

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

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| DEPARTMENT OF ENVIRONMENTAL PROTECTION, |) | |
| |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | OGC CASE NO. 22-2028 |
| |) | DOAH CASE NO. 23-2456 |
| JAMES C. NASSEF AND LEZLIE E. NASSEF, |) | |
| |) | |
| Respondents. |) | |
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FINAL ORDER

An Administrative Law Judge (ALJ) with the Division of Administrative Hearings (DOAH) on December 18, 2023, submitted a Recommended Order (RO) to the Department of Environmental Protection (DEP or Department) in the above-captioned administrative proceeding. A copy of the RO is attached hereto as Exhibit A. Neither party filed exceptions to the ALJ’s RO.

This matter is now before the Secretary of the Department for final agency action.

BACKGROUND

On May 10, 2022, the Department of Health (DOH) issued a Citation¹ to James C. Nassef and Lezlie E. Nassef (the Nassefs) imposing \$1,500.00 in fines for violations of section

¹ As of July 1, 2021, DEP took over for DOH as the agency enforcing section 381.0065, Florida Statutes, including enforcement for violations of that statute, other provisions of chapter 381, Florida Statutes, and any rule adopted thereunder related to the regulation of onsite sewage treatment and disposal systems. Ch. 2020-150, § 7, Laws of Fla. The DOH rules in chapter 62E-6, Florida Administrative Code, were transferred to DEP chapter 62-6, Florida Administrative Code, in 2021 based on the statutory authority in Chapter 2020-150, § 7, Laws of Florida.

381.0065, Florida Statutes, Chapter 62-6, Florida Administrative Code,² the Standards for Onsite Sewage Treatment and Disposal Systems (OSTDS), and Chapter 386, Part I, Florida Statutes, pertaining to a sanitary nuisance on their property at 17851 Oak Creek Road, Alva, Florida 33920 (Property). Respondent James C. Nassef (Mr. Nassef) timely requested an administrative hearing to contest the Citation,³ and the matter was forwarded to DOAH on June 28, 2023. (RO p. 2).

The ALJ held the final hearing on September 7, 2023. (RO p. 2). DEP presented the testimony of Conner Biro, Nathan Smith, and Mr. Nassef. DEP's Exhibits 1 through 5 were admitted in evidence. Mr. Nassef testified on his own behalf and presented no exhibits at the final hearing. (RO p. 2).

DEP filed its Proposed Recommended Order on November 20, 2023, which was considered by the ALJ in the drafting of her RO. The Respondent Mr. Nassef did not file a Proposed Recommended Order. (RO p. 3).

SUMMARY OF THE RECOMMENDED ORDER

In the RO, the ALJ recommended that the Department of Environmental Protection "issue a final order finding Respondents in violation of the statutes and rules set forth in the Citation, ordering the corrective actions set forth in the Citation, and imposing fines in the amount [of] \$1,500.00." (RO p. 9). In doing so, the ALJ found that DEP proved by clear and convincing evidence that the Respondents James and Lezlie Nassef: (1) constructed an onsite sewage treatment and disposal system on their Property for their recreational vehicle (RV)

² As a result of the transfer of the Onsite Sewage Treatment and Disposal Systems Program from the Department of Health, Chapter 64E-6 was transferred to the Department of Environmental Protection in its entirety and renumbered as chapter 62-6, Florida Administrative Code.

³ Respondent Lezlie Nassef did not request a hearing contesting the Citation and did not appear or participate in the final hearing.

without obtaining a permit in violation of rule 62-6.003(1), Florida Administrative Code, (2) covered an onsite sewage treatment and disposal system without getting it inspected by DEP or a Master Septic Contractor to determine compliance with construction permit standards in violation of rule 62-6.003(3), Florida Administrative Code, and (3) improperly installed and maintained an onsite sewage treatment and disposal system, creating and maintaining a sanitary nuisance in violation of rule 62-6.005, Florida Administrative Code. The Citation imposed a \$500.00 administrative fine for each violation, for a total fine of \$1,500.00. The Citation also required the Nassefs to take corrective actions to: (1) immediately cease and desist discharging sewage from the RV into the unpermitted septic tank, (2) have the RV effluent line properly sealed and ensure that all effluent from the RV be properly disposed within 24 hours of receipt of the Citation, and (3) apply for an engineer designed septic system permit or a modified permit from DEP within 5 days of receipt of the Citation.

