



Public Health

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CATTARAUGUS COUNTY BOARD OF HEALTH

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Andrew Klaczynski, MD, President

Joseph Bohan, MD, Vice-President

Giles Hamlin, MD

Joseph Eade

Sondra Fox, RN

Richard Haberer

James Lapey

Georgina Paul, FNP

James Snyder

MINUTES

November 7, 2012

The 810th meeting of the Cattaraugus County Board of Health was held at St. Bonaventure Clubhouse Restaurant, Route 417, Allegany, New York on November 7, 2012.

The following members were present:

Andrew Klaczynski, MD

Richard Haberer

Joseph Bohan, MD

James Lapey

Giles Hamlin, MD

Georgina Paul, FNP

Joseph Eade

James Snyder

Sondra Fox, RN

Also present were:

Kevin D. Watkins, MD, MPH, Public Health Director

Kathleen Ellis, Administrative Officer

Thomas Brady, County Attorney

Karen Manners, Secretary to Public Health Director

Eric Wohlers, Environmental Health Director

Raymond Jordan, Sr. Sanitarian

Susan Andrews, Director of Patient Services

Gilbert Witte, MD, Medical Director

Paula Stockman, County Legislator

Donna Vickman, County Legislator

Linda Edstrom, County Legislator

Carl Edwards, County Legislator

Susan Labuhn, County Legislator

David Porter, Hearing Officer

Rick Miller, Olean Times Herald

Guests:

Ken Farnham, Little Valley V.F.W.

Wesley Pangborn, Little Valley V.F.W.

Bill Lester, Little Valley V.F.W.

Pete Wrona, Little Valley V.F.W.

Barbara Killock, Rough Kutts, South Dayton

Sean Schiano, WNY Regional Off-Track Betting – Olean

Joyce Melfi, WNY Regional Off-Track Betting – Olean

Guests (continued)

Henry Wojtaszek, Counsel for WNY Regional Off-Track Betting – Olean
Sandy Brundage, Director, City of Salamanca Youth Bureau;
Healthy Livable Cattaraugus County Consortium
Crystal Page, American Cancer Society – Olean
Lindsay Ball, Tri County Tobacco Free Program
Erica Sebastian, Southern Tier Health Care System
Jon Chaffee, Reality Check Program, ACASA
Samantha Vanstrom, Reality Check Program, ACASA

The meeting was called to order by Dr. Klaczynski. The roll was called and a quorum declared. Mr. Eade made a motion to approve the minutes of the October 3, 2012 Board of Health meeting. It was seconded by Mr. Lapey and unanimously approved.

Dr. Watkins stated that on September 5, 2012 the Board of Health voted to discontinue the Clean Indoor Air Act (CIAA) smoking waivers that will expire on December 31, 2012. Representatives from three of the establishments are here today to request that the Board reverse their decision. In addition, there are representatives from the Healthy Livable Cattaraugus County Consortium, Tobacco Coalition and Reality Check Program to support the Board's decision to discontinue the CIAA waivers.

Dr. Watkins introduced Samantha Vanstrom, Sr. Program Coordinator for Reality Check, NYS Department of Health. She works with Chautauqua, Cattaraugus & Allegany Counties as part of the Tobacco Control Program aimed at protecting youth against tobacco. Ms. Vanstrom stated that she has information on preventing tobacco use among youth and young adults and willing to provide it electronically if anyone is interested. Ms. Vanstrom went on to state that July 2013 will be the 10th anniversary of the enactment of the CIAA. The tobacco industry has a huge impact on the amount of money that is spent on health care each year. It is important to note that the NYS Department of Health, American Cancer Society, American Lung Association, American Heart Association and many other organizations support the CIAA. There is overwhelming evidence that restaurants, bars, gaming establishments and other facilities impacted by these laws are not negatively affected and sometimes actually benefit from these laws.

Ms. Vanstrom also stated that unfortunately the tobacco companies skew research to their benefit, especially with the long standing argument over the actual health impact of tobacco use which they still partially deny. But it is firmly established that tobacco use kills when used as intended. She is grateful that the CIAA was enacted because second hand smoke is toxic to everyone and strong indoor air laws make establishments cleaner.

