

IN THE COURT OF COMMON PLEAS
TRUMBULL COUNTY, OHIO

STATE OF OHIO, *ex rel.*
JIM PETRO
ATTORNEY GENERAL OF OHIO,
Environmental Enforcement Section
30 East Broad St., 25th Floor
Columbus, Ohio 43215-3428,

Plaintiff

v.

TRUMBULL COUNTY
BOARD OF HEALTH *et al.*
176 Chestnut, NE
Warren, Ohio 44483

Defendants.

CASE NO.

2006CV2248

JUDGE

Logan

TRUMBULL COUNTY
CLERK OF COURTS

2006 SEP -1 12:52

CONSENT ORDER

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio by its Attorney General Jim Petro (hereinafter referred to as "Plaintiff") and Defendants, Trumbull County Board of Health and Trumbull County Health Department (hereinafter referred to as "Defendants"), having consented to the entry of this Order,

NOW, THEREFORE, without trial of any issue of fact or law, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. The Court has both personal and subject matter jurisdiction over the Parties. The Complaint states a claim upon which declaratory and injunctive relief can be granted against Defendants under Chapter 2721 and Chapter 2727, concerning §3701.23 and §3701.56 of the Ohio Revised Code (hereinafter referred to as "R.C.") and the rules promulgated under R.C. §3701.34 and R.C. Chapter 6111. Venue is proper in this Court.

II. PERSONS BOUND

2. All terms and provisions of this Consent Order shall apply to and be binding upon Defendants and their assigns, successors in interest and others bound by Rule 65(D) of the Ohio Rules of Civil Procedure, who are or will be acting in concert and/or in privity with the Defendants. The Defendants shall provide a copy of this Consent Order to each contractor and/or consultant employed to perform any and all work itemized herein and each general contractor shall provide a copy of this Consent Order to each of its subcontractors for such work.

III. SATISFACTION OF LAWSUIT AND RESERVATION OF RIGHTS

3. Plaintiff alleges in its Complaint that the Defendants failed to comply with R.C. 3701.56 and rules promulgated under R.C. 3701.34, specifically Ohio Adm. Code ("OAC ") Chapter 3701-29. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by Defendants for the claims under such laws as alleged in the Complaint against Defendants.

4. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against other appropriate persons, not covered by this Consent Order, for claims or conditions alleged in the Complaint. Nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to seek relief against Defendants or other appropriate persons for claims or conditions not alleged in the Complaint, including violations which occur after the filing of the Complaint. Similarly, nothing in this Consent Order shall be construed to limit the authority of the State of Ohio to undertake any action against any person, including Defendants, to eliminate or mitigate conditions that may present a threat to the public health, welfare or the environment.

IV. DEFINITIONS

5. As used in this Consent Order:

A. "CBOD₅" means Carbonaceous Biochemical Oxygen Demand –5 day;

B. "Household sewage-disposal system" or "HSDS" means any sewage disposal or treatment system or part thereof for a single family, two-family or three-family dwelling which receives sewage;

C. "Milligrams per liter" and "mg/L" means the milligrams of a substance present per liter of solution, and is equivalent to 10^{-6} kilograms per liter or parts per million, assuming unit density;

D. "NPDES" means National Pollutant Discharge Elimination System;

E. "Ohio EPA" means Ohio Environmental Protection Agency;

F. "ODH" means Ohio Department of Health;

G. "On-lot discharging household sewage-disposal system" means a household sewage-disposal system that discharges treated wastewater within the lot on which the system is located in such a way that no discharge leaves the lot;

H. "Off-lot discharging household sewage-disposal system" means a household sewage-disposal system that discharges treated wastewater to a location not within the lot at which the system is located in such manner that the discharge leaves the lot; and

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.

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.

VI. TIME EXTENSIONS

7. If any date for performance falls upon a weekend or state or federal holiday, the time for performance is extended to the next business day following the weekend or holiday.

VII. SUBMITTAL OF DOCUMENTS

8. All documents required under this Consent Order shall be submitted as required to:

Ohio EPA
Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn.: Surface Water Unit Supervisor

VIII. POTENTIAL FORCE MAJEURE

9. If any event occurs which causes or may cause a delay in Defendants' compliance with any requirement of this Consent Order, Defendants shall notify the Ohio EPA in writing within ten (10) days from when the Defendants knew, or by the exercise of due diligence should have known, of the event. The notification to Ohio EPA shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, and the timetable by which those measures will be implemented. Defendants shall adopt all reasonable measures to avoid or minimize any such delay.

10. In any action by the Plaintiff to enforce any of the provisions of this Consent Order, any Defendant may raise that it is entitled to a defense that its conduct was caused by reasons entirely beyond its control, such as, by way of example and not limitation, acts of God, strikes, acts of war or civil disturbances. While the Plaintiff does not agree that such a defense exists, it is, however, hereby agreed upon by Defendants and the Plaintiff that it is premature at this time to raise and adjudicate the existence of such a defense and that the appropriate point at which to adjudicate the existence of such a defense is at the time, if ever, that a court proceeding to enforce this Consent Order is commenced by the Plaintiff. At that time, Defendants will bear the burden of proving that any delay was or will be caused by circumstances entirely beyond the

control of Defendants. Unanticipated or increased costs associated with the implementation of any action required by this Consent Order, or a change in Defendants' financial circumstances, shall not constitute circumstances entirely beyond the control of Defendants or serve as a basis for an extension of time under this Consent Order. Failure by Defendants to timely comply with the notice requirements of this Section shall render this Section void and of no force and effect as to the particular incident involved and shall constitute a waiver of Defendants' right to request an extension of its or their obligations under this Consent Order based on such incident. An extension of one date based on a particular incident does not mean that Defendants qualify for an extension of a subsequent date or dates. Defendants must make an individual showing of proof regarding each incremental step or other requirement for which an extension is sought. Acceptance of this Consent Order without a Force Majeure Clause does not constitute a waiver by Defendants of any rights or defenses they may have under applicable law.

IX. RETENTION OF JURISDICTION

11. The Court will retain jurisdiction of this action for the purpose of enforcing and administering Defendants' compliance with this Consent Order.

X. COURT COSTS

12. Defendants are hereby ordered to pay the court costs of this action.

XI. AUTHORITY TO ENTER INTO THE 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 CONSENT ORDER AND FINAL JUDGMENT BY CLERK

14. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this 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.

August 31, 2006
DATE

Andrew W. Ryan
JUDGE

COURT OF COMMON PLEAS,
TRUMBULL COUNTY

APPROVED:
JIM PETRO,
ATTORNEY GENERAL OF OHIO

Thomas P. Behlen
THOMAS P. BEHLEN (0042721)
TODD K. DEBOE (0072034)
Assistant Attorneys General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
(614) 466-2766
Facsimile: (614) 644-1926

Counsel for Plaintiff State of Ohio

John C. Pierson
JOHN C. PIERSON (0018607)
1221 West Market Street
Akron, Ohio 44313-7107
(330) 836-8159
Facsimile: (330) 867-2379

*Counsel for Defendants Trumbull County
Board of Health et al.*

James J. Empeart MD
Authorized representative of
Trumbull County Board of Health and
Trumbull County Health Department