

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Case No. 97-WI-037

ROBERT & MARGARET CONKEY,

REPORT AND RECOMMENDATION

Applicants.

FINDINGS OF FACT

1. On October 28, 1997, Applicants, Robert and Margaret Conkey, submitted a permit to install ("PTI") application for the installation of two wastewater holding tanks on their property located at 16208 Main-Market Street, Parkman, Ohio, Geauga County. (See Hearing Exhibit A, which is a copy of the Applicants' PTI application.)
2. On November 26, 1997, the Director of the Ohio Environmental Protection Agency ("Director") issued a proposed order denying the Applicants' PTI application.
3. On December 15, 1997, Applicants filed a request for an adjudication hearing regarding the Director's November 26, 1997 proposed denial.
4. The Director's November 26, 1997 proposed denial states in pertinent part that the PTI application was being denied for the following reasons:

"In accordance with OAC 3745-31-05(A)(1) the director shall issue a permit to install only if the information contained in the application will ensure that the installation will not prevent or interfere with the attainment or maintenance of water quality standards. The application as submitted does not meet this criteria and has outstanding operational deficiencies, water quality issues and technical deficiencies which are listed in the attached report."
5. Based upon this Hearing Examiner's review of the report attached to the Director's November 26, 1997 proposed denial, it is my finding that the Ohio Environmental Protection Agency ("Ohio EPA") relied on certain incorrect assumptions in reaching its conclusion that the Applicants' PTI application contained "operational deficiencies". The Ohio EPA incorrectly assumed:

A) There would be more than 7,000 gallons of wastewater disposed of per week from the Applicants' property;

B) The cost of the disposal of the wastewater would be at least \$75 per every 1,000 gallons and, thus, a holding tank is not a cost effective wastewater disposal solution;

C) The holding tanks would not be properly emptied and maintained; and

D) The terms of the PTI could not be efficiently enforced.

(See the report attached to the Director's November 26, 1997 proposed denial, which was entered into evidence at the hearing in this case as Exhibit 5.)

6. Based upon the evidence presented at the March 10, 1998 hearing held in this case, this Hearing Examiner finds that the assumption listed in paragraph 5.A) above (that more than 7000 gallons of wastewater would be disposed per week) is incorrect because the amount of wastewater likely to be generated from the Applicants' property will be 400-500 gallons per day or 2800-3500 gallons per week. (Hearing Transcript (Tr.), pp. 300-301, Conkey, wherein Mr. Conkey testified that according to actual water meter readings taken from August 2, 1997 to January 25, 1998, a total of 2026 cubic feet of water usage was measured. Such water usage would equal an average of approximately 600-700 gallons per week from the two apartments located in Applicants' building. See Tr., pp. 284-300, Conkey. See also Tr., p. 256, Blasick, wherein Mr. Blasick testified that if Mr. Conkey's business sold only coffee and prepackaged food items, the estimated water usage for the business only would be 20 gallons per seat per day or 320 gallons per day. Taken together, the water usage from the two apartments and a 16 seat coffee shop (selling only coffee and prepackaged food items) would total 400-500 gallons of water usage per day or 2800-3500 gallons per week.)

7. Based upon the evidence presented at the March 10, 1998 hearing held in this case, this Hearing Examiner finds that the assumption listed in paragraph 5.B) above (that the cost of disposal of wastewater from a holding tank would be at least \$75 per every 1,000 gallons and, thus, a holding tank is not cost effective) is incorrect. The Applicant, Robert Conkey, testified that he plans to haul the wastewater himself to a commercial wastewater disposal facility for far less than \$75 per 1,000 gallons. Mr. Conkey testified that he received estimates that if he hauls the wastewater himself, the cost of disposing of the wastewater will be approximately \$10 each time he drives onto the property of the wastewater disposal

