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IN THE  
SUPREME COURT OF THE UNITED STATES

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AMOS MAST, MENNO MAST, SAM MILLER, and AMMON  
SWARTZENTRUBER,

Petitioners,

vs.

COUNTY OF FILLMORE, and MINNESOTA POLLUTION CONTROL  
AGENCY,

Respondents.

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On Petition for a Writ of Certiorari to  
the Minnesota Court of Appeals

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**PETITIONERS' REPLY APPENDIX**

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APPENDIX A	Excerpts from District Court Trial Transcript <i>Swartzentruber v. County of Fillmore</i> , No. 23-CV-17-351 (Fillmore Cnty. Ct.).....	1-126
APPENDIX B	Fillmore County Motion for Inspections <i>Swartzentruber v. County of Fillmore</i> , No. 23-CV-17-351 (Fillmore Cnty. Ct.).....	127-130
APPENDIX C	Complaint for Declaratory Judgment <i>Swartzentruber v. County of Fillmore</i> , No. 62-CV-17-2033 (Ramsey Cnty. Ct.).....	131-141

APPENDIX D	Code of Federal Regulations .....	142
APPENDIX E	Minnesota Rules .....	143-146
APPENDIX F	Map of Maple Springs Campground.....	147
APPENDIX G	A Plain English Guide to the EPA Part 503 Biosolids Rule, U.S. Env't Prot. Agency (Sept. 1994), Page 9.....	148
APPENDIX H	Domestic Septage Regulatory Guidance A Guide to the EPA 503 Rule, U.S. Env't Prot. Agency (Sept. 1993), Page 34.....	149
APPENDIX I	Proposed Septic Tank Alternative [Exhibit 42] .....	150-151

1                   Go right around -- you can go right around --  
2 there you go.

3                   **EMERY MILLER**

4                   THE CLERK: You do affirm that the evidence you  
5 shall give relative to the cause now under consideration  
6 shall be the whole truth and nothing but the truth, and  
7 this you do under penalties of perjury. If so, say I do.

8                   THE WITNESS: I do.

9                   THE COURT: Mr. Miller, you may have a seat.

10                  And, Mr. Miller, I'll have you speak right into  
11 that microphone. That helps me hear it better.

12                  And, Mr. Lipford, you may proceed.

13                                 DIRECT EXAMINATION

14 BY MR. LIPFORD:

15 Q. Mr. Miller, you're a member of the Swartzentruber Amish  
16 faith; is that correct?

17 A. Yes.

18 Q. And who is the bishop of your church?

19 A. Jacob Swartzentruber.

20 Q. And that's the church that we're calling the Original  
21 Canton?

22 A. Yes.

23 Q. The -- I guess when -- were you born in Minnesota?

24 A. No.

25 Q. Where were you born?

1 A. Ohio.

2 Q. And when did you move to Minnesota?

3 A. 1980.

4 Q. And how old were you when you moved?

5 A. I don't even recall.

6 Q. Okay. How old are you now?

7 A. 69.

8 Q. 69. Okay. And why did you move from Ohio to Minnesota?

9 A. Because land was pretty scarce in Ohio.

10 Q. Why was land getting scarce?

11 A. Well there was so many people that land was just bought  
12 up.

13 Q. Okay. Are you talking about Amish or English or both  
14 or...

15 A. Both.

16 Q. And when did -- I guess when did the Amish first come to  
17 the -- I guess the Fillmore County area? Your  
18 understanding.

19 A. In 1974.

20 MR. CORSON: Objection; hearsay.

21 MR. LIPFORD: Okay.

22 MR. CORSON: Based on hearsay, lack of  
23 foundation.

24 THE COURT: Overruled.

25 You may go ahead, Mr. Lipford.

1 condition of that, you know, the wash house at, oh,  
2 probably about a year and a half ago?

3 A. I don't know.

4 Q. Okay.

5 A. Probably.

6 Q. Well, does -- is this an accurate picture of what the  
7 washhouse looks like?

8 A. Yes.

9 Q. Okay. And then do you remember that you had a bulldozer  
10 come out and do some grading out at your place?

11 A. Yes.

12 Q. And do you see these tracks, like these tread marks that  
13 are through here?

14 A. Yes, I do.

15 Q. Can you see those?

16 A. Yes.

17 Q. So you had somebody with a bulldozer come out there and,  
18 like, grade your place?

19 A. Ys.

20 Q. Who was it?

21 A. Gossman.

22 Q. Gossman.

23 A. Yes.

24 Q. Is that that Brandon Gossman?

25 A. Yes.

1 Q. So is that something that your husband Amos Mast hired  
2 him to do?

3 A. Yes.

4 Q. How come you didn't do that with a horse and a scraper?

5 A. Well, it probably would've been impossible.

6 Q. Would've taken a lot of work, wouldn't it, to scrape some  
7 of that with a horse and a scraper?

8 A. Yes.

9 Q. But it could've been done; couldn't it.

10 A. I don't know about it.

11 Q. So did -- did you go and -- was there a meeting at the  
12 church regarding whether Mr. Gossman could come out and  
13 do this CAT work for you?

14 A. No.

15 Q. You just went ahead and did it?

16 A. Yes.

17 Q. That's a violation of a Swartzentruber Amish rules; isn't  
18 it?

19 A. Not if it's impossible to do it without -- with a horse  
20 and scraper.

21 Q. Don't you -- but don't you have to get permission from  
22 the bishop?

23 A. No.

24 Q. Don't you have to have a meeting of the church?

25 A. No.

1 Q. Okay.

2 MR. CORSON: I'd like to admit into evidence  
3 Exhibit Number 209.

4 THE COURT: Mr. Lipford?

5 MR. LIPFORD: No objection, Judge.

6 THE COURT: Ms. Brown?

7 MS. BROWN: No, Your Honor.

8 THE COURT: 209 is received without objection.

9 BY MR. CORSON:

10 Q. Well, didn't -- and now I'm just going to show you what's  
11 marked as Exhibit Number 208. Can you see that?

12 A. Yes.

13 Q. Did you have somebody come out there and spread gravel on  
14 your place?

15 A. Yes.

16 Q. Who did that?

17 A. I don't know for sure. Bruening, probably.

18 Q. Bruening came out with a truck?

19 A. Yes.

20 Q. And so they actually came out with a truck and then they  
21 leveled off -- leveled it off for you, or did you have  
22 Gossman do that?

23 A. Gossman leveled it off.

24 Q. So that's something you could've done with a horse and a  
25 scraper; isn't it?

1 A. I don't know.

2 Q. Did you have to get permission then from someone to buy  
3 this gravel from the English?

4 A. No.

5 Q. How did -- how did you guys get a hold of Bruening to  
6 tell him to come out?

7 A. I can't remember.

8 Q. So did you use a phone to call Bruening and say, hey,  
9 come out and deliver some gravel for us?

10 MR. LIPFORD: Judge, I'll object. It's been  
11 asked and answered. She said she didn't know.

12 THE COURT: Overruled. I'll permit it.

13 If you know, ma'am.

14 THE WITNESS: Yeah. I think my husband called  
15 him.

16 MR. CORSON: Uh huh.

17 THE COURT: I'm sorry, what was the answer?

18 THE WITNESS: I think my husband called him.

19 THE COURT: Okay.

20 BY MR. CORSON:

21 Q. Would he have called him from Mr. Tollefson's house or do  
22 you know where he called --

23 A. I don't know. I don't know.

24 Q. At the time that this was done, was your husband working  
25 for Shamiah Womeldorf?



1 A. No, I don't think so.

2 Q. Did your husband work for Shamiah Womeldorf at some  
3 point?

4 A. Yes.

5 Q. And when he was working at Shamiah Womeldorf's, he was  
6 learning how to weld; wasn't he?

7 A. He could answer that.

8 Q. Okay. But he told you that he was doing some welding for  
9 Shamiah; didn't he?

10 A. I can't remember --

11 MR. LIPFORD: Object --

12 THE WITNESS: -- that he told me --

13 MR. LIPFORD: -- as hearsay, Judge.

14 MR. CORSON: It wouldn't be hearsay. It's a  
15 party, Your Honor, to the proceeding.

16 THE COURT: Yeah. That'd be the admission of a  
17 party opponent. I'll permit the answer, but I don't  
18 think I heard the answer.

19 What did you say, ma'am?

20 THE WITNESS: I don't -- I can't remember that  
21 he told me.

22 BY MR. CORSON:

23 Q. So isn't it true, though, that he borrowed Shamiah  
24 Womeldorf's tractor to come out and bail up the hay on  
25 your property?

1 A. No.

2 Q. And he actually -- so who round-bailed the hay out on  
3 your property in 2017?

4 A. Nobody.

5 Q. So your husband did not get into some difficulties with  
6 the bishop because he was using a tractor or bailer or  
7 some farm machinery?

8 A. You can ask him about that.

9 Q. Well, no, I'm asking you what you observed, if you  
10 remember.

11 A. At some point, yes.

12 Q. Yeah. And what was -- so what power equipment was he  
13 using?

14 A. I don't know.

15 THE COURT: Before you go on, how is Shamiah  
16 Womeldorf spelled?

17 MR. CORSON: Shamiah is S-h-a-m-i-a-h and then  
18 Womeldorf is --

19 THE COURT: Okay. Hold on. Hold on. S-h-a-m-  
20 i-a-h. Got it.

21 MR. CORSON: Yep. And then Womeldorf is W-o-m-  
22 e-l-d-o-r-f.

23 THE COURT: W-o-m-e-l-d-o-r-f. Okay.

24 MR. CORSON: Okay. Thank you, Your Honor.

25 So I'd like to admit into evidence Exhibit

1 Number 208.

2 MR. LIPFORD: No objection, Judge.

3 THE COURT: Is it turned at a right angle? Is  
4 that right?

5 MR. CORSON: That would actually be a better  
6 way. Yes, Your Honor.

7 THE COURT: And is that some kind of strapping  
8 or something in the middle of the picture?

9 MR. CORSON: I believe it is, but I could ask  
10 the witness, Your Honor.

11 THE COURT: Okay. But you're offering the  
12 picture to show the gravel work.

13 MR. CORSON: Yeah. And actually, yeah, to show  
14 the gravel and then the actual CAT work that had been  
15 done.

16 THE COURT: Okay.

17 Again, any objection, Mr. Lipford?

18 MR. LIPFORD: No, Judge.

19 THE COURT: Ms. Brown?

20 MS. BROWN: No, Your Honor.

21 THE COURT: 208 is received without objection.

22 BY MR. CORSON:

23 Q. Just showing you what's marked as Exhibit Number 211.

24 Can you see that?

25 A. Yes.

1 Q. And, Ms. Mast, that would be another picture of kind of  
2 your whole place from the roadway; is that right?

3 A. Yes.

4 Q. That truly and accurately depicts your property from the  
5 roadway?

6 A. Yes.

7 MR. CORSON: I'd like to admit into evidence  
8 Exhibit Number 211.

9 MR. LIPFORD: No objection, Judge.

10 MS. BROWN: No objection, Your Honor.

11 THE COURT: 211 is received without objection.

12 BY MR. CORSON:

13 Q. Showing you what's marked as Exhibit Number 213. Can you  
14 see that, Ms. Mast?

15 A. Yes.

16 Q. Does that truly and accurately depict the poultry shed  
17 that you -- or produce shed, sorry, that you were living  
18 in?

19 A. Yes.

20 Q. So that would've been this building and that's what you  
21 were living in before 2017.

22 A. Yes.

23 Q. Okay. And do you see this -- right here in this picture  
24 --

25 MR. CORSON: Well, I'd like to admit into  
Pet. App. 10

1 evidence, first, Exhibit Number 213.

2 MR. LIPFORD: No objection, Judge.

3 THE COURT: Ms. Brown?

4 MS. BROWN: No objection, Your Honor.

5 THE COURT: 213 is received without objection.

6 BY MR. CORSON:

7 Q. Do you -- do you see this trailer that's in the picture?

8 A. Yes.

9 Q. That trailer has rubber tires on it; doesn't it?

10 A. Yes.

11 Q. That's against Amish beliefs to use rubber tires; isn't  
12 it?

13 A. It isn't our trailer.

14 Q. Well, isn't that your -- isn't that all your sheet metal  
15 and everything on there?

16 A. Yes, it is.

17 Q. Whose trailer is it?

18 A. Probably John Breman.

19 Q. John?

20 A. Breman.

21 Q. Breman? Who's John Breman?

22 A. Somebody from Stewartville.

23 Q. Is that somebody that your husband works with?

24 A. He did already.

25 Q. And he -- so he does construction with John Breman?

1 A. Not now.

2 Q. He was then?

3 A. He did some for him.

4 Q. John Breman would come down and pick up your husband and  
5 take him to the construction sites?

6 A. When he was working for him, yes.

7 Q. Right. And then how would your husband get a hold of  
8 John Breman?

9 A. Through --

10 Q. Did he call him?

11 A. -- Cornbelt Lumber.

12 Q. I'm sorry, I --

13 A. Through Cornbelt Lumber.

14 Q. Cornbelt Lumber is down in Cresco, Iowa; right?

15 A. Yes.

16 Q. And Cornbelt Lumber, that's somebody he would have to  
17 call?

18 A. No.

19 Q. How would he know how to get a hold of Mr. Breman?

20 A. He went down to the office in Cornbelt.

21 Q. So somebody would give him a ride down to Cresco to --

22 A. Yes.

23 Q. Who would give him a ride down there?

24 A. I don't know.

25 Q. How many times a week did your husband get rides down to

1 Cornbelt Lumber at that time?

2 A. I don't know.

3 Q. Was he going down there every day?

4 A. Not that I remember.

5 Q. Four days a week?

6 A. I can't remember.

7 Q. Well, so you have no recollection of when your husband  
8 was gone.

9 A. Yes. But it wasn't always at the same place.

10 Q. Well, okay. Let me then rephrase it. So during this  
11 time frame, again, when this picture is taken, he would  
12 be gone five days a week doing construction for somebody;  
13 right? Or six days a week?

14 A. Most of the time, yes.

15 Q. And --

16 MR. LIPFORD: Judge, can I -- can I just  
17 clarify the -- what time period we're talking about? I  
18 don't think I caught what --

19 MR. CORSON: Okay.

20 THE COURT: Mr. Corson?

21 BY MR. CORSON:

22 Q. When was it that your husband was working for Breman and  
23 Cornbelt Lumber?

24 A. I don't know when it was. Couple years ago.

25 Q. When he was working for -- so a couple years ago someone

1           would come down and get him five, six days a week and  
2           take him to the job sites.

3 A.    Yes.

4 Q.    Was he using power tools at those job sites?

5 A.    I don't know.

6 Q.    Did he tell you whether he was using power tools?

7 A.    I can't remember that he did.

8 Q.    If he was, that would be against Amish beliefs; right?

9 A.    You can ask him that question.

10 Q.    Well, is it okay under Amish beliefs to, as your  
11        understanding of Amish beliefs, that you could use power  
12        tools as long as they belong to somebody else?

13 A.    Yes.

14 Q.    And the same with a cellphone, you can use a cellphone as  
15        long as it belongs to somebody else.

16 A.    Yes.

17 Q.    But you just can't bring them home; right?

18 A.    No.

19                   THE COURT:  Ma'am, when you say no, are you  
20        agreeing with him?  You just can't bring them home?

21                   THE WITNESS:  Yes.

22                   THE COURT:  Okay.

23 BY MR. CORSON:

24 Q.    Did your husband have a trailer that somebody would haul  
25        around for him?



1 A. (No response.)

2 Q. When -- okay. A couple years ago to the present, did  
3 your husband have a trailer that he put his tools in that  
4 would be hauled to different job sites?

5 A. It wasn't his trailer, no.

6 Q. It was somebody else's trailer.

7 A. Yes.

8 Q. But he would put his tools in, then; right?

9 A. They weren't his tools.

10 Q. So he would use somebody else's tools.

11 A. Yes.

12 Q. And that's how he could get around -- he could use power  
13 tools because they were somebody else's.

14 A. Yes.

15 Q. And then the same with this trailer, then. You can use a  
16 trailer with rubber tires as long as it belongs to  
17 somebody else.

18 A. We just load them.

19 Q. I see. And the same with this little wagon. It's got,  
20 see in this picture here, it's got rubber tires on it.  
21 That's okay?

22 A. If it's hard rubber, yes.

23 Q. So hard rubber on anything is okay?

24 A. No, just the kids' wagons.

25 Q. Just kids' wagons. Okay. Gotcha.

1 MR. CORSON: Your Honor, may I remove that  
2 exhibit?

3 THE COURT: You may.

4 MR. CORSON: Okay.

5 BY MR. CORSON:

6 Q. I'm showing you what's marked as Exhibit 216. Would that  
7 just be a close-up of that same trailer we were just  
8 talking about?

9 A. Yes.

10 Q. Does that truly and accurately depict the trailer?

11 A. Yes.

12 MR. CORSON: Your Honor, I'd like to admit into  
13 evidence Exhibit Number 216.

14 MR. LIPFORD: No objection, Judge.

15 MS. BROWN: No objection, Your Honor.

16 THE COURT: 216 is received without objection.

17 BY MR. CORSON:

18 Q. Showing you what's -- and so -- and it's okay to use  
19 motors; right?

20 A. Yes.

21 Q. So, for example, showing you what's marked as Exhibit  
22 Number 210. Can you see that?

23 A. Yes.

24 Q. That would be a buzz saw or rip saw that you use to cut  
25 up lumber?

1 A. Yes.

2 Q. Well, not -- maybe not you, but your family uses; right?

3 A. Yes.

4 Q. That's okay.

5 A. Yes.

6 MR. CORSON: I'd like to admit into evidence  
7 Exhibit Number 210.

8 MR. LIPFORD: No objection, Judge.

9 MS. BROWN: No objection, Your Honor.

10 THE COURT: 210 is received without objection.

11 BY MR. CORSON:

12 Q. I'm showing you what's marked as Exhibit Number 217. Can  
13 you see that, Ms. Mast?

14 A. Yes.

15 Q. Does that truly and accurately depict a cement mixer that  
16 your husband was using?

17 A. Yes.

18 MR. CORSON: I'd like to admit into evidence  
19 Exhibit Number 217.

20 MR. LIPFORD: No objection, Judge.

21 MS. BROWN: No objection.

22 THE COURT: 217 is received without objection.

23 BY MR. CORSON:

24 Q. That's -- so that cement mixer there is a motorized  
25 cement mixer; right?

1 A. Yes.

2 Q. So you're -- and the -- when your husband was doing this  
3 remodeling, he bought all the supplies from Menard's;  
4 didn't he?

5 A. I don't know.

6 Q. Okay. Or did he buy them from --

7 A. No, he didn't. Not all of them.

8 Q. Okay. So did he buy some of the supplies from Menards?

9 A. I don't think so.

10 Q. Did he buy them from Cornbelt Lumber?

11 A. Yes.

12 Q. And then were those delivered on a truck?

13 A. I believe so. Or trailer.

14 Q. And that's -- so an English truck; right?

15 A. Yes.

16 Q. And the same with then he bought, like, the cement. He  
17 bought that from Badger Supply?

18 A. I don't know.

19 Q. Okay. Just showing you what's marked as Exhibit Number  
20 218. Can you see that?

21 A. Yes.

22 Q. Does that truly and accurately depict the outside of this  
23 schoolhouse that you were remodeling?

24 A. Yes.

25 Q. And there's a --

1 MR. CORSON: I'd like to admit into evidence  
2 Exhibit Number 218.

3 MR. LIPFORD: No objection, Judge.

4 MS. BROWN: No objection.

5 THE COURT: 218 is received without objection.

6 BY MR. CORSON:

7 Q. Okay. So looking there, there's a motor. What do you  
8 use that for?

9 A. Whatever it's needed.

10 Q. Okay. So it could be used for anything; right?

11 A. Yes.

12 Q. So where do you get the gas?

13 A. At the gas station.

14 Q. Where?

15 A. It's not always the same.

16 Q. Well, in Harmony? Preston? Where?

17 A. Preston oftentimes.

18 Q. How do you get the gas from the gas station to your  
19 place?

20 A. With a jug.

21 Q. With a -- with a jug?

22 A. Yes.

23 Q. Okay. Is it ever delivered by Hovey Oil or anybody else  
24 like that?

25 A. No.

1 Q. So, and then on the side of your house, I see that you've  
2 got this Tyvek stuff labeled Cornbelt Lumber; is that  
3 right?

4 A. Yes.

5 Q. So is that something you had to get approval to use that  
6 type of modern building material?

7 A. No.

8 Q. And then I see it's got a symbol Rip-Rite, Grip-Rite, and  
9 symbols. So aren't symbols against the Amish religion?

10 A. I don't know.

11 Q. Well, like -- so like the slow-moving vehicle sign. A  
12 triangle. You can't use symbols like that; is that  
13 right?

14 A. Yes.

15 Q. So how come you can use a symbol like this that says  
16 Grip-Rite or what -- and this, like, wavy line like that?

17 A. That's just how it comes.

18 Q. So those type of symbols are okay.

19 A. I guess so.

20 Q. Okay. Showing you what's marked as Exhibit Number 218 --  
21 or 220. Sorry. Can you see that?

22 A. Yes.

23 Q. Would that accurately depict some of the stuff that --  
24 from your kitchen that you would throw out on the ground?

