

**AGREEMENT FOR INTERPRETATION/APPLICATION OF  
HAMILTON COUNTY PUBLIC HEALTH'S ENVIRONMENTAL REGULATIONS IN  
VILLAGE OF TERRACE PARK, OHIO, RELATING TO DRYWELL-BASED HOME  
SEWAGE TREATMENT SYSTEMS**

This Agreement is made between the Village of Terrace Park, Ohio ("TP" or "the Village") 428 Elm Avenue, Terrace Park, OH 45174, and the Hamilton County Public Health Board ("HCPH" or "the Board"), 250 William Howard Taft, 2nd Floor, Cincinnati, OH 45219 (collectively "the Parties") effective as of the last date below executed by the respective approving bodies of both the Village and HCPH.

WITNESSETH

WHEREAS, in a letter dated July 20, 2021, outside legal counsel for the Village, acting at the behest of its residents, expressed concerns to legal counsel for HCPH relating to the Board's current treatment of a drywell-based home sewage treatment system ("STS") operating in TP;

WHEREAS, without admitting any issues of fact or law presented in the Village's letter, the Parties agreed to engage in negotiations to address the concerns of the Village and its residents, culminating in certain agreed terms and conditions set forth herein; and

WHEREAS, the Parties agree that the following terms and conditions resolve disputed positions and avoid a threat of litigation between the Parties for the term of this Agreement.

NOW, THEREFORE, the Parties hereto agree to the following terms and conditions:

1. Replacement of an Existing Drywell-Based STS. In the absence of evidence demonstrating that (a) an existing drywell-based STS in TP is creating nuisance conditions as specified in ORC 3718.011 and/or is not being operated, monitored or maintained in accordance with terms and conditions adopted by the Hamilton County Board of Health in accordance with OAC 3701-29, such that these conditions cannot be corrected by the owner, as determined by HCPH as specified in OAC 3701-29; (b) an owner of an existing drywell-based STS in TP seeks to make a "material change" (as defined herein) to the system; or (c) an owner of an existing drywell-based STS in TP seeks to make a "material improvement" (as defined herein) to a home, property or structure that is served by such system, HCPH agrees not to require that the owner of such system replace it beginning on the effective date of changes adopted by the Hamilton County Board of Health to Resolution E-2015 resulting from the signing of this Agreement through December 31, 2045. The Parties agree that the mutual intent of this provision is, at least through the end of 2045, to treat an existing drywell-based STS in TP the same as other existing types of STSs (septic tanks, aerobic units, etc.) in Hamilton County are treated by HCPH under its regulations/policies dealing with the permitting, operation and maintenance, and inspection of such systems.

2. Material Change. For purposes of this Agreement, a "material change" in an existing drywell-based STS in TP means to add flow to the system as adopted by Hamilton County Board of Health in Resolution A & F-2015, increase the strength of the waste handled by the

system, change the pollutant characteristics handled by the system, changing a property from residential to commercial or increasing commercial occupancy, or make changes in the design, size or configuration of the system.

3. Material Improvement. For purposes of this Agreement, a “material improvement” in a home in TP served by an existing drywell-based STS means: (a) Relocation of the dwelling/structure being served by the STS and/or Gray Water Recycling System (GWRS); (b) Switching the dwelling/structure being served by the STS and/or GWRS; (c) Rebuilding the dwelling/structure being served by the STS and/or GWRS; which includes but is not limited to: A dwelling/structure which has been or will be demolished, or partly demolished, so that the resulting “rebuilt” dwelling/structure has greater than fifty percent change to the walls, by adding and/or removing interior walls, including but not limited to, full walls, half walls, knee walls, doorways, archways, thresholds, closets, etc. within a five year timeframe. The general intent of the owner, as determined by the HCPH, is to build, replace or remodel a dwelling/structure. . Wall change is calculated using the formula contained in HCPH’s “Application for Sewage Treatment System (STS) and Gray Water Recycling System (GWRS) Review for Property Improvement Modifications,” available at <https://www.hamiltoncountyhealth.org/wp-content/uploads/Application-STS-Review-for-Property-Improvements-Modifications-02-01-19.pdf>, or any approved updates to such formula as adopted by the HCPH.

