

**Guidance for Terrace Park Residents on Agreement Between the Village  
and Hamilton County Public Health  
Relating to Regulation of Drywells in the Village**

*Q. What is the status and timing of central sewers coming to Terrace Park, and how much would it cost each resident?*

A. At this stage, there is no reason to believe that central sewers will come to Terrace Park any time in the foreseeable future. The City of Milford would require that Terrace Park be annexed into Milford as a condition to extending its sewers to include the Village, which is unacceptable. And Cincinnati MSD has done multiple feasibility studies, each concluding that the capital cost to extend sewers from Mariemont to include the Village would be more than \$100 million which, in the absence of a substantial percentage of grants or principal forgiveness loans, would result in a per-household assessment that would not be affordable for the vast majority of residents.

*Q. Is it true that existing drywells in Terrace Park are illegal and have to be replaced no later than the end of 2025?*

A. No, at least not in the view of the Village and the law firm it hired to research this question. While Terrace Park does not dispute that state law prohibits installation of a new or replacement drywell after September 17, 2010, older systems, including drywells, are grandfathered under an Ohio statute, and cannot be ordered to be replaced unless they are causing a nuisance condition that cannot be eliminated. The County's Public Health Department disagrees with this interpretation and is of the view that drywells installed prior to September 17, 2010, are banned by the State Board of Health, but that the Department has the authority to extend the ban, which it has done until the end of 2025.

*Q. Is the Village litigating with the County Public Health Department over this issue?*

A. No. Outside legal counsel conveyed the Village's position to the County in a letter sent last summer. After that, the Village negotiated with the County to obtain relief from the Department's current position on drywells, thereby avoiding the cost of filing a complaint in the Hamilton County Court of Common Pleas to obtain a judicial declaration of the correct interpretation of Ohio law.

*Q. What are the terms of the agreement between the Village and the County Public Health Department?*

1. The Department's has been that (a) any improvement at a property that requires a building permit, regardless how small or whether it would add flow to or modify an existing drywell, requires that the drywell be replaced; and (b) all drywells must be replaced no later than the end of 2025, even if there is no improvement to the property.
2. As part of the agreement, the Department has accepted to the Village's proposal that allows drywells to remain until the end of 2045, unless one of three conditions exists: (a) the owner adds flow to or modifies the structure of the drywell system, (b) the owner proposes a home improvement project that equates to a 50% or greater change to the interior walls of a home served by a drywell, or (c) the drywell causes a nuisance condition that cannot be eliminated without replacing the system. In effect, this means that drywells will be treated the same as

other older home sewage disposal systems in the County, such as septic tanks and aerobic units.

3. The Department will consider, on a case-by-case basis, a request from a homeowner for an exemption to the 50% trigger above for a home improvement project, if the cost of replacing the drywell is disproportionately high to the cost of the home improvement project, as long as the project will not add flow to or modify the drywell, and the drywell is not causing a nuisance condition. This potential exemption is intended primarily to benefit owners of smaller homes in Terrace Park, and to give consideration to projects designed primarily to make a home accessible for the elderly or the handicapped.
4. Although the agreement allows drywells to remain until the end of 2045, homeowners who make improvements that require a building permit, but do not trigger a requirement to replace a drywell, may still be required to limit the scope of the improvement if it would cover, or otherwise interfere with, the space needed for a replacement of the drywell in the future.
5. Currently drywells are reportedly inspected annually by the Department. Under the agreement, drywells will be inspected at the same frequency as other private systems, which is approximately once every five years, with 30-days prior notice and issuance of an inspection report that provides notification if something was found that may trigger a requirement to replace the drywell.

*Q. What happens after 2045?*

Nothing prohibits the Village and the Department from extending the current 2045 deadline in the future if they so decide. However, if the deadline is not extended, the Village basically “goes back to square one,” reserving its right to reassert that older (pre-September 17, 2010) systems, including drywells, can lawfully remain in service if not causing a nuisance condition that cannot be eliminated. This, of course, assumes that the current Ohio statutes have not changed by then. The Village believes that a 23+ year extension to the Department’s current 2025 deadline will result in many drywell replacements in the normal course of attrition as owners undertake substantial home improvement projects and might also result in upgrades in technology that make replacement systems more affordable.

*Q. Is the agreement binding on Terrace Park’s homeowners?*

A. No. While the Village believes that the terms of the agreement are beneficial to owners of older systems, particularly drywells, it is not binding on homeowners, who remain free to assert, for example, that Ohio law does not require replacement of the system at any time, regardless of the scope of a planned home improvement project, provided the system is not causing a nuisance condition.

*Q. How can the agreement be enforced?*

A. Under the terms of the agreement, homeowners can enforce its terms in the Hamilton County Court of Common Pleas, as can the Village behalf of its residents.