25 A. No. We dump it in the pig -- to the pig.

1 Q. Oh, that's the stuff that goes to the pig.

2 A. Yes.

3 Q. Okay.

4 MR. CORSON: I'll withdraw that one, Your  
5 Honor.

6 BY MR. CORSON:

7 Q. Just showing you then what's marked as Exhibit Number  
8 221. Can you see that?

9 A. Yes.

10 Q. Does that accurately depict the swing set out at your  
11 place?

12 A. Yes.

13 Q. Is --

14 MR. CORSON: I'd like to admit into evidence  
15 Exhibit Number 221.

16 MR. LIPFORD: No objection.

17 MS. BROWN: No objection.

18 THE COURT: 221 is received without objection.

19 BY MR. CORSON:

20 Q. So looking at that, you're allowed to have bright colors  
21 like that?

22 A. Yes.

23 Q. So bright colors are okay in your -- in the  
24 Swartzentruber Amish.

25 A. Some of the stuff.

1 Q. Okay. So, like you've got a bright red mower there and  
2 bright yellows and stuff like that, that's okay.

3 A. As far as I know.

4 Q. Okay. Showing you what's marked as Exhibit Number 224.  
5 Can you see that?

6 A. Yes.

7 Q. That -- would that be the inside of your schoolhouse  
8 before you got it completely remodeled?

9 A. Yes.

10 Q. And there's -- does that accurately depict some of the  
11 fiberglass insulation you had purchased?

12 A. Yes.

13 MR. CORSON: Like to admit into evidence  
14 Exhibit Number 224.

15 MR. LIPFORD: No objection, Judge.

16 MS. BROWN: No objection.

17 THE COURT: 224 is received without objection.

18 BY MR. CORSON:

19 Q. So that's okay to use fiberglass insulation?

20 A. As far as I know.

21 Q. Did you have to get any approval from the bishop to use  
22 that type of modern stuff?

23 A. No.

24 Q. Okay. Did that come from Cornbelt Lumber also?

25 A. Yes.



1 Q. Did it come on a truck?

2 A. Probably. I can't remember.

3 Q. Okay. This is the cement floor that was in the -- in  
4 this school; right?

5 A. Yes.

6 Q. And your husband used a motorized trowel to flatten out  
7 or to get that cement ready; didn't he?

8 A. Yes.

9 Q. That's something that he rented?

10 A. Yes.

11 Q. He rented in Harmony from a guy?

12 A. Yes.

13 Q. Do you know if that was Randy Barnes or Kingsley that he  
14 rented it from, or what?

15 A. Yes.

16 Q. Which one?

17 A. Randy Barnes.

18 Q. Randy Barnes? Okay. Just showing you what's marked as  
19 Exhibit Number 228. Do you see that?

20 A. Yes.

21 Q. Does that accurately depict another motor and saw that  
22 you used at your place?

23 A. Yes.

24 MR. CORSON: I'd like to admit into evidence  
25 Exhibit Number 228.

1 THE WITNESS: Well, I'm expecting they would.  
2 You know, I guess I didn't go ask them if they're going  
3 to or --

4 BY MR. CORSON:

5 Q. Okay. So it's not been important enough so far to put up  
6 to a vote; right?

7 MR. LIPFORD: Objection; argumentative.

8 THE COURT: Overruled.

9 MR. LIPFORD: And also --

10 THE WITNESS: Well, it was, you know, we had a  
11 vote, you know, over it -- over everything that, you  
12 know, and then it was agreeable to, you know...

13 BY MR. LIPFORD:

14 Q. So the people that have a straight-pipe system, then,  
15 they are in violation of the vote; right?

16 A. Probably.

17 Q. Okay. Now, it sounds like you have some religious  
18 objections to the idea of putting in the gray water  
19 system that the county and state want; right?

20 A. Yes.

21 Q. Now, as I understand your faith, it's very important for  
22 you to do what your forefathers have done before you;  
23 right?

24 A. Yes.

25 Q. So as I look through things, you know, in some of these

1 documents, like this Dordrecht Confession and then you  
2 saw another one, it sounds like it's pretty important in  
3 your faith to cause no harm to others; right?

4 A. Well, if we can avoid it, we don't want to.

5 Q. Right. So in the Dordrecht Confession in Article XIV, it  
6 says that we must not inflict pain, harm, or sorrow upon  
7 any one. Would that be consistent with what your  
8 forefathers did?

9 A. What was that?

10 Q. Okay. I probably talked too fast, so...

11 MR. LIPFORD: Yeah. I'm --

12 BY MR. CORSON:

13 Q. Let me talk slower just because I was -- in the Dordrecht  
14 Confession, it says in Article XIV that we must not  
15 inflict pain, harm, or sorrow upon any one. That would  
16 be consistent with your faith is and what your  
17 forefathers did; right?

18 A. Probably.

19 Q. And it also says we must do good and commend others  
20 (sic), in Article XIV, to every man's conscience. So you  
21 must do good; right?

22 A. Well, I try to.

23 Q. Also it was important to your forefathers, as I  
24 understand it, that you be clean. And it says in the  
25 Fifth Book of Moses that you need to keep -- stay clean

1 and keep your camp clean. Would that be fair to say  
2 that's important in your culture? Be clean, wash your  
3 hands?

4 A. Yeah. We try to wash our hands clean and --

5 Q. Right.

6 A. -- keep the house clean and --

7 Q. And that's also supported -- I'm sorry, if I interrupted  
8 you.

9 A. And keep the, you know, keep the house clean and stuff as  
10 good as we can.

11 Q. Yeah. So that's important, right, to prevent diseases,  
12 make sure people don't get sick; right?

13 A. Yeah, I suppose probably.

14 Q. And is it also true in your faith that you want to be  
15 what's called good stewards of God's earth, to take care  
16 of the earth around you?

17 A. I suppose, yeah.

18 Q. But that's important as part of your religious faith and  
19 what your forefathers did before you; right?

20 A. Well, yeah.

21 Q. Uh huh.

22 A. I suppose.

23 Q. So like out on your farm, you try -- where you farm out  
24 there, your land, you try to make sure you take good care  
25 of it, don't pollute it, things like that; right?

1 A. Well, as good as we can, yeah.

2 Q. Sure. Okay. Now, if I understand correctly, you have a  
3 business where you do run a sawmill; right?

4 A. Yes.

5 Q. In your sawmill, you got some big machines and blades and  
6 things like that out there, right?

7 A. A few.

8 Q. Some pretty heavy-duty steel that occasionally may break?  
9 Your machines may break?

10 A. Yeah.

11 Q. And when your machines break, that's some -- well, let me  
12 back up. Do you weld?

13 A. No.

14 Q. And can you weld as part of the Amish faith?

15 A. No.

16 MR. LIPFORD: Object.

17 BY MR. CORSON:

18 Q. So in order -- like when your sawmill breaks down and  
19 there's some of that heavy-duty steel breaks, you've got  
20 it welded sometimes; don't you?

21 A. Yeah.

22 Q. When you do that, you got to get an Englishman out there  
23 to do some welding; don't you?

24 A. Oh, not always.

25 Q. Oh. So there's other Amish that'll weld for you?

1 A. No.

2 Q. Well, I'm talking about when you got to do -- weld that  
3 steel, there's times you've had Englishmen come out there  
4 and weld on your equipment, are -- isn't there?

5 A. Sometimes, yeah.

6 Q. And when they come out and weld, they come out to your  
7 property; right? At the sawmill; right?

8 A. Yeah. When they come out, yeah.

9 Q. When they do, you end up having to pay them for doing the  
10 welding; right?

11 A. Yes.

12 Q. So that's one of the -- kind of the things in your  
13 Ordnung. You can hire English to do stuff like that;  
14 right?

15 A. As far as I know, we can.

16 Q. Yeah. And I know that in your family, I think you said  
17 there's eight kids?

18 A. Yes.

19 Q. So with -- all eight kids are living at home right now?

20 A. Yes.

21 Q. So, and then it's -- so with you and your wife, there's  
22 ten people in the house.

23 A. Yes.

24 Q. When you put in the gray water system, you put in the --  
25 what you thought was the same system as Menno Mast;

1 questions.

2 THE COURT: Ms. Brown, Mr. Corson? Who will  
3 start with this witness?

4 MR. CORSON: I can, Your Honor.

5 THE COURT: Mr. Corson, you may go ahead.

6 MR. CORSON: Okay. Thank you.

7 CROSS EXAMINATION

8 BY MR. CORSON:

9 Q. Mr. Mast, just want to make sure I ask this correctly.  
10 You started out, and you said that the gray water system  
11 that is being requested by the county and the state, you  
12 said that that would burden your religious belief.

13 A. Yes, it would.

14 Q. Okay. Tell me what that means.

15 A. That would be against my religious.

16 Q. Uh huh.

17 A. I would be doing something that I know better.

18 Q. Okay.

19 THE COURT: I'm sorry, you'd be doing something  
20 that what?

21 THE WITNESS: My faith would know better to do.

22 THE COURT: Okay.

23 BY MR. CORSON:

24 Q. Okay. Anything else you want to add about that?

25 A. On what?

1 Q. Of why that would be a burden.

2 A. Well, with the fines and jail threat and stuff would all  
3 go with it.

4 Q. Okay.

5 A. That would --

6 Q. Okay. So that's your description of how it burdens your  
7 religion; right?

8 A. Yeah. That's pretty much the way it's put out to the  
9 world, you know.

10 Q. Okay. Do you remember when you were asked that question  
11 during a deposition?

12 A. Oh, I probably had that question. I can't remember for  
13 sure what the answer was.

14 Q. And you never used the term burden when you were asked  
15 why you wouldn't put it in; did you?

16 A. I can't tell you the truth looking at it.

17 Q. Okay. Would it assist in refreshing your recollection if  
18 I was to show you a copy of what you stated?

19 A. Might. Can show me.

20 MR. CORSON: Your Honor, first of all I'd like  
21 to admit into evidence Exhibit Number 117, which is the  
22 sealed transcript, and then I do have a copy for the  
23 purposes of just assisting this witness.

24 MR. LIPFORD: I object.

25 THE COURT: Hold on. I don't think I'm going



1 to be receiving entire depositions. That would imply  
2 that the court then, what, would read those depositions  
3 as part of the record? I take it what you want to do is  
4 use targeted portions of those depositions; is that  
5 right?

6 MR. CORSON: Right. And I think --

7 THE COURT: Right. But you don't have to admit  
8 in evidence a deposition transcript to do that.

9 MR. CORSON: I think I have to provide you with  
10 the sealed copy of the transcript as far as what I  
11 submit.

12 THE COURT: Yeah. That gets done, but it's --  
13 I don't believe it's received in evidence.

14 But, Mr. Corson, more preliminary, I think  
15 you've got to -- do you think he's testified to something  
16 inconsistent? Do you think at his deposition he  
17 testified inconsistently with his testimony today?

18 MR. CORSON: That's what I'm going to explore,  
19 Your Honor.

20 THE COURT: Well do you think he --

21 MR. CORSON: Yes.

22 THE COURT: Right. So I think if you impeach  
23 him with his deposition testimony, you do that by  
24 confronting him with his deposition testimony.

25 MR. CORSON: That's what I was in the process

1 of doing, Your Honor.

2 THE COURT: No, you were refreshing his  
3 recollection.

4 MR. CORSON: Okay.

5 THE COURT: I think what you do is, Mr. Mast,  
6 isn't it true that at your deposition you testified --  
7 you were asked and testified as follows.

8 MR. CORSON: Yeah. Okay.

9 THE COURT: And then if he says I don't know,  
10 then I think you may be able to show him the transcript.

11 MR. CORSON: Yeah. I'll -- Yes, Your Honor.  
12 Thank you. I appreciate that.

13 BY MR. CORSON:

14 Q. Do you remember that you were asked to explain what's the  
15 difference between using a pipe like you're using now to  
16 drain out of the floor drains and then installing drains  
17 that would go out but eventually would go into a gray  
18 water tank, and you -- and you were asked what's the  
19 difference from your religious view, and you answered "I  
20 think that the ones that go in the gray water tank is the  
21 way of the world;" is that right?

22 A. Yes.

23 Q. Okay. And then you were asked "So you think that once  
24 you add the tank to it, now becomes, you know, a way of  
25 the world." And you said "yes."

1 A. Yes.

2 Q. Okay. And then you went on to say that part of the  
3 reason was you just never had it before; right?

4 A. We never had it before.

5 Q. Okay. Never said that it was a burden on your religion;  
6 did you?

7 A. I might've not.

8 Q. Okay. Okay. You, prior to September 2017, had a  
9 straight-pipe where the drains from your bathtub, sink,  
10 everything, it all went out a straight-pipe; right?

11 A. No --

12 Q. Prior to September 2017.

13 A. Which sink? Which sink are you talking?

14 Q. Okay. Well, help me out on that. So are there sinks and  
15 bathtubs, things like that where that all went down the  
16 drain and out the straight-pipe?

17 A. We got a dry sink. We got a sink where we wash our hands  
18 when we come in from chores. That goes down the drain.  
19 The bathtub goes down the -- that goes down the drain.

20 Q. Sure.

21 A. So --

22 Q. That's -- I mean that's what I was asking.

23 A. That the one you --

24 Q. That water goes somewhere else then than down the drain?

25 A. Dump it out on the ground. At times.

1 for flashlights; right?

2 A. Yes.

3 Q. And it's okay if you're -- you said that people in your  
4 community are not supposed to work off the farm in the  
5 city; right?

6 A. Right.

7 Q. But they can work doing construction, they can work doing  
8 -- like at Hy View Feeds, they can do that type of stuff;  
9 right?

10 A. Yeah.

11 Q. Some of them even work in Mable for Steuart Laboratories;  
12 don't they?

13 A. Not to my knowledge.

14 Q. Uh huh.

15 A. Not from our church. Not that I know of.

16 Q. So then it's okay, as part of your belief system for  
17 people to use cellphones as long as they belong to  
18 somebody else; right?

19 A. I try to avoid cellphone if at all possible.

20 Q. Right. But that's okay in your belief system; isn't it?

21 A. In emergency.

22 THE COURT: What was that, sir?

23 THE WITNESS: In an emergency.

24 THE COURT: Okay.

25 THE WITNESS: Not as an everyday tool.

1 BY MR. CORSON:

2 Q. Same thing if -- with all the people working off the  
3 farm, it's okay for them to get a ride every day from an  
4 Englishman or somebody else; right?

5 A. I guess I don't do that myself.

6 Q. Right. But in your church, you're the minister, you know  
7 that people are doing that; don't you?

8 A. Well, you know, I guess in a case where like a friend  
9 wants something done, help in that way, or if a person  
10 has no other work in a pinch they might allow him to do  
11 it for a certain amount of time. But that just depend on  
12 who was the driver.

13 Q. Well, how'd you get to court today?

14 A. Actually, I was just about ready to get my horse and the  
15 buggy to go and a friend stop in and says I got room,  
16 would you go along.

17 Q. Right. So you went with somebody in a car; right?

18 A. Yeah.

19 Q. And it wasn't an emergency; was it?

20 A. Well, actually to tell you the truth, in our church rules  
21 it says -- the forefathers said it this way. If a friend  
22 -- if you're walking on the road and a friend would come  
23 to offer you to ride along, they thought maybe would be  
24 better to ride along than anger him in a case like that.

25 Q. Right. And the same is true with cellphones. If a

1 friend offers you, you can use it; right?

2 A. Well, that would depend of course if there was an  
3 emergency or not.

4 Q. Uh huh.

5 A. If I just do it to use as an everyday tool, no.

6 Q. Same with power tools? It's okay in your church for guys  
7 to use those power tools as long as they belong to  
8 somebody else; right?

9 A. I guess I'm not aware of that.

10 Q. You're not aware of any of --

11 A. That this -- that there's --

12 Q. -- people in your church --

13 A. That they're allowed to use the power tools. I guess I'm  
14 not aware of that.

15 Q. Okay. And then one of the things that, according to your  
16 belief system, you are not supposed to -- and this is in  
17 the -- your belief of statement of the Mennonites, we do  
18 not prosecute nor go to law in any way. Are you familiar  
19 with that?

20 A. True. You know, yes, in certain -- well I guess put it  
21 this way, not to -- for revenge or to force money from  
22 somebody.

23 Q. Well, I'm just going to show you then what I think has  
24 been marked already.

25 MR. CORSON: Your Honor, may I remove Exhibit  
Pet. App. 36

1 350?

2 THE COURT: You may.

3 BY MR. CORSON:

4 Q. I'm just showing you, then -- this is on Page 4. Just if  
5 I may refer you to this. It says, we do not prosecute  
6 nor go to law in any way. And so isn't it true,  
7 according to your faith system, that you are not supposed  
8 to file lawsuits against others or the government? Isn't  
9 that true?

10 A. I guess I was in a meaning that we were only asking to  
11 have our religious freedom.

12 Q. Okay. So you don't think this -- these four individuals  
13 here, that's not a -- you think -- isn't that a violation  
14 of what your statement of faith is?

15 A. I guess I was not aware that it is.

16 Q. Oh, okay. So one thing I want to understand, then,  
17 please explain to me if you can, sir, how it is okay to  
18 have piping from -- for bringing in fresh water, how it  
19 is okay to have cisterns and tanks for that fresh water,  
20 how that's okay but not to have them in this case for the  
21 gray water system?

22 A. That's what our forefathers have left us.

23 Q. Okay. So it's because of what your forefathers decided.

24 A. It is that -- it is -- it is our beliefs to keep as much  
25 as at all possible what our forefathers left us. If we

1 start straying from that, where will we stop?

2 Q. Well --

3 A. Honoring our forefathers --

4 Q. Sure.

5 A. -- is part of our beliefs.

6 Q. Isn't it part of your beliefs to be stewards of the land  
7 and take care of the land so you don't contaminate water?

8 A. We try to be careful what we do out there; right.

9 Q. Right. So that's an important part of your faith; isn't  
10 it?

11 A. Yes. We don't want to destroy the land out there.

12 Q. Isn't it an important part of your faith also to make  
13 sure that you maintain cleanliness and don't endanger  
14 others because of public health and safety issues?

15 A. Well I try to be careful, yes.

16 Q. Are you -- are you familiar with a passage from the Fifth  
17 Book of Moses that talks about keeping the camp clean?

18 A. Yes.

19 Q. And so you would agree that even in the Bible it talks  
20 about keeping things clean.

21 A. That's -- isn't that what we do when we put our manure --  
22 our human waste out on the land and plow it under?

23 Q. So you agree there's all those things in the Bible, too,  
24 that you have to think about --

25 A. Well, we don't read in the Bible about the gray water



1 system.

2 Q. Right. So it doesn't talk about a gray water system in  
3 the Bible; right?

4 A. No. At least I have never read anything in it.

5 Q. Sure. Sure. Okay. But it's okay to have new things  
6 like Tyvek on the side of your building; right? That's  
7 okay?

8 A. Tyvek?

9 Q. You know, the plastic wrapping around your house. You  
10 can use that; right?

11 A. Well, I guess I don't have it on my house.

12 Q. Uh huh.

13 A. I have the old siding on there.

14 Q. Okay to use fiberglass insulation; right?

15 A. Yes. That's what our forefathers used.

16 Q. It's okay to use foam insulation? That's okay?

17 A. Yes. Insulation. I guess -- I guess I don't know if any  
18 insulation was ever --

19 Q. Uh huh.

20 A. -- our forefathers had that.

21 Q. Disposable diapers? You can use those?

22 A. I have never used them -- except I guess I shouldn't say  
23 -- when we traveled on the bus we did use occasionally  
24 for cases like that.

25 Q. So there's certain types of technologies that you're okay

1 with adapting and adopting to; right?

2 A. Well, I guess it's something that the church would have  
3 to agree with.

4 Q. Uh huh.

5 A. There would have to be through prayer --

6 Q. Uh huh.

7 A. -- and counseling.

8 Q. Right.

9 A. One person couldn't change it.

10 Q. And you talked about that the other Swartzentruber Amish  
11 that you may not have communion with them; right?

12 A. Yeah.

13 Q. But they are Swartzentruber Amish; right?

14 A. Probably, yeah. To explain that would probably be like  
15 there's different, I understand, there's different forms  
16 of Lutherans; is that correct?

17 Q. Uh huh.

18 A. This would be kind of like that, I would think.

19 Q. Sure. And one of the -- wasn't there a split, like,  
20 between your group and some of the others because  
21 actually your group actually supported the slow-moving  
22 vehicle sign; right? That the Amish should put it on?  
23 Wasn't there a split in the 1980s over that?

24 A. Our group were the ones that took the stand in that court  
25 case in '89 -- or was it '88.

1 Q. Okay. So you're saying it's not the opposite, that your  
2 group is the one that actually at first split because you  
3 thought that the slow-moving vehicle sign was okay.

4 A. I don't believe that was the split.

5 Q. Okay. Okay.

6 A. We took the stand in '88 was to not have the slow-moving  
7 sign.

8 Q. One of the things that's important in your faith is to  
9 keep separate from other groups, then; right? That are  
10 maybe not believers?

11 A. Well, separation from the world.

12 Q. Right. But in order to adapt, your group has done things  
13 like that where you do go buy your materials at Menards;  
14 right? That's okay?

15 A. I guess the last time I built, I bought from a local guy.

16 Q. Right. And it's okay to go into Menards where they have  
17 cameras on you in order to do the business; right?

18 A. I guess we don't pay attention to what they got in the  
19 ceiling.

20 Q. And it's okay --

21 A. We go in to buy the merchandise is what we do.

22 Q. And you're okay with guys like Raymond Reese actually  
23 coming out to members' farms and actually using their  
24 equipment to unload logs onto the -- onto the conveyor;  
25 right? That's okay with you to use that kind of --

1 A. On a conveyor?

2 Q. Yeah. So if you -- like if you go to Menno Mast's or Sam  
3 Miller's place, it's okay for Raymond Reese to go out  
4 there and use his trucks to bring in logs; right?

