

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO, *ex rel.*
ATTORNEY GENERAL OF OHIO,

Plaintiff

v.

TRUMBULL COUNTY
BOARD OF HEALTH *et al.*

Defendants.

CASE NO. 2006 CV 2248

JUDGE LOGAN

AMENDED CONSENT ORDER

A Complaint in the above-captioned matter was filed on August 28, 2006, and the Plaintiff State of Ohio by its Attorney General (hereinafter "Plaintiff") and Defendant Trumbull County Board of Health (hereinafter "Defendant") consented to the entry of the Order by the Court on the same date. Subsequent to the entry of the Consent Order, new filtering technologies became available for usage on home sewage system which could be substituted for sand filters which are required to be used pursuant to Paragraph 6, part C(iii) of the Consent Order. The Parties agree that amending this Consent Order to allow this additional technology to be available for use in Trumbull County would be beneficial to the County's residents. Nothing in this Amended Consent Order releases the Defendant Trumbull County Board of Health any of its obligations under the Consent Order entered by the Court on September 1, 2006.

NOW THEREFORE, without trial of any issue of fact or law, and upon consent of the parties to this Amended Consent Order, it is hereby ORDERED, ADJUDGED AND DECREED that the Consent Order entered by the Court on September 1, 2006 shall be amended as follows:

V. PERMANENT INJUNCTION

6. Defendants are hereby permanently enjoined and immediately ordered as follows:

- A. Defendants are permanently enjoined and ordered to immediately comply with the requirements of rules adopted pursuant to R.C. §3701.34 governing household sewage-disposal systems, including but not limited to OAC §§3701-29-01 to 3701-29-21 or subsequent State rules governing household sewage-disposal systems.
- B. To the extent that Defendants have adopted or in the future adopt or amend their local regulations pursuant to R.C. §3709.21 concerning the regulation of HSDSs, such regulations shall be as stringent as the requirements of OAC §§3701-29-01 to 3709-29-21 or subsequent rules amending or replacing these provisions. This paragraph does not limit Defendants from adopting local regulations that are more stringent than the requirements of OAC §§3701-29-01 to 3709-29-21 or subsequent rules amending or replacing these provisions. Defendants shall provide Ohio EPA a copy of any changes to their local regulations within ten (10) days of the adoption of the local regulation by Defendants.
- C. Defendants shall not issue any permit for the installation of an off-lot discharging HSDS unless such system is in full compliance

with OAC §§3701-29-01 to 3701-29-21 or subsequent rules amending or replacing those provisions.

i. For any proposed system that would serve as a replacement system for any existing HSDS, no off-lot discharging HSDS shall be permitted where a public sewer system is accessible to the property, or where it is possible to install an on-lot discharging HSDS in compliance with OAC §§3701-29-01 to 3701-29-21 where no public sewer system is accessible to the property. In regard to any property with an existing HSDS which is within 200 feet of an existing sanitary sewer line and where the sanitary sewer line is designed to be able to provide service to the property, Defendants may not grant a variance which would allow the property owner to continue to maintain or operate the HSDS. For any proposed off-lot discharging HSDS serving as a replacement system, no permit shall be issued unless the applicant shows that the proposed system design will meet effluent limits acceptable to the Ohio (daily maximum effluent limitations of 15 mg/L CBOD₅, 18 mg/L Total Suspended Solids (“TSS”), 2.0 mg/L Ammonia (NH₃) for summer (May 1 through October 31), 4.5 mg/L Ammonia (NH₃) for winter (November 1 through April 30) and 2000 #/100 ml Fecal Coliform (May 1 through October 31) or subsequent effluent limitations which may be adopted by Ohio EPA).

ii. For any proposed off-lot discharging system that would serve a lot upon which no previous permitted HSDS has existed, no permit shall be issued unless discharge from the proposed system has been authorized pursuant to a NPDES permit issued by Ohio EPA or the United States Environmental Protection Agency and the proposed HSDS is designed in a manner which complies with recommendations of ODH's Technical Advisory Committee. Until the said NPDES permit is issued as a final action of the Director, Defendants will continue to require that discharge from any such proposed HSDS meet or exceed ODH standards as well as the effluent limitations in paragraph V.6.C.i. above.

iii. Before Defendants approve any off-lot discharging HSDS, whether for an existing lot or for a new lot, the system must include at least the following components: a trash trap, an aerobic treatment unit, a sand filter, and a disinfection device (either ultraviolet light or chlorine); the permit applicant also must agree to install any additional component required by Ohio EPA. **In lieu of a sand filter, tertiary filtration devices can be substituted which are certified by the manufacturer to meet or exceed the performance of a sand filter, which conforms to the requirements of Ohio Administrative Code 3701-29-09 or 3701-29-14. Such manufacturer certifications shall be based**

upon accepted engineering practices and guidelines established by the Defendant.

- D. Defendants shall not approve any application to subdivide property which would result in any use of off-lot discharging HSDSs, would result in any discharges of wastewater to the surface of land, or would result in any violations of any provision of OAC §3701-29-03 or subsequent state rules governing the approval of the subdividing of property by local health districts or boards of health.
- E. Effective upon entry of this Consent Order by the Court, Defendants shall maintain their existing Permit to Operate Program and shall ensure that their household sewage treatment system program complies with applicable provisions of state law. Within thirty days of the effective date of this order, Defendants shall provide to Ohio EPA a copy of Defendants' written protocols that document their existing Permit to Operate Program. Defendant shall provide Ohio EPA copies of any subsequent changes to these protocols within thirty days of the Defendants adoption of any change.
- F. Defendants shall make available yearly to the public on or before March 31 of each year for ten (10) years from date of the entry of this Order, a written assessment of the Defendants' household sewage-disposal program for the prior year. This assessment shall

provide an evaluation of the status and effectiveness of the Defendants' household sewage disposal program, including information on the number and types of permits issued, number of inspections conducted by Defendants, and number and locations of violations found by Defendant. At minimum, Defendants shall provide notice to the public at the annual Trumbull County Health District Advisory Council meeting held in March, of the availability of the annual report. Defendants shall provide a copy of the report to Ohio EPA by March 31 of each year.

XI. AUTHORITY TO ENTER INTO THE AMENDED CONSENT ORDER

13. Each signatory for Defendants represents and warrants that he or she has been duly authorized to sign this document and to so bind the Defendants to all terms and conditions thereof.

XII. ENTRY OF AMENDED CONSENT ORDER AND FINAL JUDGMENT BY CLERK

14. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Amended Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

IT IS SO ORDERED.

June 6, 2008
DATE

Andrew D. Logan
JUDGE LOGAN
COURT OF COMMON PLEAS,
TRUMBULL COUNTY

APPROVED:
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*Counsel for Defendants Trumbull
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FILED
COURT OF COMMON PLEAS
JUN 06 2008
TRUMBULL COUNTY, OH
KAREN INFANTE ALLEN, CLERK

James J. Enyanti
Authorized representative of
Trumbull County Board of Health and
Trumbull County Health Department
JAMES J ENYANTI MD

6/10/08
Copies to
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