

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

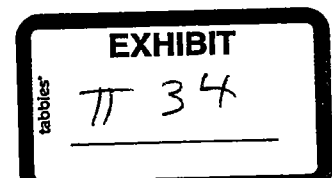
-----) Administrative Consent Order
In the Matter of) ACO-NE-03-1 G005
The Feoffees of the Grammar School)
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I. The Parties

1. The Department of Environmental Protection (the "DEP" or the "Department") is a duly constituted agency of the Commonwealth of Massachusetts within the Executive Office of Environmental Affairs. The Department maintains its offices at One Winter Street, Boston, Massachusetts, 02108. The Department implements and enforces the provisions of the Massachusetts Clean Waters Act, G.L. c. 21, §§ 26-53 and the regulations promulgated thereunder. Pursuant to G.L. c. 21A, § 16, the Department has authority to assess a civil penalty on any person who fails to comply with any regulation, order or approval issued or adopted by the DEP and any law or regulation which the DEP has the authority to enforce.
2. The Feoffees of the Grammar School ("Feoffees") own the property located at Little Neck in Ipswich (the "Site") and shown on the plan prepared by H.L. Graham Associates in Preliminary Report No. P-1, prepared by H.L. Graham Associates, Inc. dated June 23, 1999 (the "Preliminary Report"). The Feoffees are Trustees of a Massachusetts Trust and are comprised of Donald Whiston, Chairman, Peter A. Foote, James W. Foley and Alexander C. Mulholland. The Feoffees have a mailing address at 2 Jeffrey's Neck Road, Ipswich, MA 01938.

II. Statement of Facts and Law

3. Pursuant to the Clean Waters Act, G.L. c. 21, §§ 26-53, and the Groundwater Discharge Regulations, 314 CMR 5.00 et seq., the Department has the authority to regulate subsurface sewage disposal systems that handle more than 15,000 gallons per day.
4. There are 167 dwellings on the Site. 24 are used year round, and the remaining 143 are seasonal. These dwellings contain approximately 462 bedrooms. The sewage disposal systems on the Site include direct discharges, conventional Title 5 systems, and cesspools. Using Title 5 flows, the sewage disposal systems serving the dwellings on the Site discharge more than 50,000 gallons per day to the groundwater. To date, the Feoffees have not applied for or obtained a ground water discharge permit for the sewage disposal systems at the Site.
5. The Massachusetts Clean Waters Act, G.L. c. 21, § 43 (2) , provides:



No person shall discharge pollutants into waters of the Commonwealth, nor construct, install, modify, operate or maintain an outlet for discharge of any treatment works without a currently valid permit issued by the director. No person shall engage in any activity that may reasonably be expected to result directly or indirectly in discharge of pollutants into waters of the Commonwealth, nor construct, effect, maintain, modify or use any sewer extension or connection without a currently valid permit issued by the director, unless exempted by regulation of the director.

6. Groundwaters are waters of the Commonwealth as defined in the Clean Waters Act, G.L. c. 21, § 26 (2).
7. The effluent from the sewage disposal systems at the Site are pollutants as defined in the Clean Waters Act, G.L. c. 21, § 26 (2).
8. By allowing the discharge to the groundwater of the effluent from the sewage disposal systems at the Site, systems with a total design flow of over 50,000 gallons per day, without a permit, the Feoffees have violated and are continuing to violate the Clean Waters Act, G.L. c. 21, § 43 (2).
9. Pursuant to the Clean Waters Act, G.L. c. 21, § 43, the Department has promulgated the Groundwater Discharge Permit Regulations, 314 CMR 5.00.
10. The Groundwater Discharge Permit Regulations, 314 CMR 5.03 (1), provide in part:

No person shall discharge pollutants to groundwaters of the Commonwealth without a currently valid permit from the Director, pursuant to M.G.L. c. 21, § 43, and 314 CMR 5.00. No person shall construct, install, modify, operate or maintain an outlet for such discharge or any treatment works required to treat such discharge without having first obtained a discharge permit in accordance with 314 CMR 5.03 (1) and written approval from the Director for such activity.
11. The Groundwater Discharge Permit Regulations, 314 CMR 5.04 (1), provide in part:

No person shall engage in any activity other than those described in 314 CMR 5.03, which may reasonably result, directly or indirectly in the discharge of pollutants into groundwaters of the Commonwealth, without a currently valid permit from the Department pursuant to 314 CMR 5.00 and 2.00, unless exempted in 314 CMR 5.00.
12. The Groundwater Discharge Permit Regulations, 314 CMR 5.05, exempt from the requirement to obtain a groundwater discharge permit certain subsurface sewage disposal systems that discharge less than 10,000 gallons per day.
13. By allowing the discharge of pollutants from the sewage disposal systems at the Site, systems that handle approximately 50,000 gallons per day, the Feoffees have violated and are continuing to violate the Groundwater Discharge Permit Regulations, 314 CMR 5.03 and 5.04.

