AGENDA
CLARK COUNTY COMBINED HEALTH DISTRICT
BOARD OF HEALTH
July 11, 2022
6:00 p.m.

1. Call Meeting to Order
2. Roll Call
3. Retire/Rehire – Tina Fisher
4. Sewage Treatment System Variances

Next Meeting Date – Thursday, July 21, 2022

Adjournment

CHAPTER 12

Private Sewage Disposal

12.01 Requirements

12.01.01 Where a public sanitary sewer is not available, the building sewer shall be connected to a household sewage treatment system (HSTS), small flow on-site sewage treatment system (SFOSTS) or a semi-public sewage disposal system complying with the rules and regulations of the Board of Health of the Stark County Combined General Health District (elsewhere herein, Health Department). Semi-public sewage disposal systems must comply with the Ohio EPA rules and policies.

12.01.02 The owner shall, at his own expense, operate and maintain a HSTS, SFOSTS or a semi-public sewage disposal facility in a sanitary manner at all times and to the satisfaction of the Stark County Health Department and/or Ohio EPA.

12.01.03 It shall be unlawful for any HSTS, SFOSTS or semi-public sewage disposal facility to be connected to any public sanitary, storm or combined sewer.

12.02 Connection to a Public Sewer

12.02.01 When a public sanitary or combined sewer becomes available to a property served by a HSTS, SFOSTS or semi-public sewage disposal system, a direct connection shall be made thereto, by and at the expense of the owner, in compliance with these Rules and Regulations and the rules and regulations of the Health Department. HSTS, SFOSTS or semi-public sewage disposal facilities shall be abandoned by a licensed drain layer in accordance with the Health Department's sewage treatment regulations within 14 days of connection to a sanitary sewer system.

12.02.02 Within 30 days of the date that the owner of a property served by an eligible HSTS, SFOSTS, or semi-public sewage disposal system receives notification that the collection system is available for connection, the owner may choose to submit a written request for connection deferment to the Sanitary Engineer. The Sanitary Engineer and Health Department will examine the request for eligibility and, if conditions warrant, the requirement to connect to the sanitary sewer may be deferred for a reasonable time not less than 2 years and not more than 10 years.

12.02.03 The Sanitary Engineer and Health Department will use the following guidelines in evaluating eligibility for the deferment:

1) A public sewer that becomes available to a property treating wastewater by a NPDES discharging type HSTS may be relieved of connecting to the public system until the HSTS is no more than five (5) years in age from the date of its approval by the Health Department at installation, provided it is operated in accordance with applicable State and County Laws and Regulations. The deferment of five (5) years will be counted from the time of system installation approval and not when the public sewer becomes available. However, if less than two years remain on the five (5) year period when

sewer becomes available, the property owner may be relieved for two (2) years. Any system not operated in accordance with the law or that creates a public health nuisance shall forfeit the deferment.

2) A public sewer that becomes available to a property treating wastewater by a non-discharging, soil absorption type HSTS may be relieved of connecting to the public system until the HSTS is no more than ten (10) years in age from the date of its approval by the Health Department at installation, provided it is operated in accordance with applicable State and County Laws and Regulations. The deferment of ten (10) years would start at the time of system installation approval and not when the public sewer becomes available. However, if less than two years remain on the ten (10) year period when sewer becomes available, the property owner may be relieved for two (2) years. Any system not operated in accordance with the law or that creates a public health nuisance shall forfeit the deferment.

12.02.04 Eligibility for deferment will be determined by the Sanitary Engineer, in consultation with the Health Department and may be declined based on the factors listed below:

1) The system is creating a public health nuisance as defined by the Ohio Revised Code 3718.

2) The system has not been operated in accordance with Ohio Sewage Treatment System Regulation, Ohio Revised Code 3718 and Ohio Administrative Code, Chapter 3701-29.

12.02.05 Properties for which deferment is declined or any system for which connection has been deferred and is not operated in accordance with the law or that creates a public health nuisance shall have the deferment revoked and be referred to the Health Department for immediate enforcement of the requirement to connect to the sanitary sewer.

12.02.06 Any property for which connection has been deferred, upon conveyance to a new owner, shall be connected to the sewer within sixty (60) days of the conveyance or sixty (60) days of possession, whichever is later.

12.03 Disposal of Septic Tank and Holding Tank Wastes

12.03.01 No person, firm, or corporation shall discharge septic tank or holding tank wastes into any water course or storm sewer.

12.03.02 No person, firm, or corporation shall discharge septic tank or holding tank wastes into any manhole or other appurtenance of any sewer which discharges either directly or indirectly into the sewage facilities of the Stark County Metropolitan Sewer District.

End of Chapter

Clark v. Greene County Combined Health Dist.

Supreme Court of Ohio

October 25, 2005, Submitted ; April 5, 2006, Decided

No. 2004-1911

Reporter
108 Ohio St. 3d 427 *; 2006-Ohio-1326 **; 844 N.E.2d 330 ***; 2006 Ohio LEXIS 827 ****

CLARK, APPELLANT, v. GREENE COUNTY COMBINED HEALTH DISTRICT, APPELLEE.

Prior History: [****1] APPEAL from the Court of Appeals for Greene County, No. 04CA0027, *158 Ohio App.3d 492, 2004 Ohio 5276, 817 N.E.2d 113*.

Clark v. Bd. of Comm'rs, 158 Ohio App. 3d 492, 2004 Ohio 5276, 817 N.E.2d 113, 2004 Ohio App. LEXIS 4841 (Ohio Ct. App., Greene County, 2004)

Disposition: Judgment affirmed.

Counsel: Cox & Keller and David W. Cox, for appellant.

William F. Schenck, Greene County Prosecuting Attorney, and Thomas C. Miller, Assistant Prosecuting Attorney, for appellee.

Judges: ALICE ROBIE RESNICK, J. MOYER, C.J., O'CONNOR and O'DONNELL, JJ., concur. LANZINGER, J., concurs in judgment only. PFEIFER and LUNDBERG STRATTON, JJ., concur in part and dissent in part.

Opinion by: ALICE ROBIE RESNICK

Opinion

[*427] [***331] **ALICE ROBIE RESNICK, J.**

[**P1] Appellant, Thomas D. Clark, owns real property located in Bath Township. In furtherance of his plan to rebuild a home on the property, appellant contacted the city of Fairborn to inquire about the availability of water and sewer service to the property. In a letter dated March 18, 2002, the Fairborn city engineer informed appellant that the city had no present plan to extend its sewer main in the area of appellant's property and that such an extension would cost appellant approximately $ 18,000.

[**P2] [*428] Appellant then decided to install a septic system on the property and obtained a Sewage Disposal Installation [****2] Permit from appellee, Greene County Combined Health District. Although sanitary sewer service was not accessible to appellant's property at the time the permit was issued, the city of Fairborn did extend its sanitary sewer in front of appellant's property a few months later.