Dr. Watkins introduced Ms. Sandy Brundage. Ms. Brundage stated that she gave a presentation to the Board in the spring as an intern at the Health Department working on her Master's degree in Public Health, which she has now received. She is a member of the Healthy Livable Cattaraugus County Consortium. She mentioned the fact that the Cattaraugus County Health Department received a \$450,000 Community Transformation Grant (CTG) to provide activities within three communities (Salamanca, Olean and Gowanda). It is important because there are children that no longer have the same life expectancy as older people because of the environment in which they live, a reduction in physical activity, an increase in screen time and nutritional issues.

A Robert Woods Johnson Foundation research document found that social determinates of health is more important as evidenced by an individual's zip code rather than his/her genetic code. Because of these factors, we are very pleased and honored in Salamanca to be a part of the CTG project.

Ms. Brundage further stated that the Health Department is tasked with providing for a number of issues relative to health in Cattaraugus County. The CTG will target ways to strengthen tobacco free living opportunities for individuals in Cattaraugus County, to improve active living and healthy eating, and creating healthy, safe physical environments for children. Cattaraugus County is 1 of 3 counties in the State that received this grant. Ms. Brundage encouraged the Board to look at the resources in the CTG and realize the impact that tobacco has on Cattaraugus County residents.

Dr. Watkins introduced Sean Schiano, Director of Branch Operations of WNY Off-Track Betting (OTB). Mr. Schiano stated that after the CIAA was enacted and provisions for waivers were established, as a public benefit corporation, the Board of Directors had a heightened degree of responsibility to insure employees had a safe environment in which to work. At great expense, OTB furnished the Olean location with a segregated glass enclosed smoking room equipped with separate simulcast viewing and wagering facility with dedicated air evacuation equipment creating a negative pressure within the smoking area. There is no re-entry of treated air into the main area of the building. The air from the smoking room exits separately to the outside and fresh air is pumped in; there is no commingling of air from the smoke room to the main parlor area. The uniqueness of the operation permits them to bar all employees from entrance into these rooms when occupied by patrons. The ability to utilize this dedicated facility only deprives OTB patrons who choose to use tobacco products. This financial investment forms an independent basis to keep the smoking waiver. The public benefit corporation's purpose in operating off-track betting facilities is to lend financial support to New York horse racing and breeding industries, legal bookmaking, and generate reasonable revenue for participating municipalities of which Cattaraugus County is one of them. Cattaraugus County has received to date in 2012, \$61,000 and since 1974, \$4,500,000. As a gaming venue, OTB's only legal business competition are those that permit smoking because they are either exempt or beyond the jurisdiction of New York State or the county ban, for example the Seneca Nation. OTB has six employees at the Olean facility and the 2013 operating plan has a surcharge of over \$44,000; this is money that would come directly to Cattaraugus County. Operating expenses are well over \$53,000, so even though Cattaraugus County will receive money from this branch, the branch would still be operating at a loss making it more difficult to keep it open. It is OTB's intention to continue testing the smoking room to insure its effectiveness and compliance with the CIAA waiver.

Mr. Schiano added that no one under 18 years of age is permitted into the parlor or the smoking room. Employees are not allowed to go into the smoke room 30 minutes prior to the opening and 30 minutes after closing the facility. In closing he stated that as a business, it is very important for Olean and Cattaraugus County that OTB be able to keep their business going.

Ms. Joyce Melfi from WNY Off-Track Betting added that they are an entertainment business; therefore, people choose to come to the establishment. She stated that she kept track of how many people in the smoke room were big betters and OTB could lose anywhere from 16-34% of business on any given day. People make choices to smoke, gamble, and drink. OTB offers social settings for a lot of people, a lot of patrons are senior men who are widowers and this may be the only social

interaction they have all day with someone and some of them are smokers, so our business is based on pleasure and it is choice of a past time. In closing, she said that no one will quit smoking if they lose the waiver, they will just find a different place to go.

Henry Wojtaszek, Counsel for WNY Off-Track Betting Corporation, stated that according to a 3/4/09 resolution passed by the Board of Health, they were under the impression that as long as they operated under the Board of Health guidelines, they would continue to receive the smoking waiver. He has been directed by the OTB Board of Directors to request whether or not the Board made any findings regarding changes in the guidelines that were in place at the time of the 3/4/09 resolution and if there are documents in the Board's possession that were utilized to make such a decision.