5 A. Well I guess I had assumed he was buying them from  
6 Raymond, but I don't know, maybe it's custom sawing for  
7 Raymond. I don't know.

8 Q. Okay. But it's okay to use trucks and the -- and the big  
9 claw --

10 A. Well, we don't use the truck.

11 Q. Right.

12 A. Reese would use the truck.

13 Q. Right. But he would use it on the farm. That's okay.

14 A. Raymond would use it on the farm to bring merchandise.

15 Q. Right.

16 A. Logs in.

17 Q. Yeah. And it's okay for people like Randy Barnes to haul  
18 -- come out there with his truck and load up some of the  
19 materials or hold the materials for Mr. Mast; right?

20 A. I guess I don't know if does he or doesn't. If he does  
21 or not.

22 Q. All right.

23 A. Mr. Mast -- I guess I don't know.

24 Q. Oh, okay. So you don't know what some of your members  
25 are doing --

1 A. I didn't know Mast had any saw mill there.

2 Q. I mean Sam Miller.

3 A. I guess I have no idea who picks up the lumber there.

4 Q. Okay.

5 A. If he's cutting it for Raymond, I guess Raymond would be  
6 in charge of that.

7 Q. So last thing, then. Tell me, then, just so I  
8 understand this, what is that distinction of why -- of  
9 how this gray water would prevent you from practicing  
10 your religion?

11 A. It's not what we were taught.

12 Q. Okay.

13 A. And we were taught that would put us closer with the  
14 world.

15 Q. Okay.

16 A. I mean would conform us with the world, we might say.

17 MR. CORSON: Okay. Thank you, sir.

18 THE COURT: Ms. Brown.

19 MS. BROWN: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MS. BROWN:

22 Q. Mr. Swartzentruber, you mentioned you have livestock;  
23 correct?

24 A. Yes.

25 Q. Horses, cows, chickens, pigs. All of those? Do you do

1 Q. Right.

2 A. But like I said, I was thinking about changing it over.

3 Q. Yep.

4 A. But then I found out that the county is not firm yet what  
5 they want, so I thought I'd wait and see what they come  
6 up with.

7 Q. And you never made the effort to contact Mike Frauenkron;  
8 did you?

9 A. No.

10 Q. About the outhouse.

11 A. No. No, I did not.

12 Q. Never contacted anybody in zoning about the outhouse.

13 A. No.

14 Q. So --

15 A. And then like I said --

16 Q. You made --

17 A. -- I never got a notice from the county.

18 Q. You relied on some rumor that was going around about  
19 whether -- what the county wanted or didn't want.

20 A. I don't know if it was a rumor or not.

21 Q. Okay. And then the meeting about this case, again, you  
22 would agree that there was no unanimous -- no meeting of  
23 the congregation or the group to decide whether to bring  
24 this lawsuit and there was no vote taken on it; is that  
25 right?

1 A. Not in the church.

2 Q. Yep. In your church.

3 A. Not in the church there was no vote taken.

4 Q. Right. And that's required before you can bring a legal  
5 action; isn't it?

6 A. Oh, I don't know in a case like this. I guess I've never  
7 heard that if -- a case like this where you were taken to  
8 court and it was either put something in that was against  
9 your religious beliefs or sell or move out, this was an  
10 option to see if the judge would grant us our religious  
11 freedoms so we could stay.

12 Q. But you're the minister in this -- in the Canton Main;  
13 right?

14 A. One of them.

15 Q. And as a minister you have an obligation to oversee the  
16 flock; right?

17 A. The bishop is the overseer of the flock.

18 Q. Right. And so knowing that these people in your flock  
19 were going to file this lawsuit, you did nothing to say  
20 we need a meeting; is that right?

21 A. I guess -- I guess I was not really realizing that you  
22 would call it a lawsuit, except just to -- can we have  
23 religious freedom. It was not to bring somebody in to  
24 tell the judge, listen, this guy owes me so and so many  
25 dollars or he damaged my property, this was just to ask

1 for religious freedom.

2 Q. But I thought you said that if you're baptized, that one  
3 of your obligations being baptized is to follow the  
4 rules; right?

5 A. I guess we don't have a rule that says --

6 Q. Yep. Okay. But you said also that if they are baptized,  
7 one of the things you want is you want people to make up  
8 their own minds so that they can vote on it; right?

9 A. They can make up their minds whether they want to be a  
10 member of the church and in those rules.

11 Q. But also that's the idea of having the whole group meet  
12 and vote on it is because we want them to make up --  
13 well, you want them to make up their minds and vote to  
14 see if certain conduct is consistent with God's word;  
15 right?

16 A. Yes.

17 Q. And you never did that on the lawsuit.

18 A. No, we didn't.

19 MR. CORSON: Okay. Thank you.

20 MS. BROWN: All right. I have --

21 THE COURT: Are you done?

22 MS. BROWN: -- a couple quick questions. I  
23 will keep it brief.

24 THE COURT: You're done, Mr. Corson?

25 MR. CORSON: I am.



1           whether they were test or any other purpose.

2                   THE COURT: Overruled.

3                   Go ahead.

4                   MS. BROWN: Well, Your Honor, I would also  
5           object because not until the middle of this trial were  
6           these ever referred to as test systems.

7                   THE COURT: We'll find out if he knows anything  
8           about it.

9                   MS. BROWN: Okay.

10                  THE COURT: Maybe he'll say he knows knowing  
11           about it.

12                  Mr. Frauenkron?

13                  THE WITNESS: And I did not know anything about  
14           them being put in.

15 BY MR. LIPFORD:

16 Q.    Okay. You said that you went to inspect Sam's mulch  
17           system. Fair to say that was located in a pasture area  
18           kind of behind a barbed wire fence?

19 A.    Correct.

20 Q.    And, it was -- Sam was an individual that dug down at  
21           your request; correct?

22 A.    Yes.

23 Q.    Do you recall Mr. Miller telling you that they had done  
24           laundry that day that you came out there?

25 A.    Yes.

1 Q. Showing you 198. You took that picture?

2 A. Yes.

3 Q. Is that the laundry hanging up over there?

4 A. Yes, it is.

5 Q. Okay. Is that the reason you took that picture, to show  
6 that they were doing laundry that day?

7 A. No. I took the picture to show rubber tires on the wagon  
8 and on the mower.

9 Q. Okay. What did that have to do with mulch systems?

10 A. Modern technology. It had nothing to do with mulch  
11 systems.

12 Q. Okay. But you were there to inspect the mulch systems  
13 and you're taking pictures of a

14 MR. CORSON: Objection, Your Honor,  
15 argumentative --

16 THE COURT: Overruled.

17 MR. CORSON: -- and we were allowed to inspect  
18 --

19 THE COURT: Overruled.

20 MR. CORSON: -- the property.

21 THE COURT: Overruled.

22 MR. CORSON: And as per statute we are allowed  
23 to inspect the property.

24 THE COURT: Mr. Corson, your objection is  
25 overruled.

1 Sir, you have an answer?

2 THE WITNESS: Say the question again, please.

3 Yes, I was there to inspect the mulch system.

4 BY MR. LIPFORD:

5 Q. Okay. But you're taking pictures of a lawnmower?

6 A. Yes.

7 MR. CORSON: Objection, argumentative.

8 THE COURT: Yeah. I think that's the same  
9 objection I just overruled, Mr. Corson.

10 MR. CORSON: Yes, Your Honor.

11 BY MR. LIPFORD:

12 Q. Do you know what these are? I'm going to zoom in.

13 A. I cannot --

14 Q. Do you know what these are? The bands -- or I guess  
15 these black marks. Do you know what those are?

16 A. No. I can't tell what that is.

17 Q. Did you go up to take a close look at the tires?

18 MR. CORSON: Your Honor, I think this -- object  
19 as cumulative. I think --

20 THE COURT: I --

21 MR. CORSON: The court has already indicated  
22 you don't want to hear about modern technology and that  
23 tires that may be used by the Amish.

24 THE COURT: Yeah. What's going on with this,  
25 Mr. Lipford?

1 oversight here where most of this happened, but then he  
2 got health problems and is deceased now, and that's when  
3 Enos started taking oversights.

4 Q. When this first came in, though, Dan Yoder was the person  
5 who was the bishop?

6 A. Yes.

7 Q. Okay. Do you know why your -- you said your members put  
8 it in for a permit. What do you mean by that?

9 A. Well, I mean they needed to -- at the very first, they  
10 didn't have to put it in because we'd still buy a permit,  
11 but some of the members chose to put it in because the  
12 state recommended that and they didn't give much thought  
13 to it, they probably need to do it, and -- until later on  
14 when it come down to more of an issue where you guys are  
15 going to and supposed to do it, that's where a lot of it  
16 showed up and...

17 Q. Okay. And then the county started requiring them to get  
18 a building permit.

19 A. Right. And if they wanted to buy permits, they knew they  
20 wouldn't issue permits unless we installed that system.

21 Q. Okay. But you haven't -- you haven't put one in?

22 A. No.

23 Q. And have you ever been to court for not putting in a gray  
24 water system?

25 A. Yes.

1 Q. How many times have you been to court?

2 A. I don't know.

3 Q. Okay. Has any --

4 A. Probably three, four times. Maybe five.

5 Q. Okay.

6 A. I don't know.

7 Q. Okay. Has anything been threatened to you for not  
8 putting in a gray water system?

9 A. Yes.

10 Q. What? What kind of things have been threatened by the  
11 government?

12 A. Well, imposed a fine on me for a thousand dollars, and I  
13 guess right now I'm in contempt for not paying that.

14 Q. And, sir, what was your district again? Northeast?

15 A. Canton Southeast.

16 Q. Canton Southeast. I apologize. And so tell me if this  
17 is an accurate statement. There were some leadership  
18 that said go along with the county and some, yourself,  
19 were saying no, let's not do this. Is that a fair  
20 statement?

21 A. Yeah. That's very fair. It was more in our district,  
22 and so it's more of a personal, like, if I decide I can't  
23 do it. And I didn't interfere with the ones that did it.  
24 But most of them, we was pretty united about it at first,  
25 but when it got down to push and shove you're going to

1           have to pay the fine or you can't buy a building permit,  
2           a lot of them just put the system in. And, like my son-  
3           in-law, he got eviction order from the court to move out  
4           of his house and so rather than do that and face that, it  
5           was in the fall of the year and face that with the winter  
6           ahead, they had four children -- young, very very young  
7           children --

8                       MR. CORSON: Objection, Your Honor. It's based  
9           on hearsay and lack of foundation.

10                      THE COURT: Overruled. I'm going to permit it.

11                      Were you done, sir?

12                      THE WITNESS: No, I wasn't done.

13                      THE COURT: Go ahead.

14                      THE WITNESS: They had a court order for  
15           eviction and at that point they had -- I don't know for  
16           sure was it 30 days or 15 days to move out of the house,  
17           and they didn't have any choice where to go instead of  
18           making a real burden -- well did make a big burden for  
19           him, and they had small children that they was worried  
20           about, so... And at that point I did approach the county  
21           zoning office for a permit to move into a temporary  
22           building for my son-in-law, because our land joins, so  
23           they can be close to their chores and take care of their  
24           things at home even if they can't live in their house,  
25           and I was denied a permit for that from the county.

1 BY MR. LIPFORD:

2 Q. And this you said is your -- what's the name of this  
3 person we're talking about? Your son?

4 A. Ephraim and Anna Byler.

5 Q. Okay. Is Anna your daughter?

6 A. Yes.

7 Q. Okay. The -- what -- has the issue of whether or not to  
8 put the gray water system in, has that come up for a vote  
9 at Ordnung?

10 A. You mean in the church?

11 Q. Yes.

12 A. No, it didn't.

13 Q. And why hasn't it been brought up for a vote?

14 A. It's probably mostly because the leadership didn't feel  
15 strong about it. Miscommunication, some of it too,  
16 because the bishop moved out -- or a lack of  
17 communication, I should say.

18 Q. And what would it mean if the gray water system, whether  
19 or not to put it in, came up for a vote?

20 A. I think in our district --

21 MS. BROWN: Objection; speculation.

22 THE COURT: I'm going to overrule and permit  
23 it.

24 You may go ahead, sir.

25 THE WITNESS: I'd like to hear the question

1           again.

2 BY MR. LIPFORD:

3 Q.    What would it mean if the issue of whether or not to put  
4           in a gray water system came up for vote at Ordnung?

5 A.    Well, if it came up for a vote and -- actually, if the  
6           ministry, all of them felt strong that's what we need to  
7           do and we bring it up to a vote, we'd -- it'd probably  
8           stand as a rule. That and other issues. And this was  
9           kind of the way this come in for us, it didn't work that  
10          way, and rather than divide the people, I mean, some of  
11          them we knew -- we knew there's two big sides to it.

12 Q.    And what would happen if those two big sides couldn't  
13          come to an agreement on what to do, either just go ahead  
14          and do what the county wants or don't install it, what  
15          would happen?

16 A.    Well, if we really -- if the one -- the one side had  
17          really just step up and say I'm going to enforce what I  
18          -- what I -- what we're going to do, we'd have a split in  
19          the church.

20 Q.    And what would a split mean?

21 A.    Well, some members go one way and some go another way and  
22          the ministry divides itself and it develops -- one of  
23          them kind of develops a new church or a different church  
24          and --

25 Q.    And so --



1 A. -- we wouldn't communicate back and forth anymore. I  
2 mean, as far as neighbors and everything we would, but  
3 not in church related Ordnung things.

4 Q. Okay. And so it would divide you into two churches; is  
5 that right?

6 A. Yeah. I think so.

7 Q. What would it mean to divide your church? What kind of  
8 impact would have you -- you said that --

9 A. Oh, it's a very sad thing. It's very sad. Usually when  
10 it gets to that point, there's -- we see a lot of  
11 bitterness and it -- people get to where they -- it  
12 upsets their good way of thinking. I don't -- I don't  
13 think that's quite the right words. It's a feeling I --  
14 it's hard to explain, but it's bitter. It's sad.

15 MR. LIPFORD: No further questions, Judge.

16 THE COURT: Mr. Corson?

17 MR. CORSON: Sure.

18 THE COURT: Go ahead.

19 MR. CORSON: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. CORSON:

22 Q. Mr. Hershberger, you are a minister, then, in the Canton  
23 Southeast District?

24 A. Yes.

25 Q. But the bishop, then, is Enos Hershberger.

1 coming in, for I think what we've been terming  
2 illustrative purposes.

3 MR. CORSON: I don't have a problem.

4 MS. BROWN: No, Your Honor.

5 THE COURT: Received without objection.

6 BY MR. LIPFORD:

7 Q. When you testified you talked about black water and gray  
8 water; correct?

9 A. I did, yes.

10 Q. Okay. And would you agree with me that gallon-per-  
11 gallon, black water poses more of a threat than gray  
12 water?

13 A. Gallon-per-gallon more of a threat, yes.

14 Q. Okay. And can you give us an idea, like a lot, a little  
15 -- an order of magnitude? Do you have --

16 A. Probably an order --

17 Q. Is there any study out there?

18 A. -- of magnitude. So looking at typical bacterial loads  
19 coming out of gray water versus black water, the last  
20 Academy of Sciences report had in the range of 10 million  
21 bacteria coming out of gray water, and that number can be  
22 hundreds of millions coming -- when it's combined because  
23 there is a much -- the load is more concentrated in the  
24 toilet because of what we do in it, the black water,  
25 so...

1 Q. And I guess what I'm trying to get is not the combined.

2 Is there any studies, just the --

3 A. Oh, no. So that National Academy of Sciences article

4 that I referenced, I don't know if that was ever

5 submitted, that data, but it actually clearly shows that

6 gray water, the range was 10 million fecal coliform -- it

7 was coliform bacteria, which is the excrement of warm-

8 blooded animals. So any -- and, again, coming from a

9 septic system we expect a majority of that to be of a

10 human nature versus if you're out in nature it could be

11 coming from feed lots or other sources.

12 Q. Okay. And I guess here's what I'm trying to get, and I'm

13 not talking about precise calculations but a gallon-per-

14 gallon, I'm talking about just gray water and just black

15 water, do you know what data might show?

16 A. Right. So that article, again, or that -- it was

17 actually a very large extensive review, showed 10

18 million. And then when we start looking at combined,

19 there's not a lot of just black water research because --

20 Q. Okay.

21 A. -- because we almost always combine it. So usually the

22 rest of the data that's out there is of a combined

23 nature; and then we're not talking about -- you were

24 talking about hundreds of millions. So usually they're

25 talking about logs. So, you know, 10 to the 7th, 10 to

1 8th, 10 to 9th. Every time you do that you just add  
2 another zero.

3 Q. Okay.

4 A. So you could be up to, you know, you could be in the  
5 billion numbers when you have it combined.

6 Q. Okay. And you're going to have to help me with the math.  
7 If we got 10 million in just gray water and then whatever  
8 that big number is that combined --

9 A. Well, you could get to -- you know, you could, again, if  
10 you're talking -- you're talking about up to a billion in  
11 100 milliliters, I also want to clarify --

12 Q. Okay.

13 A. -- that's in -- you know, which is a relatively small  
14 volume.

15 Q. Okay. So you said, what, one billion?

16 A. Could be.

17 Q. Okay.

18 A. Yeah. I mean, it still depends on how many people are in  
19 the house, how much other water is present. They always  
20 almost always give a range of data.

21 MR. LIPFORD: Judge, I just want a chance to do  
22 one billion divided by 10 million. That's kind of what  
23 I'm looking for.

24 THE COURT: Well, maybe we can do it this way.  
25 Ten million is 10 to the 7th power.

1 THE WITNESS: Um hmm.

2 THE COURT: A 100 million is 10 to the 8th;  
3 right?

4 THE WITNESS: Yes.

5 THE COURT: A billion is 10 to the 9th?

6 THE WITNESS: Right.

7 THE COURT: So we're talking about a higher --  
8 a range of magnitude larger or two larger.

9 THE WITNESS: Yeah.

10 THE COURT: Right.

11 THE WITNESS: Can I add something?

12 THE COURT: Yeah. Go ahead.

13 THE WITNESS: The safest number to swim in is  
14 200. So when they shut down beaches because they're  
15 impaired --

16 THE COURT: Right.

17 THE WITNESS: -- the number that's allowed is  
18 200 of those units in 100 milliliters of water.

19 THE COURT: No 200 million, but 200.

20 THE WITNESS: 200.

21 THE COURT: So you wouldn't want to swim in  
22 gray water or gray water combined with black water.

23 THE WITNESS: No. You wouldn't want to swim in  
24 it, no.

25 THE COURT: Right.

1 THE WITNESS: So even though -- and, again,  
2 there is no debate that gray water has less bacteria and  
3 viruses in it. My point all along has been it still has  
4 bacteria and viruses in it.

5 BY MR. LIPFORD:

6 Q. And I'm not -- I just want to get the kind of like  
7 gallon-per-gallon and so --

8 THE COURT: Mr. Lipford --

9 MR. LIPFORD: -- one billion, 10 --

10 THE COURT: Mr. Lipford, the combined is 10  
11 times more, up to 100 times more.

12 THE WITNESS: Okay.

13 THE COURT: Right?

14 MS. BROWN: Yes.

15 THE COURT: That's all the high school math I  
16 retained, folks. You heard it all right there.

17 MR. LIPFORD: I'm very impressed.

18 BY MR. LIPFORD:

19 Q. And I might need your assistance for the second one. So  
20 combined, is there a certain percentage they do for that  
21 combined figure? Like 90 percent gray water, 50-50?  
22 What are we talking about here?

23 A. Well, the last -- the most recent data we have on this is  
24 that 25 percent, give or take, of the water coming out of  
25 the home comes from blackwater.

1 Q. Okay.

2 A. That really does depend on the toilets in your home. And  
3 as I mentioned in my testimony on Wednesday, Minnesota  
4 allows a 40 percent reduction if you remove the  
5 blackwater; but that's because it's not just looking at  
6 the gallons, it's also looking at both the hydraulic and  
7 the organic load that comes from the toilet.

8 Q. And, Doctor, I just kind of wanted the math.

9 A. Okay.

10 Q. So --

11 A. So, it's well -- yeah.

12 Q. Yeah.

13 A. Again, it's 25 percent of flow, but it's not 25 percent  
14 of load. So that study that was done looked at just the  
15 25 percent of flow comes from the toilet.

16 Q. So if I understand, that combined -- I want to -- I'm not  
17 familiar with flow and load, so if we're talking about a  
18 -- you're talking about the sample that was done, 25  
19 percent of that sample was black water, 75 percent was  
20 gray water, and it's 10 to 100 times worse than gray  
21 water?

22 A. Has more, yeah, potential pathogens and viruses.

23 Q. Okay. Thank you. And I just wanted that data, but can  
24 we consider it much worse? I'm just looking for an  
25 adjective or something, so I don't have to --

1 A. Worse.

2 Q. Okay. You just want to say worse?

3 A. Yeah. I mean, like I mentioned, I wouldn't swim in  
4 either of them; right? And neither of them are safe.  
5 Neither of them are protective of public health and the  
6 environment.

7 Q. Okay.

8 A. So, worse. I'd say it has a higher pollutant load.

9 Q. Okay. And I believe when you talked -- you talked about  
10 two things previously, pathogens and nutrients; is that  
11 correct?