[**P3] The Fairborn city engineer notified appellant that the city's sewer main was available for connection. The city engineer further explained that the city of Fairborn would not agree to connect a Bath Township property to its sewer system unless the property owner prepaid certain fees, including the cost of the connection, and unless the owner signed

an affidavit stating that he will consent to any future annexation on behalf of himself and successor owners.

[P4]** Upon learning that Fairborn had extended its sewer line, appellee rescinded the septic-system-installation permit issued to appellant. Appellee based this decision on Section 2.9 of the Greene County Household Sewage Disposal System Regulations, which requires that "[n]o household sewage disposal system shall be installed, maintained or operated on property accessible to a sanitary sewerage system. (*Ohio Administrative Code, Section 3701-29-02-L*) **[****3]** ." Appellant applied for a variance from this regulation; however, appellee voted not to approve his variance request.

[P5]** Appellant appealed the denial of his variance request to the Greene County Court of Common Pleas. The trial court found that appellee had denied the variance request based on a false assumption that the Fairborn sanitary sewer line was accessible to appellant's property. The trial court reasoned that appellee had no control over the accessibility of the Fairborn sanitary sewer system or over Fairborn's decision whether and on what conditions Fairborn would grant a Bath Township resident access to its sewer system. Therefore, the court ruled that appellee was without authority to require that appellant access Fairborn's sanitary sewer system.

[P6]** Rather, the trial court concluded that the Fairborn sanitary sewer line was **[***332]** only "conditionally accessible." The court further found that this conditional access to the Fairborn sewer line was loaded with onerous terms such as the city's requirement that appellant consent to any future annexation on behalf of himself and all successor owners.

[P7]** Because it found the accessibility of the municipal **[****4]** sewer line to be conditional, the trial court ruled that appellee had incorrectly applied the sewage-disposal requirements prohibiting the installation or operation of a household sewage-disposal system to appellant's request for a variance. Accordingly, the court enjoined appellee from requiring that appellant connect to the Fairborn sewer system unless and until the system is accessible to his property.

[P8]** **[*429]** Appellee appealed the trial court's decision to the Second District Court of Appeals. Although the appellate court agreed that appellee had no authority to control the decisions of the city of Fairborn, the court found that appellee did have the authority to control how appellant disposed of sewage from his property. Instead of seeing the key issue in the case as a question of the municipal sewer line's accessibility to appellant's property, the appellate court viewed the issue as whether appellant, by withholding whatever action that might be required for connection to the Fairborn sewer line, may impose a condition that defeats the authority given by law to appellee.

[P9]** The appellate court found that although appellant can refuse to take the steps required for **[****5]** connection to the Fairborn line, he risks a nuisance-abatement action by appellee should he attempt to occupy the new house while it is served by a septic system. Further, the court held that appellant's refusal to take the steps for connection does not and cannot constrain appellee's authority to require that property owners abandon household sewage disposal systems when a sanitary sewer system becomes accessible for connection. Accordingly, the appellate court vacated the judgment of the trial court and remanded the

cause for an order affirming appellee's connection order.

[**P10] The cause is now before this court pursuant to our acceptance of a discretionary appeal.

[**P11] *R.C. 3709.01* mandates the creation of health districts, including the creation of a "general health district" composed of the townships and villages within a county. As provided in *R.C. 3709.07*, city health districts may combine with a general health district and contract for the administration of the health district by a combined board of health. The Greene County Combined Health District is made up of the Greene County General Health District and [****6] several city health districts, including the Fairborn City Health District.

[**P12] Pursuant to *R.C. 3709.22*, a health district "may * * * provide for the inspection and abatement of nuisances dangerous to public health or comfort, and may take such steps as are necessary to protect the public health and to prevent disease." Further, "[b]oards of health of a general or city health district * * * shall enforce * * * the rules the department of health adopts." *R.C. 3701.56*.

[**P13] Under *R.C. 3701.34(A)(1)*, the Public Health Council, a part of the Department of Health, must establish rules of general application throughout the state. Pursuant to this authority, the Public Health Council established a policy prohibiting the installation or operation of household sewage-disposal systems and requiring connection to a sanitary sewerage system whenever such a system becomes accessible. [***333] *DeMoise v. Dowell (1984), 10 Ohio St.3d 92, 95, 10 OBR 421, 461 N.E.2d 1286*.

[**P14] *Ohio Adm.Code 3701-29-02* states:

[**P15] [*430] "(L) No household sewage disposal system [****7] shall be installed, maintained, or operated on property accessible to a sanitary sewerage system.

[**P16] "(M) Whenever a sanitary sewerage system becomes accessible to the property, a household sewage disposal system shall be abandoned and the house sewer directly connected to the sewerage system."

[**P17] It is well established that local boards of health have the authority to require that a household sewer be directly connected to a sanitary sewerage system whenever such a system becomes accessible to the property. *DeMoise, 10 Ohio St.3d 92, 10 OBR 421, 461 N.E.2d 1286, syllabus*. This authority applies regardless of the manner by which the sewerage system was constructed. Id. Moreover, such a requirement is not arbitrary or unreasonable and does not constitute a deprivation of due process of law. Id.

[**P18] This court has characterized household sewage-disposal systems as a potential hazard to the public health and a potential nuisance that should be prevented whenever possible. *Id. at 95-96, 10 OBR 421, 461 N.E.2d 1286*. The requirement that a household sewer be directly connected to a sanitary sewerage system whenever such a system [****8] becomes accessible "reflects a broad-based policy determination that individual household sewage disposal systems are inherently more dangerous to the public health than sanitary sewerage systems." Id.

[**P19] In the present case, the trial court determined that appellee lacked the authority to order that appellant connect to the Fairborn sanitary sewer line because that connection

required consent by the city of Fairborn, a matter over which appellee had no control. However, appellee's lack of control is immaterial to the issue of whether appellee can require appellant to abandon his plans for a household septic system and connect his house sewer to the Fairborn line. Appellee certainly has the authority to regulate the sewage-disposal method utilized on appellant's property.

[P20]** Here, the Fairborn sanitary sewerage system became accessible to appellant's property when the city extended its sewer line to the property and notified appellant that the line was available for connection upon the satisfaction of certain requirements. The requirements set forth by the city of Fairborn for connection to its sanitary sewer line by a Bath Township property have not been shown **[****9]** to be arbitrary or unreasonable in this case. The fees required by the city to cover the cost of connecting the sewer line to the property are not burdensome. Further, a municipality can require annexation agreements in exchange for providing water and sewer services. *Bakies v. Perrysburg, 108 Ohio St.3d 361, 2006 Ohio 1190, 843 N.E.2d 1182, at P33.* The mere fact that Fairborn validly imposes conditions on access to its sewer service for extraterritorial users does not mean that its sewer line is not accessible to these extraterritorial properties.