Dr. Bohan asked if there is evidence that a half hour before they open and a half hour after they close is sufficient time for second hand smoke to clear the room. Ms. Melfi stated that the cleaner works from 4:30 – 7:30 a.m. and the hours of operation are from 11:30 a.m. – 6:30 p.m. so it is longer than the half hour before and after someone other than smokers enter the room.

Dr. Watkins introduced Mr. Ken Farnham from the Little Valley V.F.W. Since the last meeting, Mr. Farnham stated that he conducted surveys on the establishments that have smoking waivers and found that in the last 8 years, no one has filed a complaint. He feels that the Board has taken a leap from taking care of people to dictating over them.

Dr. Watkins introduced Ms. Barbara Killock from Rough Kutts Tavern in South Dayton. Ms. Killock stated, as she did at the October meeting, that they have complied with all requirements of the Board of Health since they received the CAAA waiver in 2004. No one is exposed to second hand smoke unless they choose to go into the smoking room and she does not understand why they are being denied a waiver after all these years.

Dr. Watkins asked if there was anyone else who would like to speak. Ms. Vanstrom stated that studies have proven that there is so much nicotine in tobacco products that it no longer becomes a choice, it is an addiction and is very difficult to quit. As an example, people that used methamphetamines or cocaine have quit these hard drugs, but cannot quit using tobacco products. She also reminded the Board of the health implications of second and third hand smoke.

Mr. Haberer asked to make a statement to the Board. He stated that in 2002 New York State entered into an agreement with the Seneca Nation of Indians. This treaty provided certain rights to the Nation in return for considerations to the State. Recently there are some who say the State has not fulfilled its part of the bargain and others who feel that the Nation is responsible for this disagreement. The matter is supposedly going to be settled by arbitration. During the course of this controversy, parties on both sides of the issue have negatively felt the impact. In Cattaraugus County there are many who feel that this problem has been caused by the failures of the State to honor its word and keep the commitments made. The Cattaraugus County Legislature took the initiative to pass a resolution stating its support of the Nation and giving every indication that the State should honor its written word. This resolution passed unanimously and in fact all members asked to be included as sponsors. Numerous people in our County and surrounding areas felt that this was the right thing to do.

Mr. Haberer went on to say that in 2009 the Cattaraugus County Board of Health, an arm of county government, passed a resolution stating that the four entities receiving smoking waivers would continue to receive them if they operated within the Health Department guidelines. Both announced and unannounced inspections were conducted of these facilities between these dates with no violations noted. In other words, this Board gave its word that if these establishments were in compliance, waivers would be issued. Now we want to change the commitment to these four businesses after they have spent substantial time and money to comply with the regulations required of them. Mr. Haberer stated that it does not seem fair.

Dr. Klaczynski stated that in 2009 the waivers were not approved. Mr. Haberer read the third "Whereas" in the resolution: "Whereas, the Cattaraugus County Board of Health will continue to reissue those waivers as long as the facilities are operated according to the current Board of Health guidelines." Mr. Haberer stated that it is signed by Dr. Klaczynski and dated 3/4/09. Mr. Haberer went on to say that there are some who may say that there is new information and circumstances have changed and we need to act accordingly, but I'm sure that argument can be made by the State with the realization that a potential gain to be had if the 2002 conflicts with the Nation were disregarded. The whole point being that if government gives its word, in this case the Board of Health, to a nation or private businesses that codifies its word in a written resolution, it should be good. With that said, I support that the waivers should be reissued. Dr. Klaczynski read from the March 4, 2009 minutes stating that "Mr. Thrasher made a motion to approve the resolution that the Cattaraugus County Board of Health will no longer accept new requests for waivers from Section 1399-u of the NYS Public Health Law, effective March 4, 2009. It was seconded by Mr. Perkins and approved with five votes." Mr. Haberer stated that it means no new entities, new facilities and that's not what the third whereas says in the resolution. Mrs. Fox stated that she was at the meeting and she did not remember ever seeing the resolution and when it came up at the next meeting they only approved the minutes, we did not see the resolution.

Mr. Haberer made a motion for the Board to go into Executive Session to confer with Mr. Brady, County Attorney; it was seconded by Mr. Eade and was unanimously approved.