12 A. As far as what's in gray water of concern?

13 Q. Yeah. Of concern, yes.

14 A. There's -- and then there's organic material, there's  
15 chemicals, cleaners, pharmaceuticals, personal care  
16 products.

17 Q. Okay.

18 A. So the two things that we usually focus on -- well,  
19 actually three. It's removal of organic material, it's  
20 removal of bacteria and viruses, and then it's dealing  
21 with nitrogen and phosphorus.

22 Q. Okay. And nitrogen and phosphorus are nutrients?

23 A. Yes.

24 Q. Okay. And, what, viruses, harmful bacteria are  
25 pathogens?



1 THE COURT: It is.

2 THE WITNESS: Yes.

3 BY MR. LIPFORD:

4 Q. Okay. You would agree with me that there is varieties of  
5 karst throughout the state of Arizona?

6 A. It would appear to be, yes.

7 Q. And you would agree with me that I'm pointing to the  
8 state of California?

9 A. Yes.

10 Q. Isn't it true that there would be -- you see karst in  
11 California?

12 A. There would appear to be karst in California, yes.

13 Q. Would you agree with me what I'm outlining is the state  
14 of Montana?

15 A. Yes.

16 Q. Would you agree with me that there's karst in Montana?

17 A. Yes.

18 Q. Would you agree with me that this is the state of  
19 Wyoming?

20 A. No.

21 Q. Oh. Where's the state of Wyoming?

22 THE COURT: I think you got Idaho there. Yeah.  
23 Go a little east. There you go. That's Wyoming.

24 MR. LIPFORD: Sorry. Zoomed in and I had  
25 problems.

1 BY MR. LIPFORD:

2 Q. This is Wyoming; correct?

3 A. Yes.

4 Q. And there's karst in Wyoming?

5 A. Correct.

6 MR. LIPFORD: Judge, is it possible we could  
7 zoom out?

8 THE COURT: You bet.

9 BY MR. LIPFORD:

10 Q. Could you identify for me any state where there's not  
11 karst?

12 MS. BROWN: Objection. Relevance.

13 THE COURT: Overruled. I'll permit it. Not  
14 much in Louisiana it looks like.

15 THE WITNESS: That's what I was going to point  
16 out, as well. I'm not sure --

17 THE COURT: And maybe up in the northeast. We  
18 can't see Maine quite, can we?

19 THE WITNESS: Correct.

20 THE COURT: Rhode Island.

21 I don't know that there's a question before the  
22 witness at this point, Mr. Lipford.

23 MR. LIPFORD: Oh, I asked him to identify any  
24 state where there was not karst, and I think we're going  
25 to agree that Louisiana is the only state.

1 THE COURT: Even it might have something down  
2 there at the delta, but anyway.

3 MR. LIPFORD: Nothing further.

4 THE COURT: Ms. Brown?

5 MS. BROWN: Yes.

6 REDIRECT EXAMINATION

7 BY MS. BROWN:

8 Q. Mr. Montgomery, have you been presented with any evidence  
9 that shows that all states that have karst permit mulch  
10 systems?

11 A. No.

12 Q. Have you been presented with any climate data as it  
13 relates to Montana?

14 A. No.

15 Q. Arizona?

16 A. No.

17 Q. Wyoming?

18 A. No.

19 Q. Were you presented with any soil data as it relates to  
20 Arizona?

21 A. No.

22 Q. Montana?

23 A. No.

24 Q. Wyoming?

25 A. No.

1 Q. Okay. So what'd you do after hearing that?

2 A. I dug a pit and I moved the outhouse on top of that.

3 Q. Okay. So you heard the court talk about, hey, we can dig  
4 a pit and you went and dug a pit? Was it that weekend?

5 A. Yes.

6 Q. And the -- you've got -- you made some changes to your  
7 outhouse since that time; correct?

8 A. Yes. I actually built a whole new outhouse.

9 Q. Okay. And that required a permit?

10 A. Yes.

11 Q. Where'd you get that through?

12 A. From the zoning office.

13 Q. Okay. And you paid a fee?

14 A. Yes.

15 Q. Do you remember how much it was?

16 A. I think it was \$100.

17 Q. Okay. So you paid a \$100 fee and it sounds like you're  
18 saying it's kind of in the process of being done?

19 A. Yes. It's almost complete.

20 Q. Did the county come out and do soil testing?

21 A. Yes.

22 Q. And you had to move your outhouse location after that  
23 soil testing; is that correct?

24 A. Well I preferred to move it, yes.

25 Q. Okay. But they came out and you heard the term

1 redoximorphic soils. They came out and they did that  
2 thing; right?

3 A. Yes.

4 Q. And what kind of test did they do for that? Did they  
5 kind of drill into the --

6 A. Yes. They drilled a hole and did the test. Yeah.

7 Q. And you had no objection to paying for that, having them  
8 come out and drill the --

9 MR. CORSON: I'm going to object to the line of  
10 questioning. I think he's testified that he put another  
11 outhouse in. He doesn't know what redoximorphic soils  
12 are and --

13 MR. LIPFORD: Judge --

14 MR. CORSON: -- the issue of whether he paid a  
15 permit is irrelevant.

16 MR. LIPFORD: It's not, Judge. There's been  
17 some suggestion that they wouldn't comply. He's --

18 MR. CORSON: They didn't comply.

19 MR. LIPFORD: He paid for the permit. They  
20 came out. He's -- they did the soil testing.

21 THE COURT: Hold on. We're talking solely  
22 about the new outhouse; right?

23 MR. LIPFORD: Right. But what we're  
24 essentially intending to show is that if they're allowed  
25 to do the mulch system, there's no problem with coming

1 out and doing soil testing and finding the proper place  
2 for it.

3 THE COURT: I'll permit it --

4 MR. CORSON: That's if they get a court order,  
5 which --

6 THE COURT: I'm going --

7 MR. LIPFORD: No, I --

8 THE COURT: I'm going to allow it for that  
9 purpose.

10 MR. LIPFORD: Okay.

11 THE COURT: Go ahead.

12 BY MR. LIPFORD:

13 Q. So if the court had, I guess, approved of the mulch  
14 system, would you be fine with paying a permit, having  
15 the county come out, do a soil test and tell you if  
16 that's a proper place to put it just like they did for  
17 your outhouse?

18 A. Yes.

19 Q. So you would have a problem with that or you'd be okay  
20 with it?

21 A. I would be okay with it.

22 Q. Okay. You'd be fine with that because that's what you  
23 had to do for your outhouse; right?

24 A. Yes.

25 Q. Is a mulch system consistent with your religious beliefs?

1 MR. LIPFORD: Thank you.

2 BY MR. LIPFORD:

3 Q. And you -- I'll show you Exhibit 3. Can you see that on  
4 the screen?

5 A. Yes.

6 Q. What is that?

7 A. That's a letter that Bishop Jake wrote to the --

8 Q. Okay. And is that -- did you sign that document?

9 A. Yeah.

10 Q. Now, do you have a septic system in your home?

11 A. No.

12 Q. Do you have a gray water system in your home?

13 A. No.

14 Q. Has the government done anything to try to get you to  
15 install one?

16 A. Yes.

17 Q. What have they done?

18 A. They gave me a fine.

19 Q. How much was the fine?

20 A. A thousand dollars.

21 Q. They just mail that to you in the letter or they bring  
22 you to court, or what happened?

23 A. That was here in court.

24 Q. Anything else happen other than a thousand dollar fine?

25 A. They hold me in contempt of court.

1 Q. How many times have they brought you to court?

2 A. I'm not quite sure. Two or three times.

3 Q. Was it only one \$1,000 fine or were there more?

4 A. Just one that I'm aware of.

5 Q. Did they -- and that was for your failure to install a  
6 gray water system; correct?

7 MR. CORSON: Objection; leading question.

8 THE WITNESS: Yes.

9 THE COURT: Overruled. I'll permit it.

10 BY MR. LIPFORD:

11 Q. Is there anything other than fine and contempt that they  
12 wanted the court to order you to do?

13 A. They've threatened to -- for community work service.

14 Q. And how much were you -- were they asking you to do?

15 A. Three days a week, eight hours.

16 Q. And you said you're 69 years old?

17 A. Yes.

18 Q. Would it -- what would it be like if you had to do three  
19 days a week community service eight hours a day?

20 MR. CORSON: Your Honor, I think this is  
21 irrelevant as it relates to whether there's a public  
22 health and safety issue or sincerely held religious  
23 beliefs of these four people. It's not the sincerely  
24 held religious beliefs of anybody else, it's of these  
25 four people.



1 THE COURT: Well it seems to me that the  
2 consequence as a noncompliance goes to burden, and I take  
3 it this being presented as an example of that.

4 I'm going to overrule the objection and permit  
5 it to occur.

6 You may go ahead, Mr. Lipford. I think we're  
7 in the middle of a question here. I think you asked a  
8 question. No answer had yet been given.

9 MR. LIPFORD: Right.

10 BY MR. LIPFORD:

11 Q. And, Mr. Miller, the question was what would it be like  
12 to have to do three days a week, eight hours a day of  
13 community service? How would that impact your life?

14 A. Well, I'm pretty busy the way it is. It would take quite  
15 a bit of my...

16 Q. You say pretty busy. What kind of stuff are you busy  
17 with?

18 A. I'm still farming, and I've got a shop too.

19 Q. And why didn't you just install a gray water system or a  
20 septic system if you were being threatened with all those  
21 things?

22 A. Because it -- I feel that that is the way of the world  
23 and Romans 12:2 says be not conformed to this world.

24 Q. And was this -- was this issue discussed in your -- in  
25 your church?

1           it would have to be inspected and he would receive the  
2           same literature on how to care for the system after it  
3           were installed.

4 Q.    But he wouldn't have to take a class to learn how to  
5           install it?

6 A.    He would not.  And in fact the gray water systems that  
7           have been installed, they have not been required to take  
8           the class.  They've been given the literature provided to  
9           us.

10 Q.   But your ordinance says that have to take a class.

11 A.    Yes, it does.

12 Q.    You've just not been following that portion of the  
13           ordinance?

14 A.    The class isn't offered any more, as it used to be.

15 Q.    You'd testified earlier about -- I think Mr. Corson asked  
16           you what's -- what's the -- what's wrong with just doing  
17           dishwashers and -- or washing dishes and dumping that  
18           into your garden, and you said it would be immediate  
19           public health threat.

20 A.    Yes.

21 Q.    Do you have campgrounds here in Fillmore County?

22 A.    Yes, we do.

23 Q.    Familiar with -- showing -- I'm not going to mark this,  
24           but you're familiar with Maple Springs Campground?

25 A.    Maple Springs Campground, yes.

1 Q. In fact, they have tent sites on Maple Hill.

2 A. Yes.

3 Q. And it looks like from this map, one, two, three, four,  
4 and five, you have tent sites, six, seven, eight, nine,  
5 ten -- what, about 14 tent sites?

6 A. That's approximate, yes.

7 Q. Okay. And those individuals can wash their dishes at the  
8 tent sites; correct?

9 A. There is a bath house provided at the -- at the  
10 campground, so they're not -- I'm not aware if there's  
11 water provided to each of those sites.

12 Q. Well, it's a tent site.

13 A. Correct. But if you have a bath house, you have the  
14 availability, if you -- if you need it.

15 Q. But you don't have to.

16 A. Use the bathroom?

17 Q. No, I -- you can, there's nothing preventing you from  
18 washing your dishes there next to your campsite when you  
19 make your camp and dumping that on the ground?

20 A. No.

21 Q. Nothing wrong with you washing your pots and pans  
22 and dumping down on the ground?

23 A. I'm not a camper, so answering questions on camping is  
24 probably not my field of expertise, but --

25 Q. Well, ordinances. There's no preventive ordinances from  
Pet. App. 73

1 preventing an individual from doing that?

2 A. The ordinance requires that they have all of the  
3 regulations required for septic and treatment. Just like  
4 a house, a campground has to have those same requirements  
5 when they apply for the CUP.

6 Q. But not for tents.

7 A. Tent sites are permitted the same as the rest of the  
8 campground, and they're in that same plan for the  
9 campground.

10 Q. You agree that based on this picture you got a -- is that  
11 Forestville Creek? You got a creek running right alone  
12 there?

13 A. Yes.

14 Q. And the tent site is fairly close that creek?

15 A. Most of the tent sites are close to the creeks in all of  
16 the campgrounds in the county.

17 Q. Okay. So most of the tent sites are right closer to the  
18 creeks?

19 A. Almost every campground in the county is on a creek of  
20 some sort.

21 Q. Okay. Again, no restrictions on individuals washing the  
22 dishes, washing their pets -- pots and pans right next to  
23 that creek?

24 A. It's -- when there are facilities provided at the  
25 campground, we can't -- we don't monitor what they're

1           doing at the individual campsites.

2 Q.    And you don't prevent it?

3 A.    We don't monitor it.

4 Q.    Are you saying you do prevent it?

5 A.    I'm saying in the campground regulations, they are  
6       required them to meet the regulations as -- with regard  
7       to any kind of sewage, gray water, or any other  
8       regulations.  So do I go out and check the tent sites?  I  
9       do not.

10 Q.   But you're talking about buildings and dwellings and  
11       things like that that are on the campground?

12 A.    The campground itself is required to have plan, an  
13       emergency evacuation plan, lots of requirements, meetings  
14       state, local, and federal regulations.  So those are all  
15       required as part of their conditional use permit, but I  
16       do not personally monitor what they're doing in the tent  
17       sites -- or the camper sites for that matter.

18 Q.    I think in Fillmore County you can camp nine months out  
19       of the year?

20 A.    I think the campground ordinance says they have to be  
21       closed December, January, February, March; so eight.

22 Q.    Showing you 104 -- Exhibit 100.  You said it was closed  
23       for four months out of the year, and from that 03, we're  
24       talking about December, January, and February?

25 A.    Three it is then.

1 are required and the states that allow that?

2 A. I'm not.

3 Q. It's just an assumption you made on -- about Minnesota?

4 A. It's an assumption I'm -- it's not an assumption, it's my  
5 knowledge of an advanced system and that's not a standard  
6 system.

7 MR. LIPFORD: Give me just a second, Judge. I  
8 might be done here.

9 (Pause.)

10 MR. LIPFORD: No further questions, Judge.

11 THE COURT: Mr. Corson, redirect?

12 MR. CORSON: Yes, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. CORSON:

15 Q. You were asked about campgrounds in Fillmore County?

16 A. Yes.

17 Q. So can anyone just go start up a campground on their own  
18 at any time?

19 A. No, they cannot.

20 Q. What do you have to have in order to have a campground in  
21 Fillmore County?

22 A. A campground is a conditional use process and so it  
23 requires a conditional use permit. It requires a plan.  
24 It requires septic design and septic system, requires an  
25 emergency evacuation plan, parking regulations.

1 Q. And just so we all understand it, is a conditional use  
2 permit different than just getting a building permit?

3 A. Yes, it is. It's a public hearing.

4 Q. Is it easier?

5 A. No, it's more extensive. It's a public hearing process,  
6 and it requires more exhibits and plans I guess you could  
7 say than a standard land use permit application.

8 Q. So I'm referring you to Section 711.02 of Fillmore County  
9 Zoning Ordinance marked as Exhibit 100. Referring you to  
10 that section, are there certain list of things that have  
11 to presented?

12 A. Yes.

13 Q. To even get the condition use permit?

14 A. That's correct. Section 711.02 Number 2 has all those  
15 requirements for a condition --

16 Q. So they talk -- I'm sorry --

17 A. No, I'm sorry.

18 Q. I interrupted you.

19 A. Just for conditional use permit. Those are all the  
20 minimum requirements to be met.

21 Q. And then under 2)e. is there something there that is  
22 relevant to our case that we have now?

23 A. Yes. A proposed sewer system, water system, storm  
24 runoff. We have all of those plans on place for the  
25 campgrounds in Fillmore County.

1 Q. And then I would just refer you to 711.033. Does that  
2 talk about whether you can put wastewater on the surface?

3 A. It does. It says no wastewater from recreational camping  
4 vehicles shall be deposit on the surface of the ground.

5 Q. So of course you're out there every week manning every  
6 campground in this county: right? Making sure that  
7 nobody puts any water on the ground; aren't you?

8 A. No, sir. I --

9 THE COURT: Hold on, hold on. Mr. Corson that  
10 deals with vehicles. That's sewage dump out of RVs.

11 MR. CORSON: Right.

12 THE COURT: Right. Don't we all know where  
13 this is headed? And that is, is it okay for campers --  
14 does Fillmore County think it's okay for campers who've  
15 carried in their water, once they washed their dishes, or  
16 maybe washed the romaine lettuce, to dump the water, you  
17 know, 30 feet from the fire pit. That's what we're  
18 really dealing with here; right?

19 MR. CORSON: Okay.

20 BY MR. CORSON:

21 Q. And so under the SSTS ordinance, is it allowable for  
22 someone to surface discharge from a tent?

23 A. It is not.

24 Q. And so but -- do you have -- are you able to police every  
25 campground in this county to ensure that they aren't



1           doing that?

2   A.    No sir, I am not.

3   Q.    Why not?

4   A.    I don't have the staffing, first of all.  And I don't --

5   Q.    Well, that doesn't mean that the county doesn't care  
6           about it; right?  Is that why you're not doing that?

7                    THE COURT:  That's an argumentative question.

8                    MR. LIPFORD:  Objection.

9                    THE COURT:  This is a very peripheral point and  
10           really not something for us to get all head up about.

11                   MR. CORSON:  Yes, Your Honor.

12  BY MR. CORSON:

13  Q.    Last thing I would ask you about that, you were asked  
14           about Maple Springs Campgrounds?

15  A.    Yes.

16  Q.    So have you done inspections of that site to ensure that  
17           they have septic tanks and drain fields out there?

18  A.    Yes.  The septic systems that were installed there were  
19           designed and inspected upon installation.

20  Q.    Okay.  And was that done in response some complaints  
21           about some surface discharge?

22  A.    It was done as part of their plan for their campground.

23  Q.    Okay.  And so a campground -- I'm showing you what's been  
24           marked as Exhibit Number 275 -- or 260.  Actually, I'm  
25           off on my numbering now.  266.  So showing you what's

1           been marked as Exhibit 266 as it relates to the Maple  
2           Springs Campground; do you recognize that document?

3 A.    Yes, I do. That's the certificate of compliance on the  
4           septic system.

5 Q.    Okay. And then showing you the following pages as it  
6           relates to that. Would that indicate to you what type of  
7           system was being put in?

8                   MR. LIPFORD: Judge, I guess I'm going to  
9           object to the relevance. I mean, we're not disputing the  
10          fact that the buildings have to have septic systems.

11                   THE COURT: I think the whole subject matter is  
12          largely relevant, but you brought it up Mr. Lipford --

13                   MR. LIPFORD: All right

14                   THE COURT: -- and I'm going to let county go  
15          into it.

16 BY MR. CORSON:

17 Q.    So is -- what would this tell us, actually is part of  
18          Exhibit 266 was put in. Where would -- what document  
19          would you need to see as part of this to show whether it  
20          was mound or a tank?

21 A.    The inspection form and the application both would  
22          indicate.

23 Q.    Okay. So would this page -- the ISTS inspection report  
24          indicate what type of system was put in?

25 A.    Yes. It's a type one mound system and there is the tank.

1 THE COURT: 223 is received without objection.

2 MR. CORSON: Thank you, Ms. Mast. I have no  
3 further questions, Your Honor.

4 THE COURT: Mr. Lipford?

5 MR. LIPFORD: No, Judge.

6 THE COURT: Ms. Brown?

7 MS. BROWN: No, Your Honor.

8 EXAMINATION

9 BY THE COURT:

10 Q. Ma'am, if I could ask you, so you do your washing of  
11 dishes in this dry sink; right?

12 A. We do it in a bowl.

13 Q. Right.

14 A. In the -- yes.

15 Q. But it's in the dry sink; correct?

16 A. Yes.

17 Q. And this dry sink, is it kind of a wooden construction?

18 Is that right?

19 A. Yes.

20 Q. It's kind of a cabinet with --

21 A. Yes.

22 Q. -- a dry wooden sink on the top; right?

23 A. Yes.

24 Q. Okay. Do you have running water in your house?

25 A. No.

1 Q. So the water that goes into those bowls in the dry sink,  
2 is that brought in in pails?

3 A. Yes.

4 Q. Where is the -- where is the faucet or the pump or where  
5 is the end of the pipe where the water comes out that you  
6 access?

7 A. It's in the basement. That plastic tank.

8 Q. Okay. So water does come from the well into your house.

9 A. From the neighbors.

10 Q. I'm sorry?

11 A. From the neighbors.

12 Q. Oh. So it's a well at your neighbor's place?

13 A. Yes.

14 Q. And water comes from the neighbor's well through this  
15 pipe into your basement.

16 A. No. We don't -- we don't have water piped into our  
17 house.

18 Q. Oh, okay. I thought it came into the basement. What was  
19 that about?

20 A. That yellow building. I carry it from the yellow  
21 building to the house.

22 Q. Oh. I gotcha. The wash house.

23 A. Yes.

24 Q. The water is piped to the wash house.

25 A. Not -- it's just in a tank. It's not piped in there.

1 Q. Oh. Okay.

2 A. We have to haul it all.

3 Q. I'm sorry.

4 A. We have to haul all our water.

5 Q. Oh.

6 A. With a tank.

7 Q. Oh. So you get it from the neighbor's well.

8 A. Yes.

9 Q. You actually take buckets to the neighbor's.

10 A. No. We use a tank. We have a tank on wheels.

11 Q. Oh, I see. So you haul water in a tank --

12 A. Yes.

13 Q. -- of some size.

14 A. Yes.

15 Q. From the neighbor's to your place.

16 A. Yes.

17 Q. Then it goes into pails, I take it.

18 A. Yes.

19 Q. And --

20 A. Just as we need it.

21 Q. Right. You take it from the -- the tank is on a wagon I  
22 take it?

23 A. Yes.

24 Q. You take it from the tank wagon in pails into your house  
25 or the wash house.

1 A. Yes.

2 Q. Gotcha. Okay. Before you put in the gray water system,  
3 you didn't want to put in a gray water system; is that  
4 right?