CONCLUSION

The case law of Florida holds that parties to formal administrative proceedings must alert reviewing agencies to any perceived defects in DOAH hearing procedures or in the findings of fact of ALJs by filing exceptions to DOAH recommended orders. *See, e.g., Comm'n on Ethics v. Barker*, 677 So. 2d 254, 256 (Fla. 1996); *Henderson v. Dep't of Health, Bd. of Nursing*, 954 So. 2d 77, 81 (Fla. 5th DCA 2007); *Fla. Dep't of Corr. v. Bradley*, 510 So. 2d 1122, 1124 (Fla. 1st DCA 1987). Having filed no exceptions to any findings of fact the parties “[have] thereby expressed [their] agreement with, or at least waived any objection to, those findings of fact.” *Env't Coal. of Fla., Inc. v. Broward Cnty.*, 586 So. 2d 1212, 1213 (Fla. 1st DCA 1991); *see also Colonnade Med. Ctr., Inc. v. State of Fla., Agency for Health Care Admin.*, 847 So. 2d 540, 542 (Fla. 4th DCA 2003). However, even when exceptions are not filed, an agency head reviewing a

recommended order is free to modify or reject any erroneous conclusions of law over which the agency has substantive jurisdiction. *See* § 120.57(1)(l), Fla. Stat. (2023); *Barfield v. Dep't of Health*, 805 So. 2d 1008, 1012 (Fla. 1st DCA 2001); *Fla. Public Emp. Council, 79 v. Daniels*, 646 So. 2d 813, 816 (Fla. 1st DCA 1994).

In this case, no party filed any exceptions to the RO objecting to the ALJ's findings, conclusions of law, recommendations, or to the DOAH hearing procedures. The Department concurs with the ALJ's legal conclusions and recommendations.

Having considered the applicable law and standards of review in light of the findings and conclusions set forth in the Recommended Order, and being otherwise duly advised, it is

ORDERED that:

A. The Recommended Order (Exhibit A) is adopted and incorporated by reference herein.

B. The Citation issued to James C. Nassef and Lezlie E. Nassef is hereby APPROVED.

C. The Nassefs shall immediately cease and desist discharging sewage from their RV into the unpermitted septic tank.

D. The Nassefs shall have the RV effluent line properly sealed and ensure that all effluent from the RV is properly disposed within 24 hours of receipt of this Final Order.

E. If the RV is approved by the local building department, then the Nassefs shall apply for an engineer designed septic system permit or a modification permit from the Department of Environmental Protection within 5 days of receipt of this Final Order.

F. Within 21 days of receipt of this Final Order, James C. Nassef and Lezlie E. Nassef shall pay the Department the sum of \$1,500.00 for the violations at 17851 Oak Creek

Road, Alva, Florida 33920. Payment shall be made in the form of a cashier's check, certified check, or money order made payable to the Florida Department of Environmental Protection, and reference thereon OGC No. 22-2028. The check or money order shall be sent to the following address: Florida Department of Environmental Protection, Onsite Sewage Program, Attention: Eb Roeder, 2600 Blair Stone Road, M.S. 3596, Tallahassee, Florida 32399-2400.

JUDICIAL REVIEW

Any party to this proceeding has the right to seek judicial review of the Final Order pursuant to Section 120.68, Florida Statutes, by the filing of a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the clerk of the Department in the Office of General Counsel, 3900 Commonwealth Boulevard, M.S. 35, Tallahassee, Florida 32399-3000; and by filing a copy of the Notice of Appeal accompanied by the applicable filing fees with the

appropriate District Court of Appeal. The Notice of Appeal must be filed within 30 days from the date this Final Order is filed with the clerk of the Department.

DONE AND ORDERED this 29th day of February 2024, in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



SHAWN HAMILTON
Secretary

Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

FILED ON THIS DATE PURSUANT TO § 120.52,
FLORIDA STATUTES, WITH THE DESIGNATED
DEPARTMENT CLERK, RECEIPT OF WHICH IS
HEREBY ACKNOWLEDGED.