facility and an additional charge of \$4 per each 1,000 gallons disposed. (Tr., p. 97, line 24, through p. 98, line 4.) Based upon Mr. Conkey's testimony, it is this Hearing Examiner's finding that even if Mr. Conkey has to haul 3 separate loads per week, the cost of disposal will be approximately \$50 per week or \$2,600 per year. Since the estimated cost of the 1500 gallon per day package treatment wastewater disposal system recommended by the Ohio EPA (1500 gallon package treatment system) is \$15,000 to \$25,000 (Tr., p. 57, Blasick), even if Applicants' hauling costs are approximately \$2,500 per year, Applicants could haul wastewater themselves from their property for approximately 6 to 10 years before their total cost would exceed the estimated cost of the 1500 gallon package treatment system. Since the Applicants could haul wastewater from the holding tank for approximately 6 to 10 years before their costs would exceed the estimated cost of the 1500 gallon package treatment system, the holding tank disposal system is cost effective.

8. This Hearing Examiner finds that the assumption listed in paragraph 5.C) above (that the holding tank would not be properly emptied and maintained) is incorrect because as stated in Conclusion of Law No. 4, when determining whether to issue a PTI, the Ohio EPA cannot properly assume that the Applicants will violate the law and the terms of their permit by failing to properly empty and maintain the holding tanks.
9. This Hearing Examiner finds that the assumption listed in paragraph 5.D) above (that the terms of the PTI could not be efficiently enforced) is incorrect because the holding tanks and the area surrounding them can be inspected periodically by either the Ohio EPA or by the Geauga County General Health District to ensure that Applicants are complying with the terms of any PTI issued to Applicants and to ensure that the holding tanks are properly emptied and maintained. In addition, conditions can be added to the permit that will assist with monitoring the maintenance of the holding tank disposal system.
10. Based upon my examination of the report attached to the Director's November 26, 1997 proposed denial, it is this Hearing Examiner's finding that the Ohio EPA relied on certain incorrect assumptions in reaching its conclusion that the Applicants' PTI application contained "water quality and other issues". The Ohio EPA incorrectly assumed:
 - A) The proposed holding tanks will not be properly emptied and maintained and, thus, the attainment or maintenance of water quality of the Grand River will be prevented or interfered with because of the installation of the proposed holding tanks. (See Tr., p. 269, Bell.);

B) Ohio EPA Policy No. 0200.003 pertaining to holding tanks has the force of law and, thus, because the proposed holding tank system does not meet the specific conditions within Ohio EPA Policy 0200.003, the PTI application must be denied.;

C) Holding tanks cannot constitute best available technology (BAT) because they do not treat the wastewater. (Examiner's emphasis.) (Tr., p. 268, Bell.); and

D) A wastewater disposal system installed at the Applicants' property must necessarily discharge wastewater from the system and, thus, must comply with Ohio Administrative Code (OAC) 3745-31-05.

11. This Hearing Examiner finds that the assumption listed in paragraph 10.A) above (that the holding tank system will not be properly emptied or maintained and, thus, the holding tank system will prevent or interfere with the attainment or maintenance of water quality) is incorrect because as stated in Conclusion of Law No. 4, when determining whether to issue a PTI, the Ohio EPA cannot properly assume that the Applicants will violate the law and the terms of their PTI by failing to properly empty and maintain the holding tanks. In fact, if the Applicants properly empty and maintain the holding tanks in accordance with their PTI, there will be no discharge whatsoever of wastewater and, thus, there will be no prevention or interference whatsoever with attainment or maintenance of the water quality of the Grand River.
12. This Hearing Examiner finds that the assumption listed in paragraph 10.B) above (that Ohio EPA Policy No. 0200.003 pertaining to holding tanks has the force of law and, thus, because the proposed holding tank system does not meet the specific conditions within Ohio EPA Policy 0200.003, the PTI application must be denied) is incorrect because a guideline/policy, unlike a rule/regulation, does not have the force of a law. (A guideline might be used as an aid to determining if an application complies with statutory requirements, but a guideline does not, standing alone, constitute an independent ground for the Ohio EPA denying a PTI application. (See the Report and Recommendation of Chief Hearing Examiner Alan L. Lapp, Esq., In the Matter of Village of Moscow, Ohio EPA Case No. 89-WI-012, page 7.))
13. According to Conclusion of Law No. 13, the Ohio EPA cannot properly deny the Applicants' PTI application solely because it does not comport with Ohio EPA Policy 0200.003.
14. This Hearing Examiner finds that the assumption listed in paragraph 10.C) (that holding tanks cannot constitute BAT