14. The Clean Waters Act, G.L. c. 21, sec. 44, provides in part as follows:

Whenever it appears to the director that there are discharges of pollutants without a required permit or that such discharges are in violation of a permit issued under this chapter, or in contravention of any regulation, standard, or plan adopted by the division, the director may order the discharger to apply forthwith for a permit or take other appropriate action under rules and regulations adopted by the director.

15. In 2000, the Feoffees entered into an Administrative Consent Order with the Department ACO-NE-99-1017 (the "Consent Order"). During the negotiations of this Consent Order, the Feoffees proposed a plan and schedule for coming into compliance with the Clean Waters Act (the "compliance plan"). The compliance plan was incorporated into the Consent Order. The compliance plan called for the implementation of certain actions including the installation of tight tanks and drip irrigation systems.
16. Subsequent to the execution of the Consent Order, the Feoffees requested that the Department allow them to postpone the implementation of the compliance plan pending a decision by the Town of Ipswich on a possible extension of the municipal sewer system to Great Neck and Little Neck. In response to this request, the Department agreed to exercise its enforcement discretion and refrain from enforcing the requirement to implement the compliance plan pending the Town's decision.
17. The Town subsequently decided not to extend the sewer to Great Neck and Little Neck. In light of this decision, the parties have agreed to amend the Consent Order to provide a new schedule for implementation of the compliance plan.

III. Disposition and Order

18. For the reasons set forth above, and pursuant to the authority granted to the Department under G.L. c. 21, § 26-53, G.L. c. 21A, § 16, and the regulations promulgated thereunder, the Department hereby issues and enters into this Administrative Consent Order. The Feoffees hereby consent to the issuance of this Consent Order. The Feoffees understand and hereby waive their right to an administrative hearing, a tentative decision, rehearing, re-argument, reconsideration and judicial review of this Consent Order and to notice of any such rights of review. The parties hereto agree that the Department has the authority to enter into this Administrative Consent Order.
19. On or before March 1, 2004, the Feoffees, through Lombardo Associates shall provide a scope of work for its review of alternatives to the drip system and tight tanks including, but not limited to, off-island options, on-island options, preliminary testing that will be required for soils and groundwater, technology review, the review and identification of permits and cost estimates.
20. On or before May 30, 2004, the Feoffees shall complete the installation of one drip irrigation system and notify the Department in writing that the installation is complete.

21. On or before June 1, 2004, the Feoffees shall provide a draft report to the Department regarding the alternatives reviewed.
22. On or before September 1, 2004, the Feoffees shall submit the final report to the Department regarding the alternatives reviewed. If the final report recommends the approval of alternatives, it shall also submit a schedule for implementation and compliance.
23. On or before December 31, 2004, the Feoffees shall complete the installation of the first batch of 50 tight tanks and notify the Department in writing that the installation is complete.
24. On or before December 31, 2004, the Feoffees shall complete the installation of the second drip irrigation system and notify the Department in writing that the installation is complete.
25. On or before December 31, 2004, the Feoffees shall submit to the Department for its review and approval applications to install fifty additional tight tanks.
26. On or before May 1, 2005, the Feoffees shall submit to the Department a report on the drip irrigation systems. The report shall recommend whether the year round residences should be served by drip irrigation systems or whether tight tanks or other systems are needed to serve the year round residences. The report shall also include a schedule for installation of the recommended systems that will provide for the installation of all systems by December 31, 2006. Thereafter, the Feoffees shall implement the recommendations in the report as approved by the Department in accordance with the schedule approved by the Department. The installation of the systems recommended in the report as approved by the Department in accordance with the schedule approved by the Department shall be deemed incorporated and made part of this Consent Order upon the approval of the report. Each failure to carry out an action recommended in the report as approved by the Department in accordance with the schedule approved by the Department shall be a violation of this Consent Order.
27. On or before June 15, 2005, the Feoffees shall complete the installation of the second batch of 25 tight tanks and notify the Department in writing that the installation is complete.
28. On or before December 31, 2005, the Feoffees shall complete the installation of the third batch of 25 tight tanks and notify the Department in writing that the installation is complete.
29. On or before December 31, 2005, the Feoffees shall submit to the Department for its review and approval applications to install tight tanks to serve the remaining seasonal residences on the Site.

