

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

In the Matter of:	:	Case No. 97-WI-037
	:	
	:	DIRECTOR'S FINAL
ROBERT & MARGARET CONKEY	:	FINDINGS AND ORDER
	:	
Applicants	:	

Pursuant to section 119.09 and Chapter 6111. of the Ohio Revised Code, and the rules of the Ohio Environmental Protection Agency, the Director of Environmental Protection hereby makes the following Findings and issues the following Order:

FINDINGS

1. On October 28, 1997, Robert and Margaret Conkey ("the Applicants") submitted to the Ohio Environmental Protection Agency ("the Agency") an application for a permit to install two wastewater holding tanks on their property located at 16208 Main-Market Street in Parkman Township, Geauga County, Ohio.
2. This property is the site of a building the Applicants currently rent as apartments. The Applicants intend to establish and operate as a commercial business a coffee shop in the building.
3. On November 26, 1997, the Director of Environmental Protection ("the Director") issued a proposed action denying the permit to install sought by the Applicants.
4. The Applicants submitted a timely request for an adjudication hearing in response to the November 26, 1997 proposed action.
5. On March 10, 1998, an adjudication hearing in this matter was held before an Ohio Environmental Protection Agency Hearing Examiner.
6. Pursuant to Rule 3745-47-03(J) of the Ohio Administrative Code, the parties to the adjudication hearing were the Applicants and the Agency.
7. On June 2, 1998, the Hearing Examiner filed his Report and Recommendation in this matter.

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

by *Jana L. Clements* Date 11-25-98

each) of wastewater per week, the cost to the Applicants would be approximately \$50 per week. The Director finds this figure to be unsupported by the evidence. This figure is based entirely upon the statement of Mr. Conkey that he was told by an unidentified representative of the McFarland Plant in Geauga County that it would cost \$10 plus \$4 per thousand gallons to dispose of wastewater at that facility. Not only does the \$14 dollar figure upon which the Examiner relies not include the cost of hauling the waste, the figure itself is contradicted by the manifest weight of the evidence presented at the hearing. The testimony of two Agency witnesses and the Environmental Health Director for Geauga County, all of whom have considerable experience in wastewater disposal issues, was that estimated disposal costs range from approximately \$75 per thousand gallons to approximately \$125 per thousand gallons. Further, the Director of the Geauga County Department of Water Resources, who has responsibility for the McFarland Plant referenced by Mr. Conkey, testified that this facility is not currently accepting waste from private haulers, and if such waste were accepted, the cost of disposal would be \$75 per thousand gallons.

15. Other than as described in the previous two Findings, the Applicants presented virtually no evidence in this matter addressing any requirements set forth in Rule 3745-31-05 of the Ohio Administrative Code.
16. Other than as described in Finding 13 above, the Applicants have presented no evidence in this case demonstrating that any factual statements contained in the November 26, 1997 proposed action and attached denial report are incorrect.
17. The Applicants have not presented evidence in this proceeding demonstrating that they are entitled to the permit sought.
18. The Agency presented uncontradicted evidence in the adjudication hearing that wastewater holding tanks often leak or overflow, causing environmental problems; that raw wastewater from holding tanks repeatedly has been discharged into the environment as the result of intentional, illegal tampering with the tanks, and that the Ohio EPA allows the use of holding tanks as a temporary measure when centralized sanitary sewers are under construction, or when no other feasible solutions exist to remedy a serious problem with an existing system. Neither of these circumstances exists here.
19. Despite the absence of evidence demonstrating the Applicants' entitlement to a permit to install, the Hearing Examiner has concluded that the Agency's proposed denial in this case is incorrect owing to what the Examiner believes to be certain erroneous assumptions or misinterpretations made by the Agency.
20. Principally, the Examiner has concluded that the Agency has erroneously overestimated both the volume of wastewater to be generated by the Applicants' proposed establishment and the cost of its disposal; that the Agency has improperly assumed that the Applicants will not appropriately maintain their holding tanks if installed and thus will not comply with a permit to install if issued; that the Agency has improperly assumed a negative effect on water quality based on the improper assumption that the Applicants will not appropriately maintain the

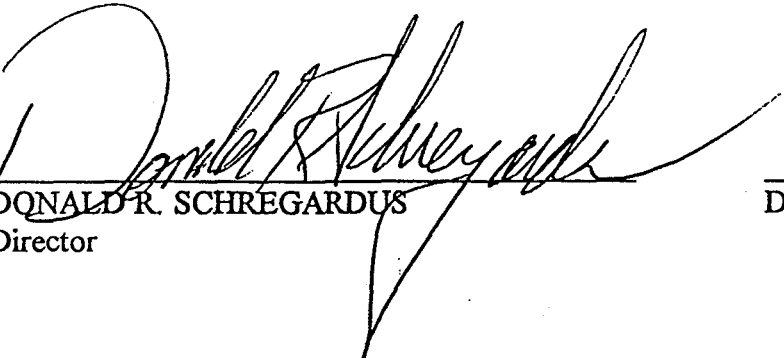
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holding tanks, that incorporates no control technology at all, cannot reasonably be described as constituting best available demonstrated control technology.

25. The Record in this matter does not demonstrate that the application for a permit to install submitted by the Applicants meets the requirements of Rule 3745-31-05 of the Ohio Administrative Code.
26. Because the application for a permit to install submitted by the Applicants in this matter has not been shown to comply with the mandatory requirements of Rule 3745-31-05 of the Ohio Administrative Code, the permit sought may not be issued.
27. The Examiner has recommended that a permit to install, incorporating various conditions and refinements to the subject application, be issued as a final action. It is not, and cannot be, the Director's burden to cure deficiencies and fashion an approvable application for a permit applicant; that burden is the applicant's. Beyond this, the permit conditions suggested will not transform the proposed holding tanks into a disposal system that may be granted a permit to install consistently with the requirements of Rule 3745-31-05 of the Ohio Administrative Code.

ORDER

1. Permit to Install Application No. 02-11693 submitted by the Applicants Robert and Margaret Conkey is hereby denied as a final action of the Director, effective immediately.



DONALD R. SCHREGARDUS
Director

November 25, 1998

Date

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State of Ohio Environmental Protection Agency

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November 25, 1998

Re: Director's Final Findings and Orders
Ohio EPA Permit No.: 02-11693
Facility Name: Robert & Margaret Conkey

Robert & Margaret Conkey
1296 Lander Road
Mayfield Heights, Ohio 44124

Ladies and Gentlemen:

Transmitted herewith is one copy of the Director's Final Findings and Orders in the referenced matter.

You are hereby notified that this action of the Director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. It must be filed with the Environmental Review Appeals Commission within thirty (30) days after notice of the Director's action. A copy of the appeal must be served on the Director of the Ohio Environmental Protection Agency and the Environmental Enforcement Section of the Office of the Ohio Attorney General within three (3) days of filing with the Board. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
236 East Town Street, Room 300
Columbus, OH 43215

Sincerely,

Martha D. Spurbeck, Supervisor
Permit Processing Unit
Division of Surface Water

MDS/dks

Enclosure

CERTIFIED MAIL

cc: G. Elmaraghy, DSW
R. Bournique, DSW
Margaret A. Malone, Esq., AG Office
Michael E. Idzkowski, Esq., AG Office
W. Samuel Wilson, Esq., Hearing Officer
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