because they do not treat the wastewater) is incorrect because BAT (best available technology) does not require the best available "treatment" technology. (It seems apparent to this Hearing Examiner that the Ohio EPA Staff assumes that some type of treatment is required. See Tr., p 268, Bell, wherein the Ohio EPA's Ron Bell attempts to explain why the proposed holding tanks do not constitute BAT by stating: "First off, it doesn't meet best available treatment technology." (Underline emphasis added).)

15. The Ohio EPA has previously issued PTI's to at least 2 other facilities for wastewater holding tank systems. (See Tr., p. 76, Blasick.) It seems apparent to this Hearing Examiner that the Ohio EPA believed the 2 other holding tanks constituted BAT under the circumstances of those cases, even though the holding tanks employed no treatment of the wastewater.
16. This Hearing Examiner finds that the Ohio EPA Staff's apparent assumption as listed in paragraph 10.D) (that a PTI can only be approved if there is a wastewater discharge from the disposal system that complies with OAC 3745-31-05 from the disposal system) is an incorrect assumption because a disposal system may be approved even if there is no direct discharge from the disposal system to waters of the state. (The Ohio EPA has previously issued PTI's to at least 2 other facilities for wastewater holding tanks. See Tr., p. 76, Blasick. It seems apparent to this Hearing Examiner that the Ohio EPA believed the 2 other holding tanks could be approved even though it was anticipated that there would be no direct discharge from the holding tanks to waters of the state.)
17. Currently, the Ohio EPA's practice is not to approve PTI's for holding tanks. The Ohio EPA's practice is not based upon a rule/regulation or on a statute, but it is based on an Ohio EPA policy. (See Tr., pp. 76-77, Blasick.)
18. The explanation given for the Ohio EPA's current practice of refusing to approve holding tanks was as follows:

"We've had a lot of problems with them in the past, specifically in the area of Chesterland, where several of them had been installed. Sewer project took a lot longer to come to light than anyone had ever anticipated. Some of these systems have overflowed. Some of those systems, I believe, have some illegal connections to the storm sewer, contributing to the water quality problems that we had out in that area. And the holding tanks are very expensive to maintain."

(See Tr., p. 80, line 17, through p. 81, line 7, Blasick.)

19. Ohio EPA employee Rich Blasick's concern with holding tanks is that the tanks will not be properly maintained, i.e., the holding tank waste will not be hauled away on a regular basis. (Tr., p. 85, line 17, through p. 86, line 16.)
20. During his hearing testimony, Ohio EPA employee Rich Blasick stated:

"Holding tanks have been a problem in the past. We have made mistakes in the past, as has been testified to earlier, in the Chesterland area. I'm not going to make a recommendation to make another mistake. This area will someday be getting sanitary sewers, as the Chesterland area was. The exact timetable has not been laid out. I don't wish to create another problem there." (Tr., p. 204, lines 7-15, Blasick.)
21. There was no evidence presented during this adjudication proceeding demonstrating that there is a statute, rule, or Director's order absolutely prohibiting the installation and use of holding tanks.
22. Parkman, Ohio (where the Applicants' property is located) currently has no centralized sewer system. (See Tr., p. 164, Saikaly.)
23. The current situation in Parkman, Ohio regarding wastewater disposal is viewed as unacceptable. (See Tr., pp. 164; 178; and 182, Saikaly.)
24. Because of the unacceptable wastewater disposal situation in Parkman, Ohio, the Geauga County General Health District has instructed the Geauga County Department of Water Resources to take action to explore the installation of a centralized sewer system for the Parkman area. (See Tr., p. 72, Blasick; Tr., p. 179, Saikaly.)
25. Because of the amount of pollution being generated and discharged in the Parkman, Ohio area, the Ohio EPA has asked the Geauga County Department of Water Resources to move the Parkman centralized sewer project up on the Department's list of priorities. (See Tr., p. 165, Saikaly.)
26. Rich Blasick, Ohio EPA employee, testified that it is his understanding that Geauga County is going to proceed with the construction of a centralized sewer system in the Parkman, Ohio area. (See Tr., pp. 72 and 204, Blasick.)
27. Currently, the disposal of wastewater from the Applicants'

