



LEFT HOLDING THE BAG?

WHEN ARE COUNTIES RESPONSIBLE FOR UNDERTAKING OWNERSHIP AND/OR OPERATION OF DYSFUNCTIONAL WATER AND SEWER SYSTEMS LOCATED IN THE COUNTY?

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OHIO REVISED CODE SECTION 6117.34

- Whenever the legislative authority or board of health, or the officers performing the duties of the legislative authority or board of health, of a municipal corporation, the board of health of a general health district, or a board of township trustees makes complaint, in writing, to the environmental protection agency that unsanitary conditions exist in any county, the agency's director forthwith shall inquire into and investigate the conditions complained of.

OHIO REVISED CODE SECTION 6117.34

- If, upon investigation of the complaint, the director finds that it is **necessary** for the public health and welfare that sanitary or drainage facilities or prevention or replacement facilities be acquired or constructed, maintained, and operated to serve any territory **outside municipal corporations** in any county, the director shall notify the board of county commissioners of the county of that finding and order that corrective action be taken.

OHIO REVISED CODE SECTION 6117.34

- The board shall obey the order and proceed as provided in this chapter to establish a county sewer district, if required, to provide the necessary funds, to acquire or construct the facilities, and to maintain and operate the facilities, as required by the order and in a manner that is satisfactory to the director.

OHIO REVISED CODE SECTION 6117.34

- Any part or all of the cost of the facilities or of the maintenance and operation of the facilities may be assessed upon the benefited properties as provided in this chapter.

APPLICABILITY?

- Outside municipal corporations
- Applies to Counties only
- Applies to individual on-lot septic systems and central sewer systems

REQUIREMENTS

- Petition filed
- Investigation made
- Findings and Order Issued
- Take corrective action
- Establish Sewer District, as needed
- Acquire and construct facilities
- Maintain and Operate facilities
- Manner satisfactory to the Director

APPEAL TO ERAC?

- “Shall obey and proceed”
- Necessity?
- Source of contamination?
- Order alternative corrective measures? –See R.C. 6111.05 (Slide #18)
- Responsibility of other entity?
 - City, Regional District, other?

APPLICABILITY

- Mostly applicable to individual on-site septic systems

EXAMPLES OF APPLICABILITY TO CENTRAL SYSTEMS:

- Portage County
 - 85 homes
 - On common piping system
 - Discharged to swamp
 - County Health District complaint to Ohio EPA

EXAMPLES OF APPLICABILITY TO CENTRAL SYSTEMS:

- Washington County
 - County intergovernmental contract with City to sewer Devola, Oak Grove
 - County refuses to provide services, asserts contamination due to agricultural runoff
 - EPA investigates pursuant to R.C. 6117.34
 - Findings and Orders issued
 - Pollution due to sewage runoff
 - County refuses to comply
 - County waives right to appeal in Findings and Orders
 - Mandamus action by Attorney General

DEVELOPER CONSTRUCTED SYSTEM

- 1958 OAG Opinion
- R.C. 6117.34 applies to original installation, extension, completion, repair of previously constructed sewer system or sewage disposal plant

SAVE THE LAKE V. SCHREGARDUS

- No complaint under 6117.34 issued and EPA did not issue Findings and Orders, only draft orders
- EPA only threatened county by letter and draft orders
- Court holds
 - Actual complaint and actual Findings and Orders not necessary
 - Discretion of EPA

OHIO REVISED CODE 6103.17

- Whenever the legislative authority or board of health, or the officers performing the duties of a legislative authority or board of health, of a municipal corporation, the board of health of a general health district, or a board of township trustees makes complaint, in writing, to the environmental protection agency that unsafe water supply conditions exist in any county, the agency's director forthwith shall inquire into and investigate the conditions complained of.

OHIO REVISED CODE 6103.17

- If, upon investigation of the complaint, the director finds that it is **necessary** for the public health and welfare that water supply facilities be acquired or constructed, maintained, and operated to serve any territory **outside municipal corporations** in any county, the director shall notify the board of county commissioners of the county of that finding and order that corrective action be taken.

OHIO REVISED CODE 6103.17

- The board shall obey the order and proceed as provided in this chapter and section 6117.01 of the Revised Code to establish a county sewer district, if required, to provide the necessary funds, to acquire or construct the facilities, and to maintain and operate the facilities, as required by the order and in a manner that is satisfactory to the director

OHIO REVISED CODE 6103.17

- Any part or all of the cost of the facilities or of the maintenance and operation of the facilities may be assessed upon the benefited properties as provided in this chapter.

LOCATION OF FACILITIES

- Both 6117.34 and 6103.17 involve territory **outside of a municipal corporation**
 - This would seem to say that territory inside of a municipal corporation could not become the responsibility of a county
 - Municipal dissolution

R.C. 6111.05

- Pursuant to R.C. 6111.05, the Director of the EPA, on his own initiative, may investigate or make inquiries into any alleged act of pollution or failure to comply with Chapter 6111
 - This section gives the director the authority to investigate alleged acts of pollution without any complaint from the township or board of health
 - Then, if pollution is found, the director can issue orders to prevent, control, or abate water pollution by either (a) prohibiting or abating discharges or sewage, industrial water, or other wastes into the waters of the state; or (b) requiring construction of new disposal systems or any parts thereof, or the modification, extension, or alteration of existing disposal systems. See R.C. 6111.03(H).

ASSESSMENT AND BENEFIT CONFERRED

- Worth mentioning is the fact that BOTH R.C. 6117.34 (sewer) and R.C. 6103.17 (water) allow the county commissioners to **assess the benefitted properties** any part or all of the cost of the facilities or the maintenance and operation of the facilities
 - Sewer assessments in accordance with Chapter 6117 and water assessments in accordance with Chapter 6103
 - Constitutional Limitation
 - Assessment cannot exceed benefit conferred
 - Taking without just compensation
 - Illegal Tax

WATER AND SEWER SYSTEM VALUATION LEGISLATION PROPOSED BY AQUA

- In 2016, AQUA proposed the above legislation which would amend R.C. 4909.05. The legislation sought to establish a new methodology for determining the valuation of such systems and for setting rates as a result of such valuation. The legislation would have applied to the acquisition of any water or sewer system owned by a political subdivision or public utility corporation by a “Large Public Utility” (revenues exceeding \$250,000/year)

WATER AND SEWER SYSTEM VALUATION LEGISLATION PROPOSED BY AQUA

- Current regs: R.C. 4909.05 establishes criteria for ascertaining value of public utility systems. AQUA asserts it is not adequate and does not establish fair market value (FMV) of such systems
- Challenge: AQUA asserts need for a new system to determine FMV in order to establish post acquisition value and set rates, whether by PUCO or locally negotiated rates

WATER AND SEWER SYSTEM VALUATION LEGISLATION PROPOSED BY AQUA

- Proposed solution: create new method which Large Public Utilities may use to establish value and rates:
 - New process
 - 3 appraisers
 - Alternate methods of valuing
 - Process for future rate making