[P21]** **[*431]** Moreover, appellant's refusal to take the actions required for connection to the Fairborn sewer line cannot and does not alter the "accessibility" of the sanitary sewer system so as to defeat appellee's authority and duty to enforce the rules adopted by the Department of Health. While appellant is correct that he has the right to decline to consent to the annexation of his property by the city of **[***334]** Fairborn, the prohibition against a septic system on his property and the risk of a nuisance-abatement action should he attempt to operate such a system may make signing the annexation agreement an attractive option. **[****10]** See *State ex rel. Indian Hill Acres, Inc. v. Kellogg (1948), 149 Ohio St. 461, 476, 37 O.O. 137, 79 N.E.2d 319*.

[P22]** To define the Fairborn sewer line as inaccessible simply because appellant does not wish to comply with the city's requirements for connection would allow him to negate the authority and duty conferred by law on appellee. Moreover, such a definition is inconsistent with the established policy of the agency charged with protecting the public health that household sewage-disposal systems should be prevented whenever possible. Given that Fairborn extended its sewer line past appellant's property and notified appellant that the line was available for connection, it is unquestionable that appellee has the authority and duty to require that appellant connect his house sewer to the Fairborn line, thus abating the potential nuisance and public health hazard posed by a household sewage-disposal system.

[P23]** Accordingly, we affirm the judgment of the court of appeals.

Judgment affirmed.

MOYER, C.J., O'CONNOR and O'DONNELL, JJ., concur.

LANZINGER, J., concurs in judgment only.

PFEIFER and LUNDBERG STRATTON, JJ., concur in part and dissent in **[****11]** part.

Concur by: PFEIFER (In Part)

Dissent by: PFEIFER (In Part)

Dissent

PFEIFER, J., concurring in part and dissenting in part.

[P24]** I agree with the majority that "local boards of health have the authority to require that a household sewer be directly connected to a sanitary sewerage system whenever such a system becomes accessible to the property[,]" citing *DeMoise v. Dowell (1984), 10 Ohio St.3d 92, 10 OBR 421, 461 N.E.2d 1286*, syllabus. I do not agree, with respect to a mandatory household connection, that "a municipality can require annexation agreements in exchange for providing water and sewer services." For this proposition, the majority cites *Bakies v. Perrysburg, 108 Ohio St.3d 361, 2006 Ohio 1190, 843 N.E.2d 1182, at P33*, which does not involve a mandatory household connection.

[P25]** **[*432]** Pursuant to their police power, municipalities can require households to connect to a sanitary sewerage system. Even an exercise of otherwise valid police power, however, is constitutional only when it is not unreasonable or arbitrary. *Benjamin v. Columbus (1957), 167 Ohio St. 103, 4 O.O.2d 113, 146 N.E.2d 854, paragraph five of the syllabus.* **[****12]** When both parties consent to a continuation of water and sewer service, as in *Bakies*, it is not unreasonable for a municipality to require the household to submit to annexation as a condition to the continuation of water and sewer service. To require a household to submit to annexation as a condition to a mandatory connection, as in the case before us, is unduly coercive and not reasonable.

[P26]** I would reverse the judgment of the court of appeals and reinstate the decision of the trial court.

LUNDBERG STRATTON, J., concurs in the foregoing opinion.

End of Document

Shannon Hackathorne

From: Larry Shaffer
Sent: Wednesday, July 6, 2022 2:09 PM
To: Charles Patterson
Cc: Shannon Hackathorne; Elizabeth Dewitt
Subject: FW: Sewer connection guidance
Attachments: Sanitary Sewer Connection Policy.pdf; Chapter 12 SCSE Rules and Regs.pdf; Hamilton Co Connection Policy.pdf

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From: Audrey.Blakeman@odh.ohio.gov <Audrey.Blakeman@odh.ohio.gov>
Sent: Thursday, June 16, 2022 8:14 AM
To: Larry Shaffer <LShaffer@ccchd.com>
Cc: Rebecca.Fugitt@odh.ohio.gov
Subject: Sewer connection guidance

Hi Larry,

It was nice speaking with you the other day. Below is some guidance we've sent in the past related to sewer connection. I am also attaching a couple of local connection policies from other LHDs.

The Ohio Revised Code 3718.02 (A) gives the authority to adopt and administer rules for the management of sewage treatment systems (STS) to the Director of health. Ohio Administrative Code (O.A.C.) 3701-29 are the rules prescribed under the statute overseeing the regulation of household sewage treatment systems. Ohio Administrative Code 3701-29-06(I) states that *A STS shall not be sited, permitted, or installed where a sanitary sewerage system is accessible, unless otherwise excepted by law. Whenever a sanitary sewerage system beco*mes *accessible to a dwelling or structure served by a STS, the dwelling and/or structures shall be connected to the sanitary sewerage system and the STS abandoned in accordance with rule 3701-29-21 of the Administrative Code.* Additionally, Ohio Administrative Code 3701-29-21 (A) states *a STS or applicable component of a STS shall be disconnected from the dwelling and properly abandoned when it is no longer in use due to connection to sanitary sewer*.

Accessibility is going to be determined locally, by the jurisdictional authority.

O.A.C. 3701-29-06(I)(1) goes on to say…*In determining the accessibility of a sanitary sewerage system a board of health may consider*:

- Availability of the connection
- Local or state ordinances or rules prohibiting or requiring connection
- The technical feasibility of the connection
- The ability of the sanitary sewerage system and associated treatment facility to accept additional flows
- The distance from the foundation wall of the structure from which sewage originates to the nearest boundary of the right-of-way within which the sewer is located.

As prescribed, there is no "defined" distance to determine "accessibility". This decision is going to be determined locally, sometimes on a "site by site" basis. Hopefully, with consideration to input & rules from other agencies/stakeholders (zoning, building, planning commission, county engineer, county commissioners, sewer purveyor(s), municipality, legal counsel, Ohio EPA, etc.) involved. There are scenarios when the dwelling could be 40' from the wastewater treatment plant but it would require directionally drilling and boring under a major interstate. Even though a short distance, this may not be technically feasible. On the other hand a connection could be much further and still determined to be

accessible. Not that it is specific to this property, but here is a weblink from Ohio EPA's website that we often reference regarding connection to sanitary sewer. http://ohioepa.custhelp.com/app/answers/detail/a_id/326

O.A.C. 3701-29-06(I) also does not explicitly list economic hardship/financial burden as a factor to consider when determining accessibility. However, when weighing technical feasibility and the additional factors listed in O.A.C. 3701-29-06(I)(1), it would be reasonable to discuss the corresponding economic impact. A frank conversation between the property owner and jurisdictional authority(ies) is typically warranted. Initial cost(s) can be weighed, but so too should ongoing costs for a STS. This may include, but not be limited to, the cost of an ongoing service & maintenance contract & associated service calls (may need to be maintained for the life of the system), annual diagnostic effluent sampling costs, operation and maintenance tracking permit cost, ongoing electric costs associated with the treatment train, costs of repair/replacement of worn out devices/parts of the treatment train, septage pumping & cleaning costs, etc.