property is contributing to the Parkman, Ohio wastewater disposal problem. The septic tank that is there now retains solids, but the liquid wastewater that flows through the system is discharged to the storm sewer. (Tr., p. 89, lines 16-21, Blasick.) The current discharge from the septic tank flows into the storm sewer and is discharged into the Grand River. (Tr., pp. 90-91, Blasick.)

28. Currently, the wastewater disposal system at the Applicants' property is discharging virtually untreated wastewater into the storm sewer, which discharges into the Grand River. (See Tr., pp. 90-91 and 252-253, Blasick.)
29. If the Applicants do not receive a PTI for the holding tanks, the current wastewater disposal system will continue to be utilized and approximately 600-700 gallons per week of virtually untreated wastewater will continue to enter the Grand River from the two residential apartments housed in the Applicants' building. (See Tr., p. 252, Blasick, and Tr., pp. 284-300, Conkey.)
30. The wastewater holding tanks proposed in the Applicants' PTI application are designed to receive wastewater discharged from Applicants' building and temporarily hold that wastewater. It is intended that the holding tanks shall be regularly emptied and maintained.
31. If a PTI for the holding tanks is approved and if the holding tanks are properly emptied and maintained in accordance with the terms and conditions of the PTI and the law, the use of the holding tanks in the disposal of the wastewater from Applicants' property will result in zero discharge to the Grand River and, under such circumstances, the proposed disposal system will not contribute to the lowering of the water quality in the Grand River. (See Tr., pp. 197 and 259, Blasick.)
32. The negative environmental impact to the Grand River of a properly emptied and maintained holding tank would be less than the negative environmental impact of a 1500 gallon package treatment system that, even after treatment of the wastewater, would still discharge pollutants to the Grand River.
33. If the holding tanks are not properly emptied and maintained, then the Ohio EPA and/or the Geauga County General Health District could take appropriate enforcement action, including, but not necessarily limited to, an action to revoke the Applicants' PTI. (See Tr., p. 251, Blasick.)
34. According to Conclusions of Law Nos. 16 and 17, if the holding

tanks are not properly emptied and maintained, then the Ohio EPA and/or the Geauga County General Health District will be entitled to take appropriate enforcement action.

35. The "technical deficiencies" listed in the report (Hearing Exhibit 5) attached to the November 26, 1997 proposed action are minor and/or are deficiencies that could be addressed by approving the current PTI application subject to appropriate special conditions.
36. The two wastewater holding tanks proposed in Applicants' PTI application do not have a high water level alarm. (See Tr., p. 101, line 24, through p. 102, line 4, Conkey.)
37. If the Director chooses to approve the Applicants' PTI application, the Director could add as a condition to the PTI that the Applicants must install and maintain a high water level alarm on the holding tanks.
38. The Applicants' PTI application does not indicate that the Applicants currently have a contract with a registered wastewater hauler for the removal of wastewater from the proposed holding tanks. (See Ohio EPA Staff's Exhibit A, which is a copy of Applicants' PTI application.)
39. Since Applicant Robert Conkey plans to haul the wastewater himself, it is understandable that Applicants would not have entered into a contract with a wastewater hauler for the removal of wastewater from the proposed holding tanks.
40. If the Director chooses to approve the Applicants' application, the Director could add as a condition to the permit a requirement that the Applicants submit proof that they have secured the services of a registered wastewater hauler or proof that the Applicant, Robert Conkey, has registered with the Geauga County General Health District as a wastewater hauler.
41. The Applicants' PTI application does not indicate that a contract has been made by Applicants with a wastewater treatment facility for the disposal of the wastewater from the proposed holding tanks. (See Ohio EPA Staff's Exhibit A, which is a copy of Applicants' PTI application.)
42. Since the Applicants have not yet received a PTI for the holding tanks, it is understandable that Applicants would not yet have entered into a contract with a wastewater treatment facility for the disposal of wastewater from the proposed holding tanks.
43. If the Director chooses to approve the Applicants'

application, the Director could add as a condition to the permit a requirement that the Applicants submit proof that they will have access to a wastewater treatment facility for the purpose of disposing wastewater from the proposed holding tanks.