CLERK

2/29/24
DATE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Final Order has been sent by
electronic mail to:

James C. Nassef, *pro se*
17851 Oak Creek Road
Alva, FL 33920
jameynassef@gmail.com

Jay Patrick Reynolds, Esquire
Department of Environmental Protection
3900 Commonwealth Blvd., M.S. 35
Tallahassee, FL 32399-3000
Patrick.Reynolds@FloridaDEP.gov

this 29th day of February 2024.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION


STACEY D. COWLEY
Administrative Law Counsel

3900 Commonwealth Blvd., M.S. 35
Tallahassee, FL 32399-3000
email Stacey.Cowley@FloridaDEP.gov

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Petitioner,

vs.

Case No. 23-2456

JAMES C. NASSEF AND LEZLIE E. NASSEF,

Respondents.

_____ /

RECOMMENDED ORDER

Pursuant to notice, a final hearing in this case was conducted before Administrative Law Judge ("ALJ") Mary Li Creasy of the Division of Administrative Hearings ("DOAH") by Zoom conference on September 7, 2023.

APPEARANCES

For Petitioner: Jay Patrick Reynolds, Esquire
Department of Environmental Protection
3900 Commonwealth Boulevard, Mail Station 35
Tallahassee, Florida 32399-3000

For Respondents: James C. Nassef, pro se
17851 Oak Creek Road
Alva, Florida 33920

STATEMENT OF THE ISSUES

Whether Respondents installed and maintained a septic system, without a permit and inspection, in violation of the Florida Statutes and Administrative Code, as alleged in the Citation for Violation ("Citation") issued on May 10, 2022; and if so, what is the appropriate remedy.

Exhibit A

PRELIMINARY STATEMENT

On May 10, 2022, the Department of Health ("DOH")¹ issued a Citation to Respondents imposing \$1,500.00 in fines for violations of section 381.0065, Florida Statutes; Florida Administrative Code Chapter 62-6,² the Standards for Onsite Sewage Treatment and Disposal Systems ("OSTDS"); and chapter 386, Part I, Florida Statutes, pertaining to sanitary nuisances. Respondent James C. Nassef ("Mr. Nassef") timely requested an administrative hearing to contest the Citation,³ and the matter was forwarded to DOAH on June 28, 2023. The matter was set for final hearing on August 17, 2023. The final hearing was subsequently rescheduled by agreement of the parties to September 7, 2023.

Petitioner Department of Environmental Protection ("Department") presented the testimony of Connor Biro, Environmental Specialist III with DOH and a Certified Environmental Health Professional ("CEHP"); Nathan Smith, Environmental Specialist III with DOH and a CEHP; and Mr. Nassef, who also testified on his own behalf. The Department's Exhibits 1 through 5 were admitted in evidence. Mr. Nassef presented no exhibits at the final hearing.

The one-volume Transcript was filed on October 2, 2023. The Department requested and was granted additional time within which to file proposed

¹ On July 1, 2021, regulation of Onsite Sewage Treatment and Disposal Systems and the Onsite Sewage Treatment and Disposal Systems Program were transferred, by a type two transfer as defined in section 20.06(2), Florida Statutes, from DOH to Petitioner Department of Environmental Protection, pursuant to chapter 2020-150, Laws of Florida, known as the Clean Waterways Act.

² As a result of the transfer, Florida Administrative Code Chapter 64E-6 was transferred in its entirety to Petitioner Department of Environmental Protection and renumbered as chapter 62-6.

³ Respondent Lezlie Nassef did not request a hearing contesting the Citation and did not appear or participate in the final hearing.

recommended orders. The Department timely filed a Proposed Recommended Order, which was considered in the drafting of this Recommended Order. Respondent did not file a proposed recommended order. Except as otherwise indicated, citations to Florida Statutes refer to the version in effect at the time of the alleged violations.

FINDINGS OF FACT

1. The Department is the state agency responsible for regulating onsite sewage treatment and disposal systems. The Department administers and enforces the provisions of chapter 381, pertaining to the regulation of septic systems, and the rules promulgated thereunder in chapter 62-6, the Standards for OSTDS. As part of this regulatory authority, the Department may issue citations; enforce citations issued by other regulatory agencies, such as DOH in Lee County; and impose fines.

2. Respondents Mr. Nassef and Lezlie Nassef ("Ms. Nassef") own a home located at 17851 Oak Creek Road, Alva, Florida 33920 ("Property"). Respondents purchased their home in October of 2020. The Property includes a recreational vehicle ("RV") parked on the lot.