Additionally, the board of health shall consult with the appropriate sewer entity personnel as necessary to determine sanitary sewerage accessibility. (O.A.C. 3701-29-06(I)(2))

Though the current version of the statewide sewage rules took effect on January 1, 2015, this is not a new requirement. Required connection to sanitary sewers was included in the previous 1977 version of the rules:
[1977] OAC 3701-29-02 (M) – *"Whenever a sanitary sewerage system becomes accessible to the property, a household sewage disposal system shall be abandoned and the house sewer directly connected to the sewerage system."*

Based on paragraph (I) of rule 3701-29-06 of the Ohio Administrative Code, there is no provision that would allow a home with an existing household sewage treatment system, or a proposed new home/structure to be served by a sewage treatment system to be exempted from connection to sanitary sewer system that has been determined to be accessible to the home. Local Health Districts have the responsibility to enforce Chapter 3701-29 of the O.A.C.

The local health district does have the flexibility to adopt timelines on when those impacted must tie in as long as the timelines do not conflict with the findings and orders by the Ohio EPA or orders from the county commissioners or other local authority. (O.A.C. 3701-29-06(J)). This will usually vary by system type, age, etc., but it is normally more economically feasible for the resident to connect as construction is occurring. Here is an example of the timelines adopted by a local health district regarding connection:

- A STS that is non-discharging and is compliant with all operation permit inspection requirements shall have five years to connect into the sanitary sewer and properly abandon the STS.
- A STS that is discharging and is compliant with all operation permit inspection requirements shall have two years to connect into the sanitary sewer and properly abandon the STS.
- A STS that is not compliant with all operation permit inspection requirements or that is within an area that has been declared a health hazard shall have 90 days to connect into the sanitary sewer and properly abandon the STS.

Often there may also be flexibility regarding cost to connect (e.g. space out on property taxes over a number of years) or potential funding available to help offset the cost of the connection (i.e. Water Pollution Control Loan Funding, CHIP funding, etc.)

We always encourage the local health district and additional stakeholders (homeowners, planning commission, sanitary sewer purveyor, utility department, local municipality, Ohio EPA, etc.) to maintain an open dialogue of communication and transparency when these potential developments are on the horizon, and how they may affect future constituents down the road.

Feel free to reach out any time if you have questions. Thank you!

Audrey Blakeman, MS, REHS
Sewage Treatment Systems and Private Water Systems Programs
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(a) A permanent, recorded, legal easement shall be required for any portion of a STS, including the discharge line(s) from the system or associated drains, not sited on the same parcel as the structures or dwelling served by the STS. When an easement is required under this paragraph, a STS installation permit shall not be issued by the board of health until a certified copy of the legally recorded easement is provided.

(b) When a portion of a STS is sited on a parcel other than the parcel containing the structure(s) or dwelling(s) served by the STS and both parcels have a common owner, the parcels shall either be merged or otherwise reconfigured, or recorded on the property deed.

(c) An easement or merger of parcels shall no longer be required when the STS is abandoned in accordance with rule 3701-29-21 of the Administrative Code and the required dwelling(s) or structure(s) are connected to a public sewer.

(H) STS shall not be sited under the following conditions:

(1) A new STS shall not be sited in an area identified as a flood way, and only below grade soil absorption components of a new STS may be sited within any part of the one hundred-year flood plain except where prohibited by federal, state, or local regulations or ordinances.

(2) A STS shall not be sited within a jurisdictional wetland subject to a U.S. army corps of engineers 404 permit and/or Ohio EPA 401 certification or within an isolated wetlands subject to sections 6111.02 to 6111.028 of the Revised Code.

(3) A STS shall not be sited within the sanitary isolation radius of a public water system well as determined in accordance with rule 3745-09-04 of the Administrative Code. A SFOSTS shall have additional design and/or O&M requirements when sited within the inner management zone of a drinking water source protection area determined to be highly susceptible to contamination by the Ohio EPA source water assessment and protection program for a community or non-transient non-community public water system as defined in rule 3745-81-01 of the Administrative Code.

(4) A STS shall not be sited in soil and site conditions that prohibit compliance with this chapter.

(I) A STS shall not be sited, permitted, or installed where a sanitary sewerage system is accessible, unless otherwise excepted by law. Whenever a sanitary sewerage system becomes accessible to a dwelling or structure served by a STS, the dwelling and/or structures shall be connected to the sanitary sewarage system and the STS abandoned in accordance with rule 3701-29-21 of the Administrative Code.

(1) In determining the accessibility of a sanitary sewerage system a board of health may consider the availability of connection, local or state ordinances or rules prohibiting or requiring connection, the technical feasibility of connection, the ability of the sanitary sewerage system and associated treatment facility to accept additional flows, and the distance from the foundation wall of the structure from which sewage originates to the nearest boundary of the right-of-way within which the sewer is located.

The Hamilton County Board of Health, as authorized by Ohio Administrative Code 3701-29-06(I)(1), specifies that STS are accessible to a sanitary sewer when all of the following conditions are satisfied:

i ***The sanitary sewer is capable of accepting flow as determined by the sanitary sewer authority;***

i ***The nearest point of the right-of-way containing the sanitary sewer is less than or equal to 200 feet from the nearest point of the dwelling or structure; and***

i ***The sanitary sewer is not limited for use because of a legal barrier, physical barrier or other technical feature as determined by the Health District.***

(2) The board of health shall consult with appropriate sewer entity personnel as necessary to determine sanitary sewerage accessibility.

(J) The conditions and schedule for connection to a sanitary sewer which may be established by the board of health shall not conflict with findings and orders by the Ohio EPA or orders from the county commissioners or other local authority.

The Hamilton County Board of Health, as authorized by Ohio Administrative Code 3701-29-06(J), specifies the timeline for connection to an accessible sanitary sewer shall be as follows:

i ***A STS that is non-discharging and is compliant with all operation permit inspection requirements shall have five years to connect into the sanitary sewer and properly abandon the STS.***

i ***A STS that is discharging and is compliant with all operation permit inspection requirements shall have two years to connect into the sanitary sewer and properly abandon the STS.***

i ***A STS that is not compliant with all operation permit inspection requirements or that is within an area that has been declared a health hazard shall have 90 days to connect into the sanitary sewer and properly abandon the STS.***

Procedure for Sanitary Sewer Connection

A. **SEWER ACCESSIBILITY DETERMINATION**—Sewer accessibility shall mean that a property has been provided with a lateral, wye, or main line on the property or to the property line, or to a public right-of-way or easement adjacent to the property line. Additionally, the definition shall also mean that the available sewer and downstream sewerage facilities have capacity to accept the additional flows, and otherwise not be declared inaccessible by the Sanitary Engineer (or other authority having jurisdiction over the sewer) due to unusual topographical or other exceptional physical conditions. In the case of an existing structure where the sewage treatment system (STS) is operating in accordance with Ohio Law (O.R.C. 3718 and O.A.C. 3701-29), the sewer is deemed inaccessible when the distance from the sewer to the point of connection at the structure is greater than 400 feet. However, if the system is not operating in accordance with Ohio Law, the sewer may be deemed accessible to abate a public health nuisance or safety hazard; prevent the pollution of surface or ground water; or to prevent the installation of a discharging STS. When a property has been deemed inaccessible, for any reason, written notice shall be sent to the property owner stating such, and copies shall be maintained by the Sanitary Engineer (or other applicable sewer authority) and the Board of Health.