44. Applicants' PTI application does not indicate that the proposed holding tanks will be equipped with bolt-down lids. (See Ohio EPA Staff's Exhibit A, which is a copy of the Applicants' PTI application.)
45. If the Director chooses to approve the Applicants' PTI application, the Director could add as a condition to the permit a requirement that the holding tanks be equipped with bolt-down lids.
46. Applicant, Robert Conkey, testified that if the holding tanks are equipped with a bolt-down cover/lid, the wastewater flowing into the holding tanks would not be able to get out of those tanks, unless the wastewater backed up through the system. With the bolt-down lid(s), if the wastewater was not properly emptied, it would back up into the Applicants' building. (See Tr., p. 115, Conkey.)

CONCLUSIONS OF LAW

1. The Applicants have the burden of proof in this case because they have submitted an application for a Permit to Install (PTI) for two holding tanks. (See Ohio Administrative Code Rule (OAC) 3745-47-23(A)(1).)
2. The Applicants must establish their entitlement to the requested permit by a preponderance of the evidence. (See Application of Gram, (1948), 39 O.O.477, 53 Ohio Law Abs. 470, 86 N.E.2d 48; Klunk v. Hocking Valley R. Co., (1906), 74 Ohio St. 125.)
3. The Director of the Ohio EPA (Director) has sole authority to issue a PTI for a wastewater disposal system for commercial buildings in Ohio. (See Ohio Revised Code Section (R.C.) 6111.03(J).)
4. In determining whether to approve or disapprove a PTI application, the Ohio EPA cannot assume that an Applicant will violate the law and/or the terms of the application and deny the application on that basis. (See Little Miami, Inc. v. Ned E. Williams, Director of Environmental Protection, (1976, Tenth Appellate District Court of Appeals, Franklin Co.), Unreported Decision, which states that on April 16, 1975, the

Director issued Final Findings of Fact, Conclusions of Law, and Orders stating that he had every intention of enforcing the regulations and permit conditions and would not refrain from granting permits because of the possibility that a person might violate some regulation or permit condition. (Underline emphasis added.) A copy of said unreported case is attached to this Report and Recommendation.)

5. The fact that others with holding tanks have violated the law and/or improperly emptied and maintained their holding tanks is not relevant to the determination of whether the Applicants are entitled to a PTI for holding tanks. (The Ohio EPA's proposal to deny Applicants a PTI because persons other than the Applicants have improperly emptied or maintained holding tanks would be analogous to the Bureau of Motor Vehicles (BMV) refusing to grant a person a new driver's license because other drivers have committed speeding violations or other violations in the past. Just as the BMV could not deny a qualified driver a license simply because other drivers have violated the law in the past, the Ohio EPA cannot deny Applicants' PTI application based upon the fact that other permittees have improperly emptied and maintained holding tanks in the past.)
6. The Director shall issue a permit to install if he determines that the installation and operation of the disposal system will: 1)not prevent or interfere with the attainment or maintenance of applicable ambient water quality standards; 2)not result in the violation of any laws; and 3)employ the best available technology. (See OAC 3745-31-05(A).)
7. Since the Ohio EPA cannot assume that the Applicants will violate the law and the terms of any PTI issued to the Applicants, since the PTI application is for wastewater holding tanks that are designed to receive and hold wastewater discharged from Applicants' building, and since any PTI would require that the holding tanks be regularly emptied and maintained so that there is no emission of wastewater from the holding tanks to the Grand River, the Director must find that the proposed disposal system will not prevent or interfere with the attainment or maintenance of applicable ambient water quality standards of the Grand River.
8. Because the proposed holding tank disposal system is designed to receive and hold all of the wastewater discharged from the Applicants' building and, thus, because there will be no discharge of pollutants into the already pollution burdened Grand River, the Applicants' proposed disposal system would be consistent with the goal of the 1972 Amendments to the Federal Water Pollution Control Act "to progressively reduce the amount of pollutants entering the waterways of the nation."

