



Sewer District's Regional Stormwater Management Program Gets Green Light from Ohio Supreme Court

Cleveland (September 15, 2015) – Today, the Ohio Supreme Court ruled in favor of the Northeast Ohio Regional Sewer District's appeal concerning the Regional Stormwater Management Program. The Sewer District, under Ohio Revised Code Chapter 6119 and founding charter, is not only authorized to manage stormwater, but impose a fee for that purpose.

The Regional Stormwater Management Program is designed to address flooding, streambank erosion and water quality issues throughout much of Northeast Ohio.

"This is a great victory for the region," said Darnell Brown, President, NEORS D Board of Trustees. "Stormwater is causing damage and inter-community flooding problems, and we can now tackle this growing problem with a regional solution."

The Supreme Court was asked to hear two Propositions of Law:

- **Proposition of Law No. 1:** "A district formed pursuant to [Ohio Revised Code] Chapter 6119 is authorized to manage stormwater which is not combined with sewage, and to impose a charge for that purpose. Such a charge is one 'for the use or service of a water resource project or any benefit conferred thereby.'"
- **Proposition of Law No. 2:** "When a Petition and Plan of Operations grant a [Ohio Revised Code] Chapter 6119 district the authority to operate storm water handling facilities, that District is authorized to create and implement a regional stormwater management program, including imposing appropriate charges to operate that program."

Ruling in favor of the Sewer District were Justices Paul E. Pfeiffer, Judith Ann Lanzinger, William M. O'Neill and Chief Justice Maureen O'Connor. Justices Sharon L. Kennedy and Terrence O'Donnell dissented. Justice Judith L. French concurred in part and dissented in part.

"There are many sound policy reasons to support or oppose the creation of the Sewer District's regional stormwater-management program and its attendant fee structure," writes Justice Pfeiffer in the ruling. "In our view, the statute plainly indicates that 'waste water' comes in two forms. One is 'any storm water.' The other is 'any water containing sewage or industrial waste or other pollutants or contaminants derived from the prior use of the water.' There is no other plausible reading of the definition."

“We are pleased with the Ohio Supreme Court’s decision and the statewide impact it has for other similarly-governed agencies across the state,” said Marlene Sundheimer, Chief Legal Officer. “The Ohio Eighth District Court of Appeals’ prior ruling jeopardized stormwater programs throughout Ohio and now, without a doubt, we can continue to address large-scale stormwater problems on a regional basis.”

The prior court’s ruling suspended the Sewer District’s program, effectively terminating construction projects and maintenance work. All billing was suspended and collected funds were placed into escrow. Although the Sewer District will re-start the Regional Stormwater Management Program, a specific date – either for re-mobilize construction projects or resuming billing – has not yet been established.

“There is a tremendous amount of work required to resurrect this vital program,” said Frank Greenland, Director of Watershed Programs. “\$20 million in fees was collected before the program was suspended and we will work diligently to prioritize projects and resolve regional flooding and erosion problems.”

Court Case Timeline:

- **January 7, 2010:** The Sewer District filed the initial complaint for declaratory judgment, the same day the Sewer District’s Board of Trustees unanimously voted to adopt Title V, the section of the Sewer District’s Code of Regulations that details the Regional Stormwater Management Program. This court action asked the court to confirm the Sewer District’s authority to establish a stormwater utility.
- **April 21, 2011:** Cuyahoga County Court of Common Pleas Judge Thomas J. Pokorny issued his first opinion in the case of Northeast Ohio Regional Sewer District vs. Bath Township, Ohio, et al. (CV-10-714945). In this decision, Judge Pokorny ruled that Chapter 6119 of the Ohio Revised Code gave the Sewer District the authority to implement most of the Regional Stormwater Management Program. He also ruled that consent of member communities to participate in the program is not required.
- **February 15, 2012:** After a lengthy trial, Judge Pokorny issued his second opinion in the case. In this ruling, he ruled that the Sewer District’s Stormwater Management Program fee is authorized under Chapter 6119 of the Ohio Revised Code; the charges proposed are ruled a fee, and not a tax as the Defendants argued.
- **June 28, 2012:** Judge Pokorny issued his third and final opinion in the case. This final ruling acknowledged several recommended program changes the Sewer District made – most notably an increase to the Community Cost-Share Program to benefit member communities – by recommendation of the Judge.
- **September 26, 2013:** The Court of Appeals reversed Judge Pokorny’s decisions, finding that the agency does not have the authority under Ohio Revised Code Chapter 6119 – or its charter – to implement the Regional Stormwater Management Program under Title V or collect the associated stormwater fee. As a result of the appeals court ruling, the Sewer District suspended Regional Stormwater Management Program activities and the collection of stormwater fees for the program while the District pursued the appeal to the Supreme Court.

- **November 12, 2013:** The Sewer District asked the Supreme Court to hear the case. The Court of Appeals' prior ruling jeopardizes stormwater programs throughout the State of Ohio.
- **February 19, 2014:** The Supreme Court agreed to hear the case.
- **September 9, 2014:** The Sewer District argued its case before the Supreme Court.
- **September 15, 2015:** The Supreme Court of Ohio ruled on the case.

"Let's get this program back up and running and get some work done," said Julius Ciaccia, NEORS D CEO.

Updates will be provided to customers as soon as possible.

About the Program:

The Sewer District's Regional Stormwater Management Program will address flooding, erosion and water quality problems throughout its defined service area. In addition, the Sewer District will assume responsibility for millions of dollars of necessary maintenance along streams across the region.

The average homeowner within the Sewer District's Stormwater Service Area was charged \$5.05 per month, or \$60.60 per year, to pay for stormwater-related construction projects and maintenance. The Sewer District identified more than \$220 million of needed construction projects, and detailed planning on some projects has already begun. These stormwater-related projects will provide relief to multiple communities within each watershed. Several emergency projects were completed in 2013 and others were actively under construction. Projects with alternative funding sources are continuing until funds are exhausted, whereas other much-needed projects were immediately suspended.

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