in Walton County is a chambered system. It consists of trenches with plastic domes installed over the trenches, which create voids in the soil, or chambers, where effluent collects and begins to break down and enters the soil. (Testimony of Mr. Terry.)

4.

Unprocessed sewage contains disease causing organisms. On-site sewage systems are heavily regulated due to the potential health hazards if sewage is not properly processed. (Testimony of Mr. Terry.)

Repairs by Mr. Morrow at 7209 Sunset Blvd.

5.

Ms. Janet Moses, the homeowner of 7209 Sunset Blvd, Loganville, GA 30052, purchased her home on June 8, 2014. When she purchased the home, the toilets functioned and there were no disturbances to the grass or to the yard in the area of the septic system. On about August 1, 2014, she began having trouble with one of the toilets; it did not flush completely. She hired Master Rooter, to repair the problem. On about August 5, 2015, Mr. Morrow and his assistant came to her home. Mr. Morrow was the technician on the job. He and his assistant used a Bobcat to dig up and inspect the septic tank and to dig into the drainfield. Mr. Morrow attached

cleanout pipes to three of the chamber absorption lines in the drainfield and chemically treated the lines. Mr. Morrow also installed a vent pipe to vent gases from the septic system. The vent opening was next to the front door of the house. Ms. Moses paid \$2682.50 for the work. (Testimony of Ms. Moses; Testimony of Mr. Terry; Exhibits R-2, R-5d.)

6.

Mr. Morrow's repair did not fix the problem with Ms. Moses' toilet. Initially, the cleanout pipes installed by Mr. Morrow extended approximately one foot above the level of the soil. Subsequently, the soil in the areas of the pipe installations, as well as the pipes themselves, began to sink. The pipes continued to sink until the caps extended just above the surface of the soil, with one pipe sinking and disappearing completely into the soil. (Testimony of Ms. Moses; Exhibits R-5A, R-5B and R-5C.)

7.

Ms. Moses asked Mr. Morrow to return to her home to discuss his work. When he did, he did not directly answer any of her questions about what work he did and why he did it. Rather, he implied that the pipes sticking out of the ground were to vent the system. (Testimony of Ms. Moses.)

8.

Ms. Moses asked W.L. Quinton Construction, a general construction contractor, to evaluate her non-flushing toilet and to visually inspect the repairs done by Mr. Morrow. W.L. Quinton Construction contacted the Walton County Environmental Health Department to report the problem and to apply for a permit to repair the septic system. (Testimony of Ms. Moses and Mr. Terry.)

9.

On October 21 and 22, 2014, in response to the request by W.L. Quinton Construction, Mr. Jonathan Terry, the Walton County Environmental Health Manager, inspected the repairs to the septic system in Ms. Moses' yard. Mr. Terry is a certified Level 2 Environmental Inspector and an Environmental Supervisor with 13 years of installation and inspection experience. (Testimony of Mr. Terry.)

10.

Mr. Terry used the 2002 On-Site Sewage Management System Inspection Report, which details the installation of the system at issue, to identify the location of the septic tank and four underground chamber absorption lines in the drainfield. (Exhibit R-4; Testimony of Mr. Terry.) Mr. Terry inspected the ground and the three pipes installed into three of the chamber absorption lines. Mr. Terry also probed into the absorption lines. (Testimony of Mr. Terry.)

11.

Mr. Terry found that Mr. Morrow had dug down into the ground and cut holes in the chamber absorption domes to install three pipes (called "cleanout caps" in the Master Rooter receipt). (Testimony of Mr. Terry; Exhibit R-2.) The chamber absorption lines were no longer rigid and had collapsed. The system was no longer functional and required the drainfield to be abandoned and replaced in different location in the yard. Mr. Terry determined that it was Mr. Morrow's installation of the pipes that damaged the chamber absorption lines. Mr. Terry's determination is supported by the fact that the pipes and the surrounding soil sank after the pipes were installed. It is also supported by the fact that Mr. Terry inspected a fourth chamber absorption line in Ms. Moses' yard, which Mr. Morrow did not work on. The fourth line was rigid, intact and not collapsed. (Testimony of Mr. Terry.)

Failure to Apply for a Permit

12.