After moving out of Executive Session, where no actions were taken, Mr. Snyder made a motion to rescind the 9/5/12 resolution to discontinue the smoking waivers because if the County Attorney feels that he cannot defend this in court, then this is the right thing to do to save time and money. The motion was seconded by Mrs. Paul and a roll call vote was taken: Dr. Klaczynski – yes; Dr. Bohan – yes; Dr. Hamlin – yes; Mr. Eade – no; Mrs. Fox – no; Mr. Haberer – yes; Mr. Lapey – no; Mrs. Paul – yes; and Mr. Snyder – yes. There being 6 yes votes and 3 no votes, the motion to rescind the 9/5/12 Board of Health resolution to discontinue the smoking waivers is passed. Mr. Snyder made a motion to extend the smoking waivers to the Ischua Fire Department, WNY Off Track Betting-Olean, Rough Kutts-South Dayton and Little Valley V.F.W. until December 2013 and was seconded by Mrs. Paul.

Mr. Jordan stated that he would recommend that the resolution also state that the waivers be extended only if the smoking rooms at these establishments still pass inspections according to the Board of Health guidelines issued in 2003 and that the appropriate fee is paid. Mr. Brady stated that when the original waivers were granted those were the requirements and the waivers are just being extended for another year, so they are subject to the same requirements. Mr. Jordan asked if upon

inspection, any of the smoking rooms are not operating properly, the waiver will be revoked. Mr. Brady said, yes and then there will be no extension of the waiver.

The motion was made, Mr. Brady added, "subject to the same conditions as existed when they were originally granted," seconded and a roll call vote was taken: Dr. Klaczynski – no; Dr. Bohan –yes; Dr. Hamlin – yes; Mr. Eade – no; Mrs. Fox – no; Mr. Haberer – yes; Mr. Lapey – no; Mrs. Paul – yes; Mr. Snyder – yes. There being 5 yes votes and 4 no votes, the motion to extend the smoking waivers until December 2013 is passed.

Dr. Bohan stated that he would like to add an addendum to the 2009 resolution stating that the Board of Health reserves the right to not reissue new waivers to those organizations that have previously been granted same due to evidence that may be presented that said rooms are no longer effective in maintaining the public health. Mr. Brady stated that there then would be a question of what is substantial evidence and the quantum of evidence that would be needed. He would prefer to take a look at the addendum and then make a recommendation to the Board. Dr. Bohan said that if there is hard evidence that these rooms are no longer effective in doing what they are supposed to do then the waivers should be discontinued.

Director's Report: Dr. Watkins reported that an individual in Cattaraugus County that has tested positive for West Nile Virus (WNV). She is a resident of the Randolph area with no significant travel history. She developed a high fever, lethargy, a stiff neck and a rash. She continues to do well and there is no neurological affect as part of her diagnosis. About 80% of the population that is bitten by a mosquito carrying WNV never has any symptoms. In the other 20% it causes flu like symptoms, such as headaches, fever, nausea, muscular weakness and a skin rash on the back or chest. These symptoms usually resolve without treatment within a few days or weeks. About 1 out of every 150 people that are infected with WNV becomes seriously ill with an infection that affects the central nervous system. These patients frequently experience severe symptoms such as confusion, convulsions, high fever, neck stiffness, headache and they may go into a coma, they may have encephalitis and/or meningitis and may experience muscular paralysis. This serious form of WNV is more common in the elderly and the immune-compromised. While most symptoms resolve within several weeks, some nerve damage and paralysis may linger or be permanent.

There is no anti-viral treatment for WNV; we only treat the symptoms, so we must alert the public about the presence and the need for preventive measures. Preventive measures include using repellent that contains DEET, limiting exposure to mosquitoes at dusk and dawn when they are most active and emptying standing water pools around the home and spraying when necessary.

As of October 30, 2012, the Centers for Disease Control (CDC) have identified 4,891 human cases of WNV and a total of 223 deaths nationwide. In New York State, there have been 100 cases that have been identified and there have been 5 deaths associated with WNV. 1,005 mosquito pools submitted in New York State have identified WNV.

