

MEMORANDUM

TO: Sharon Rollins, Technical Consulting Administrator

FROM: Melissa Ashburn, Legal Consultant

DATE: April 12, 2005

RE: “Wastewater Treatment Facilities Management Agreement” and responsibility of the County Water and Wastewater Treatment Authority to maintain lateral sewer lines

The City entered into a Wastewater Treatment Facilities Management Agreement with the County Water and Wastewater Treatment Authority for the operation of the City’s wastewater facilities on October 31, 2003. The City actually transferred its facilities to the Authority pursuant to the Agreement. The Authority now claims that it is only responsible for the operation and maintenance of the “main” lines, not the lateral lines, although the City understood that all assets and liabilities of the wastewater facility were transferred to the Authority. You have asked me to review the Agreement and statutes and determine if lateral lines are included in the property transferred to the Authority.

Wastewater Treatment Facilities Management Agreement

Although the Agreement references an Exhibit B as containing a list of the facilities and equipment, no such list is attached to the contract, and we have been informed by the City that no list was ever attached to the Agreement. The City may not now go back and attach a list to the previously signed Agreement. We must rather look to the language of the Agreement itself and the applicable laws to determine what facilities were transferred.

In the preamble in which the Agreement purposes are stated, the Agreement states:

WHEREAS, the City currently owns interests in real property (“the Property”), which is utilized for wastewater collection and transport purposes, and operates and maintains thereon wastewater collector facilities, all of which property and wastewater treatment facilities, collectively termed “the Facilities,” is currently operated and maintained by the City...

The Agreement recognizes that the City owns interests in property used for “collection and transport purposes,” and such interests in property are referred to collectively as “the Facilities” throughout the Agreement. Note that the property included in the definition of “facilities” does

not exclude any property or interests in property held by the City. This language indicates that all of the City's interests and ownership in the "facilities" is subject to the Agreement.

In my opinion, the "interests in property" refer to right-of-ways in which the City has installed lines, both lateral and main. This opinion is supported by the following language appearing on page 4 of the Agreement:

It is the intent of the City to transfer complete ownership of all such facilities, including those now being developed, and to grant to the WWTa all property interests of the City, including sewer easements, and rights of access and use in all City right-of-ways as may be necessary for the purposes herein. (Emphasis added).

It is clear from this language that the City intended to transfer complete ownership of the facilities, including sewer easements. As sewer easements contain sewer lines, and there is no qualifying language indicating that some lines are not transferred, the Authority received all such lines under the Agreement. There is simply no language appearing in the Agreement which can be interpreted as limiting the types of sewer lines transferred to the Authority.

In another section of the Agreement, found on page 4 and titled "*Transfer and Acceptance of the Facilities*," the conveyance of the facilities from the City to the Authority is discussed. This is the section of the contract that discusses "Exhibit B," the document that was not attached to the Agreement, according to the information we have been given. In this section, the City retains ownership of a parcel of real property at a specified location, which is leased to a third party. No other exception to the blanket transfer of "facilities" is mentioned in any other section of the contract. The above quoted sections from the Agreement are clear that *all* of the City's rights, ownership and interests in the facilities are transferred to the Authority.

The Agreement further states:

WHEREAS, to enable the WWTa to rapidly accomplish these purposes, the City will transfer its Facilities to the WWTa, and the WWTa will assume operational authority and responsibility for the collection, transport and discharge of wastewater in the City all as authorized by the Act and other provisions of state law...

"Facilities," as defined earlier in the Agreement includes right-of-ways involved in "collection and transport." There is nothing to indicate that lateral lines are not included in the "facilities" transferred to the Authority by the City. The term "collection" as used in this paragraph is another example of the Authority's responsibility over all sewer lines under the contract. There is no exception to the Authority's responsibility over "collection" of wastewater, leading to the conclusion that the activity of collection of wastewater is wholly the responsibility of the Authority. It necessarily follows that all lines, both main and lateral, are now the property of the Authority, and the City has no obligation, legally or contractually, to maintain those lines.

Applicable Tennessee Laws

The first page of the Agreement, in the second paragraph, states: “The parties enter into the Agreement pursuant to authorizations provided in state law, including, but not limited to, the provisions of the Water & Wastewater Treatment Authority Act (“the Act”)...” This Act is found at *Tennessee Code Annotated* 68-221-601, et seq., although it is important to note that the contract anticipates other state laws will apply, by using the term “including, but not limited to...” The Act defines “treatment works” as:

“Treatment works” means any devices and systems used in the storage, treatment, recycling and reclamation of sewage or industrial wastes of a liquid nature to restore and maintain the chemical, physical and biological integrity of the state’s waters, or any devices and systems used in the treatment and distribution of water, including intercepting sewers, outfall sewers, *sewage collection systems*, water storage facilities, water transmission lines, pumping, power *and other equipment, and their appurtenances, extensions*, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled supply, such as standby treatment units and clear well facilities, and any works. T.C.A. 68-221-603(9). (emphasis added).

