

**BEFORE THE
FRANKLIN COUNTY DISTRICT BOARD OF HEALTH
COLUMBUS, OHIO**

FINDINGS AND ORDERS

WHEREAS, Kevin M. Lacey and Claire L. Lacey; (“Applicants”) own 6435 Cabin Croft Drive; Galloway, Ohio 43119 (Prairie Township, Tax District 240, Parcel ID #006441-00) (“Property”), have submitted an appeal to the Board of Health Orders issued on February 13, 2024;

WHEREAS, Franklin County Public Health Regulation 106 “Sewage Treatment Systems”, which incorporates by reference relevant portions of Ohio Administrative Code (“OAC”) Chapter 3701-29 “Sewage Treatment System Rules”;

WHEREAS, the Board heard testimony from Jeff Gibbs, Environmental Health Division Manager, Nathan Ralph, Water Quality Program Supervisor, and James May, REHS Jeff Gibbs presented the matter to the Board and recommended the appeal be denied and the Order remain in place and submitted into evidence the following:

- Complaint Investigation Form
- Evapotranspiration Treatment System Observational Reports
- Email to Claire L. Lacey dated July 13, 2023
- Notice of Violation dated August 14, 2023
- Email from James May dated August 18, 2023 and attachments
- Notice of Violation dated January 5, 2024
- Resolution 24-015
- Board Orders dated February 13, 2024
- March 13, 2009 letter from the Ohio Department of Health
- November 29, 2016 Letter from the Ohio Department of Health
- February 26, 2024 email from the Ohio Department of Health
- Notice of Appeal
- Notice of Hearing

WHEREAS, Kevin M. Lacey and Claire L. Lacey, applicants, were represented by legal counsel, who presented the case to the Board stating the Applicants have replaced the aerator in the septic system with a like for like aerator which was functional in the system at the time the Order was issued, and as a result, the violation, which was issued by the Health Commissioner is inaccurate and should be dismissed.

Now, therefore, upon motion of Board Member _____, second by Board Member _____;

THE FINDINGS AND ORDERS OF THE FRANKLIN COUNTY BOARD OF HEALTH, BOARD MEMBERS ARE AS FOLLOWS:

1. The Property is served by a Norweco household sewage treatment system approved by the State of Ohio.
2. The Applicants replaced the aeration motor with a non-Norweco motor in 2023.
3. Applicants Kevin M. Lacey and Claire L. Lacey were issued Board of Health Orders on February 13, 2024, which state, in part, that:

An inspection of the property indicated that the aforementioned property continues to be in violation of (Sewage Treatment System Rules) OAC Chapter 3701-29-13 (P) which state, in part: **“Devices critical to the performance of pretreatment components shall be maintained as manufacturer's original equipment matching the system configuration approved by the director”** and ORC 3718.011. On February 13, 2024, the Board of Health adopted Resolution 24-0, attached hereto and incorporated herein, ORDERING you to:

- 1) Replace the existing aerator motor with a Norweco motor approved by the Ohio Department of Health.
4. Legal counsel for the Applicants filed a notice of appeal dated February 27, 2024 to the Board of Health Orders.
5. Ohio Revised Code Section 3718.011(A)(1) states that a sewage treatment system is causing a public health nuisance if any of the following situations occurs and, after notice by a board of health to the applicable property owner, timely repairs are not made to that system to eliminate the situation: The sewage treatment system is not operating properly due to a missing component, incorrect settings, or a mechanical or electrical failure.

6. From at least 2009 through 2016, the Ohio Department of Health's ("ODH") guidance was:

If an approved aeration component was installed, and at a later date the motor was replaced with a motor from a different manufacturer, this would invalidate the aeration unit's approval from the Ohio Department of Health. This would also be the case if an approved component's motor is replaced with a motor from a different manufacturer's approved component (i.e. a Jet motor cannot be used in a Norweco aeration unit).

7. Recently, a program administrator for ODH opined that:

An additional consideration for systems that were installed prior to 2007 is that O.R.C. 3718.012 allows for systems in use prior to the effective date of the rules to remain in use so long as they are not creating a public health nuisance. The statute gives preference to repairs over replacement if repairs can be made to the STS to eliminate the nuisance. It is important to note that the statute specifies repairs can be made to systems that eliminate the public health nuisance as determined by the applicable board of health. This interpretation has been delivered previously via ODH speaking engagements and as displayed by the attached PowerPoint slides.

Succinctly, the guidance has been that *if available, OEM parts should be utilized*. If not available the owner should work with the manufacturer to identify an acceptable replacement, and ensure that the local health district finds the alternative part identified by the manufacturer acceptable for use. If the manufacturer is completely defunct, work with the local health district to identify repairs that may be compatible.

8. Ohio Revised Code Section 3718.012 states that:

A sewage treatment system that was in operation prior to the effective date of this section shall not be required to be replaced with a new sewage treatment system under this chapter or rules adopted under it and shall be deemed approved if the system does not cause a public health nuisance or, if the system is causing a public health nuisance as provided in Section 3718.011 of the Revised Code, repairs are made to the system that eliminate the public health nuisance as determined by the applicable board of health.

9. Pursuant to Ohio Revised Code Section 3718.011, a nuisance exists if the sewage treatment system is not operating properly due to a missing component, incorrect settings, or a mechanical or electrical failure.

10. Norweco motors are available.

11. The Applicants' appeal is dismissed and the Board's Order is upheld.

12. If the Board's Order is neglected or disregarded, in whole or in part, the board may elect any of the administrative remedies available pursuant to the Ohio Revised Code or refer the matter to the Franklin County Prosecuting Attorney to file a request for injunctive relief in the Franklin County Municipal Court, Environmental Division and to request that any costs of the abatement shall be assessed as liens against the Property.

13. This Order may be appealed pursuant to Ohio Revised Code Chapter 3718 by filing a notice of appeal within 30 days with Franklin County Public Health and the Franklin County Court of Common Pleas or the Franklin County Sewage Treatment Systems Appeals Board. In addition, the Franklin County Municipal Court, Environmental Division, may have jurisdiction for such an appeal, pursuant to R.C. 1901.181. This notification does not in any way preclude Franklin County Public Health from arguing any jurisdictional matters.

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IT IS SO ORDERED.

Franklin County Board of Health
Board Members