Mrs. Fox asked if there is money in next year's budget for mosquito surveillance. Dr. Watkins stated that because of the decreased revenue brought in for the 2012 FY, and because we far exceeded the 2% cap that we were supposed to try and stay within, the mosquito surveillance portion of the budget was removed by the county administrator. However, there was a stipulation that the Health

Department could come before the vacancy committee in March or April and request those two positions, but they will not be a part of the 2013 budget at this time. Mrs. Fox stated that we should let the Legislature know the concerns the Board has regarding the need to conduct mosquito surveillance. The amount is \$14,000. Dr. Watkins will do a resolution for the Board's approval to submit to the Legislature.

The CDC in collaboration with the State and local health departments are investigating a multi-state fungal meningitis outbreak among patients who received contaminated steroid injections. This form of meningitis is not contagious which means it is not transmitted from person to person. The fungus was introduced directly into the central nervous system or to a body site that was next to the central nervous system. All infected patients identified thus far received methylprednisolone acetate from three lots that were contaminated from the New England Compounding Center in Framingham, Massachusetts. The medication was used as a spinal epidural given to patients in treatment of back pain or as injections to peripheral joint spaces, such as the knee, shoulders and ankles. There are certain symptoms that patients need to be aware of which include new or worsening headaches, fever, sensitivity to light, stiff neck, new weakness or numbness in any part of the body, slurred speech or increased pain, redness or swelling at the injection site. No one has been identified as having a fungal meningitis infection in Cattaraugus County, although we have identified a resident who received an injection from one of the contaminated lots in the Rochester area, although she lives in Cattaraugus County. There have been a total of 30 deaths from individuals nationwide who received injections from these contaminated lots of steroids.

Dr. Watkins stated that the Health Department budget totaling \$11,518,290 was submitted for the 2013 FY, which exceeded last year's budget. All programs will continue for 2013 if approved by the Legislature.

Nursing Division Report: Mrs. Andrews reported that a Physician's Assistant for the clinic will be starting at the end of this month, unfortunately she only wants to work three days a week.

Hepatitis C testing will start this week. There have been no human post exposure rabies treatments in the last two months.

Home Care was short six nurses, but 4 of them have returned to work so we are now just short two. There is nothing new to report on the certificate of need for the long term care program; just waiting to see if we will have to compete with other agencies doing business in Cattaraugus County as certified agencies.

The flu clinics have been completed and 2,000 doses were administered. In New York State, 150 flu cases were reported. There was a reported Pertussis case of an 8 week old baby who is recovering.

Environmental Health Division: Mr. Wohlers stated that all public water supplies were placed on alert status during hurricane Sandy, but thankfully Cattaraugus County did not experience any major damage.

Mr. Wohlers reported that the final draft of the County Sanitary Code has been submitted to the New York State Health Department. A new section called "Body Art" was added to cover tattooing,

body piercing and a new procedure that is being done where tattoos are implanted under the skin. After we receive comments from the State, we will make any suggested changes and then submit it to the Board for adoption.

Mr. Porter reported the following enforcement cases for Board action:

DOCKET 12-018

KATHLEEN & ROGER HANLEY, 11441 Route 98, Freedom

Violations: CCSC, Section 16.6.1 Respondents were not fully complying with condition #1 of the 11/4/09 Board of Health order at the time of a site visit on 3/29/12 by CCHD. They are allowing their grey water to discharge to the surface of the ground via their sump pump. Notice of Hearing was mailed with no stipulation offer on 10/11/12. It was received and signed for by Kathleen Hanley on 10/17/12.

Administrative Hearing:

Public Health Sanitarian: Rhonda Kelley and Raymond Jordan, Sr. Public Health Sanitarian, appeared for CCHD and were sworn.

Respondent: Roger Hanley and Mr. David Seeger, Counsel for Respondent, appeared and were sworn.

Testimony was given by Mr. Jordan to cover the time period between 10/28/09 – 10/4/12.

Enf. 1 was read and affirmed to be correct by Mr. Jordan and identified as **People's Exhibit #1. P. Ex. #2** is a copy of a Board of Health Order dated 11/4/09 which stated that:

1. As a short term solution Respondent be allowed to pump the septic tank as needed so as to prevent an illegal discharge of sewage;
2. At the end of six months CCHD will review the case and the effectiveness of the short term solution, and
3. Respondent's failure to comply would result in further action deemed necessary by the Board of Health.