30. On or before June 15, 2006, the Feoffees shall complete the installation of the fourth batch of 25 tight tanks and notify the Department in writing that the installation is complete.
31. On or before December 31, 2006, the Feoffees shall complete the installation of the tight tanks needed to serve the remaining seasonal residences at the Site and notify the Department in writing that the installation is complete.
32. On August 6, 1999, the Feoffees submitted to the Department for its review and approval a plan (the monitoring plan) for installing monitoring wells to assess the impact of the sewage disposal systems on the levels of nitrate, ammonia nitrogen, surfactants, bacteria, fecal coliform, ph, and specific conductants on the groundwater at the Site. The Feoffees shall sample, monitor and report in accordance with that monitoring plan as approved by the Department.
33. On or before January 2, 2006, the Feoffees shall submit to the Department for its review and approval an application for a groundwater discharge permit. Thereafter, the Feoffees operate the sewage disposal systems in accordance with the groundwater discharge permit and plan approval issued by the Department and 314 CMR 5.00 and 12.00.
34. This Consent Order does not constitute a permit. This Consent Order does not relieve the Feoffees of their obligation to obtain all necessary permits and to comply with all relevant federal, state, and local statutes, ordinances, bylaws or regulations.
35. Each submission required by this Consent Order shall be submitted to

David Ferris, Section Chief
Wastewater Management Program
Department of Environmental Protection
One Winter Street
Boston, MA 02108

36. The Feoffees shall pay to the Commonwealth stipulated penalties of \$1000 a day for each day of each violation of a provision of this Consent Order. Stipulated penalties shall begin to accrue on the day a violation occurs and shall continue to accrue, until the Feoffees correct the violation or complete performance, whichever is applicable. Even if violations are simultaneous, separate penalties shall accrue for each violation of each provision of this Consent Order. The payment of stipulated penalties shall not alter in any way the obligations of the Feoffees to complete performance as required by this Consent Order.
37. All stipulated penalties accruing under this Consent Order shall be paid upon written demand within ten days of the demand. The stipulated penalties set forth herein shall not preclude the Department from electing to pursue alternative remedies or alternative civil or criminal penalties which may be available by reason of the Feoffees' failure to comply with the requirements of this Consent Order. In the event that the Department collects

alternative penalties, the Feoffees shall not be required to pay stipulated penalties pursuant to this Consent Order.

38. Payment of all penalties due under this Administrative Consent Order is necessary for the Feoffees to come into compliance. In the event that the Feoffees fail to pay in full any penalty on or before the date due under this Consent Order, the Feoffees shall pay to the Commonwealth three times the amount of the penalty with costs plus interest on the balance due from the date of nonpayment. The rate of interest shall be the rate set forth in G.L. c. 231, § 6C. If a court judgment is necessary to execute a claim for penalties under this Consent Order, the Feoffees shall assent to the entry of such judgment.
39. The Feoffees shall pay all penalties due under this Consent Order by certified check, cashier's check or money order payable to the Commonwealth. The Feoffees shall print the Consent Order No. on the face of the payment and mail it to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 3584
Boston, MA 02241-3584

And shall deliver a copy of the payment to:

Madelyn Morris, Deputy Regional Director
Bureau of Resource Protection
Department of Environmental Protection
One Winter Street
Boston, MA 02108

40. In addition to being a Consent Order, this is also a Notice of Noncompliance pursuant to G.L. c. 21A, § 16 and 310 CMR 5.00 et seq. The Department and the Feoffees agree that the deadlines set forth herein are reasonable. In the event that the Feoffees fail to comply with any provision of this Consent Order, the Department shall have the right to seek further relief pursuant to G.L. c. 21, §§ 26-53, G.L. c. 21A, § 16, and 310 CMR 5.00 and 314 CMR 5.00.
41. Nothing in this Consent Order shall be construed as, or operate as barring, diminishing, or in any way affecting any legal or equitable right of the Department to issue any future order with respect to the subject matter covered by this Consent Order or in any way affecting any other claim, action, suit, cause of action or demand that the Department may have with respect thereto. Nothing in this Consent Order shall affect any legal or equitable right of the Department to take action in response to events of noncompliance not enumerated in this Consent Order.
42. This Consent Order shall be binding on the Feoffees, their employees, agents, contractors, consultants, successors, and assigns. The Feoffees shall not violate this

Consent Order and shall not allow their employees, agents, contractors, consultants, successors or assigns to violate this Consent Order. A violation of this Consent Order by any of the foregoing shall constitute a violation by the Feoffees.

