

State of Minnesota

District Court

County of Ramsey

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.¹ 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

¹ 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
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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