5 A. Yes.

6 Q. How come?

7 A. Because the elders didn't want us to.

8 Q. Okay. Was it discussed with the elders?

9 A. Yes.

10 Q. So did you or your husband or both of you go to the  
11 elders and say, I'm just making this up but something  
12 like we're being told we need one of these gray water  
13 systems. Did you tell them that?

14 A. I can't remember.

15 Q. Okay. Anyway, it was discussed with the elders.

16 A. Yes.

17 Q. And you say the elders told you you shouldn't have a gray  
18 water system.

19 A. Yes.

20 Q. And was that because it broke Amish rules?

21 A. I really don't know.

22 Q. Okay. But, I mean, that's what you'd consulted with the  
23 elders about; right?

24 A. Yes.

25 Q. So the elders told you that. So did that cause you to

1 resist putting in a gray water system?

2 A. Yes.

3 Q. Okay. But ultimately you put one in.

4 A. Yes.

5 Q. Let me ask you this. Did the objection to a gray water  
6 system originate with the elders or was it something you  
7 personally objected to, or maybe it was both.

8 A. Probably both of them.

9 Q. Okay. But in any event, at some point you put a gray  
10 water system in; correct?

11 A. Yes.

12 Q. Why did you put in a gray water system if you objected to  
13 it on religious grounds?

14 A. Because we had to. With the young children we couldn't  
15 live in that building.

16 Q. Okay. You were in the produce building.

17 A. Yes.

18 Q. And it was unlivable; is that right?

19 A. Yes. Yes.

20 Q. And I'm extrapolating here, but you tell me if I go  
21 wrong. You needed to move out of there into the  
22 schoolhouse you wanted to renovate; is that right?

23 A. We had renovated it.

24 Q. Okay. But you weren't living in it.

25 A. No.

1 Q. And the county wouldn't let you live in it without a gray  
2 water system.

3 A. No.

4 Q. Are you agreeing with me or --

5 A. Yes.

6 Q. Okay. All right. And so you put in a gray water system  
7 because that's the only way you could get out of the  
8 produce shed and into the house.

9 A. Yes.

10 THE COURT: Mr. Lipford, any additional  
11 questions based on what I asked?

12 MR. LIPFORD: No, Judge.

13 THE COURT: Mr. Corson? I'm sorry, Ms. Brown?

14 MS. BROWN: Yes, Your Honor.

15 RE CROSS EXAMINATION

16 BY MS. BROWN:

17 Q. Ms. Mast, who are the elders that you were referring to?

18 A. My dad is one --

19 Q. Your father?

20 A. My dad is one of them.

21 Q. Is he one of the bishops?

22 A. No.

23 Q. Or one of the -- okay. What's his name?

24 A. Levi Zook.

25 Q. And did the elders tell you why you couldn't have -- or



1 Q. So I'll say land application septage. Do you know what  
2 I'm talking about?

3 A. Yes.

4 Q. And so a farmer doesn't have to know what their water  
5 tables are to do that?

6 THE WITNESS: I'm unable to answer that, Your  
7 Honor.

8 THE COURT: Yeah, that's fine.

9 MR. LIPFORD: So Fillmore County doesn't  
10 require that.

11 MR. CORSON: Your Honor, I'm just going to  
12 object. And my line is this is that, Your Honor, if we  
13 had ten million, hundred quadrillion dollars, we would  
14 enact one hundred million more ordinances. We can't even  
15 enforce the one we have --

16 THE COURT: Mr. Corson.

17 MR. CORSON: -- and that's why we're in court  
18 today.

19 THE COURT: Mr. Corson, it's not time for  
20 argument yet.

21 MR. CORSON: It's -- but this is --

22 THE COURT: Mr. Corson.

23 MR. CORSON: -- irrelevant.

24 THE COURT: Mr. Corson, sit down. It's not  
25 time for argument. That's an argument, but not an

1 objection.

2 Mr. Lipford?

3 BY MR. LIPFORD:

4 Q. Fillmore County doesn't require farmers to know what the  
5 water tables are to do the land application of septage?

6 THE COURT: I think she just said, she doesn't  
7 know about that; right?

8 THE WITNESS: Correct.

9 MR. LIPFORD: Okay.

10 BY MR. LIPFORD:

11 Q. There's no soil testing done required by Fillmore County?

12 A. Required by Fillmore County, no, because we don't have  
13 any regulations more restrictive than the state.

14 Q. You don't have to know about redox features for land  
15 application of septage?

16 A. If we have no regulations, Mr. Lipford, we have nothing  
17 beyond that. I can't -- you can -- I can't answer any  
18 more than that on what my knowledge of those regulations  
19 is.

20 Q. You testified that you believed a mulch system would  
21 require an operating permit.

22 A. It's an advanced system, it's not a basic system. So I  
23 believe as an advanced system, it would require an  
24 operating permit, yes.

25 Q. You're not familiar with whether or not operating permits

1 MR. LIPFORD: Okay.

2 THE COURT: Are you going to ask a question,  
3 Mr. Lipford?

4 MR. LIPFORD: I am.

5 BY MR. LIPFORD:

6 Q. Are you aware that these mulch systems are allowed in  
7 other states?

8 A. Prior to this trial, I was not aware of that.

9 Q. Okay. But now you're aware that they're allowed in  
10 Montana?

11 MS. BROWN: Objection; foundation.

12 THE WITNESS: I was not aware they were allowed  
13 --

14 THE COURT: Hold on. I'm going to sustain  
15 that.

16 MR. LIPFORD: Okay.

17 BY MR. LIPFORD:

18 Q. Were you aware that they're allowed in Wyoming?

19 MS. BROWN: Objection; foundation.

20 THE COURT: Yeah. Whether she's aware of it or  
21 not --

22 MR. LIPFORD: Okay.

23 THE COURT: -- what's the relevance of that,  
24 Mr. Lipford?

25 MR. LIPFORD: Well, she was talking about, you

1 know, she's aware in California and she talked about the  
2 weather. I want to ask her about if she's familiar with  
3 the weather in Wyoming and Montana.

4 THE COURT: Well then let's go to the weather  
5 in Wyoming and Montana.

6 MR. LIPFORD: Okay.

7 BY MR. LIPFORD:

8 Q. Have you ever lived in Wyoming?

9 A. I have not.

10 Q. Are you familiar with the climate in Wyoming?

11 A. I am not.

12 Q. Know how much snow they get in Wyoming?

13 A. I do not.

14 Q. But based on general knowledge, they have winter in  
15 Wyoming; correct?

16 A. I would assume so, yes.

17 Q. Okay.

18 A. They have winter in California, too, it just doesn't get  
19 as cold.

20 Q. Okay. Are you familiar with the climate in Montana?

21 A. I am not.

22 Q. Know if they get snow or not in Montana?

23 A. I believe they do.

24 Q. They have winter in Montana?

25 A. I would assume so.

1 Q. So you had said that you don't have any training on a  
2 mulch system but just kind of learned about it through  
3 this case; correct?

4 A. That's correct.

5 Q. A fair statement that you maybe don't have a good working  
6 knowledge of how they're supposed to work?

7 A. I do not because I'm trained to do my work in the state  
8 of Minnesota, and that's not allowed in the state of  
9 Minnesota so I have not received that training.

10 Q. Would you be willing to talk with someone that's a gray  
11 water expert and learn about what they're doing in those  
12 other states?

13 MS. BROWN: Objection; relevance.

14 THE COURT: Sustained.

15 BY MR. LIPFORD:

16 Q. Are you familiar with a letter that was sent by the --  
17 signed by several members of the Amish community  
18 concerning objections to a gray water system?

19 A. I would have to see the letter because I've --

20 Q. Okay.

21 A. -- over the years we've received a number of letters.

22 Q. Okay. Have you ever seen that letter? I think this is  
23 Exhibit 3.

24 A. Yes, I believe I do.

25 Q. Okay.

1 THE COURT: Mr. Lipford?

2 MR. LIPFORD: Yeah.

3 CROSS EXAMINATION

4 BY MR. LIPFORD:

5 Q. Mr. Frauenkron, are you familiar with the rules and  
6 regulations that allow mulch systems in other states?

7 MS. BROWN: Objection; foundation.

8 THE COURT: Well he's trying to find that out.

9 MR. LIPFORD: Yeah.

10 THE COURT: Overruled.

11 THE WITNESS: In other states?

12 BY MR. LIPFORD:

13 Q. Yeah.

14 A. I know some about Wisconsin.

15 Q. Okay. Do you know anything about Wyoming?

16 A. No.

17 Q. Anything about Montana?

18 A. No.

19 Q. Anything about Arizona?

20 A. No.

21 Q. Washington?

22 A. No.

23 Q. California?

24 A. No.

25 Q. Have you taken any classes or course work in mulch

1 systems?

2 A. No, I have not.

3 Q. Talked to anyone knowledgeable about their installation?

4 A. No, I have not because it's not an approved system in  
5 Minnesota.

6 Q. Have you talked to anyone about how they work and what  
7 their all about?

8 MS. BROWN: Objection; relevance, Your Honor.

9 THE COURT: Overruled.

10 Go ahead.

11 THE WITNESS: We do put mulch systems in in our  
12 milk house waste systems.

13 BY MR. LIPFORD:

14 Q. Okay.

15 A. But they're several hundred feet long and they're built  
16 on top of the ground.

17 Q. That's usually for treating commercial --

18 A. Milk house waste.

19 Q. Milk house waste.

20 A. Correct.

21 Q. And that's commercial milk house waste?

22 A. (No response.)

23 Q. You understand that what my clients put in were kind of  
24 test systems?

25 MR. CORSON: Objection; irrelevant as to  
Pet. App. 93

1 Q. Okay. And that's generally handled by a different  
2 program at MPCA; correct?

3 A. Yes.

4 Q. Because those are dealing with the surface discharges and  
5 to surface waters.

6 A. Yes.

7 Q. Okay. So we don't generally talk too much about SDS  
8 permits in the SSTS system. They're generally -- They  
9 can be, but they're generally a separate area.

10 THE COURT: Okay. I understand.

11 MS. BROWN: Okay.

12 EXAMINATION

13 BY THE COURT:

14 Q. Again, and I asked this question a little bit earlier on  
15 but, you know, hypothetically, applying this -- all of  
16 those options to this situation, if these Amish people  
17 had wanted to get approval for a mulch system, as a  
18 practical matter, is it accurate that they'd be dealing  
19 with a system five situation?

20 A. With this system, yes.

21 Q. Right. And to do that, they'd have to have an engineer  
22 design that system; correct?

23 A. Correct.

24 Q. Okay. And then that would go through some kind of  
25 evaluation process; correct?



1 A. It goes through permitting with the local unit of  
2 government.

3 Q. Okay. Would MPCA be involved in that?

4 A. No.

5 Q. So this would be something they would do with Fillmore  
6 County in this case.

7 A. Correct.

8 Q. And so they'd show the plan and the plan would be  
9 reviewed by folks on Fillmore County's behalf, and I take  
10 it sometimes these things get modified in process?

11 A. They do, yes.

12 Q. We like parts 1 and 2, but we don't like 3. You got to  
13 change 3, and we're okay with 4. Something like that; is  
14 that accurate?

15 A. It's usually a discussion that everyone comes to an  
16 agreement and --

17 Q. Okay. All right.

18 A. -- we agree with this. Yes.

19 Q. And does that happen a lot?

20 A. The type fives?

21 Q. Yeah.

22 A. No.

23 Q. Okay. Have you ever heard of one?

24 A. Yes.

25 Q. Okay. In your experience -- and you've been there since

1 2015?

2 A. Correct.

3 Q. At MPCA?

4 A. Yes.

5 Q. How many have you heard of?

6 A. I think we've had probably seven in the last four years.

7 Q. Seven. Okay. All right. So MPCA has some kind of  
8 consulting with that. That's how you find out about it.

9 A. No. The MPCA receives information on system  
10 installations --

11 Q. Oh.

12 A. -- from the local units of government.

13 Q. I see.

14 A. Yeah.

15 Q. So you find out about them, but you really don't play a  
16 process in the approval.

17 A. Correct. Yes.

18 Q. You don't play a part in the approval --

19 A. Yes.

20 Q. -- process.

21 A. Yep.

22 Q. Something I guess I've kind of always wondered about, we  
23 keep talking about septic systems. And of course we've  
24 used that, and maybe the rule does, as a euphemism for a  
25 black water system; right?

1 Q. All right. I learned that in this last four -- five  
2 days, and I'm glad to know that. So have you had a look  
3 in preparation for your testimony at some description of  
4 the systems that have been installed by the plaintiffs,  
5 the Amish men in this case? Have you looked at that at  
6 all?

7 A. I saw some of the diagrams. I also saw some pictures  
8 that were provided.

9 Q. Okay. All right. And you -- I think you've expressed  
10 the opinion that those systems are not adequately  
11 protective of our water; is that right?

12 A. And human health; correct.

13 Q. And human -- and thus, human health; right?

14 A. Yes.

15 Q. It seems to me possible -- I'm putting this out there  
16 hypothetically. It seems to me possible that a person  
17 with your background and training and knowledge might  
18 look at that diagram and those systems and think to  
19 yourself, these are awful, but they're on to something  
20 here. This is just terrible execution of a plan, the  
21 basics of which could work if we had the proper soil  
22 borings. If we had a proper site inspection before they  
23 went in. If we did the other things that are necessary  
24 to make sure that it's done right, that we're not sitting  
25 on top of a sinkhole, you know, stuff like that. Mulch

1           could work if done right. Hasn't been done right in this  
2           case, but it could be. That's at least possible. Would  
3           you say that?

4 A.    I mean, there'd be a lot of questions that I would have  
5           to ask to get to that.

6 Q.    You bet. Right. But the scenario I'm describing, I'm  
7           just saying is at least hypothetically possible?

8 A.    I mean, potentially. I don't have anything to back that  
9           up, though.

10 Q.    Right. But I mean has MPCA looked at, in your work  
11           there, the possibility of approval of mulch systems?

12 A.    We've never had to look at a mulch system --

13 Q.    Okay.

14 A.    -- for approval.

15 Q.    Okay. Right. And the way you would get that is someone  
16           would bring the idea to you; is that right?

17 A.    Correct.

18 Q.    Okay. I think you're saying MPCA hasn't taken it upon  
19           itself, for example, this way: You know, in California,  
20           they're approving those mulch systems. Arizona seems to  
21           like them too. Let's take a look at this. That hasn't  
22           happened since 2015 in your work.

23 A.    Well, so I guess I should be a little bit more clear. I  
24           mean --

25 Q.    Sure.

1 MR. LIPFORD: Judge, I have another couple  
2 witnesses, though they'll be shorter.

3 THE COURT: Oh.

4 MR. LIPFORD: But could we take maybe a two-  
5 minute bathroom break and then call Menno Mast?

6 THE COURT: Let's give ourselves 10 minutes.  
7 10 minutes, folks.

8 (At 10:36 a.m. a recess was taken, and the  
9 matter reconvened at 10:45 a.m.)

10 THE COURT: Okay. Let's go back on the record  
11 in this matter. Parties and counsel are present.

12 And, Mr. Mast, it sounds like you're headed for  
13 the witness stand, and you may have a seat.

14 MR. LIPFORD: Yes, would call Menno Mast.

15 THE COURT: All right. You may have a seat.

16 And, Mr. Lipford, you may inquire.

17 **MENNO MAST**

18 (Previously sworn.)

19 REDIRECT EXAMINATION

20 BY MR. LIPFORD:

21 Q. Mr. Mast, Ms. Adkins and Mr. Frauenkron testified that  
22 the government's gray water septic system is the least  
23 restrictive alternative for your religious beliefs; is  
24 that true?

25 A. No.

1 Q. What would be a less restrictive method?

2 A. The mulch system.

3 Q. And why?

4 A. Well it doesn't have a holding tank and a drain field and  
5 --

6 MR. CORSON: Your Honor, I have to object. I  
7 would just ask for a continuing objection if this line of  
8 questioning is going to be kind of going forward. As I  
9 understand as it relates to his religious beliefs, but to  
10 talk about the technical aspects of, you know, how it's  
11 different and this and that, then I would --

12 THE COURT: He hasn't asked any -- he hasn't  
13 anything about a technical -- of a technical aspect at  
14 all.

15 MR. CORSON: Right.

16 THE COURT: So right now he's asking about  
17 religious beliefs.

18 MR. CORSON: Yep.

19 THE COURT: If we get into technical aspects,  
20 you may raise your objection; but we aren't there yet.

21 Go ahead, Mr. Lipford.

22 BY MR. LIPFORD:

23 Q. And I'd ask you why a mulch system is less restrictive  
24 than a septic system.

25 A. It's got no septic holding tank. You know, like a drain

1 field and the mulch system is something that we're trying  
2 to maintain ourself.

3 Q. Some other Amish testified that they had installed a gray  
4 water septic system. Does that mean it's not a burden  
5 for your religious beliefs to install it?

6 A. No, that doesn't mean it isn't a burden for our religious  
7 belief.

8 Q. And why is that?

9 A. Well if we put it in, that would still burden my  
10 religious belief. The gray water system is the same  
11 thing as a septic system, and down the road they're going  
12 to hook the toilet -- indoor toilets up to it.

13 Q. And you understand you can't hook a toilet directly up to  
14 the gray water septic system; correct?

15 A. Not without a little bit of changes, but it's a septic  
16 system.

17 Q. Do you see any differences in the mulch system versus the  
18 septic system?

19 A. Yeah.

20 MR. CORSON: Objection, Your Honor. That's  
21 beyond his capabilities or technical expertise.

22 MR. LIPFORD: It's --

23 MR. CORSON: Now we're talking about the burden  
24 and I understand we're talking about his religious  
25 beliefs, not the nature of the system.

1 MR. LIPFORD: I'll clarify that.

2 THE COURT: Go ahead.

3 BY MR. LIPFORD:

4 Q. As far as your religious beliefs, do you see any  
5 difference between the mulch system and the gray water  
6 septic system?

7 A. Yes. Yes, I do.

8 MR. CORSON: Your Honor, object. Asked and  
9 answered. It's cumulative. I think that was the first  
10 three or four questions went to that.

11 THE COURT: Overruled. I'm going to hear the  
12 testimony.

13 You may go ahead, Mr. Mast.

14 THE WITNESS: That is against my religious  
15 beliefs to put a septic system in.

16 BY MR. LIPFORD:

17 Q. Mr. Frauenkron testified that he thought your mulch  
18 system didn't work because he found some buildup under  
19 the pipe. Who designed the system that you put in?

20 A. I did.

21 Q. And how'd you come up with that plan?

22 A. Well I've heard of other states having mulch systems and

23 --

24 MR. CORSON: Objection, Your Honor. That's  
25 calling for hearsay. No foundation. And, again, the --



1 my understanding the rebuttal is only to talk about the  
2 burden on the religious beliefs and not -- not the system  
3 itself. He's already testified about putting in the  
4 system.

5 THE COURT: I'm going to overrule the  
6 objection. You may go ahead, Mr. Mast.

7 THE WITNESS: Repeat the question.

8 BY MR. LIPFORD:

9 Q. How did you come up with the plan for your mulch system?

10 A. Well I was kind of wondering what I could do to get rid  
11 of my straight-pipe so it wouldn't be running on top of  
12 the grouped and I've heard of these other systems and I  
13 kind of decided I'm going to try some. And I really  
14 didn't have no actual plan, I just kind of step by step.

15 Q. And is this the plan you kind of came up with? Is that  
16 your drawing?

17 A. Yes. That's the plan I kind of came up with.

18 Q. And how big are those mulch basins that you put in?

19 A. Like four by four.

20 Q. Okay. Four-foot by four-foot?

21 A. Yeah.

22 Q. Now, Ms. Allen testified that the mulch system could be  
23 improved. I'm going to show you --

24 MR. LIPFORD: Sorry, here are copies. If I  
25 could have 42.

1 (Counsel conferred.)

2 BY MR. LIPFORD:

3 Q. Are you willing to make the changes that she suggested?

4 A. Yes, I think I would do that.

5 Q. And so that would -- if I'm correct, four-by-four. You  
6 had two of the mulch basins?

7 A. Yes.

8 Q. Okay. So it would take you from 32 square feet to 100  
9 square feet of mulch.

10 A. Yes.

11 Q. And has this plan been discussed with your -- with your  
12 church?

13 A. With some of the members, Elder members --

14 MR. CORSON: Objection; hearsay, Your Honor.  
15 Can he -- He can only talk about what he has stated, and  
16 what other people have stated would be hearsay.