3. Sometime in January or February of 2022, after clearing vegetation around the RV, Mr. Nassef discovered a plastic septic tank that was unstable in the ground. Concerned about sanitation issues for himself and his neighbors, Mr. Nassef installed a new 550-gallon concrete septic tank in the back of his property to service the RV. Mr. Nassef testified that he replaced an existing plastic septic tank with the concrete 550-gallon septic tank and connected it to a preexisting drain field ("septic system"). He assumed this septic system was previously permitted.

4. Mr. Nassef did the work himself and did not obtain a permit before or since the installation of the new septic tank.

5. On February 2, 2022, DOH received an anonymous complaint that there was an RV on Respondents' Property with a connected sewage pipe running into the well on the neighbor's property.

6. DOH sent an inspector to visually inspect the Property. He did not find an effluent (waste) pipe connected to the RV that was into the ground in the neighbor's well. The inspector observed an effluent pipe that was connected to the RV, it was open, and the cap to the effluent pipe was dangling below the pipe.

7. The DOH investigator took photographs, and a notice to abate was issued to Respondents. They were advised in writing that the pipe could result in effluent being discharged from the RV onto the ground.

8. On May 2, 2022, Connor Biro ("Mr. Biro"), an Environmental Specialist III with DOH and a CEHP, performed a follow-up inspection on the Property to determine if the RV effluent pipe had been capped and properly sealed so that no untreated sewage was being discharged on the ground. Mr. Biro observed that a new septic tank had been installed in the back of the Property and that the RV had an effluent line hooked up going into the septic tank. Mr. Biro estimated the size of Respondents' new tank to be approximately 450 gallons, well below the minimum required septic tank size for a new installation for an RV of 900 gallons.

9. After checking the Environmental Health Database and finding that no permit had been applied for or issued for work on Respondents' septic system, Mr. Biro issued a Citation to Respondents.

10. The Citation identified three rule violations as follows:

62-003(1): 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.

62-6.003(3): A system shall be inspected by the Department of a Master Septic Contractor to

determine compliance with construction permit standards prior to final covering of the system.

62-6.005: Maintaining a sanitary nuisance. Improperly built, installed, or maintained septic system.

11. The Citation seeks to impose a \$500.00 fine for each violation for a total of \$1,500.00.

12. Ms. Nassef received and signed for the Citation on May 11, 2022. The Citation required Respondents to apply for "a septic system permit, or modification permit with the Department of Health within 5 days of receipt of this notice."

13. Mr. Biro subsequently went back to the Property on November 15, 2022, and observed the RV still hooked up to the septic tank.

14. Nathan Smith, an Environmental Specialist III with DOH and a CEHP, conducted follow-up inspections on May 27, 2022, and June 27, 2023, and observed that the RV was still in the back of the Property and "still hooked up to a concrete septic tank, and that was draining into a drain field." Mr. Smith confirmed in the Environmental Health Database that no permits had been applied for or issued for the septic system on Respondents' Property.

15. Mr. Smith explained that homeowners must have permitted and visually inspected septic systems for public health and safety reasons, including: making sure the setback is sufficient to prevent drainage into surface water, retention areas, or neighboring wells; determining whether the septic tank and drainage fields are the appropriate size for the intended use; and to make sure the field is above the wet season water table.

16. At final hearing, Mr. Nassef argued that DOH had no right to come unannounced onto his property to conduct multiple inspections. Further, he sought, through public records requests, information about the inspections which he did not receive, and he had minimal communication from DOH regarding his alternative recourses despite repeated attempts to get answers

on what to do. However, he also admitted that, to date, he had not yet applied for a permit to either abandon the new septic system, or sought a permit to have it inspected. He admitted he was not in compliance and committed the cited violations.

17. The Department demonstrated by clear and convincing evidence that Respondents committed the cited violations.

CONCLUSIONS OF LAW

18. DOAH has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569, .57, Fla. Stat.

19. The Department is the state agency charged with regulating OSTDS. § 381.0065(2)(m), (3), Fla. Stat. The Department is authorized to adopt rules that, among other things, set forth requirements for permitting and maintaining such systems. § 381.0065(3)(a), Fla. Stat.

20. Proper management of onsite sewage treatment and disposal systems is paramount to the health, safety, and welfare of the public. § 381.0065(1)(a), Fla. Stat. Where a publicly owned or investor-owned sewerage system is not available, the Department shall issue permits for the construction, installation, modification, abandonment, or repair of onsite sewage treatment and disposal systems under conditions as described in this section and rules adopted under this section. § 381.0065(1)(b), Fla. Stat.