I. **REQUIRING CONNECTION PROCEDURE**—After sanitary sewer is made available to a home, a notice is sent to the homeowner from the Sanitary Engineer's Office making the owner aware that the sewer is available for connection.

II. If no connection is made within 30 days of the Sanitary Engineer's Notice, a SEWER CONNECTION NOTICE (equivalent to a Sanitarian Order) is sent to the property owner, enforceable under Ohio Administrative Code 3701-29, giving the owner 180 days to connect to the sanitary sewer. *If the septic system is failing then the procedure for environmental heath nuisances must be followed to allow for a timely abatement of the public health nuisance.*

III. If still no connection has been made, a Public Health Order will be issued to the homeowner giving them 120 days to connect to the sanitary sewer.

IV. If the connection still has not occurred, but progress has been made, an extension approved by the Unit Manager or Director of 90 days may be granted. Extensions are done on a case-by-case basis.

V. After the above 120 days given by the Public Health Order and any extensions have expired and connection has not been made, a Prosecution Warning letter will be sent to the homeowner giving them 60 days to connect to the sanitary sewer to avoid prosecution. The only exception to this is if a variance has been granted by the Board of Health. If no connection has been made after the Prosecution Warning letter, a Complaint Package will be filed with the Stark County Prosecutor, requesting relief of 90 days to connect to the sanitary sewer. See the **FILING A COMPLAINT IN COURT / LAWSUIT** section of this policy. After the Complaint Package has been reviewed by the Prosecutor, you will be notified of the Court date, when applicable.

STATE v. SIMON

Hamilton County Municipal Court, Ohio.

The STATE of Ohio v. SIMON.*

No. C 00 CRB 2574.

Decided: July 20, 2000

Michael K. Allen, Hamilton County Prosecuting Attorney, and Karen Falter, Assistant Prosecuting Attorney, for the state. Margaret Simon, pro se.
Pro se defendant Margaret Simon is charged with failure to connect into the sanitary sewerage system in violation of R.C. 3707.48, which states:

"No person shall violate sections 3707.01 to 3707.53, inclusive, of the Revised Code, or any order or regulation of the board of health of a city or general health district made in pursuance thereof, * * * or willfully or illegally omit to obey such order."

Local boards of health are given authority pursuant to R.C. 3707.01 to enact regulations for the health and safety of citizens. The specific regulation defendant Simon is charged with violating is Hamilton County Household Sewage Code 529.02(K) ("Section 592.02[K]"), which states:

"Whenever a sanitary sewerage system becomes available to the property, the building drain shall be directly connected to such sanitary sewerage system and the household sewage disposal system shall be properly abandoned."[1]

In addition, the county commissioners of each county can, by resolution, require homeowners to connect to a new public sewer construction project that is proposed or located in certain places pursuant to the provisions of R.C. 6117.51. R.C. 6117.51, however, contains several exceptions, one of which is for "[a]ny premises that are not served by a common sewage collection system when the foundation wall of the structure from which sewage or other waste originates is more than two hundred feet from the nearest boundary of the right of way within which the sewer is located."

Defendant Simon owns residential property at 11400 Enyart Road, Hamilton County, Ohio. In June 1997, Kyle Dexter, a water quality technician with the Hamilton County Health District, performed routine inspections of houses on defendant's street. When no one answered defendant's door, the technician entered her yard to check the septic tank and observed a drainage ditch in the far right corner of the yard. He further observed a black corrugated pipe and blackish-grey discharge coming from the pipe that he believed might be untreated sewage.

Based on these observations, Dexter sent defendant Simon a request that the health district be allowed to make a dye test of the water coming from the house to determine its source and status. Simon and the health district discussed the proposed dye test but permission was never secured from Simon to conduct the test, and it was not done. As a result, on or about January 10, 2000, defendant was ordered by the Hamilton County Health District to connect to the nearest sewer, which was less than two hundred feet from her home. Specifically, the center of defendant Simon's home is 149.41 feet from the nearest available sewer; her nearest foundation wall is less than 149.41 feet from this service. She refused to connect to the sewer as ordered.

Defendant testified at trial that she had gotten estimates between $15,000 and $40,000 to connect to the system, but, provided no written estimates as evidence herein. She has refused to connect to the sewer system based on the cost of connection and her belief that her current system for handling sewerage is operating properly.[2]

The court further finds that the sewer system in question has been operational for probably ten years, while residences in the area were generally built more than ten years ago.

Defendant Simon argues that she is not in violation of the regulation that purports to require her to connect to the sewer system because (1) the state has failed to demonstrate that her existing septic tank is deficient in its operation and (2) due to the expense of connection, the sewer is not "available" to her property. She further asserts that R.C. 6117.51 is not applicable to compel connection because the sewer system in question is not "new" as described by the statute.

Initially, there are few Ohio cases concerning connections to sewer systems. However, more than fifteen years ago, the Ohio Supreme Court held that local health boards have the authority to enforce regulations such as the one at issue here.[3] The court in DeMoise v. Dowell (1984), 10 Ohio St.3d 92, 95-96, 10 OBR 421, 424, 461 N.E.2d 1286, 1290, stated:

"The legislative delegation of authority, under the present scheme * * * reflects a broad-based policy determination that individual household sewage disposal systems are inherently more dangerous to the public health than sanitary sewerage systems and must be replaced when possible."

The court continued:

"It is not necessary that the board make a case-by-case evaluation of the efficiency of each septic system. The determination has already been made that septic systems pose a potential hazard to the public health, and that they are a potential nuisance to be prevented when possible."[4] Id., 10 Ohio St.3d at 96, 10 OBR at 424, 461 N.E.2d at 1290.

As the Ohio Supreme Court has stated in DeMoise, defendant's septic tank need not be found to be inoperable before she can be ordered by the health district to connect to the sewer. Accordingly, defendant Simon's first argument fails.

Defendant's second argument is that the sewer is not "available" (Section 529.02[K]) as a matter of law due to the economic cost of connection. Black's Law Dictionary (6 Ed.1990) 135 defines the word "available" as "[s]uitable; useable; accessible; obtainable; present or ready for immediate use." The court can envision some situations in which excessive economic expense might make connection to a sewer system "unavailable" as a matter of law. In this case, however, the court lacks information necessary to consider such an analysis. Specifically, defendant has only presented evidence of the cost of connecting to the sewer; she has provided no evidence of the value of the property on which the present septic system operates. The latter evidence would be a necessary element in any reasoned analysis of unavailability due to excessive cost of connection.[5] Defendant's second argument therefore fails.