P. Ex. #3 – memo to the file from Rhonda Kelley stating that she verified that the septic tank outlet at the property was plugged and tank was being pumped.

P. Ex. #4 – communications dated 10/28/09 – 8/30/10 between Ms. Kelley and Mr. Hanley. Phone call dated 7/16/10: Mr. Hanley was told that it was illegal to pump his grey water by sump pump to the street via his driveway.

P. Ex. #5 – memo to the file dated 8/26/10 stating that Mr. Jordan explained to Mr. Seeger that if investigation reveals that grey water is discharging to the ground surface then Respondents are going to be cited for the illegal discharge.

P. Ex. #6 – memo to the file dated 8/31/10 stating that Mr. Jordan informed Mr. Seeger that Respondents will be cited for the illegal discharge of grey water onto the surface of the ground.

P. Ex. #7 – memo to the file dated 9/14/10 documenting phone conference with Mr. Hanley and his attorney. Practice of discharging grey water onto his driveway has to cease or legal action would be taken against Respondents. Documentation of phone calls with Mr. Seeger's office on 9/16/10 & 10/20/10.

P. Ex. #8 – letter dated 12/15/10 from Dr. Watkins explaining to Respondents to adhere to Board Order and stop illegal discharge of grey water or further action would be taken by the Board of Health which may include condemnation of the dwelling.

P. Ex. #9 – letter dated 6/3/11 from Mr. Jordan to Mr. Seeger requesting an update on the Respondents' illegal discharge of grey water and the Department of Transportation (DOT) lawsuit.

DOCKET 12-018 (continued)

P. Ex. #10 – letter dated 8/23/11 from Mr. Tom Brady, County Attorney, explaining that the Health Dept. has the authority to perform inspection of their property to determine level of compliance with Board Order.

P. Ex. #11 – letter dated 2/16/12 from Dr. Watkins to Respondents explaining that the Health Dept. will be on site on 3/29/12 for an inspection.

P. Ex. #12 – complaint investigation form dated 2/21/12; exposed sewage at Respondents' home.

P. Ex. #13 – memo dated 4/3/12 to file. Meeting was held with Mr. Hanley, Mr. Jordan and Ms. Kelley on 3/29/12. Respondent admitted to discharging grey water onto the surface of the ground via his sump pump.

P. Ex. #14 – design and permit to construct dated 4/11/12.

P. Ex. #15 – memo dated 5/2/12 to file stating that Mr. Jordan contacted Mr. Hanley to see if there were any new developments.

P. Ex. #16 – complaint investigation form dated 8/22/12; exposed sewage at Respondents' home.

P. Ex. #17 – photo dated 10/4/12 showing discharge from the Respondents' home on Route 98 going to the storm sewer and on into Clear Creek, a Cattaraugus County trout stream.

Mr. Jordan summarized that a resolution to the violation of pumping sewage via a sump pump onto the surface of the ground at the Respondents' home has to be remedied quickly.

Mr. Seeger gave the following testimony:

1. Law suit against DOT has been pending for 11 months (claim #120675) and could be resolved in 2 to 4 years.
2. Respondents' claim is that DOT work on Route 98 resulted in change in drainage causing septic systems to not operate as designed.
3. Potentially the law suit could be settled quickly if the Respondent would allow his attorney to compromise with the Attorney General's Office. There is no guarantee of a settlement in less than a year.

Mr. Seeger then questioned Mr. Hanley concerning conditions of the septic system since 1998 to the present.

Presently, Mr. Hanley is pumping his 1,000 gal. septic tank once every two months at a cost of \$175/pump and using his basement sump pump to pump grey water to the driveway, down the street and into the storm sewer. Grey water is sewage by definition.

Mr. Jordan gave the following wrap up:

1. Septic systems installed in the Respondent's area in 1980 are borderline acceptable due to the high water table and poor drainage.
2. Mr. Hanley's address is not suitable for a typical septic system. A septic system utilizing a pump would be required.
3. Mr. Hanley's neighbor had a new septic system installed in 2009. A septic system utilizing a pump had to be designed and used due to the water table and drainage.
4. The illegal discharge of sewage from the Respondent's basement sump pump must be stopped immediately. A permanent, effective septic system must be designed, installed and approved at the Respondent's home.