43. Failure on the part of the Department to complain of an action or inaction on the part of the Feoffees shall not constitute a waiver by the Department of any rights under this Consent Order, nor shall a waiver by the Department of any provision of this Consent Order be construed as a waiver of any other provision. This Consent Order may be modified only by the written agreement of the parties. The Feoffees may not assign their obligations under this Consent Order.
44. If, at any time, there is break out or backup from the existing sewage disposal systems at the Site, the Feoffees shall notify the Department and the Ipswich Board of Health within 24 hours of such break out or backup by telephone or facsimile. Such notice shall be followed by formal written notice by mail within seven days of said breakout or backup.
45. If, at any time, the Department determines that the existing sewage disposal systems at the Site are operating in a manner which threatens the public health, safety or the environment or threatens to cause damage to property, or creates a nuisance, the Department may require the Feoffees to repair the affected systems. The Feoffees shall repair the affected systems as required by the Department pursuant to this paragraph.
46. The Feoffees shall allow Department personnel to enter and inspect the Site at reasonable times without notice for the purpose of assessing compliance with this Consent Order and all applicable laws and regulations.
47. If any term or provision of this Consent Order, or its application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Consent Order shall not be affected thereby, and each remaining term and provision shall be valid and enforceable to the fullest extent permitted by law, provided, however, that the Department may in its sole discretion elect to void the entire Consent Order in the event of such invalidity or unenforceability.
48. If any event occurs which causes or contributes or has the potential to cause or contribute to a delay in achieving compliance with a requirement of this Consent Order, the Feoffees shall immediately notify the Department by contacting David Ferris at the Northeast Regional Office by telephone and by following such oral notice, by written notice, not later than seven days of learning of such event. Notice of such an event shall include the anticipated length and cause of the delay, the measures taken or to be taken to minimize the delay and a timetable for implementing the required measures. The Feoffees shall adopt all reasonable measures to avoid and minimize any noncompliance. Failure of the Feoffees to comply with the notice requirements of this Paragraph shall render Paragraph 49 void and of no effect as to the particular incident involved and shall constitute a waiver of the Feoffees' right to request an extension of time for their obligations based on the incident.

49. If the Department determines that a delay has been caused by an event beyond the reasonable control of the Feoffees, the Department may extend the performance date in question for a period of time equal to the delay caused or contributed to by the event. Events for which the Department may extend performance deadlines include (1) acts of God; (2) acts of war; (3) unanticipated delays due to accidents, strikes, freight embargoes, or other work stoppages; (4) flood, fire, extreme weather conditions or other natural disasters; and (5) delay in obtaining permits and or approvals from state, local or federal authorities required to comply with the terms and conditions of this Consent Order, provided, however, that the Feoffees demonstrate to the satisfaction of the Department that best efforts were used to obtain such permits. Actions of the Feoffees' officers, employees, agents, consultants, or contractors shall not be acts beyond the control of the Feoffees. Unanticipated or increased costs or expenses associated with the implementation of the actions required under this Consent Order or changed financial circumstances shall under no circumstances serve as the basis for changes in this Consent Order or extensions of time for the performance of the actions required under this Consent Order, and shall not constitute force majeure events.
50. This Consent Order constitutes the entire agreement between the Department and the Feoffees with regard to the subject matter of this Consent Order. This Consent Order shall be effective on the date it is signed by the Department.
51. Each undersigned representative hereby certifies that he/she is fully authorized to enter into the terms and conditions of and to execute and legally bind the parties to this Consent Order.

Issued on behalf of the Department of Environmental Protection,

By Made Lynn Munn

Title DRD

Date 4/20/04

Consented to on behalf of The Feoffees of the Grammar School

By Donald F. Whiston

Title Chairman & Treasurer

Date 4/16/04