(See Columbus & Franklin Cty. V. Shank (1992), 65 Ohio St.3d 86, 116.)

9. Since the Ohio EPA cannot assume that the Applicants will violate the law and the terms of their PTI (and since there has been no evidence that would indicate that Applicants, Robert and Margaret Conkey, will violate the law by failing to properly empty and maintain the proposed holding tanks), and since the holding tanks are designed so there will be no discharge of pollutants into the Grand River, the Director must find that the installation and operation of the proposed disposal system will not result in a violation of any applicable law.
10. In order to determine whether the proposed holding tanks constitute the best available technology (BAT) under the particular circumstances of this case, the Director must first define BAT.
11. With regard to the definition of BAT, it is this Hearing Examiner's conclusion that for each new source, regardless of size or location, BAT is a case-by-case determination of an emission limit and/or control technique which, taking into account environmental, energy, and economic considerations, represents the maximum emission control achievable by the source. The BAT determination also considers the energy and economic costs of controls, which should be estimated through a cost-effective analysis. The primary purpose of such an analysis is to eliminate control technologies with excessive costs, although the analysis can also be used in the selection of competing technologies. The environmental analysis includes air and water quality, land, and aesthetic impacts and is included to avoid excessive degradation of these environmental areas. (See the definition of BAT contained in Ohio EPA Division of Air Pollution Control, Engineering Section, Engineering Guide #42.)
12. As long as a particular disposal system is not absolutely prohibited by a statute, rule, or Director's order, the Ohio EPA must determine on a case-by-case basis whether that particular disposal system represents BAT under the particular circumstances presented. (See the Report and Recommendation issued by Chief Hearing Examiner Alan L. Lapp, Esq., In the Matter of the Village of Moscow, Ohio EPA Case No. 89-WI-012, at page 7; See also the definition of BAT found in Conclusion of Law No. 11 above.)
13. The Ohio EPA cannot properly conclude that the Applicants' proposed disposal system does not constitute BAT solely because it does not comport with Ohio EPA Policy 0200.003. (See the Report and Recommendation issued by Chief Hearing

Examiner Alan L. Lapp, Esq., In the Matter of the Village of Moscow, Ohio EPA Case No. 89-WI-012.) A guideline/policy, unlike a rule/regulation, does not have the force of a law. A guideline might be used as an aid in determining if a proposed disposal system constitutes BAT, but a failure to comport with a guideline does not, in and of itself, give the Ohio EPA a basis for concluding that a proposed system does not constitute BAT and/or is not approvable. (See the Report and Recommendation of Chief Hearing Examiner Alan L. Lapp, Esq., In the Matter of Village of Moscow, Ohio EPA Case No. 89-WI-012, page 7.);

14. Given that the proposed holding tank disposal system, as designed, will reduce the amount of pollutants entering the Grand River;¹ given that the 1500 gallon package treatment system recommended by the Ohio EPA (which is designed to treat the wastewater and to discharge the treated pollutants into the Grand River) will add to the amount of pollutants entering the Grand River; and given the current unacceptable situation regarding pollution flowing from Parkman, Ohio homes and businesses into the Grand River; the proposed holding tanks represent the maximum emission control achievable by the source in light of the detrimental environmental effects of allowing more pollution to flow into the already pollution inundated Grand River. In other words, in light of the adverse environmental impact of allowing more pollutants to enter the Grand River (which would happen if the Applicants did not receive any permit or if the Applicants received a permit for a 1500 gallon package treatment system), the proposed holding tanks constitute BAT under the unique circumstances of this case.
15. In accordance with Ohio Administrative Code (OAC) 3745-31-05(A), because the proposed holding tank disposal system will not prevent or interfere with the attainment or maintenance of applicable ambient water quality, will not result in the violation of any laws, and will employ the best available technology given the circumstances of this case, the Director must issue the applied for PTI to the Applicants. (See Conclusions of Law Nos. 6, 7, 9, and 14. See also Ohio Administrative Code 3745-31-05(A).)
16. If the Applicants' violate the terms of any PTI issued to them, the Ohio EPA could take enforcement action against the Applicants, including, but not necessarily limited to, an action to revoke the PTI. (R.C. 6111.03(H); 6111.03(J).)