DOCKET 12-018 (continued)

Hearing Officer Finding: The Respondent is in violation of condition #1 of the 11/4/09 Board of Health Order at the time of a site visit on 3/29/12 by CCHD. The Respondent admits to the violation which started in 2009.

Recommendation:

1. That Respondent has a small sewage system installed at 11441 Route 98, Freedom, NY by 1/31/13 according to the Permit to Construct issued by CCHD on 4/11/12. A representative of CCHD must do a final inspection before the system is backfilled.
2. Failure to have a sewage system installed and approved by 1/31/13 will result in a \$1,000 fine to be received by CCHD by 2/15/13 with a \$10 per diem fine if not paid by this date.
3. Residence will be placarded as unfit for occupancy on 2/15/13 if condition #1 is not met.

Dr. Bohan made a motion to accept the Hearing Officer's recommendation; it was seconded by Mrs. Fox and unanimously approved.

Board Ordered:

1. That Respondent has a small sewage system installed at 11441 Route 98, Freedom, NY by 1/31/13 according to the Permit to Construct issued by CCHD on 4/11/12. A representative of CCHD must do a final inspection before the system is backfilled.
2. Failure to have a sewage system installed and approved by 1/31/13 will result in a \$1,000 fine to be received by CCHD by 2/15/13 with a \$10 per diem fine if not paid by this date.
3. Residence will be placarded as unfit for occupancy on 2/15/13 if condition #1 is not met.

DOCKET 12-036

BURNT HILL MOBILE HOME PARK, TERRY BLOUGH, 1212 Burnt Hill Rd., Portville
Violations: 10NYCRR, Section 5-1.12 (a,2b) Respondent failed to install a permanent disinfection system on the water supply for the Burnt Hill Mobile Home Park in response to an MCL violation of coliform bacteria. Notice of Hearing offering a \$50 civil compromise was served by Richard Dayton, Public Health Technician, on 9/10/12.

Administrative Hearing:

Public Health Technician: Richard Dayton appeared for CCHD and was sworn.

Respondent: Mike Blough appeared on behalf of the owners (his parents, who were also present) of Burnt Hill Mobile Home Park and was sworn.

Enf. 1 was read and affirmed to be correct by Mr. Dayton and identified as People's Exhibit #1. Extensive testimony was given and summarized as follows:

- a) Burnt Hill Mobile Home Park has five mobile homes, all occupied; 1-owner, 4-rentals.
- b) Park was purchased in 2005.
- c) Water is tested quarterly.
- d) Water failed on 9/19/11 for the first time since purchase.
- e) Letter dated 12/16/11 identified as P. Ex. #8 is an excellent summary of the situation at the mobile home park:

DOCKET 12-036 (continued)

1. Failed water sample 9/9/11.
2. Two follow up water samples on 9/23/11 failed.
3. The presence of coliform bacteria in the water supply exceeds the maximum contaminant level (MCL) and requires correction.
4. Owner completed an approved shock treatment. Water sample failed.
5. November 2011 – a leaking water line was identified and repaired. Subsequent water testing confirmed the presence of coliform bacteria on one of the two samples after repair.
6. Summary of letter (P. Ex. #8) is that CCHD is requiring the installation of a permanent disinfection system since the source of the contamination could not be found and corrected.

Respondent offered the following testimony:

- a) After the leak was found and repaired in November 2011, 1 out of 2 samples tested by the county showed the presence of coliform. A private company was hired to test the water and it passed on 12/27/11.
- b) Since 12/27/11 to present, 10/9/12, there has not been a water sample failure by a private tester or the County Health Department.
- c) The Respondent also informed the Hearing Officer that he or any of his renters do not want a chlorine disinfection system installed on their drinking water supply as they are unsafe.

Dr. Christopher Crawford, consultant for CCHD, gave the following testimony:

- a) The break in the water line identified and fixed in November 2011 was not the cause of the coliform bacteria.
- b) Chlorine disinfection systems are the acceptable systems for water systems that test positive for coliform bacteria.
- c) Water quality changes can be the result of different depths of pump pick up and potentially the surrounding environment (source of water to the well).