Defendant Simon finally argues that R.C. 6117.51 does not apply to this case. The court agrees with this argument. The state here is not pursuing the remedy available to it under this section, to wit, seeking monetary sanctions for civil contempt for violation of an order of the county commissioners to connect to a new sewer.[6] Rather, the state is seeking compliance through the alternate mechanism provided by law, the filing of a complaint alleging a violation of R.C. 3707.48.

The court is sympathetic to the concerns expressed by defendant Simon regarding the financial burden that property owners face when ordered by the health department to connect to the sewer system. However, the law requires, for reasons of public policy and health, that homeowners comply with such orders. For the above-stated reasons, the court finds that the state has proven beyond a reasonable doubt that defendant Simon is in violation of R.C. 3707.48.

Defendant found guilty.

FOOTNOTES

1. Hamilton County General Health District Revised Section 529.02, general sewage disposal requirements, effective March 8, 1999.

2. Defendant Simon testified at trial that she believes that the black discharge observed by the water technician could be mold.

3. For a thorough discussion of the statutory authority for enforcing such regulations, see DeMoise v. Dowell (1984), 10 Ohio St.3d 92, 93-95, 10 OBR 421, 422-424, 461 N.E.2d 1286, 1288-1290.

4. Moreover, as the court further noted, "The fact that septic systems are themselves lawful is immaterial. That fact merely reflects the realization that a septic system is an appropriate means of sewage disposal so long as no sanitary sewerage system is available." Id., 10 Ohio St.3d at 96, 10 OBR at 424, 461 N.E.2d at 1290.

5. Obviously, a $15,000 to $40,000 expenditure is one thing in relation to a one-room log cabin home; it is quite another if the property in question is a $5 million mansion.

6. R.C. 6117.51 exempts a building from sewer connection only if the entire structure is more than two hundred feet from the sewer's right of way; if even part of one wall of the building is less than two hundred feet "from the nearest boundary of the right of way" (R.C. 6117.51[C]), the exemption does not apply. Fry v. Hildebrant (1985), 26 Ohio App.3d 126, 127-128, 26 OBR 337, 339, 498 N.E.2d 1089, 1091. Thus, under the facts of this case, the exemption is unavailable even if R.C. 6117.51 applied to this matter.

ELIZABETH B. MATTINGLY, Judge.

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THOMSON REUTERS

SURVEY OF LOCAL HEALTH DEPARTMENTS IN REGARD TO ISSUING HSTS OPERATION PERMITS WHERE PUBLIC SEWER IS AVAILABLE.

Larry Shaffer REHS, Director of Environmental Health – Clark County Combined Health District

An informal survey was conducted with health departments from across Ohio in order to determine if the Clark County Combined Health District's standard operating procedure in regard to issuing HSTS operation permits where public sewer is available is similar to other health departments.

To conduct the survey, the following email was sent to 91 health departments across Ohio:

In the course of issuing HSTS operation permits, we are encountering homes that are accessible to existing sewer. We define accessible as the foundation of the home is within 200' to a right of way containing public sewer as referred to in ORC 6117.51. We are not issuing operation permits to the homes that are accessible to public sewer per OAC 3701-29-06 (I):

OAC 3701-29-06 (I) A STS shall not be sited, permitted, or installed where a sanitary sewerage system is accessible, unless otherwise excepted by law. Whenever a sanitary sewerage system becomes accessible to a dwelling or structure served by a STS, the dwelling and/or structures shall be connected to the sanitary sewerage system and the STS abandoned in accordance with rule 3701-29-21 of the Administrative Code.

> (1) In determining the accessibility of a sanitary sewerage system a board of health may consider the availability of connection, local or state ordinances or rules prohibiting or requiring connection, the technical feasibility of connection, the ability of the sanitary sewerage system and associated treatment facility to accept additional flows, and the distance from the foundation wall of the structure from which sewage originates to the nearest boundary of the right-of-way within which the sewer is located.
>
> (2) The board of health shall consult with appropriate sewer entity personnel as necessary to determine sanitary sewerage accessibility.

Of course, if an operation permit cannot be issued, the alternative is to connect to public sewer. We make it clearly known that the homeowner can ask for a variance from rule based on hardship and/or technical difficulty.

Are all homes accessible to public sewer in your jurisdiction already connected? This is an important question as we want to know how common these situations are.

Does your health department operate differently from ours in regard to issuing operation permits and OAC 3701-29-06 (I)? If so, how? We are interested in alternatives.

Thank you in advance for your comments.

Best Regards,

Larry Shaffer, REHS
Director of Environmental Health
Clark County Combined Health District
529 East Home Road, Springfield, OH 45503
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Website: www.ccchd.com

The following responses were received:

WAYNE COUNTY HEALTH DEPARTMENT

Where is 200' defined? I believe in order to enforce this 200' you need to have a resolution or regulation as you connection policy. I don't see in rules where the 200' is stipulated. Our local OLD rules did though! I don't think but could be wrong 200' is defined in sewage code.

We have several properties within 200' but that isn't the only determination for us to be accessible. For example are they in the township and village or city sewer is 200' away but they have to annex into village/sewer to connect? Then we state that is not accessible cause we don't force people to annex into a jurisdiction. Does the accessibility include an unnecessary hardship? Like just because its closure than 200' but is the overall circumstances? Is the system discharging? Is it undocumented? Is it soil based? What do they need to do to connect as in getting easements from neighbors and lift pumps and grinder pumps? Basically we take each property into its own consideration and not use the 200' rule. We ask the village or City or sewer entity if the sanitary is AVAILABLE then we work together to see if it's actually accessible. Each property has its own situations to consider.

If you determine it isn't accessible then I don't think a variance is needed whether its 200' or not. If you are simply going by the 200' "definition" I think we are treading over difficult grounds. I've never issued or considered an variance on an operational permit but it an interesting question!!! We do have homes that are accessible but not connected.

DARKE COUNTY HEALTH DEPARTMENT

Larry, we have been using 400 feet to align with the EPA. We are still issuing permits if they are within sewer as we would rather make sure they are operating correctly. What we have found is, if the village or sewer owner wants the property, then we can require them to tie in. HOWEVER, if the village requires annexation, we cannot force annexation and therefore, cannot require tie in. If there are multiple homes and the majority agrees to annex, then we can require tie in. This has apparently been researched in the past with our prosecuting attorney's office.

We do have a couple of commercial properties that recently put in brand new on-site systems because the municipality was WAY HIGH on their utility estimates. Because these properties would be required to annex, they were having them put in sanitary to edge of property, storm sewer, water distribution, sidewalk, road improvements, etc. The estimate they gave these company's was enough for the EPA to say they were not considered accessible anymore because of cost. It is unfortunate. This is also really the only municipality who has homes that are within sewer- there are just a couple other homes around.

AUGLAISE COUNTY HEALTH DEPARTMENT

Our local Prosecutor does not wish to pursue cases where Municiple Sewer is available because our cities/villages are requiring annexation to connect. Since we are not getting his support our BOH is reluctant to issue orders that cannot be enforced. So at this point we huff and puff and bluff when these situations arise.

