

SPECIAL REPORT		
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		SECTION A, PAGE 3
DEVOLA SEWER DISPUTE: SIDE-BY-SIDE COMPARISON OF STATE LAWSUIT AND WASHINGTON COUNTY RESPONSE		
STATE		COUNTY
County Health Commissioners failed to follow Ohio EPA orders to sewer Devola.		State failed to outline a claim upon which relief can be granted.
Commissioners vested with authority to govern Washington County.		Admits.
Defendant (board) is a "person" as defined by ORC.		Admits.
Commissioners may be sued/ plea in any court.		Admits.
Commissioners were responsible for establishing the sanitary and drainage facilities of Devola.		Denies, says the ORC code referenced only says commissioners "may" lay out bound-aries of sewer districts outside of municipal corporations.
Proper jurisdiction in Washington County Common Pleas court.		Admits.
Groundwater is defined as water of the state.		Admits.
Most single-family homes in Devola served by inadequate or failing on-site sewage disposal systems such as aerator, leaching and dry well systems.		Denies inadequacies or failings. says county health department inspections have found systems to be functioning properly as permitted.
Sewers are installed in eastern portion of Devola east of Lindsey Avenue.		Admits.
County health commissioner requested Ohio EPA involvement in May 2010, inves-tigate unsafe water supply because multiple samples exceeded nitrate maximum con-tamination level.		Admits.
High levels of nitrates found result from improper disposal of human and animal waste.		Admits this can be the result but denies existence of conclusive evidence.
August 2010 study, published June 2011 concludes groundwater flowing from the unsewered Devola area was main source of high nitrates.		Admits study was done; denies conclusions. *
Groundwater from agricultural areas north on Muskingum River are not to blame for high nitrates because high chloride concentrations were also found. Those chloride con-centrations are from failing septic systems.		Denies conclusions.
Study concluded distinct decrease of nitrate concentrations where there is sewer in Devola's east side.		Denies conclusions.
Centralized wastewater treatment facilities currently unavailable in Devola.		Admits.
Replacing existing on-site septic systems not legally permitted or will not remedy unsanitary condition.		Admits some types of septic systems no longer legally replaceable with same type but denies that all on-site systems cannot be replaced or remedied.
Commissioners signed September 2012 orders to: submit a plan and schedule to treat sewage in Devola including connecting existing sewers and directing sanitary sewage flows to nearest wastewater treatment plant		Admits order was signed but denies limitation to address only by sewerling.
Commissioners signed September 2012 orders to implement approved plan within two years.		Does not address.
In November 2012 commissioners submitted application for permit to install a sewer system to service all of Devola. OEPA approved on Jan. 18, 2013. Permit expired after July 18, 2014		Admits but says current board doesn't know why previous board didn't wait to see impact of reverse osmosis system in Devola. **
ORC: - prohibits pollution via sewage in any waters of state - provides that no person shall violate any order or rule issued by OEPA - provides that any person who violates an order from the OEPA shall pay a civil penalty of not more than \$10,000 per day of violation.		Admits. ***
Between July and October 2016 OEPA again gathered samples in Devola. Results confirmed continued presence of E. Coli and nitrates in the unsewered portions of Devola. Confirmed cause to be failing on-site sewage disposal systems, dry-wells and off-lot discharging systems because of the concurrent presence of elevated chloride concentration in the samples.		Admits further samples collected, denies test results, denies contamination due to failing systems.
Commissioners' failure to replace failing systems with a sewer system servicing the entire Devola area (has permitted) the residents of the Devola area to continue using their existing failing septic systems... (causing) pollution to the groundwater of the Devola area, Tupper Creek and the Muskingum River, which are waters of the state.		Denies, says state can't prove that on-site septic systems are failing because it has not inspected them. Says state can't prove "conclusively" the source of contamination. Says reverse osmosis system at the Putnam Community Water Association is already reducing nitrates to safe drinking water levels.
Seeks civil penalty in excess of \$25,000.		Calls state's civil penalty request a demand for judgement.
OEPA director has power to issue, modify or revoke orders to prevent, control or abate water pollution.		Admits OEPA has that power, denies inference of noncompliance. Says reverse osmosis plant accomplished original orders, regardless of general plan submitted to con-struct sewer system. Calls general plan "unnecessarily duplicative." Says there is evi-dence that the reverse osmosis plant has stabilized groundwater nitrate levels.
Beginning Jan. 18, 2015 commissioners were out of compliance with implementa-tion schedule to sewer Devola.		Admits that commissioners failed to implement general plan to sewer but denies this is a violation of orders from OEPA because the reverse osmosis plant fulfilled the orig-inal objective.
Commissioners are liable for civil penalties of up to \$10,000 for noncompliance with orders to sewer Devola.		Denies.
<div>* - Oct. 2010: Devola Community Sanitary Sewer Improvements Facilities Planning Report completed by Stantec. - May 2011: Commissioners signed 40-year contract with city to sewer Devola and Oak Grove.</div> <div>** - In the July 2013 Southern Watershed Action plan published by the Ohio Department of Natural Resources and Friends of the Lower Muskingum River and endorsed by the Washington County Commissioners, the 2011-2012 installation of the reverse osmosis system was “To immediately handle the exceeding levels of Nitrate... to better treat current water withdraws,” while the connection to Marietta's wastewater system was under construction following the May 2011 contract.</div> <div>*** - Jan. 18, 2015: From this date forth, Ohio EPA and Ohio Attorney General’s office consider the county in violation of Ohio Revised Code 6111 which states: No person shall violate or fail to perform any duty imposed...or violate any order, rule, or term or condition of a permit issued or adopted by the director of environmental protection. That same chapter authorizes a civil penalty of up to \$10,000 per day for violations.</div>		