¹ It should be noted that currently, an average of 600-700 gallons per week of wastewater is being disposed of from the two apartments in the Applicants' building and that wastewater is being discharged to the Grand River. (See Finding of Fact No. 6.)

17. If the Applicants' violate the terms of any PTI issued to them, the Geauga County General Health District could take enforcement action against the Applicants, including, but not necessarily limited to, an action to revoke any food establishment license that might be issued to Applicants. (See Tr., p. 151.)

RECOMMENDATIONS

1. The Director's November 26, 1997 proposed denial of the Applicants' October 28, 1997 permit to install (PTI) application for two wastewater holding tanks should be withdrawn.
2. The Director should, as a final action, approve the Applicants' October 28, 1997 PTI application subject to special conditions that the Director believes would be protective of human health and the environment.
3. In approving said PTI application, the Director may wish to consider some or all of the following special conditions:

(A) The waste stream to the holding tank disposal system located at 16208 Main-Market Street, Parkman, Ohio, Geauga County, Ohio, shall be limited to the sewage (as defined in R.C. 6111.01(B)) generated within the building owned by Applicants at 16208 Main-Market Street, Parkman, Ohio. The building owned by the Applicants at 16208 Main-Market Street, Parkman, Ohio shall be limited to residential use, except that the Applicants may operate a 16 seat coffee shop, which, in addition to the sale of coffee and other beverages, shall sell only prepackaged food items. There shall be no preparation of food items on the premises for sale on the premises.

(B) The holding tank disposal system shall be installed consistent with sound engineering principles. The installation must be inspected and confirmed as acceptable by either a qualified engineer hired by the Applicants or by a qualified Ohio EPA employee. If the installation is inspected by an engineer hired by the Applicants, said engineer must send a notice confirming that the installation is consistent with sound engineering principles to the Surface Water Unit Supervisor, Ohio EPA Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087.;

(C) The holding tank disposal system must maintain at least a 50 foot isolation distance from any and all water wells.

(D) The holding tank disposal system must be equipped with a high water level alarm and said alarm must be properly maintained and functional at all times. The purpose of the high water level alarm is to notify Applicants that the wastewater level is too high and that the wastewater must be emptied immediately.

(E) The holding tank disposal system must be equipped with bolt-down lids. The purpose of the bolt-down lids is to prevent any wastewater from escaping the holding tanks.

(F) Prior to putting the holding tank disposal system into operation, the Applicants must either 1) enter into a contract with a registered wastewater hauler for the removal of wastewater from the proposed holding tank(s) and send proof of such contract to the Ohio EPA; or 2) one or both of the Applicants must register with the Geauga County General Health District as a wastewater hauler and send proof of such registration to the Ohio EPA. The proof referred to in this paragraph must be sent to the Surface Water Unit Supervisor, Ohio EPA Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087.

(G) Prior to putting the holding tank disposal system into operation, the Applicants must submit proof that they will have access to a wastewater treatment facility for the purpose of disposing wastewater from the proposed holding tanks. The proof referred to in this paragraph must be sent to the Surface Water Unit Supervisor, Ohio EPA Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087.