Hearing Officer Finding: That the Respondent is in violation of NYS Sanitary Code, Subpart 5-1.12 (a, 2b) – Failure to install a permanent disinfection system on the water supply for the Burnt Hill Mobile Home Park in response to a violation of coliform bacteria.

Recommendation: That the Board of Health rule on the side of caution and require that Respondent installs a permanent disinfection system on the water supply for the Burnt Hill Mobile Home Park in response to a maximum contaminant level violation for coliform bacteria by 12/31/12.

The system must be installed and approved by 12/31/12, then the Permit to Operate will be renewed and the recommendation for the \$50 civil compromise will be dismissed.

DOCKET 12-036 (continued)

Mrs. Fox made a motion to accept the Hearing Officer's recommendation; it was seconded by Mr. Lapey and unanimously approved.

Board Ordered: That Respondent installs a permanent disinfection system on the water supply for the Burnt Hill Mobile Home Park in response to a maximum contaminant level violation for coliform bacteria by 12/31/12. If the disinfection system is installed and approved by 12/31/12, then the Permit to Operate will be renewed and the recommendation for the \$50 civil compromise will be dismissed.

DOCKET 12-045

BARTLETT COUNTRY CLUB, BARTLETT COUNTRY CLUB, INC., 32 Euclid Avenue, Olean

Violations: 10NYCRR, Section 6-1.4(B)(17) On 8/30/12, during an inspection of the swimming pool operation at the Bartlett Country Club, the sodium hypochlorite and muriatic acid were found stored in a manner that constitutes a public health hazard. Notice of Hearing offering a \$75 civil compromise was mailed 9/20/12. It was received and signed for by Kristen Kolivoski on 9/21/12.

Administrative Hearing:

Public Health Sanitarian: Eli Rust appeared for CCHD and was sworn.

Respondent: Failed to appear at hearing.

Enf-1 was read and affirmed to be correct by Mr. Rust and identified as People's Exhibit #1. Mr. Rust offered the swimming pool inspection report identified as P. Ex. #2 that occurred on 8/30/12 and was signed by Kristen Kolivoski, an employee of Bartlett Country Club. The following items were noted in the inspection report:

- a) No inspection reports submitted for the full swimming season.
- b) The pool pH is incorrect for proper pool operation.
- c) Improper/no label on crocks in the treatment room that supplies chlorine and acid. This is an extremely dangerous situation that could cause a potentially life threatening explosion/fumes and fatalities.
- d) Must insure lifeguards are in constant surveillance of the pool and not distracted. Lifeguards must be properly attired.
- e) The chemical pump room is not secure.
- f) The pool access is not secure.

Hearing Officer Finding: The Respondent is in violation of 10NYCRR, Section 6-1.4(B)(17) creating or allowing a public health hazard to exist at the Bartlett Country Club that could lead to physical harm or fatalities.

Recommendations: **a)** Respondent submits to CCHD a comprehensive operation manual for review and approval by 1/1/13.
b) Respondent submits to CCHD the name of an individual on staff who has a certificate as a qualified swimming pool treatment operator by 5/1/13.

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In addition to "a" and "b" above, the civil compromise offered to Respondent be increased to a \$150 fine to be received by CCHD on or before 11/30/12. Failure to pay the \$150 fine would result in a \$10 per diem fine until paid.

Conclusion: The 2013 permit to operate the swimming pool at the Bartlett Country Club is dependent on the successful completion of all recommendations.

Mr. Haberer made a motion to accept the Hearing Officer's recommendation; it was seconded by Mr. Lapey and unanimously approved.

Board Ordered: That Respondent submits to CCHD a comprehensive operation manual for review and approval by 1/1/13. That Respondent submits to CCHD the name of an individual on staff who has a certificate as a qualified swimming pool treatment operator by 5/1/13. Also, that Respondent pays a \$150 fine to be received by CCHD on or before 11/30/12 with a \$10 per diem fine if not paid by that date.

There being no further business to discuss, Mr. Lapey made a motion to adjourn. It was seconded by Dr. Hamlin and carried to adjourn.

Respectfully submitted,

Kevin D. Watkins M.D., M.P.H.

Kevin D. Watkins, M.D., M.P.H.
Secretary

KDW/km