17 THE COURT: overruled. He's not offering  
18 anything for the truth of the matter asserted.

19 You may go ahead, Mr. Mast

20 THE WITNESS: Repeat the question.

21 MR. LIPFORD: Sure.

22 BY MR. LIPFORD:

23 Q. Was this plan discussed with your church?

24 A. With the elders, some of the elders, yes.

25 Q. And is it okay for your group to install this system?

1 A. Yes.

2 MR. CORSON: Objection; hearsay, Your Honor.

3 THE COURT: overruled.

4 MR. CORSON: It's the truth of the matter  
5 asserted.

6 THE COURT: Overruled.

7 Go ahead.

8 THE WITNESS: Yes, it's -- it's okay to put it  
9 in in our group.

10 BY MR. LIPFORD:

11 Q. There's testimony about water usage, and you do some  
12 processing of chickens?

13 A. Yes, we do.

14 Q. What, as far as the most gallons per day, what do you  
15 think the most gallons per day you use?

16 MR. CORSON: Objection; speculation. He has  
17 done no measurements to keep track of the water usage;  
18 and in fact, that's one of the issues here. We have no  
19 data that's been provided in any way, so...

20 THE COURT: Overruled.

21 Go ahead, Mr. Mast.

22 THE WITNESS: We got like 150-gallon tank where  
23 we put water in to cool them, and it's like -- we fill it  
24 like half or so before we put the chickens in, and then  
25 sometimes we let it run through there a little bit. I'm

1 THE COURT: I don't want to spend much time on  
2 it.

3 MR. LIPFORD: Okay.

4 BY MR. LIPFORD:

5 Q. Why did you -- you had a straight-pipe before your mulch  
6 system?

7 A. Yes.

8 Q. Why did you put the mulch system in?

9 A. They threaten us with a fine and court cases and we  
10 decided to try and do something to see if the community  
11 could go along with, so that's what we came up with. To  
12 experiment with it.

13 Q. And what did -- what did you mean -- what do you mean by  
14 to experiment with it?

15 A. See if it work.

16 Q. And do you mean work with your church or work as a  
17 concept? What do you mean work?

18 A. I guess, yeah, it would be work with the church, the  
19 water supplies and stuff that we are using, to try and  
20 keep it underground or in a bed so you can seep down  
21 instead of running down that ravine in the pasture.

22 Q. And prior to the county getting involved or asking you to  
23 do on your straight-pipe, what'd you -- what'd you think  
24 about your straight-pipe?

25 A. I didn't really think it's harmful.

1 Q. What do you -- What do you think about a straight-pipe  
2 now?

3 A. To me I don't think it would be harmful. But if I have a  
4 choice and could do it, I'd probably put a mulch bed in.

5 Q. Okay. So you don't see anything wrong with a straight-  
6 pipe but the county has got a problem with it; is that a  
7 fair statement?

8 MR. CORSON: Objection, Your Honor. I think  
9 that's somewhat a misstatement of where we're at on this  
10 case and --

11 MR. LIPFORD: Judge, their --

12 THE COURT: I don't know if it is or not. I'm  
13 going to overrule the objection.

14 You may go ahead, sir.

15 THE WITNESS: What was the question?

16 BY MR. LIPFORD:

17 Q. The question was you don't see anything wrong with the  
18 straight-pipe, but the county and the government have a  
19 problem with the straight-pipe.

20 A. No, I --

21 MS. BROWN: Objection; foundation. He now  
22 included the PCA.

23 MR. LIPFORD: Oh, okay.

24 THE COURT: Folks, let's just get an answer to  
25 this question.

1                   What was the answer, sir?

2                   THE WITNESS:    No, I don't have a problem with  
3                   that.

4 BY MR. LIPFORD:

5 Q.    You understand the government has a problem with it.

6 A.    Yes, I do.

7 Q.    And the county said you never came and asked for a permit  
8                   to put this in.

9                   MR. CORSON:  Objection; that's a misstatement.

10                  MR. LIPFORD:  Okay.

11                  MR. CORSON:  I did not state that, the witness  
12                  stated that.

13                  MR. LIPFORD:  I don't know if we can read back  
14                  the record, I'm curious to what he asked about the  
15                  permitting process.

16                  MR. CORSON:  I'll withdraw the objection, Your  
17                  Honor.

18                  THE COURT:  We're not going to be able to find  
19                  that piece in the record that quickly.

20                  MR. LIPFORD:  Okay.

21                  THE COURT:  Go ahead, Mr. Lipford.

22 BY MR. LIPFORD:

23 Q.    Well, my recollection was the county had asked you, you  
24                   didn't come in and get a permit for this mulch system.

25 A.    No, I didn't.

1 Q. And why didn't you do that?

2 A. I figured they wouldn't let me have one anyway.

3 Q. Why is that?

4 A. Because if I would've said we're going to experiment with  
5 it, they would've said there's no way we can do it.

6 Q. Do you recall I guess something called mediation being  
7 done in this case?

8 MR. CORSON: Objection, Your Honor. Mediation  
9 cannot be brought up during the course of a civil case --

10 THE COURT: Yeah, I get it. I get it.

11 Mr. Lipford, what's the story on this?

12 MR. LIPFORD: This is relevant because he had  
13 asked the question you never came to us and talked to us  
14 about this, you never said can't we do this, you never  
15 came and said, you know, would this be okay, and that's  
16 simply not true.

17 MR. CORSON: I can --

18 MR. LIPFORD: We were here at mediation --

19 MS. BROWN: Your Honor, I'd like --

20 MR. LIPFORD: -- we showed them the book --

21 THE COURT: Hold on --

22 MR. LIPFORD: -- we explained it --

23 THE COURT: Hold on, hold on --

24 MR. CORSON: This is inappropriate in the  
25 presence of the witness to be going through this and --

1 (November 28, 2018 at 8:30 a.m.)

2 THE COURT: Okay. Let's go on the record.

3 Parties and counsel are present, and we're  
4 still in the case being presented by Mr. Lipford's  
5 clients and, Mr. Lipford, anything of a preliminary  
6 nature before we begin this morning?

7 MR. LIPFORD: No, Judge.

8 THE COURT: Mr. Corson?

9 MR. CORSON: No, Your Honor.

10 THE COURT: Ms. Brown, Ms. Kimble?

11 MS. BROWN: No, Your Honor.

12 THE COURT: All right.

13 Mr. Lipford, you may call your next witness.

14 MR. LIPFORD: We call Laura Allen.

15 THE COURT: Okay.

16 Ms. Allen, the witness chair is right up here  
17 by Ms. Morgan. Come on up to the chair, remain standing  
18 for an oath to be administered, please.

19 THE CLERK: Please raise your right hand.

20 **LAURA ALLEN**

21 THE CLERK: You do swear that the evidence you  
22 give relative to the cause now under consideration shall  
23 be the whole truth and nothing but the truth, so help you  
24 God? If so, say I do.

25 THE WITNESS: I do.



1 THE CLERK: And would you please be seated.  
2 Would you state and spell your name for the record,  
3 please.

4 THE WITNESS: My name is Laura Allen, spelled  
5 L-a-u-r-a A-l-l-e-n.

6 THE COURT: Thank you, Ms. Allen.

7 And, Mr. Lipford, you may inquire.

8 MR. LIPFORD: Thank you, Judge.

9 Judge, I apologize. We're trying to come in  
10 and get ready.

11 THE COURT: That's okay.

12 MR. LIPFORD: I've got to locate my binder and  
13 notes here.

14 (Pause.)

15 MR. LIPFORD: All right. Thank you for your  
16 patience.

17 DIRECT EXAMINATION

18 BY MR. LIPFORD:

19 Q. Ms. Allen, what do you -- what do you do? What's your  
20 occupation?

21 A. I work with an organization called Greywater Action. We  
22 provide education about gray water systems as well as  
23 rainwater harvesting and composting toilets. We run  
24 programs for cities and water utilities to educate their  
25 customers. I'm also a writer. I write technical how-to

1 books on water reuse.

2 Q. And what's your position with -- I guess Greywater  
3 Action, you said?

4 A. I'm one of the founders.

5 Q. And how long have you -- I guess has that -- have you  
6 been with them or has it been in existence?

7 A. It started informally in 1999 and we became a project of  
8 another nonprofit in 2008, so since 2008 it's been a  
9 formal organization.

10 Q. Okay. But you've been with them informally since 1999?

11 A. Yes.

12 Q. And what is -- just so we get the background, when you  
13 talk about gray water, what are you referring to?

14 A. I'm referring to water that has been used in a home  
15 coming from showers, sinks, and washing machines. So  
16 it's pretty much everything but the toilet water. So  
17 it's clean enough for some situations, like irrigation  
18 and non-potable reuse, but it's not a potable source of  
19 water.

20 Q. And what do you mean by potable? What does potable mean?

21 A. Potable is drinking water.

22 Q. Okay.

23 A. So it's water that you want to manage carefully with  
24 precautions, but it can be a good resource with  
25 precautions in place.

1 Q. Okay. And then what would you call the toilet water or  
2 the --

3 A. That's called black water.

4 Q. Okay. The -- Well, I'll ask you is there a uniform use  
5 of the term? Is it one word, is it two words, it is E or  
6 an A or --

7 A. There's four ways to spell gray water, and there's  
8 several definitions depending on where you are in the  
9 country and world.

10 Q. Is one way of spelling any way, I guess, any more  
11 prevalent than the other?

12 A. Internationally one word with an E, g-r-e, gray water is  
13 the most common way. In the United States it's often  
14 spelled with an A, but it depends on what state you're  
15 in.

16 Q. Okay. And you say -- I think you were saying that you  
17 design implement sustainable water management programs.

18 A. Yeah.

19 Q. What do you mean by that?

20 A. So in -- I live in Oregon, but I've lived in California  
21 for many years so I mostly work in those two states.  
22 There's a lot of interest in gray water so we -- our  
23 organization is contacted by water utilities, like San  
24 Francisco Public Utilities Commission, Pasadena Water and  
25 Power, but there's a whole handful of water agencies.

1           They may be the city utility or they may be a separate  
2           entity who want to educate their customers about gray  
3           water, so we teach classes that are free to the customers  
4           about how to design and install the systems. And we also  
5           -- some of the programs are kind of more in-depth, so we  
6           go to homes and consult with people about how to  
7           implement these systems in their homes.

8 Q.   And just, generally, what do these systems do with the  
9           gray water?

10 A.   They redirect the water from the home out into the  
11           landscape and they are mostly designed to irrigate  
12           plants.

13                   MR. LIPFORD: Judge, if we can get this -- I'm  
14           going to show -- this is called an Elmo. That's what I  
15           refer to this screen. Can we get thing on?

16                   THE COURT: It shows up for me right now. Does  
17           it for everyone else?

18                   MR. CORSON: It's just not on our screens yet,  
19           Your Honor.

20                   (Pause.)

21                   THE COURT: Is that showing for you now?

22                   MR. CORSON: It is.

23                   THE WITNESS: Yes.

24                   THE COURT: Okay.

25 BY MR. LIPFORD:

1 Q. And is it, sorry, this is Exhibit 5. And just generally  
2 speaking, is that kind of the concept?

3 A. Yeah. That's the concept.

4 Q. Okay.

5 MR. LIPFORD: Would move to admit Exhibit 5  
6 just for illustrative purposes.

7 THE COURT: Mr. Corson, Ms. Brown?

8 MR. CORSON: I don't object for illustrative  
9 purposes.

10 MS. BROWN: Same caveat, Your Honor. No  
11 objection if it's for illustrative purposes.

12 THE COURT: Okay. Exhibit 5 is received with  
13 that understanding without objection.

14 Mr. Lipford, go ahead.

15 BY MR. LIPFORD:

16 Q. So the concept is take water from your laundry and  
17 irrigate plants with it?

18 A. Yes.

19 Q. Okay. And, let's see, and have you -- I guess, have you  
20 worked with any cities as far as the -- or states as far  
21 as the development of these codes?

22 A. I have. I started working on codes in 2009 with  
23 California. I was a stakeholder with the Department of  
24 Housing and Community Development's code rewrite of the  
25 California Plumbing Code. That happens every three

1           years, so I've been involved in that every three years.

2           I worked -- I was on the stakeholder committee for  
3           Washington State when they wrote their gray water code,  
4           and I am currently a technical committee member for the  
5           IAPMO. It's an entity that writes codes. They write  
6           uniform plumbing code as well as other codes. And --

7 Q.       Sorry just to interrupt you. When you use an acronym --

8 A.       Sorry.

9 Q.       You said --

10 A.       IAPMO. It's I-A-P-M-O. International Association of  
11           Mechanical and Plumbing Officials.

12 Q.       Okay. And what's your role with them?

13 A.       I'm on the technical committee for their water efficiency  
14           standard. It's a -- It's a standard that is designed --  
15           it's all about water. So it contains gray water,  
16           composting toilets, rainwater efficiency. It's a  
17           supplement, so it's not -- it's adopted by some areas and  
18           it also influences their uniform plumbing code. But not  
19           -- yeah, there's influence, but they are separate codes.

20 Q.       Okay. And then what about policy work? Have you done  
21           any of that?

22 A.       I have. I have kind of informally consulted on several  
23           bills in California on water reuse. I've been a witness  
24           for a bill in the California senate on gray water with  
25           the attempt to redefine gray water -- or actually with

1 the attempt to bring in a new definition in California to  
2 call it dark gray water. That was -- I think it was AB15  
3 or 1258. I'm not remembering the number of the bill.

4 Q. And have you published any materials concerning gray  
5 water?

6 A. I have. I have published two books, one called the Water  
7 Wise Home.

8 Q. If you -- just to pause for a second. Is this the book  
9 we're -- sorry, it's not all fitting here. Is this the  
10 book you're referring to?

11 A. Yeah.

12 Q. Okay.

13 A. And a second book called Gray Water Green Landscape that  
14 is --

15 Q. Sorry, I keep interrupting you. But what is -- what's  
16 this book cover?

17 A. It covers -- it's a how-to book, so it is geared towards  
18 the residential scale systems and it covers gray water  
19 reuse, rainwater harvesting, and waterless toilets, and  
20 it is -- it takes you both step-by-step through the site  
21 assessment, the design, and the installation of some of  
22 the simpler systems, and then it discusses the more  
23 complex and advanced systems that would require  
24 professional design and installation.

25 Q. And is this the back cover of your book?

1 A. Yes.

2 Q. Okay. And I see kind of a modern home. Is it a fair  
3 assessment that -- well, let me just back up. I guess  
4 who is typically using these types of systems?

5 A. They are homeowners who are environmentally aware, who  
6 are interested in being -- bringing more sustainable  
7 practices to their home or they are homeowners that live  
8 in water stressed regions of the country that have --  
9 like for example in California. In the last drought,  
10 there was rationing in place and people were prohibited  
11 from irrigating with potable water in much of the state  
12 and so that really drives people to looking at other  
13 sources of water, and gray water is a really kind of  
14 logical first step for them because every house is  
15 producing gray water.

16 Q. So urban? Rural? Both?

17 A. Yeah, both.

18 Q. Okay. And what was the second book you --

19 A. The second book is titled Greywater, Green Landscape, and  
20 it's also a how-to, but it just focuses on gray water.  
21 It has more -- it's a -- the book that you just showed  
22 has drawings, and Greywater, Green Landscape has  
23 photographs. So we did some kind of step-by-step photo  
24 shoots of installations.

25 Q. Okay. And is that the book that you're referring to?



1 A. Yeah. That's the book.

2 Q. Okay.

3 A. I've written two other kind of -- I wrote -- I was the  
4 main author for the San Francisco Public Utilities  
5 Commission Manual on Graywater.

6 Q. Is this the --

7 A. The Graywater Design Manual for Outdoor Irrigation.

8 Q. And, sorry. Is that the front cover?

9 A. Yeah.

10 Q. And what is the -- what is the San Francisco Graywater  
11 Design Manual?

12 A. The San Francisco Public Utilities Commission provides  
13 water for San Francisco, and they want to offer their  
14 customers options of conserving and reusing water so they  
15 had this manual created to teach their kind of do-it-  
16 yourself type population how to build their own gray  
17 water systems. The manual came as part of a program  
18 where they gave free classes, and they gave free  
19 materials so if you went to a class you would get \$100  
20 off materials to build a gray water system from a local  
21 irrigation store.

22 Q. Okay. And have you done any, I guess, been a part of any  
23 studies?

24 A. Yeah. Greywater Action spearheaded a study a couple  
25 years back. We looked at 83 gray water systems in

1 California and it was a partnership between a city, two  
2 nonprofits, and a water agency to assess what the impact  
3 on the soil was on the plants and what the quality of the  
4 gray water was. So we tested the gray water and sent it  
5 to a lab to analyze it for irrigation suitability.

6 Q. And what was the title of that?

7 A. It has a long title --

8 Q. Okay.

9 A. -- and I'm blanking on the name, but it's Graywater --

10 Q. Let me -- Is this the --

11 A. Yeah. Residential Graywater Irrigation Systems in  
12 California.

13 Q. Okay. You stated that you testified in front of the  
14 California legislature?

15 A. I did. There were two different committees that I  
16 testified to as part of that.

17 Q. Okay. And I guess which states have you worked on code  
18 development for?

19 A. For California. For Washington. In Oregon I've worked  
20 on implementation of the code. The Washington State  
21 Greywater Code has a lot of requirements, but they didn't  
22 have any way for people to know, like, exactly what they  
23 were supposed to do, so I worked with the Department of  
24 Environmental Quality on creating -- we called it a  
25 standard plan, so it was basically taking the code and

1 I'm not going to try to paraphrase what the order said.

2 THE COURT: So the question was --

3 BY MR. LIPFORD:

4 Q. The question was how has it been working?

5 A. Pretty good.

6 Q. Okay. And it's -- as far as freezing, was there any  
7 freezing with it?

8 A. No.

9 Q. In your opinion how was -- how harsh was last -- was the  
10 2017 winter?

11 MR. CORSON: I'd object, Your Honor. That is  
12 broad. Really should be defined as far as measurements,  
13 freezing, temperatures, things like that.

14 MR. LIPFORD: If we want, Judge, I'm fine on us  
15 getting some data. We could all stipulate to having --

16 THE COURT: You're really asking about how cold  
17 was it last year.

18 MR. LIPFORD: How cold was it last year.

19 THE COURT: I'm going to allow him to answer  
20 the question.

21 Go ahead, sir.

22 THE WITNESS: We had, like 20 below or so once  
23 or twice that I can remember of.

24 BY MR. LIPFORD:

25 Q. So no -- but you said no freezing throughout the winter.

1 A. No.

2 Q. And you previously had a -- I guess, what do you do to  
3 prevent the lines from freezing in the winter?

4 A. We covered it up with sawdust and shavings, chips, and  
5 whatever we had around there.

6 Q. And where do you cover that stuff up?

7 A. Right where the line comes down into the mulch beds and  
8 then the valve boxes and everything.

9 Q. You said you cover it up. Why do you cover it?

10 A. To keep it from freezing.

11 Q. Is that something you did when you had your straight-pipe  
12 system?

13 A. Yes.

14 Q. So you've been kind of, I guess, insulating the line for  
15 a while?

16 A. Yes.

17 Q. And has there been any -- has there been any problems  
18 with it?

19 A. We had a little bit a problem overflow, but we cleaned it  
20 and remulched it and it's working good.

21 Q. When was that overflow?

22 A. During the time they were doing a lot of chickens,  
23 dressing a lot a chickens and bathing and stuff a little  
24 bit.

25 Q. So what -- you said a lot of chickens. How many -- how

1           many chickens?

2   A.    Like 60 or 70 a day.

3                   THE COURT:  How many days?  You said 60 or 70 a  
4   day?

5                   THE WITNESS:  Yeah.  How many days?

6                   THE COURT:  And just one day?

7                   THE WITNESS:  Probably two or three days.

8                   THE COURT:  Okay.

9                   THE WITNESS:  In a row.

10  BY MR. LIPFORD:

11  Q.    And that's 60 to 70 over the three-day period?

12  A.    Yeah.

13  Q.    Okay.

14  A.    Yes.

15  Q.    Was it about 20 a day?

16  A.    Yes.

17  Q.    Okay.

18                   THE COURT:  Hold on.  Sir, you initially said  
19   60 or 70 a day.  Is it 60 or 70 total or is it 60 or 70  
20   times three days?

21                   THE WITNESS:  In three days.

22                   THE COURT:  60 or 70 total over three days.

23                   THE WITNESS:  Yes.

24                   THE COURT:  Gotcha.  Okay.

25                   Mr. Lipford.

1 Q. How good do you know them?

2 A. Well I see them about every two weeks.

3 Q. Okay. And how long have you been going to this church?

4 A. It's over 20 years.

5 Q. And you've -- you earlier testified you've been in their  
6 homes for church services?

7 A. Yes.

8 Q. How many of the other members' homes have you been in?

9 A. 25 or more.

10 Q. Let me ask you this. Do you know of any of these members  
11 that have gray water systems or septic systems?

12 A. There's none that I know of.

13 MR. LIPFORD: No further questions.

14 THE COURT: Mr. Corson?

15 MR. CORSON: Thank you.

16 CROSS EXAMINATION

17 BY MR. CORSON:

18 Q. Mr. Miller, you reside here in Fillmore County; is that  
19 right?

20 A. Yes.

21 Q. Okay. And do you know what the Dordrecht Confession is?

22 A. What was that?

23 Q. Okay. You consider yourself as a Swartzentruber Amish;  
24 right?

25 A. Yes.

1 Q. And are all the Amish in Fillmore County, are they  
2 Swartzentruber Amish?

3 A. I guess they call themselves Swartzentruber Amish.

4 Q. So does that include the -- so you're talking the people  
5 over by Canton and that general Canton-Preston area;  
6 right?