We have not yet started out O & M program for existing systems so it's not been an issue for us, I imagine that we will simply issue Operation Permits for those properties when the time comes.

BUTLER COUNTY HEALTH DEPARTMENT

We have some homes that may be located within 200 Feet of the sanitary sewer, but due to other conditions (getting an easement, having to extend the main) the cost of the connection makes it not feasible. We are seeing this issue a lot due to farms selling and subdivision being developed, but the county sewer system not taking these legacy systems into consideration to provide the sanitary sewer to them. We just had a meeting with the Sewer Department about it last week. So to answer your question we do not have a blanket policy and each situation must be looked at separately.

LAKE COUNTY GENERAL HEALTH DEPARTMENT

In Lake County, if a house is accessible to sanitary sewers, we will begin the process to get them connected to sanitary sewer. An operational permit will not be issued. But we do find several homes a year that should have been connected but did not for some reason.

WILLIAMS COUNTY HEALTH DEPARTMENT

Our process is fairly similar. When considering accessibility, we contact the "owner" of the sanitary sewer line to ask if the line is available for new residential connections. If it is, then we consider if it is technically feasible to connect. If both are true, we issue a connection order. If either are false, we note that the sewer is not available/accessible, and they maintain the HSTS. Of course, as you stated, they could apply for a variance for our BOH to consider.

Most of the homes that have sewer access are connected, though we do occasionally come across one that is not.

We also do not issue operation permits to vacant dwellings, with the reasoning that the STS is not in operation, therefore an operation permit is not required. We note the vacant properties and will monitor for occupancy. If somebody moves in, we send an application for the operation permit with a cover letter explaining what it is and why they are getting the application.

ADAMS COUNTY HEALTH DEPARTMENT

Our agency requires any home that is accessible to sewers to connect. The issue that we have encountered is that Village may extend a sewer line but in order for a home to connect property has to annex into the village limits and the township trustees refuse to allow that annexation due to loss of tax money. Our prosecutor has said that the refusal for annexation makes the sewer inaccessible and we cannot require connection. We currently have three major sewer projects in progress that we will be dealing with this issue for the next few years.

TRUMBULL COUNTY HEALTH DEPARTMENT

This office forces all sewer connections for properties that are accessible. However, we do allow for a variance from connection to sewers if the property has a functioning, non-discharging HSTS that is not creating a public health nuisance. If the system is creating a public health nuisance, then the variance is denied and they must connect to sewers or in rare circumstances, install a soil based HSTS. This variance is only for properties that are under 200’ to sewers. The variance must be renewed every five years. The property owner pays for the inspection, we inspect and make sure everything is above board and not creating a nuisance. Let me know if you have any questions.

HAMILTON COUNTY HEALTH DEPARTMENT

We handle this pretty much in the same way. We issue about 100-150 orders each year and have successfully completed about 2,500 sewer connections over the last 25 years.

Our board put the following in place regarding sewer connections:

The Hamilton County Board of Health, as authorized by Ohio Administrative Code 3701- 29-06(I)(1), specifies that STS are accessible to a sanitary sewer when all of the following conditions are satisfied:

- The sanitary sewer is capable of accepting flow as determined by the sanitary sewer authority;
- The nearest point of the right-of-way containing the sanitary sewer is less than or equal to 200 feet from the nearest point of the dwelling or structure; and
- The sanitary sewer is not limited for use because of a legal barrier, physical barrier or other technical feature as determined by the Health District.

The Hamilton County Board of Health, as authorized by Ohio Administrative Code 3701-29- 06(J), specifies the timeline for connection to an accessible sanitary sewer shall be as follows:

- A STS that is non-discharging and is compliant with all operation permit inspection requirements shall have five years to connect into the sanitary sewer and properly abandon the STS.
- A STS that is discharging and is compliant with all operation permit inspection requirements shall have two years to connect into the sanitary sewer and properly abandon the STS.
- A STS that is not compliant with all operation permit inspection requirements or that is within an area that has been declared a health hazard shall have 90 days to connect into the sanitary sewer and properly abandon the STS.

In pursuing a successful code variance, we require the owner to provide sufficient agreeable alternatives to the required sewer connection. Those alternatives include the owner working with a sewage treatment system designer to evaluate and implement upgrades/updates/replacements to the existing system. Particularly if the existing system is a non-NPDES legacy discharging type. Upgrades could include, incremental replacement such as installation of a code approved soil absorption system behind the existing discharging type system, a full replacement system or, if the site and soil conditions are not adequate, updating

the existing discharge (manufacturer specific) or replacement to come into compliance with NDPES permitting requirements.

UNION COUNTY HEALTH DEPARTMENT

Notes from telephone conversation:

- There are not a lot of homes with septic systems that are accessible to sewer but all that fit the description are within Marysville.
- The City of Marysville Utilities staff often cite technical difficulties that prevent connection to sewer.
- UCH does issue operation permits to these homes.
- The septic systems are often not inspectable. They issue orders to install riserS, sampling ports, etc…. In this way, they are working toward discovering nuisance conditions and some homes have had to connect to sewer. Apparently, the technical difficulties with connection become less difficult when a system is failing
- The situation in Union County is much different than Delaware County where the respondent formerly worked. Everyone in Delaware County was on board with all efforts to make sure sewage was treated safely and if that meant connection to sewer for homes that are accessible, that's what happens.

SHELBY COUNTY HEALTH DEPARTMENT

Not all connected. Our Board put a hold on enforcing the policy unless it involves and new HSTS or failure of existing. (The email included link to their policy. Please see attached at end of the document.)

PORTAGE COUNTY HEALTH DEPARTMENT

When Portage County comes across a property that is available and accessible to sewer: 1) we contact the sewer authority,2) request written verification on their letter head that the property is "available and accessible"; and 3) issue a NOV to the property owner and order them to tie on and abandon the HSTS. We would not issue an operation permit to someone that is supposed to be on sewer.

The economic hardship is only taken on a case by case basis. If needed the 208 map would have to be amended.

And, we definitely come across properties that are supposed to be tied into sewer but are not.

HURON COUNTY HEALTH DEPARTMENT

In Huron County, we are beginning to run into the same issues as you. We are starting to find a good number of systems that are accessible but not tied in. At the moment, we are working through this with our county prosecutor and board of health. We have made at least one homeowner begin the process of tie in with a city. We are also involved in the process of the formation of a regional sewer district (the first in our county), which will have to address this situation as well. As management, we plan on developing a policy/policies with the prosecutor and then approved by our BoH to move forward with tie-in's in some capacity. It can get complicated due to forced annexation and a particular instance where there is a small commercial business that's located in an unzoned township that has access and would have to annex into the city in an area that is currently not zoned commercial. As you are well aware, this is a touchy topic, especially in this day and age. I'm sure that this is not a great deal of help to you, but I wanted to let you know that you are not alone and this is the direction that we are heading.