According to Mr. Terry, a permit is required any time a component is added to a septic system or a part of the system is changed. Mr. Morrow did not apply to Walton County for a permit to perform repair work on Ms. Moses' septic system. (Testimony of Mr. Terry; Exhibit R-3.)

Faulty Work and Workmanship

13.

Mr. Terry's inspection revealed a number of faults with Mr. Morrow's work. As set out in Paragraph #11 above, Mr. Terry found that the installation of the cleanout pipes damaged the drainfield to the extent that the drainfield had to be abandoned and replaced in another location in the yard. Further, installation of the cleanout pipes served no useful purpose. (Testimony of Mr. Terry.) Mr. Terry noted that, according to Mr. Morrow's work invoice, Mr. Morrow used the pipes he installed to chemically treat the drainfield. (Exhibit R-2.) The Rules of the Department of Public Health for On-Site Sewage Management Systems prohibit the use of strong chemicals. Specifically, Rule 511-3-1-.17(3) provides as follows: "Additives: No strong bases, acids, or organic solvents shall be used in the operation of an on-site sewage management system." Page L-1 of the referenced Manual states that, [c]hemical or biological additives are not a substitute for pumping [and]. . . may severely damage the soil structure" (Exhibit R-3, at L1.) Consistent with his past inspections where chemicals have been used, Mr. Terry believes the chemical treatment likely contributed to the collapse of the drainfield chambers and damage of the drainfield system. Furthermore, Mr. Terry concluded that there is no other useful purpose for the pipes; this kind of system does not require pipes to inspect or to vent the drainfield. (Testimony of Mr. Terry.)

14.

Mr. Terry found further faults in Mr. Morrow's work and defects in his workmanship. According to Mr. Terry, conveyance piping connections must be glued. The pipe components were not glued and Mr. Terry was able to disassemble them with his hands. Further, Mr. Morrow installed a vent pipe to vent septic gases. The vent opening was on the ground next to Ms. Moses' front door. (Testimony of Mr. Terry; Exhibit R-5D.) Mr. Terry found that there was no need for this vent. Moreover, even if the additional vent had been proper, the standard design for the venting of sewer gases is to release the gases above the sewer's roof so that the strong odors are carried up into the atmosphere. Venting on the ground by the house and not using glue did not meet acceptable plumbing standards. Based on the results of his inspection, Mr. Terry opined that Mr. Morrow's work was substandard. (Testimony of Mr. Terry.)

Failure to Request and Inspection

15.

Mr. Morrow did not request an inspection of his work by Walton County after the work was completed. (Testimony of Mr. Terry.)

Department's Notice of Decision to Decertify Petitioner

16.

Mr. Terry notified the State Office of the Department of Public Health, Environmental Health Section of Mr. Morrow's failure to seek a permit and inspection, the Walton County Magistrate Court disposition for failure to seek a permit,¹ and the results of his inspection of the septic system at 7209 Sunset Blvd. (Testimony of Mr. Terry.) On April 16, 2015, Mr. Chris Kumnick, the Land Use Program Director of the Georgia Department of Public Health, sent Mr.

¹ After a bench trial, on March 3, 2015, the Magistrate Court of Walton County found Petitioner guilty of installing pipes onto septic lines without a permit. Petitioner was sentenced to 60 days in the Walton County Jail, but the sentence was suspended upon his payment of a \$545.00 fine on or before April 10, 2015. (Ex. R-6.)

Morrow a notice of the Department's decision to decertify Mr. Morrow as a septic tank contractor. The letter enclosed documentation of the practices at issue and cited the following reasons for decertification pursuant to the Decertification Protocol in the DPH Manual for Onsite Sewage Management Systems, Section N(6):

1. Repairing an onsite sewage management system without a permit or inspection.
2. Evidence of questionable business practices.

(Exhibit R-1.) Petitioner appealed the Department's decision.

II. CONCLUSIONS OF LAW

1.

Respondent seeks to decertify Petitioner as a septic tank contractor. In essence, Respondent is seeking the revocation of Petitioner's septic tank contractor certificate. Accordingly, Respondent bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(1)(a). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21.

2.

In Georgia, prior to making a repair or addition to an existing septic tank system, septic tank contractors must obtain a permit. Ga. Comp. R. & Regs. 511-3-1-.03(2) and -.03(2)(c). Additionally, once the work is complete, it must be inspected. Ga. Comp. R. & Regs. 511-3-1-.03(2)(c).