7 A. The Canton area.

8 Q. Okay. Do you also know there's Amish down in Granger  
9 area?

10 A. Yes.

11 Q. Like the Yutzys and some of those folks?

12 A. Yes.

13 Q. Are the Swartzentruber Amish?

14 A. No.

15 Q. They're a different -- a different kind of Amish.

16 A. Yes.

17 Q. But are they still Old Order Amish?

18 A. I guess that's what they call themselves.

19 Q. So do you know what the Dordrecht Confession is?

20 A. What?

21 Q. Do you know what the Dordrecht Confession is?

22 A. Part of it. I can't -- I can't memorize it all.

23 Q. Yeah. What is it?

24 A. That was -- that's the confession of faith.

25 Q. Okay. So you would agree that God has ordained power and

1 authority to the government as part of the Dordrecht  
2 Confession?

3 A. I don't think I understand your question.

4 Q. Well, as part -- in the Dordrecht Confession doesn't it  
5 say that you must -- that God has ordained the authority  
6 to protect good and to govern people to the government?

7 A. Yes.

8 Q. Okay. And that you must acknowledge and be subject to  
9 that?

10 A. But in a -- in Ephesians it says that we must obey God  
11 more than man.

12 Q. Okay. And in -- all right. Do you know what the  
13 Articles of Faith of the Old Order Amish Mennonite are?

14 A. Not really specifically. I --

15 Q. Okay. You would agree that one of the things as part of  
16 your faith is you are not supposed to prosecute nor go to  
17 the law in any way.

18 A. Yes.

19 Q. And so it's a -- it's against your faith to file a  
20 lawsuit; isn't it?

21 A. Yes.

22 Q. How -- so just to help me out. If I'm looking at a bunch  
23 of Amish in a room, how do I tell the difference between  
24 say the Canton Middle group versus the Canton Northwest  
25 group that belong to -- go with Enos Hershberger?





**NOTICE OF MOTION**

PLEASE TAKE NOTICE that on 30th day of August, 2018 at 2:30 p.m., or as soon thereafter as may be heard by the Court, Brett A. Corson, Fillmore County Attorney, on behalf of Fillmore County, will bring the following Motion on for hearing before the Honorable Joseph Chase, Judge of District Court, at the Fillmore County Courthouse in the City of Preston, Minnesota.

**MOTION**

Fillmore County moves the Court for an order granting the County of Fillmore the following relief:

1. Ordering that Fillmore County and/or its representatives be able to inspect plaintiffs' properties to include all outbuildings, sheds, barns, buildings, dwellings, and other structures. This would include, but not be limited to the following:
  - a. Inspect the well, cistern, holding tank, piping, pumps, faucets, and all equipment used to obtain, move, transfer or use potable, fresh, or drinking water.
  - b. Inspect the interior and exterior of all structures, sheds, barns, dwellings, and buildings for inside bathrooms, plumbing, floor drains, pits, tanks, chemicals, piping, washrooms, motors, batteries and other equipment or items used to move and/or transfer water, sewage, and wastewater or which may affect the discharge or treatment of sewage and/or wastewater.
  - c. Inspect the interior and exterior of all buildings, outhouses, privies, dwellings and surrounding property for all straight pipes, floor drains, holding tanks, pits, drains, instruments or materials used in the disposal of sewage, graywater, and

other wastewater or human waste produced by the defendants or disposed of on plaintiffs' property.

2. Ordering that the Answer and Counterclaim or pleadings be amended to include the spouses of the plaintiff Amish litigants as follows:
  - a. Verna Miller as spouse, joint tenant, and co-owner of property occupied by Samuel P. Miller.
  - b. Susie Mast as spouse, joint tenant and co-owner of real estate occupied by Menno Roman Mast.
  - c. Mattie Mast as spouse, joint tenant and co-owner of the real estate occupied by Amos Mast.
3. Clarifying that the issues before the court regarding Subsurface Sewage Treatment Systems and/or alternative graywater treatment systems includes proper installation of a privy/outhouse.
4. Clarifying that the litigation in this matter only applies to the religious beliefs of the four Amish plaintiffs who are parties to this case and does not apply all Swartzentruber Amish.
5. Ordering that representatives of Fillmore County be allowed to document, photograph, film and/or otherwise preserve information obtained from the inspection of the buildings, well, straight pipe system and property of the plaintiff Amish litigants.
6. Ordering that the plaintiff Amish litigants pay all attorney's fees, costs and disbursements incurred by Fillmore County in bringing this motion.

7. Ordering that representatives of Fillmore County be able to continue to inspect the buildings and property of the Plaintiff Amish litigants in this case to ensure proper compliance with Fillmore County SSTS and Zoning Ordinances.
8. For such other and further relief as the Court deems just and equitable.

Dated: 5/29, 2018

  
\_\_\_\_\_  
Brett A. Corson  
Fillmore County Attorney  
Atty. Reg. No. 0205990  
P.O. Box 307, Preston, MN 55965  
Tel. No. 507-765-2530

**State of Minnesota**

County of Ramsey

**District Court**

Judicial District:	Second
Court File Number:	
Case Type:	Other Civil: Declaratory Judgment

Ammon Swartzentruber,  
Menno Mast,  
Amos Mast, and  
Sam Miller,

Plaintiffs.

vs.

**COMPLAINT**

Minnesota Pollution Control Agency,  
and County of Fillmore,

Defendants.

Plaintiffs, for their Complaint, state and allege as follows:

**PRELIMINARY STATEMENT**

Plaintiffs are all members of the Swartzentruber Amish community residing in Fillmore County, Minnesota. A principal tenet of Plaintiffs' religious beliefs is that its adherents remain separate and apart from the modern world. This concept of separation emanates from Christian Biblical directions to "be not conformed to this world," *see Romans* 12:2; and "Be ye not unequally yoked together with unbelievers," *see II Corinthians* 6:14. An integral part of Plaintiffs' religious beliefs is compliance with Ordnungs. The term "Ordnungs" is not easily translated into the English language but is a term used to describe the "blueprint" of expected behavior which regulates an entire way of Amish life or an unwritten code of conduct the church maintains by tradition rather than by explicit or systematic written rules.

Plaintiffs believe their religious beliefs should be both practiced and translated into daily living in their homes. Based on these Biblical directives and Ordnungs, the Plaintiffs eschew and reject many modern conveniences commonplace amongst the non-Amish community such as electricity, televisions and ownership of motor vehicles. At issue in this case is the Plaintiffs' disposal of household water used for common indoor household duties of washing dishes, bathing and laundry.<sup>1</sup> Plaintiffs dispose of this household water in a manner consistent with their religious faith and traditions, which include the recycling and reuse of this water and water byproducts in their vegetable gardens.

October 10, 2013, the Minnesota Pollution Control Agency passed its sewage treatment rules. On December 3, 2013, Fillmore County adopted and implemented a Sub-Surface Sewage Treatment System Ordinance. Pursuant to these rules and this ordinance, the Minnesota Pollution Control Agency and Fillmore County are requiring Plaintiffs to install wastewater treatment systems to process the disposal of indoor household water. The installation and use of these wastewater treatment systems violates Plaintiffs' sincerely held religious beliefs. Plaintiffs believe that installation and use of these wastewater systems is contrary to their religious faith and, if they comply with this policy, they will have to answer for this utilization of wastewater systems at the Day of Judgment. The Minnesota Pollution Control Agency has filed civil litigation, issued administrative penalty orders and assessed ongoing fines in an effort to force Plaintiffs, and other Amish similarly situated, to install greywater treatment systems which violate their sincerely held religious beliefs. Fillmore County has similarly sought to force Plaintiffs to install greywater treatment systems which violate their sincerely held religious

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<sup>1</sup> Plaintiffs use outdoor toilet facilities or "outhouses". This case does not involve the disposal of water associated with toilet facilities that is commonly referred to as "black water".

beliefs through civil litigation. Fillmore County has filed criminal charges against Plaintiff Ammon Swartzentruber for failure to obtain a building permit, which would have first required an agreement to install a greywater treatment system. Fillmore County has sought and obtained civil court orders which permit the County to render Plaintiff Ammon Swartzentruber's home uninhabitable through the removal of doors, windows, and his wood stove and other heat sources. See Fillmore County District Court Case No. 23-CV-15-5. Fillmore County is currently seeking an order forcing Plaintiff Amos Mast to destroy his home and vacate the property for not installing a greywater system. See Fillmore County District Court Case no. 23-CV-16-658.

Plaintiffs now bring this action to enforce their rights to religious liberty granted to them under the United States Constitution, the Minnesota Constitution and the Religious Land Use and Institutionalized Person Act of 2000 ("RLUIPA").

### THE PARTIES

1. This action for declaratory and equitable relief is challenging, as applied to the Plaintiffs, the Fillmore County Sub-Surface Sewage Treatment System Ordinance, which was adopted by defendant County of Fillmore pursuant to Minnesota Statutes, Section 115.55; Minnesota Statutes, Sections 145A.01 through 145A.08; Minnesota Statutes, Section 375.51; and Minnesota Rules, Chapter 7080, Chapter 7081, and Chapter 7082. This action is also brought under 42 U.S.C. § 1983.
2. Each Plaintiff is a member of the Swartzentruber Amish community residing in Fillmore County, Minnesota.

3. The Swartzentruber Amish community religious beliefs include living a life that is separate and apart from the modern world and avoid many modern conveniences including greywater treatment systems.
4. The Swartzentruber Amish community is an “old order” Amish community which believes their religion should be both practiced and translated into daily living in their homes.
5. Each Plaintiff utilizes an outhouse or outhouses on their properties for toilet facilities.
6. At issue in this case is the Plaintiffs’ disposal of household water used in indoor household duties of washing dishes, bathing and laundry. This water is considered “greywater” as defined by Minn. R. 7080.110.
7. A declaratory judgment action is proper to test the constitutionality of a municipal ordinance or administrative rule. Minn. Stat. § 555.02, McCaughtry v. City of Red Wing, 808 N.W.2d 331, 337 (Minn. 2011).
8. Plaintiffs are suffering a direct and imminent injury as a result of the Defendant’s enforcement of an unconstitutional municipal ordinance and administrative rule.

#### **THE SUB-SURFACE SEWAGE TREATMENT SYSTEM ORDINANCE**

9. On December 3, 2013, Fillmore County adopted its Sub-Surface Sewage Treatment Ordinance as required by Minn. Stat. § 115.55; Minn. Stat. §§ 145A.01-145A.08 and Minn. Rules 7080-7082.
10. Minn. Stat. § 115.55, titled Subsurface Sewage Treatment Systems, requires counties to enact local ordinances that comply with revisions to Minnesota Pollution Control Agency’s sewage



treatment system rules within two years of the final adoption by the agency. *Id.* at Subd. 2(a).

11. The Minnesota Pollution Control Agency passed its sewage treatment rules on October 10, 2013. *See* Minn. R. 7080 et seq.

### **THE INTERPLAY BETWEEN PLAINTIFFS' RELIGIOUS BELIEFS AND THE LAW**

12. The County's ordinance has largely incorporated the Minnesota Pollution Control Agency's rules with respect to residential sewage treatment. Ordinance at Sec. 501, p. 10. The Minnesota Pollution Control Agency rules specifically address greywater. *See* Minn. R. 7080.2240. The Minnesota Pollution Control Agency's greywater rules mandates tank size based on bedroom size. For a home of three bedrooms or less, the Minnesota Pollution Control Agency's rules require a tank liquid capacity of 750 gallons. Minn. R. 7080.2240. For a home of four to five bedrooms, the rules require a tank liquid capacity of 1,000 gallons. *Id.*

13. The Fillmore County ordinance has "Alternative Local Standards" regarding greywater that applies to the County's Amish Community. Ordinance at Section 502, p. 10. This local standard requires a tank capacity of 1,000 gallons regardless of bedroom size. The Fillmore County ordinance is more onerous as applied to Plaintiffs than the Minnesota Pollution Control Agency's rules with respect to greywater disposal.

14. Plaintiffs have either been denied zoning permits by defendant Fillmore County for their alleged failure to have a method for disposing of their greywater in compliance with the local

ordinance and the Minnesota Pollution Control Agency rules or Plaintiffs are in imminent fear of being denied a permit by defendant Fillmore County.

15. Plaintiffs have been threatened by Fillmore County with civil lawsuits, or have already been sued civilly by the defendant Fillmore County, for their alleged failure to comply with the ordinance and Minnesota Pollution Control Agency rules.
16. The County of Fillmore has sought court orders permitting the government to render Plaintiffs' homes uninhabitable by: removing windows and doors of their homes, dismantling plumbing, removing stoves and other sources of heat for failure to install septic and/or greywater systems. The County has also sought to assess to Plaintiffs the cost of the destruction of their homes.
17. Plaintiffs have been threatened by Fillmore County with condemnation of and eviction from their homes, and threatened with criminal charges, and attachment and garnishment of their personal property for alleged debts or fines owed to Fillmore County.
18. Plaintiffs' failure to comply with the ordinance and the Minnesota Pollution Control Agency's rules is based on their sincerely held religious beliefs that septic systems and/or greywater systems as required by the ordinance and the Minnesota Pollution Control Agency rules are modern conveniences that are forbidden by their Amish religion and violate their right to religious liberty.
19. On April 14, 2016, Defendant Minnesota Pollution Control Agency filed 23 civil separate lawsuits against members of the Swartzentruber Amish community seeking administrative penalties for failure to comply with Minnesota Pollution Control Agency which violate their right to religious liberty.

**COUNT ONE****MINNESOTA CONSTITUTION ARTICLE I, SECTION 16**

20. Based on their sincerely-held religious beliefs, Plaintiffs state and allege that compliance with the local ordinance and with the Minnesota Pollution Control Agency rules is inconsistent with and constitutes an unreasonable burden upon their religious convictions. Based on their respective sincerely-held religious beliefs, Plaintiffs state and allege that the methods they have chosen and will choose to manage their greywater, namely, recycling of water and water byproducts associated with clothes washing, bathing and food preparation for use in their crop fields and gardens, have not posed and will not in the future pose any imminent public health threat.
21. The Fillmore County ordinance and the Minnesota Pollution Control Agency rules override and interfere with Plaintiffs' rights of conscience and burden the free exercise of their religious beliefs by requiring them to install water treatment systems that violate their sincerely held religious beliefs.
22. The Defendants' interest in overriding and interfering with Plaintiffs' rights of conscience and burdening the free exercise of their religious beliefs is not compelling.
23. The Fillmore County ordinance and the Minnesota Pollution Control Agency rules are not the least restrictive means for effectuating the State's interest.
24. The Fillmore County ordinance and the Minnesota Pollution Control Agency rules as applied to Plaintiffs to require them to install and use greywater handling systems that interfere with

and override their sincerely held religious beliefs violate Plaintiffs' rights protected by Article I, Section 16 of the Minnesota Constitution.

## **COUNT TWO**

### **FREEDOM OF RELIGION, U.S. CONSTITUTION**

25. The Plaintiffs have a fundamental right to practice, worship and observe the tenants of their religious faith and unwritten Ordnungs, under the First and Fourteenth Amendments to the United States Constitution.
26. In the exercise of sincerely-held religious beliefs, Plaintiffs have eschewed modern conveniences in their homes and have chosen to continue to recycle their indoor water used for common household activities in the manner an custom in which they, as well as many non-Amish, have done for centuries.
27. The Minnesota Statutes and County of Fillmore ordinances require the Plaintiffs to install water treatment systems that violate their right of freedom of religion.
28. The State's interest in controlling and interfering with the Plaintiffs' right of religious freedom, if any, is not compelling.
29. The Minnesota Statutes and County of Fillmore ordinances are not the least restrictive means for effectuating the State's interest, if any.
30. Accordingly, the Minnesota Statutes and County of Fillmore violate the First and Fourteenth Amendments to the United States Constitution.

**COUNT THREE****RELIGIOUS LAND USE ACT of 2000**

31. The Fillmore County ordinance and the Minnesota Pollution Control Agency rules are land use regulations within the meaning of the Religious Land Use and Institutionalized Person Act of 2000 (“RLUIPA”), 42 U.S.C. Section 2000cc et seq.
32. The Fillmore County ordinance and the Minnesota Pollution Control Agency rules impose and implement land use regulations that apply to Plaintiffs more onerously and restrictively than other reasonable alternatives such as are allowed to other individuals, such as those with “seasonal homes, buildings located on sensitive sites, parks, playgrounds, service station drains, etc.”, who are permitted to use holding tanks instead of subsurface sewage treatment systems for greywater. Fillmore County Sub-Surface Sewage Treatment Ordinance Section 503, subd. 4.
33. The Defendants’ application of their ordinances and rules threaten civil fines, condemnation, and other severe penalties against Plaintiffs whose religious beliefs would be seriously infringed and compromised by complying with Defendants’ ordinances and rules. The ordinance and rules impose and implement land use regulations that unreasonably limit Plaintiffs within the State of Minnesota.
34. Defendants, through the ordinance and Minnesota Pollution Control Agency rules, have violated RLUIPA.
35. Plaintiffs have been injured by the Defendants’ land use regulations and have standing to assert violations of RLUIPA.

**PRAYER FOR RELIEF**

Wherefore, Plaintiffs request that the Court issue an order:

1. Declaring that the ordinance and rules as applied to Plaintiffs violate the Minnesota Constitution, the United States Constitution, and RLUIPA;
2. Declaring that Defendants must allow Plaintiffs to retain, recycle, reuse or establish alternate safe systems for disposing of their household water used for common indoor household duties;
3. Enjoining the County of Fillmore and Minnesota Pollution Control Agency from enforcing the ordinance and agency rules against the Plaintiffs;
4. Enjoining the County of Fillmore and Minnesota Pollution Control Agency from assessing, collecting or otherwise enforcing fines or administrative penalties against the Plaintiffs;
5. Awarding Plaintiffs their attorneys' fees, expenses, and costs; and
6. Granting such other and further relief as is just and proper.

Dated: April 6, 2017

/s/

Signature  
Attorneys for Plaintiffs  
Southern Minnesota Regional Legal Services

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**Acknowledgement**

The undersigned hereby acknowledge that costs, disbursements, and reasonable attorney fees may be awarded pursuant to Minn. Stat. § 549.211, subd 2.

\_\_\_\_\_/s/\_\_\_\_\_  
Signature

Code of Federal Regulations  
Title 40. Protection of Environment  
Chapter I. Environmental Protection Agency (Refs & Annos)  
Subchapter O. Sewage Sludge  
Part 503. Standards for the Use or Disposal of Sewage Sludge (Refs & Annos)  
Subpart A. General Provisions

40 C.F.R. § 503.5

§ 503.5 Additional or more stringent requirements.

Currentness

(a) On a case-by-case basis, the permitting authority may impose requirements for the use or disposal of sewage sludge in addition to or more stringent than the requirements in this part when necessary to protect public health and the environment from any adverse effect of a pollutant in the sewage sludge.

(b) Nothing in this part precludes a State or political subdivision thereof or interstate agency from imposing requirements for the use or disposal of sewage sludge more stringent than the requirements in this part or from imposing additional requirements for the use or disposal of sewage sludge.

SOURCE: [58 FR 9387](#), Feb. 19, 1993, unless otherwise noted.

AUTHORITY: Sections 405 (d) and (e) of the Clean Water Act, as amended by [Pub.L. 95–217](#), Sec. 54(d), 91 Stat. 1591 ([33 U.S.C. 1345 \(d\) and \(e\)](#)); and [Pub.L. 100–4](#), Title IV, Sec. 406 (a), (b), 101 Stat., 71, 72 ([33 U.S.C. 1251 et seq.](#)).

Notes of Decisions (4)

Current through April 23, 2021; 86 FR 21666.

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End of Document

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## Minnesota Rules

## Pollution Control Agency [4760 to 9220]

## Chapter 7080. Individual Subsurface Sewage Treatment Systems

## Minnesota Rules, part 7080.1500

## 7080.1500. COMPLIANCE CRITERIA.

## Currentness

Subpart 1. **Treatment required.** Sewage discharged from a dwelling, group of dwellings, or other establishment that is not served by a system issued a permit by the agency that contains effluent and discharge limits or specific monitoring requirements must be treated according to applicable requirements.

Subp. 2. **Hand-carried graywater.** Graywater that originated from hand-carried water must not be discharged directly to surface waters, drainageways, or poorly drained soils; in a manner or volume harmful to the environment or public health; or in a manner that creates a public health nuisance as determined by the local unit of government.

Subp. 3. **Compliance criteria for new construction.** An ISTS regulated under a current construction permit is considered compliant if it meets the applicable requirements of [parts 7080.2150 to 7080.2400](#).

Subp. 4. **Compliance criteria for existing systems.** To be in compliance, an existing ISTS must meet the provisions of this subpart.

A. The ISTS must be protective of public health and safety. A system that is not protective is considered an imminent threat to public health or safety. At a minimum, a system that is an imminent threat to public health or safety is a system with a discharge of sewage or sewage effluent to the ground surface, drainage systems, ditches, or storm water drains or directly to surface water; systems that cause a reoccurring sewage backup into a dwelling or other establishment; systems with electrical hazards; or sewage tanks with unsecured, damaged, or weak maintenance hole covers. A determination of protectiveness for other conditions must be made by a qualified employee inspector or licensed inspection business.

B. The ISTS must be protective of groundwater. A system that is not protective is considered a system failing to protect groundwater. At a minimum, a system that is failing to protect groundwater is a system that is a seepage pit, cesspool, drywell, leaching pit, or other pit; a system with less than the required vertical separation distance described in items D and E; and a system not abandoned in accordance with [part 7080.2500](#). A determination of the threat to groundwater quality for other conditions must be made by a qualified employee or licensed inspection business.