SUMMIT COUNTY PUBLIC HEALTH

Yes, we do issue operation permits to homes that are within 200' of sanitary sewer provided that the home is not under orders to connect.

Our operation permit program has been a work in progress since we began it in 2015. The first priority was to get all homes with a STS under permit through a tiered approach. We have an estimated 33,000 STS in Summit County, about 5000 of which are considered "unknown" as we do not have records for the system and we have 5 sewer authorities in our county, only one of which has maps of existing lines that are available for reference. So the issuance of an operation permit with proximity to sewer is often not known.

One of our primary issues with sewer is the "accessibility" concern. If the sewer is within 200 feet or 400 feet for a NPDES system, accessibility is evaluated- is the sewer line a force main? Is the sewer across the street under 5 lanes of traffic? Etc, etc. At that point we consult with the sewer authority to determine what is truly "accessible". So, based on the many factors that determine accessibility, we choose to issue operation permits to everyone to locate all STS in Summit County and determine system type of all STS in Summit County. For existing STS, we will evaluate sewer accessibility to abate a nuisance, or when a new sewer project is completed, or when orders are issued. At that point, the operation permit may be revoked as part of the enforcement process. If we had access to the location of all the sanitary sewer lines, existing laterals, and better communication among the sewer authorities in our county, we may have not implemented our program the way we did.

HOLMES COUNTY HEALTH DEPARTMENT

Hope all is going well for you and your Team! We are currently operating at half of our normal EH staff so it's shaping up to be a pretty crazy summer

We are still evolving our O&M Program, but here is what we currently do in regards to properties with access to Sanitary Sewer:

1. If the system is existing and sanitary sewer becomes available, we will not force the tie-in unless the system is creating a nuisance. Our Co Engineer is really good at incentivizing tie-ins when they do an expansion project.

2. If it is a proposed new construction or replacement, we force the tie-in if it meets the 200'. If the project site is beyond 200', we will encourage, but at this time cannot enforce the tie-in. We would probably be more hard-nosed if it was going to be an NPDES beyond 200'

3. As of now, if the system is not creating a nuisance, we will issue an O&M permit. I would like to introduce a mandatory Point of Sale program (once we can find staff) at some point in the future so that we can bring more existing systems under our O&M program and work with our County to see what areas are in need of some attention due to failing/aging systems.

ALLEN COUNTY HEALTH DEPARTMENT

Our course of action and stance with this is the same as yours. The only time we have issues with accessible sewers and connections is when the Sanitary Engineers Office declares a property inaccessible due to snags with engineering problems causing problems for connections. Doesn't happen often but has happened. We declare all homes within 200 ft. from the Road Right-of-Way, which has public sewers as accessible. We install numerous E-1 pumps to connect to force mains. Our county office has property owners sign a waiver for the county to maintain the pumps. We do not issue operation permits unless sanitary sewers is declared inaccessible and/or the structure is 200 ft. or less from the road right-of-way.

CHAMPAIGN COUNTY HEALTH DEPARTMENT

We check with the public sewage operator. They sometimes do not want the additional load or they will not suggest they hook up at this time because of cost to do work for one home. Each situation can lead to different answers in our experience. We have several homes that will likely need to connect if their current system fails 29-02(C).

We believe in 29-06(I) the intent of "permit" is for the installation permit. We never thought of it meaning the operation and maintenance permit.

In 29-21(A) it does appear to give the board of health authorization to "otherwise order" the use of the STS. With that, it does sound as though you could interpret the word "permit" to mean either way.

Our public sewage operator do not want to force anyone to hook up, if it comes to that, we will be carrying the ball.

GREENE COUNTY COMBINED HEALTH DISTRICT

As a rule, yes, all homes within 300' of public sewer are required to connect. A few exceptions have occurred: sometimes a home would be closer than the 300' (as a crow flies) but have no easement or access to connect. In that case, an OP could be issued for the home.

As far as I know, no formal variance has ever been granted by the BOH to be exempted from connection. The situations we have encountered to date have all been pretty clear cut—if at all possible, you'll be ordered to connect.

PREBLE COUNTY HEALTH DEPARTMENT

Houses that aren't connected to public sewer but are accessible is not a wide-spread problem as the county is very rural and they only have the small City of Eaton and a few villages with public sewer. If they do discover a home that is accessible to sewer, they would do what we do. The home is not eligible for an operation permit. The property owner could ask for a variance from rule. The BOH must consider the variance as staff do not have authority to grant variances.

The Ohio EPA has ordered Preble County to supply public sewer to the unincorporated area called Glenwood as a result of the surface water testing and threat to drinking water. Glenwood is located along Rt 35 between West Alexandria and Eaton. The Preble County Health Department has been asked to assist with that project. Several residents are resistant.

MERCER COUNTY HEALTH DISTRICT

I wanted to let you know that you're not alone in this issue. We are actually in the process of creating a policy for this, so that we can be consistent with how we handle situations (as much as possible – I know every situation can be different). We still encounter situations in which homes that we thought were connected to sewer turn out, to our surprise, to have been somehow missed 20 years ago when the sewers went in. It's actually more common than we had ever thought. As we are progressing in our O & M roll-out, we're finding more of them. Our plan is to definitely do a thorough assessment of "access", erring more on the side of property owner rights – as long as the system is in good condition and not creating a nuisance. The problem is how to determine "undue adverse economic impact" for the property owner. We kind of try to compare what the estimated cost of connecting to the sewer would be vs. the typical cost of installation of a sewage system. If the sewer is cheaper, then we would lean more on enforcing connection. There are just so many factors involved in these determinations. But to answer your question about the issuance of an operation permit – yes – it is an either / or situation. Either they can keep their septic system (and in that case must get an operation permit) or, connect and abandon the current one.

WARREN COUNTY COMBINED HEALTH DISTRICT

Currently I am not aware of particular addresses that are accessible that have not connected. Typically, as soon as a purveyor makes note of a property they think is accessible they will let us know and we will issue orders to connect. I believe our board would be accepting of the option of granting a variance for those that would have difficulty connecting, however, we have been able to overcome some issues through the use of Ohio EPA WPCLF funds for qualifying applicants.

We currently do not have an updated list which would allow us to not issue operating permits. At this time we don't have a process like that, but I think that or issuing a modified permit with requirements to tie in within a certain timeframe might be a good way to prompt connection. Please let me know if you hear anything else back of interest from other agencies.

MIAMI COUNTY HEALTH DISTRICT

Notes from telephone conversation: Miami County issues operation permits with no regard to availability of public sewer. The sewer providers haven't shared where the sewer lines are. The only way they know about homes that have septic systems but have sewer available is when they get a pumping report. He said the Village of Bradford bills everyone for sewer even if the home is not connected to sewer. They believe the EPA allows commercial discharging systems to continue to operate where sewer is available so they are not going to push the issue. He said it's totally different in Miami vs. Greene where he used to work.