21. Section 381.0065(4), entitled "Permits; Installation; Conditions," states:

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.

22. Pursuant to its authority under section 381.0065(3)(a), the Department adopted chapter 62-6, the Standards for OSTDS. Rule 62-6.003 provides, in pertinent part:

(1) System Construction Permit – No portion of an onsite sewage treatment and disposal system shall be installed, repaired, altered, modified, abandoned or replaced until a construction permit has been issued on Form DEP 4016, 08/09, Construction Permit, herein incorporated by reference.

* * *

(3) Repair Inspections – A system repair shall be inspected by the Department or a master septic tank contractor to determine compliance with construction permit standards prior to final covering of the system.

23. Section 381.0065(5), entitled "Enforcement; Right of Entry; Citations," provides, in pertinent part:

(a) Department personnel who have reason to believe noncompliance exists, may at any reasonable time, enter the premises permitted under ss. 381.0065-381.0066, or the business premises of any septic tank contractor or master septic tank contractor registered under part III of chapter 489, or any premises that the department has reason to believe is being operated or maintained not in compliance, to determine compliance with the provisions of this section, part I of chapter 386, or part III of chapter 489 or rules or standards adopted under ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489. As used in this paragraph, the term "premises" does not include a residence or private building. To gain entry to a residence or private building, the department must obtain permission from the owner or occupant or secure an inspection warrant from a court of competent jurisdiction.

(b)1. The department may issue citations that may contain an order of correction or an order to pay a fine, or both, for violations of ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 or the rules adopted by the department, when a violation of these sections or rules is enforceable by an administrative or civil

remedy, or when a violation of these sections or rules is a misdemeanor of the second degree. A citation issued under ss. 381.0065-381.0067, part I of chapter 386, or part III of chapter 489 constitutes a notice of proposed agency action.

2. A citation must be in writing and must describe the particular nature of the violation, including specific reference to the provisions of law or rule allegedly violated.

3. The fines imposed by a citation issued by the department may not exceed \$500 for each violation. Each day the violation exists constitutes a separate violation for which a citation may be issued.

* * *

5. The department may reduce or waive the fine imposed by the citation. In determining whether to reduce or waive the fine, the department must consider the gravity of the violation, the person's attempts at correcting the violation, and the person's history of previous violations including violations for which enforcement actions were taken under ss. 381.0065-381.0067, part I of chapter 386, part III of chapter 489, or other provisions of law or rule.

24. Section 386.041(1)(b), entitled "Nuisances injurious to health," states:

(1) The following conditions existing, permitted, maintained, kept, or caused by any individual, municipal organization, or corporation, governmental or private, shall constitute prima facie evidence of maintaining a nuisance injurious to health:

* * *

(b) Improperly built or maintained septic tanks, water closets, or privies.

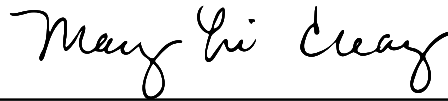
25. The Department has the burden of proving, by clear and convincing evidence, the allegations against Respondents. § 120.57(1)(j), Fla. Stat.; *Dep't of Banking & Fin., Div. of Sec. & Inv. Prot. v. Osborne Stern & Co.*, 670 So. 2d 932 (Fla. 1996).

26. Mr. Nassef admitted to installing a new 550-gallon concrete septic tank without a permit in the back of his Property in January or February of 2022. Mr. Nassef also admitted that he has not applied for or received a permit since the installation of the new septic tank. Mr. Nassef has not requested that the Department reduce or waive the fine imposed by the Citation and has not corrected the violations.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Environmental Protection issue a final order finding Respondents in violation of the statutes and rules set forth in the Citation, ordering the corrective actions set forth in the Citation, and imposing fines in the amount \$1,500.00.

DONE AND ENTERED this 18th day of December, 2023, in Tampa, Hillsborough County, Florida.



MARY LI CREASY
Administrative Law Judge
DOAH Tampa Office

Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 18th day of December, 2023.

COPIES FURNISHED:

James C. Nassef
(eServed)

Jay Patrick Reynolds, Esquire
(eServed)

Lea Crandall, Agency Clerk
(eServed)

Justin G. Wolfe, General Counsel
(eServed)

Shawn Hamilton, Secretary
(eServed)

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.