3.

Rule 511-3-1-1.16(1)(b) requires the Department to publish a protocol for decertification of septic tank contractors and other personnel ("Decertification Protocol") in *the Manual for On-*

Site Sewage Management Systems (“Manual”). The Decertification Protocol is located on Page N-6 of the Manual.²

The Decertification Protocol for Septic Tank Contractors reads as follows:

Grounds for Decertification of Septic Tank Contractors/Companies, Inspection Personnel, Pumpers, Soil Classifiers and Maintenance Personnel

(1) The Department may take disciplinary action including suspension and revocation of an individual or company’s certification after a notice and opportunity for hearing pursuant to the Georgia Administrative Procedure Act O.C.G.A. Chapter 50-13, as amended, if the Department finds such individual has failed to comply or maintain compliance with O.C.G.A. 31-2, the DHR Rules and Regulations Chapter 290-5-26, this protocol, or has committed any of the following acts:

- (a) Deliberate misrepresentation and/or falsification of information on the application for certification[;]
- (b) Pending judicial disciplinary action(s) relevant to the on-site sewage industry;
- (c) Judicial judgments against the individual or company holding certification;
- (d) Any act or omission that is indicative of unethical behavior or practices;
- (e) Conviction of company’s principal in any court of any felony or other criminal offense; or
- (f) Evidence of questionable business practices.

4.

The Decertification Protocol allows for revocation of a septic tank contractor’s certification for failure to comply with the Rules and Regulations, *or, alternatively*, if the individual has committed one of the listed acts, in this case, evidence of questionable business practices.

² The Decertification Protocol for Septic Tank Contractors is contained in the Manual at page N-6, but its heading and the body of the protocol include incorrect citations to Chapter 290-5-26. The Department’s rules currently appear at Ga. Comp. R. & Regs. 511-3-1-.01 through 511-3-1-.11.

Violations

5.

There is sufficient evidence to decertify Petitioner as a septic tank contractor. Mr. Morrow's failure to request a permit for the repair of the septic system at 7209 Sunset Blvd, and his failure to request an inspection of his work after it was completed are both failures to comply with the applicable Rules and Regulations for on-site sewage management systems and are each sufficient grounds for decertification. Ga. Comp. R. & Regs. 511-3-1-.16(1)(b); Manual, at N-6.

6.

Furthermore, there is sufficient evidence to show that Petitioner engaged in a number of questionable business practices including unnecessary work. Specifically, Mr. Morrow charged Ms. Moses \$2682.50 to install cleanout pipes to chemically treat her drainfield. The evidence shows that the installation of the pipes for the purpose of inspecting or venting the drainfield was unnecessary, and was improper for the use of chemical treatment. The Manual deters the use of chemical additives and prohibits the use of strong additives because they lack effectiveness and are potentially damaging to the system. The chemical treatment did not remedy the problem with the toilet and likely contributed to the damage and destruction of the drainfield chamber absorption domes. Mr. Morrow returned at Ms. Moses' request to talk to her about the repairs, but he did not adequately answer any of her questions about what he did or why he did it. Ga. Comp. R. & Regs. 511-3-1-.16(1)(b); Manual, at N-6.

7.

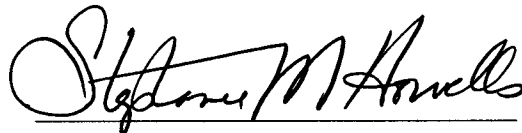
As a result of Mr. Morrow's installation of the cleanout pipes into the chamber absorption domes, the absorption domes collapsed. The ground around the cleanout pipes sank and the pipes themselves sank approximately one foot, with one of the pipes disappearing into

the ground. The unnecessary work damaged the system to the extent that a new drainfield had to be installed at a new location in the yard. Finally, Mr. Morrow's work did not meet acceptable plumbing standards. Specifically, he vented septic gases on the ground level next to Ms. Moses' front door. He also failed to glue sewer pipes.

III. ORDER

For the above and foregoing reasons, the undersigned concludes that Respondent presented sufficient evidence to decertify Petitioner as a septic tank contractor. Accordingly, Respondent's decision to decertify Petitioner is hereby **AFFIRMED**.

SO ORDERED, this 31st day of July, 2015.



STEPHANIE M. HOWELLS

Administrative Law Judge