4. Inspection Frequency and Enforcement. The Parties agree that existing drywell-based STSs in TP, the Board’s inspectors will inspect such systems at the same frequency as non-mechanical systems, (at the time of this agreement, approximately once every five years, as occurs for other types of existing STSs in Hamilton County). In addition, inspections will occur at any time to address a potential nuisance condition or complaint, or to document whether a “material change” or “material improvement” is proposed or has occurred, as defined in this Agreement. Reinspections of any such system will occur following the standard timeline adopted by the Hamilton County Board of Health in the Operation Permit Terms and Conditions. Additionally, HCPH may seek enforcement and/or remediation of any violations found during the course of its inspections as they see fit.

5. Potential Exemption for Disproportionate Cost of STS Replacement. Among concerns raised by the Village on behalf of residents owning an existing drywell-based STS is that small homes and small lots in TP, combined with the cost for replacement of an existing drywell-based STS, has led to situations where the estimated cost for replacement exceeded the estimated cost of a planned “material improvement” to a home served by such system, when no “material change” was being made to the system, nor was the system causing or threatening a nuisance condition. While any person is allowed to seek a code variance request from the Board of Health, the Board is willing to consider, on a case-by-case basis, a code variance request from an owner of an existing drywell-based STS for consideration of an exemption from the requirement to replace the existing system due to a “material improvement” to the home if the owner demonstrates that: (a) the cost for replacement exceeds the cost of the “material improvement,” (b) no “material change” is being made to the system, (c) the system is not causing or threatening a nuisance condition, and (d) any other extenuating circumstances, such as, for example, making improvements to provide or improve accessibility for elderly or handicapped individuals. Materials presented by the owner and others will be reviewed in consideration for any code variance request. The Parties agree that any exemption that might be granted under this provision

shall not be treated as precedent by any Village resident, and that any resident seeking an exemption hereunder must make an independent demonstration of their request.

6. Preservation of Future Property Conditions. The Parties agree that, notwithstanding any term or condition of this Agreement, a planned improvement of property by a property owner within of the Village, which may or may not trigger a requirement to obtain a building permit, but which does not rise to the level of a “material change and/or improvement,” as defined herein, must nevertheless preserve sufficient property for a potential future replacement of the existing system and related code specified offset distances, and that this limitation might serve as a limitation or even prohibition of a planned improvement of the property.

7. Enforcement of this Agreement. The Parties agree that this Agreement may be enforced by the Village acting on behalf of its residents.

8. Nonbinding Conditions. The Parties agree that nothing herein binds the State of Ohio Department of Health (ODH) in its interpretation and enforcement in the Village of statutes and regulations that pertain to sewage treatment systems and grey water recycling systems, including, but not limited to, R.C. Chapter 3718 and OAC Chapter 3701-29, as they exist now or as may be amended in the future, regardless of whether they conflict with any agreed terms or conditions in this Agreement. Should the Ohio Department of Health provide written findings to HCPH regarding this agreement under OAC 3701-29-04, or a third-party file an action challenging this agreement, HCPH will notify the Village, and HCPH and Village will expeditiously discuss making necessary modifications to comply with ODH’s position or to address the third-party challenge, including and up to, nullification of this agreement if necessary. In addition, HCPH understands that, while the Village will encourage its residents and businesses to comply with the terms and conditions of this Agreement, they are not bound hereby, and retain the right to interpret the applicable state statutes and regulations, as well as the applicable regulations of the HCPH, in their own right, and to proceed differently if they so choose.

9. Modification. This Agreement may only be extended or modified in writing signed by the respective approving authorities of both HCPH and the Village.

10. Nullification: This Agreement may be nullified by any court order or if required by the Ohio Department of Health.

11. Expiration. This Agreement expires on December 31, 2045, unless extended by mutual consent of the Parties. Once expired, the Parties retain their respective rights and legal interpretations, whatever they may be, of the applicable state statutes and regulations and local HCPH regulations pertaining to STSs located in the Village of Terrace Park at that time, and nothing in this Agreement shall be used by the Village or HCPH as evidence to support a particular interpretation of the governing laws by either Party pertaining to STSs.

*Gerald E. Hayhow 4.11.2022*

Gerald E. Hayhow  
Chief of Police/Village Administrator  
Village of Terrace Park, Ohio  
428 Elm Avenue  
Terrace Park, Ohio 45174

SO AGREED

*Greg Kesterman 03/24/2022*

Greg Kesterman  
Health Commissioner  
Hamilton County Public Health  
250 William Howard Taft  
Cincinnati, OH 45219