

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

VILLAGE OF BEVERLY HILLS,
A Michigan Municipal Corporation,

2018-164245-AA

JUDGE D. LANGFORD MORRIS

Plaintiff/Appellant,
Vs.

Case No. 2018- -AA

MICHIGAN DEPARTMENT OF
ENVIRONMENTAL QUALITY, a
Michigan state agency

Defendant/Appellee.

THOMAS J. RYAN, P.C. (P19808)
Attorney for Plaintiff
2055 Orchard Lake Road
Sylvan Lake, Michigan 48320
(248) 334-9938

Bill Schuette (P32532)
Attorney General
525 W. Ottawa Street
Lansing, MI 48933
(517)373-0003

CLAIM OF APPEAL

1. Plaintiff/Appellant, Village of Beverly Hills, by and through its attorney, Thomas J. Ryan, P.C., claims an appeal from the decision of the Department of Environmental Quality dated January 8, 2018, validating the water sample collected on August 24, 2017, by Jennifer Gilchrist, at 19180 Riverside Drive, Village of Beverly Hills, Michigan. (See attached Exhibit "A" Letter from Jeni Bolt, Environmental Quality Specialist dated 1/8/18).

2. The statute authorizing the Defendant/Appellee's proceedings and determination is MCL 325.1000 et seq.

3. The statute or constitutional provisions authorizing appellate review of the agency's decision or order is MCL 325.1005.

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LAW OFFICES OF
THOMAS J. RYAN, P.C.
2055 ORCHARD LAKE ROAD
SYLVAN LAKE, MICH.
48320
(248) 334-9938

4. The facts on which venue is based is the subject property is located within the Village of Beverly Hills, County of Oakland, State of Michigan, at 19180 Riverside.

5. Plaintiff/Appellant is contesting the denial of its challenge to the invalidation of a drinking water sample at the address on August 24, 2017 for the following reasons:

- a. The six-hour hold requirement was not met.
- b. The individual who signed for the sample did not take the sample.
- c. The sample was taken from a faucet with a treatment devise. Per the resident who took the sample, filter was removed prior to sample collection. The home had other eligible faucets without treatment devices that could have been used.
- d. The sample site was not in the sample pool. This site was not in the Village's original sampling pool, but was selected when another location in the sampling pool was not available.
- e. The Village had a sufficient number of samples that were properly collected to meet testing requirements, including another category 1 sample.
- f. Upon reviewing the report, the Village immediately checked the potable water lead to the property, as it is one of the older residences in the Village. This investigation indicates a lead pipe delivered the water to the residence from the public water system.
- g. The Village immediately replaced the lead pipe with PVC pipe.
- h. A follow up test showed the residence was well within compliance limits.
- i. A neighboring house was then tested with the same results within compliance limits.

WHEREFORE, Plaintiff/Appellant requests that the January 8, 2018 determination from the Department of Environmental Quality determining that the sample should not be invalidated be reversed.

Dated: March 8, 2018

Respectfully submitted,

By: /s/ Thomas J. Ryan

THOMAS J. RYAN (P19808)
Attorney for Plaintiff/Appellant
2055 Orchard Lake Road
Sylvan Lake, MI 48320
(248)334-9938

LAW OFFICES OF
THOMAS J. RYAN, P.C.
2055 ORCHARD LAKE ROAD
SYLVAN LAKE, MICH.
48320
(248) 334-9938



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



C. HEIDI GREETHER
DIRECTOR

January 8, 2018

VIA E-MAIL and U.S. MAIL

Mr. Thomas H. Meszler
Village of Beverly Hills
18500 West 13 Mile Road
Beverly Hills, Michigan 48025

WSSN: 00690
County: Oakland

Dear Mr. Meszler:

SUBJECT: Lead and Copper Monitoring – Invalidation Request Response;
Village of Beverly Hills

The Department of Environmental Quality (DEQ) received a request for invalidation on October 13, 2017, regarding one sample collected at 19180 Riverside. This sample was collected by a resident on behalf of the Village of Beverly Hills (Beverly Hills) during the June through September 2017 compliance period. Beverly Hills collected a total of six samples, meeting compliance criteria within the monitoring period, to comply with the requirements of the Safe Drinking Water Act, 1976 PA 399, as amended (Act 399).

Beverly Hills provided the sample result, sampling instruction form, an affidavit from the sample collector (Ms. Jennifer Gilchrist) and an explanation for why the sample should be excluded from the 90th percentile calculation. Beverly Hills requested the sample be excluded from the 90th percentile calculation because the sample may not have been properly collected. Act 399 requires compliance samples be one liter in volume, from a kitchen or bathroom cold water tap, have a minimum six hours stagnation, and be collected from an appropriate location per the site selection criteria. Based on the information provided on the sampling instruction form and the affidavit, the invalidation request is due to a potentially insufficient stagnation period.

According to the information provided, the home is an appropriate sampling location (Tier 1 site) due to the lead service line to the home. The sample was one-liter in volume collected from a kitchen or bathroom tap. However, the resident's daughter was unsure if her mother (the homeowner and resident) had used the water within the six-hour stagnation period. She completed the sampling instruction form and had her mother sign it.

The DEQ has determined the sample should not be invalidated. The sample collected on August 24, 2017, from 19180 Riverside had a lead concentration of 228 parts per billion (ppb), well above the action level of 15 ppb. Though duration of the stagnation period is uncertain, a longer stagnation would potentially increase, rather than decrease, the result. Therefore, the prudent course of action to protect public health is to include the sample in the 90th percentile calculation.

Exhibit "A"

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Mr. Thomas H. Meszler
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January 8, 2018

The DEQ sent a letter on October 20, 2017, detailing Beverly Hill's 90th percentile for lead and copper and the requirements associated with exceeding the lead action level.

Thank you for your efforts to comply with the requirements in this letter. If you have questions, please contact me at boltj@michigan.gov; Technical Support Unit, DWMAD, DEQ, P.O. Box 30817, Lansing, Michigan 48909-8311; or at the phone number below.

Sincerely,

Handwritten signature of Amy D. Fachant in cursive script.

Jeni Bolt
Environmental Quality Specialist
Drinking Water and Municipal
Assistance Division
517-331-5161
Cell: 517-331-5161
Fax: 517-284-1328

cc: Mr. Chris Wilson, Village of Beverly Hills
Mr. Kristina Donaldson, DEQ
Mr. Abu Islam, DEQ

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