(H) The Applicants shall properly operate and maintain the subject holding tank disposal system. Maintenance of the subject holding tank disposal system shall include, but not be limited to, pumping the holding tank(s) at least once per week so that the amount of wastewater pumped from the tank(s) each week is substantially equal to or is greater than the amount of the wastewater stream flowing into the tank(s) during the previous week. The Applicants shall pump the wastewater more often than once per week if such is necessary to ensure that the holding tanks do not overflow. The Applicants shall send weekly notices and proof (such as receipts) that pumping and proper disposal of the wastewater has occurred to the Surface Water Unit Supervisor, Ohio EPA Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087;

(I) The Applicants shall properly operate and maintain the subject holding tank disposal system. In addition to the maintenance referred to in the immediately preceding paragraph regarding the pumping of wastewater, maintenance of the

subject holding tank disposal system shall include, but not be limited to, pumping the holding tank(s) at least once every 12 months so that the holding tanks are completely emptied of both liquid and solid waste. The Applicants shall send a notice and proof that pumping and proper disposal of the entire contents of the holding tank disposal system has occurred to the Surface Water Unit Supervisor, Ohio EPA Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087;

(J) The Applicants shall install and maintain a functioning and accurate water meter and the Applicants shall monitor the total amount of water used at their building at 16208 Main-Market Street, Parkman, Ohio. The Applicants shall have the accuracy of the water meter checked and certified at least once every 12 months. The Applicants shall provide access to the water meter for inspection, reading, and/or testing to the Geauga County General Health District and/or to the Ohio EPA or its representative. Every 30 days, the Applicants shall send a statement of the water meter reading to the Surface Water Unit Supervisor, Ohio EPA Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087. At least once every 12 months, the Applicants shall send proof that the water meter has been checked and that the meter is accurate to the Surface Water Unit Supervisor, Ohio EPA Northeast District Office, 2110 East Aurora Road, Twinsburg, Ohio 44087.;

(K) The Applicants shall provide access to the holding tank(s) for inspection by the Geauga County Health Department and/or the Ohio EPA or its representative.

(L) Should the holding tank disposal system fail to operate properly, the Applicants shall immediately stop all water usage at and wastewater disposal from their building at 16208 Main-Market Street, Parkman, Ohio until the holding tank system is either properly repaired or abandoned and replaced. Should the holding tank disposal system fail and need to be abandoned and replaced, the Applicants shall submit a permit to install application to the Ohio EPA for approval before replacing the failed disposal system.

(M) Should a centralized sewer system be installed in the Parkman area and should such a centralized sewer system become available to Applicants for their building at 16208 Main-Market Street, Parkman, Ohio, then the Applicants shall cease use of the holding tank disposal system and connect to the centralized sewer system.

(N) The Director should add any other conditions that he

believes would be helpful in protecting human health and the environment.

Sam Wilson

W. SAMUEL WILSON, ESQ.
Presiding Hearing Examiner

6-2-98

Date

ROBERT & MARGARET CONKEY
Case No. 97-WI-037

SERVICE LIST

Robert & Margaret Conkey
1296 Lander Road
Mayfield Heights, Oh. 44124
for Robert & Margaret Conkey

Margaret A. Malone, Esq.
Michael E. Idzkowski, Esq.
Environmental Enforcement Section
Office of the Attorney General
30 East Broad Street - 25th Floor
Columbus, Ohio 43215
(614) 466-2766
for the Ohio Environmental Protection Agency

W. Samuel Wilson, Esq.
Hearing Examiner
Ohio Environmental Protection Agency
Offices of the Hearing Examiners
1700 WaterMark Drive, 1st Floor
P.O. Box 1049
Columbus, Ohio 43216-1049
(614) 644-2746
Presiding Hearing Examiner

Hearing Clerk
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049
(614) 644-2129

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REPORT AND RECOMMENDATION

Applicants.

Attached hereto is a copy of the Hearing Examiner's Report and Recommendation in this matter. Pursuant to Ohio Revised Code Section 119.09 and Ohio Administrative Code Rule 3745-47-24, any party to this matter may file written objections to the Report and Recommendation. Such objections must be filed with the Director of Environmental Protection within ten (10) days of the receipt of the Report and Recommendation. Written objections should be filed with:

Hearing Clerk
Ohio Environmental Protection Agency
Fourth Floor, 1800 WaterMark Drive
P.O. Box 1049
Columbus, Ohio 43216-1049

If objections are filed, an original plus two (2) copies are required.

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