C. The ISTS must be operated, meet performance standards, and be managed according to its operating permit.

D. ISTS built after March 31, 1996, or in an SWF area as defined under [part 7080.1100](#), subpart 84, must have at least a three-foot vertical separation or a vertical separation in compliance with [part 7080.2350](#), subpart 2, Table XI. The local

ordinance is allowed to provide for a reduced vertical separation for existing systems that were designed with at least a three-foot vertical separation distance.

The local ordinance must not allow more than a 15 percent reduction in the vertical separation distance. A 15 percent reduction is only allowed to account for settling of sand or soil, normal variation of measurements, and interpretations of the limiting layer conditions.

E. ISTS built before April 1, 1996, in areas that are not SWF areas as defined under [part 7080.1100](#), subpart 84, must have at least two feet of vertical separation.

F. The vertical separation measurement for items D and E must be measured outside the area of system influence in an area of similar soil.

Subp. 5. **Compliance criteria for systems with a flow of greater than 2,500 gallons per day.** In addition to the requirements under subpart 4, systems designed under [part 7080.2150](#), subpart 4, must demonstrate that the additional nutrient reduction component required under those items is in place and functioning.

Subp. 6. **Compliance criteria for systems receiving replacement components.** Components of an existing system that result in the system being in noncompliance must be repaired or replaced according to [part 7082.0100](#), subpart 1. The repaired or replacement components must meet technical standards and criteria for new construction according to local ordinance. The remaining components of the existing system must result in the system being in compliance with subpart 4.

#### Credits

**Statutory Authority:** [MS s 115.03](#); [115.55](#)

**History:** [32 SR 1347](#); [35 SR 1353](#)

Current with rules published in the Minnesota State Register Volume 45, Number 39, March 29, 2021.

Minn. R. 7080.1500, MN ADC 7080.1500

Minnesota Rules  
Pollution Control Agency [4760 to 9220]  
Chapter 7083. Ssts Credentialing and Product Registration  
Licensing and Certification

Minnesota Rules, part 7083.0700

7083.0700. LICENSES.

Currentness

A state SSTS license applicable to the type of work being performed is required for any business that conducts work to design, install, repair, maintain, operate, or inspect all or part of an SSTS. A license is also required to land spread septage and operate a sewage collection system discharging to an SSTS. Property owners that employ a business to perform this work shall hire a business that is licensed according to this chapter. Individuals exempt from a state SSTS license must follow all applicable local, state, and federal requirements. A license is not required for:

- A. an individual who is a qualified employee performing work as directed by a state or local government employer;
- B. an individual who, after obtaining a signed site evaluation and design report from a licensed design business, constructs an ISTS to serve a dwelling that is owned by the individual and functions solely as a dwelling or seasonal dwelling for that individual. Any assistance provided to the system owner in construction of a system under this item must be performed by a licensed installation business;
- C. an individual who performs supervised labor or services as an employee of a licensed SSTS business;
- D. a farmer who pumps septage from an ISTS that serves dwellings or other establishments that are owned or leased by the farmer and applies septage on land that is owned or leased by the farmer;
- E. a property owner who personally gathers existing information, evaluates, and investigates an ISTS to provide a disclosure as defined in [Minnesota Statutes, section 115.55, subdivision 6](#), for a dwelling that is owned by the individual and functions solely as a dwelling or seasonal dwelling for that individual;
- F. an individual or business who abandons an SSTS;
- G. an individual who maintains a toilet waste treatment device for a dwelling that is owned by the individual and functions solely as a dwelling or seasonal dwelling for that individual;
- H. an individual who performs tasks identified in the system's management plan that do not require a maintainer or service provider license for a dwelling that is owned by the individual and functions solely as a dwelling or seasonal dwelling for that individual; or

I. the owner or designee of a campground or other similar facility who removes and transports sewage wastes from recreational vehicles into a holding or treatment system located on the same property as the facility.

**Credits**

**Statutory Authority:** [MS s 115.03](#); [115.55](#)

**History:** *32 SR 1420*

Current with rules published in the Minnesota State Register Volume 45, Number 39, March 29, 2021.

Minn. R. 7083.0700, MN ADC 7083.0700

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End of Document

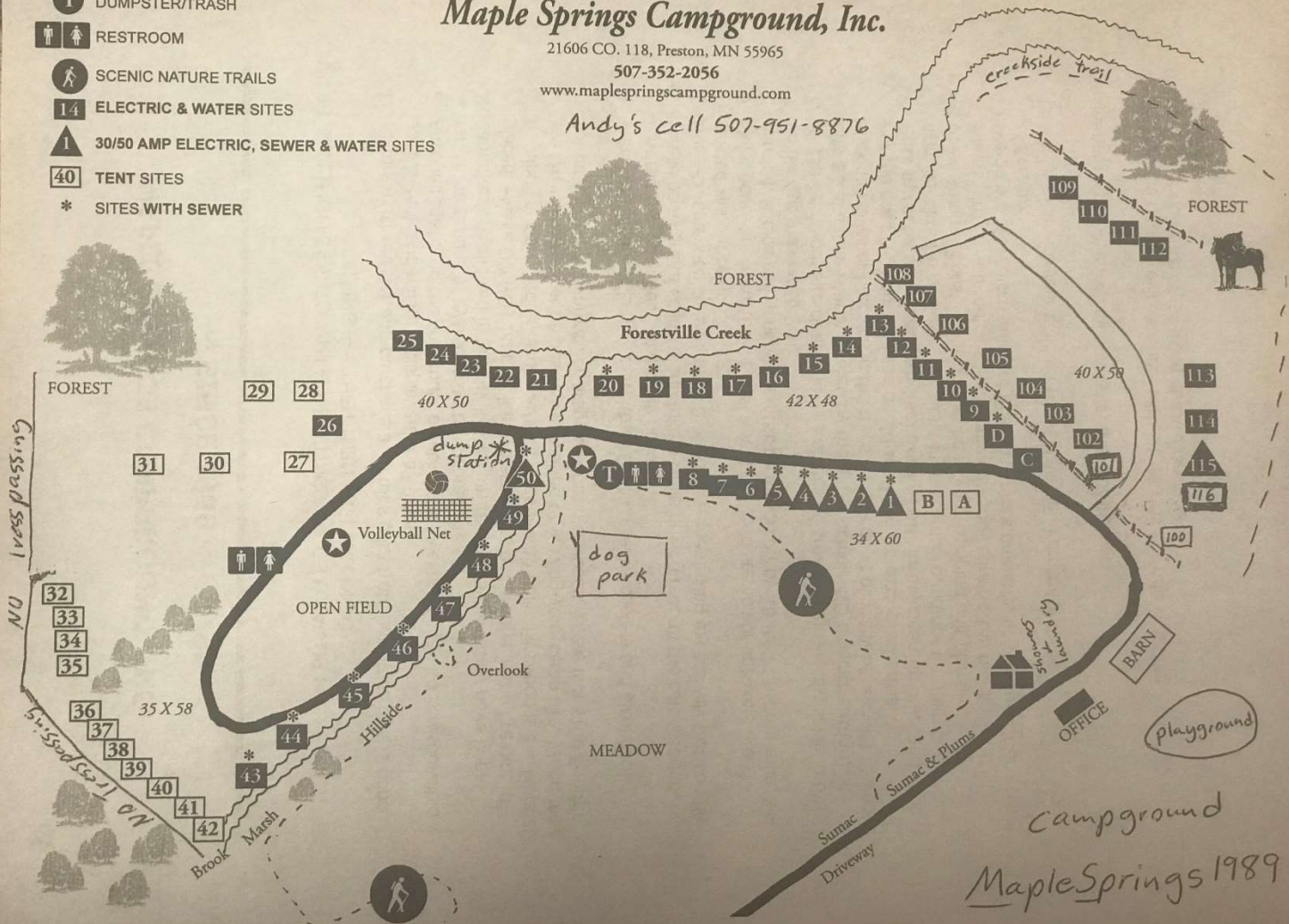
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- ★ WATER
- T DUMPSTER/TRASH
- ♂ ♀ RESTROOM
- 🚶 SCENIC NATURE TRAILS
- 14 ELECTRIC & WATER SITES
- ▲ 30/50 AMP ELECTRIC, SEWER & WATER SITES
- 40 TENT SITES
- \* SITES WITH SEWER

~Since 1989~  
**Maple Springs Campground, Inc.**

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 507-352-2056  
 www.maplespringscampground.com

Andy's cell 507-951-8876



Campground  
 Maple Springs 1989

Each of the options for land applying biosolids are affected by the Part 503 February 25, 1994, amendment, which states that EPA is reconsidering appropriate land application and pollutant limits for molybdenum.

**During the period of reconsideration, only ceiling limits for molybdenum must be met. Molybdenum pollutant limits for EQ, PC, CPLR, or APLR biosolids have been deleted.**

**Options for Using or Disposing of Domestic Septage Under Subpart B:** If domestic septage is applied to land with a high potential for contact by the public (e.g., public parks, ball fields, cemeteries, plant nurseries, and golf courses), the Part 503 land application requirements apply. However, when domestic septage is applied to nonpublic contact sites (e.g., agricultural land, forests, and reclamation sites), less burdensome requirements may apply. A separate EPA guidance document, entitled *Domestic Septage Regulatory Guidance: A Guide to the EPA 503 Rule*, provides detailed guidance on how to comply with these requirements.

### **Subpart C—Requirements for Sewage Sludge Placed on a Surface Disposal Site**

Subpart C of the rule covers requirements for biosolids—including domestic septage—placed on a surface disposal site.

**Placement** refers to the act of putting biosolids on a parcel of land at high rates for final disposal rather than using the organic content in the biosolids to condition the soil or using the nutrients in the biosolids to fertilize crops. Placing biosolids in a monofill, in a surface impoundment, on a waste pile, or on a dedicated site is considered surface disposal.

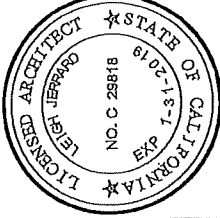


**Treatment** and **storage** of biosolids are not considered surface disposal. **Treatment** is the preparation of biosolids for final use or disposal through such activities as thickening, stabilization, and dewatering. **Storage** is the placement of biosolids on the land for 2 years or less. Placement on land for longer than 2 years is considered surface disposal unless the site owner/operator retains written records demonstrating clearly to the permitting authority that the area of land onto which biosolids are placed is not a surface disposal site but rather, based on management or operational practices, constitutes a treatment or temporary storage site.

Surface disposal requirements and the difference between disposal, treatment, and storage of biosolids are explained in Chapter Three of this document. (See also *Process Design Manual: Land Application of Sewage Sludge and Domestic Septage*.)

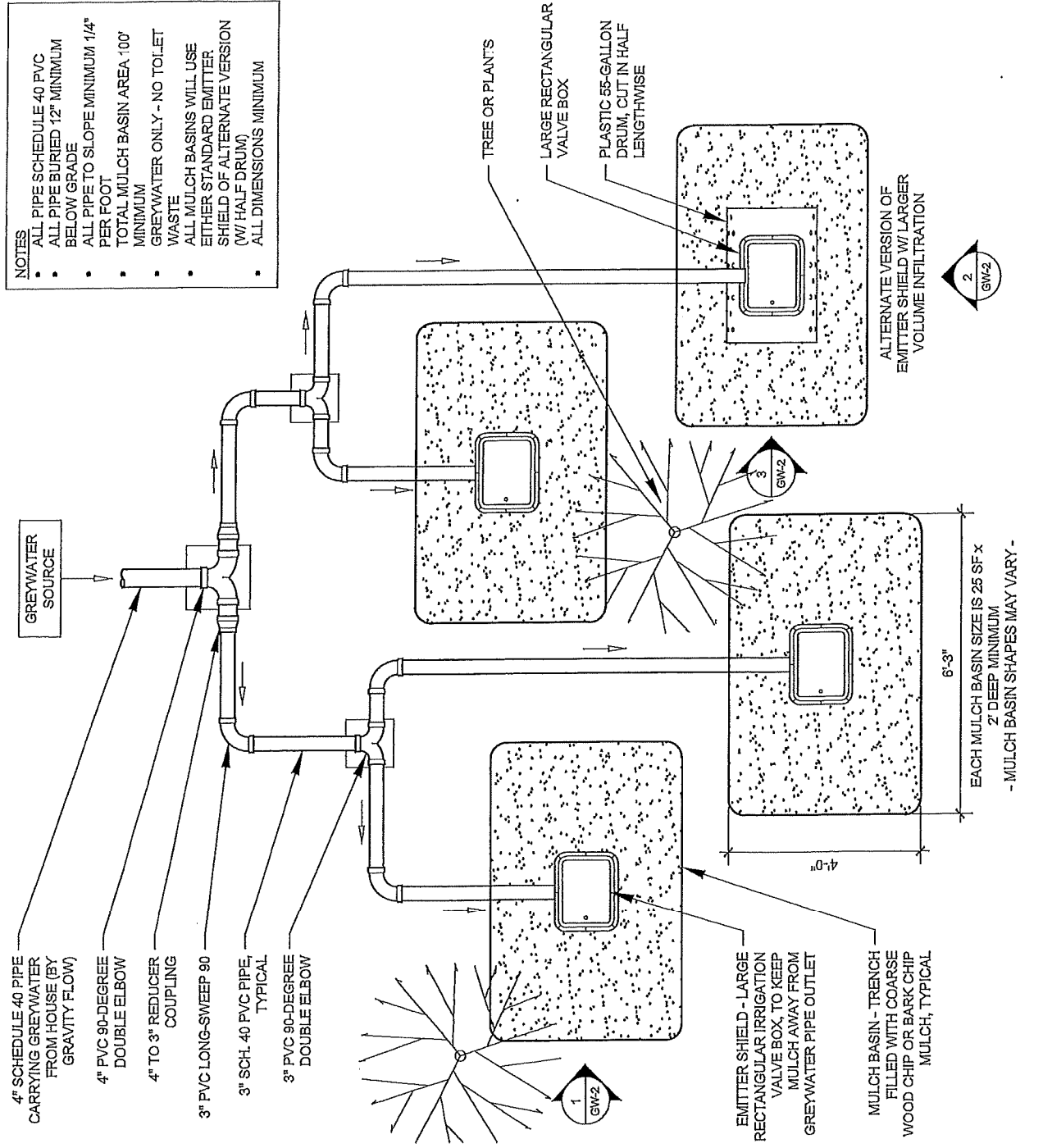
**FEDERAL STANDARDS FOR THE APPLICATION OF DOMESTIC SEPTAGE**

**CASE EXAMPLE — Management of Untreated Domestic Septage**

- 1) The untreated domestic septage is pumped directly into the truck's tank and hauled to a non-public contact site.
- 2a) The domestic septage is injected below the land surface with no significant amount of domestic septage remaining on the land surface within one hour after the domestic septage is injected (vector attraction reduction alternative 1).  
.....  
OR  
.....
- 2b) The domestic septage is incorporated into the soil surface within six hours after application to the land (vector attraction reduction alternative 2).
- 3a) If an animal feed crop like hay, a food crop like corn (which does usually not touch the surface of the soil), or a fiber crop like cotton is grown, a minimum wait of 30 days after application of the domestic septage is required before the crop may be harvested.  
.....  
OR  
.....
- 3b) A minimum wait of 30 days after application of the domestic septage is required before letting animals graze the pasture.  
.....  
OR  
.....
- 3c) If a food crop, like melons or cucumbers that touch the surface of the soil, is grown, a wait of 14 months after application of the domestic septage is required before that food crop.  
.....  
OR  
.....
- 3d) If you raise a food crop, like potatoes or onions which grow below the surface of the soil, a minimum wait of 38 months after application of the domestic septage is required before that food crop may be harvested. Additional examples of the different kinds of crops described in 3a to 3c are listed in Figure 6.
- 4) Public access to this non-public contact site (site with a low potential for public exposure) must be restricted for 30 days after application of untreated domestic septage. Examples of restricted access includes remoteness of site, posting with "no trespassing" signs, and simple fencing.
- 5) You must complete and sign the certification listed in Figure 7 about meeting the pathogen and vector attraction reduction requirements.

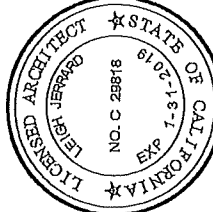

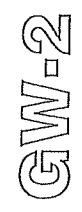
Greywater Corps 323-487-2687 greywatercorps.com Leigh Jerrard, Architect	Project: Swartzentruber Amish Greywater System Preston, MN	 	<b>GREY WATER DISTRIBUTION SYSTEM - PLAN</b>	SCALE: 3/8" = 1' DATE: DEC. 17, 2018 PROJ. #: 18-069	
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- NOTES**
- ALL PIPE SCHEDULE 40 PVC
  - ALL PIPE BURIED 12" MINIMUM BELOW GRADE
  - ALL PIPE TO SLOPE MINIMUM 1/4" PER FOOT
  - TOTAL MULCH BASIN AREA 100' MINIMUM
  - GREY WATER ONLY - NO TOILET WASTE
  - ALL MULCH BASINS WILL USE EITHER STANDARD EMITTER SHIELD OF ALTERNATE VERSION (W/ HALF DRUM)
  - ALL DIMENSIONS MINIMUM



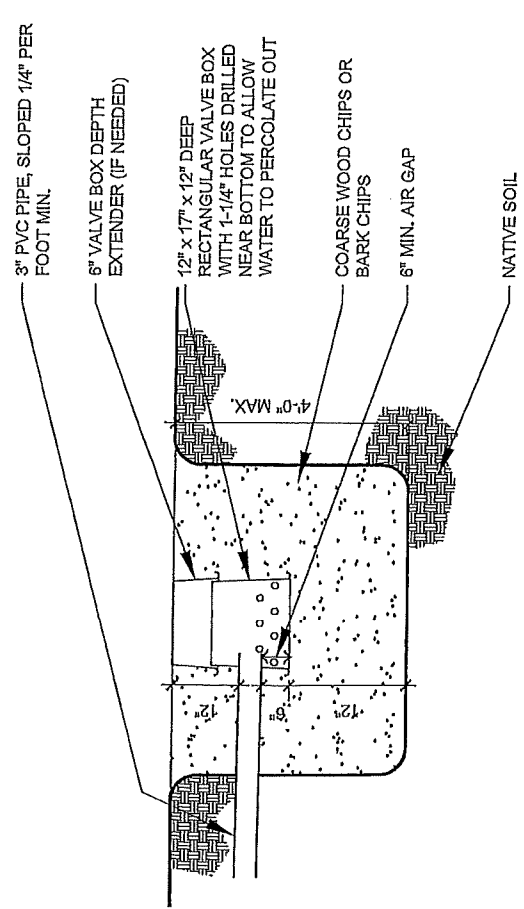
Add-99



Greywater Corps 323-487-2887 greywatercorps.com  Leigh Jerrard, Architect	Project Swartzentruber Amish Greywater System Preston, MN	 	GREYWATER DETAILS	SCALE: 1/2" = 1' DATE: DEC. 17, 2018 PROJ. #: 18-069	
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NOTES

- ALL DIMENSIONS MINIMUM EXCEPT WHERE OTHERWISE NOTED

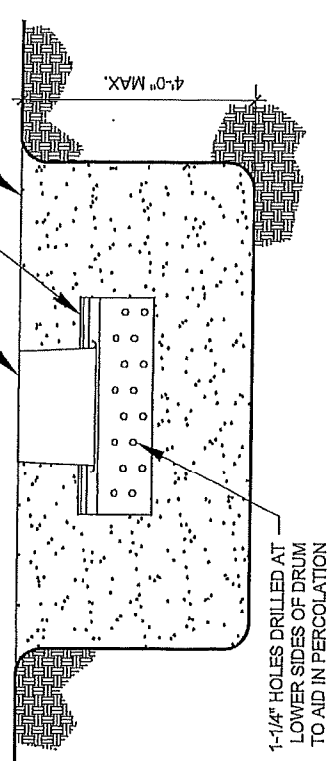


1 STANDARD EMITTER SHIELD - SECTIONAL VIEW  
SCALE: 1/2" = 1'-0"

MIN. 12" x 17" x 12" DEEP RECTANGULAR IRRIGATION VALVE BOX W/ REMOVABLE LID FOR INSPECTION & CLEANING

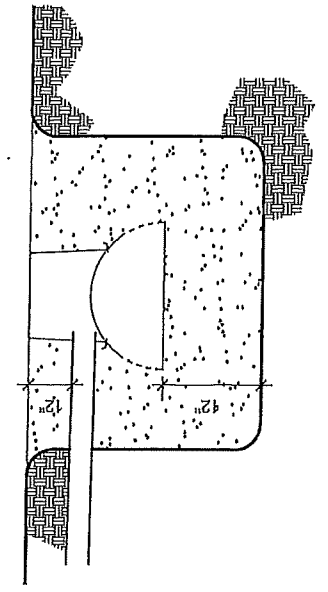
55-GALLON POLYETHYLENE CLOSED-TOP DRUM, CUT IN HALF LONGITUDINALLY TO ACT AS INFILTRATION GALLERY

COARSE WOOD CHIPS OR BARK CHIPS



2 ALTERNATE EMITTER SHIELD - LONG. SECTION  
SCALE: 1/2" = 1'-0"

1-1/4" HOLES DRILLED AT LOWER SIDES OF DRUM TO AID IN PERCOLATION



3 ALTERNATE EMITTER SHIELD - TRANSVERSE SECTION  
SCALE: 1/2" = 1'-0"