The definition does not differentiate between lateral lines and main lines, but does clearly refer to such lines as part of the “treatment works” authorities are required to manage and maintain under the Act. There is no language contained in the Act which authorizes a city to only transfer a portion of the treatment works to the authority for operation. The municipality is rather required to provide for the “orderly transfer to the authority of the treatment works properties, functions, services area and outstanding obligations.” T.C.A. 68-221-1304(e)(1). Cities therefore lack the authority under the statute to exclude lateral lines or other portions of the “treatment works” when transferring facilities to wastewater treatment authorities.

Another statute which is applicable to wastewater and sewer systems in Tennessee is the Wastewater Facilities Act, which contains the following definition:

“Wastewater facility” means any facility, including the reserve capacity thereof, *whose purpose is to collect, store, treat, neutralize, stabilize, recycle, reclaim or dispose of wastewater*, including treatment or disposal plants, interceptors, outfall, and outlet sewers, pumping stations, equipment and furnishings thereof *and their appurtenances which are necessary to accomplish the foregoing purposes*. T.C.A. 68-221-1003(9)(A). (Emphasis added).

As both of the above state code definitions use the word “appurtenances,” we must look to the definition of that term. It is not defined in the statutes, so the common definition applies.

Webster’s Third New International Dictionary contains the following definition:

appurtenance: 1: an incidental property right or privilege (as to a right of way, a barn, or an orchard) belonging to a principal right and passing in possession with it **2:** a subordinate part, adjunct, or accessory **3 appurtenances pl:** accessory objects used in any function

Applying the common definition of “appurtenances,” which is appropriate as no other definition

is provided in the Code, the term clearly includes all accessories, property rights and privileges necessary to carry out wastewater treatment. Interestingly, the definition above mentions “right of way” and uses the words “belonging to a principal right *and passing in possession with it.*” It is necessarily implied that when a right is transferred, all privileges pass along with that right. So, if sewer lines are transferred, the entity receiving those lines inherits the city’s right to use the right of way.

Without a specified exclusion appearing in the Agreement, “appurtenances” therefore includes all sewer lines, both main and lateral. The definition contained in the Wastewater Facilities Act states that all “appurtenances” necessary for the facility to collect wastewater are included in the definition of “wastewater facility.” Wastewater cannot be collected without lines, both main and lateral lines, so this definition necessarily includes all such lines.

Based on the language quoted above from the Wastewater Treatment Authority Act and the Wastewater Facilities Act, it is clear that both of these statutes include sewer lines as part of the “treatment works” and “wastewater facilities” defined and governed by these laws. There is no language contained in these statutes which removes lateral sewer lines from the definitions employed.

Another statute which is applicable to the Agreement is contained in the general Water and Sewerage Act, found at *Tennessee Code Annotated* 68-221-101, et seq., which includes the provisions of the Wastewater Treatment Authority Act. In these statutes, the following provision governing wastewater treatment authorities appears:

If a water and wastewater treatment authority, created pursuant to part 6 of this chapter:
(A) Owns a sanitary sewer funded in whole or in part through a grant obtained under this part; and
(B) Installed the sanitary sewer, contracted with an entity to install the sanitary sewer, *or such sanitary sewer was conveyed to the authority after installation;*
Then *such authority is responsible for maintaining the sanitary sewer and building service, including couplings and fitting thereto, to which the building lateral sewer of the residential or commercial customer is connected.* In no event shall a residential or commercial customer be responsible for maintaining that portion of any lateral or connection that is located beyond the property line of such customer. T.C.A. 68-221-209(b)(1). (Emphasis added).

This section of the law is applicable to the Agreement, as the sewer system has been conveyed to the Authority under the Water and Wastewater Treatment Authority Act, noted as “part 6 of this chapter” above. The Agreement specifically cites to that portion of the state code, so the Authority cannot argue that this law does not apply. The statute clearly states that the authority is responsible for maintaining the lateral lines up to the property line of the customer. As the Agreement did not contain any language seeking to modify this responsibility, the Authority has the legal obligation to maintain those lateral lines that run to customers in Red Bank.

TDEC Facilities Permit

The Tennessee Department of Environment and Conservation permit issued to the City for the operation of its wastewater treatment facility contains the conditions and requirements under which the system must be operated by the Authority. The permit defines “collection system” as including “septic tanks, pump tanks, and *sewer lines*.” Page 2, TDEC Facilities Permit (emphasis added). The operation of the collection system is governed by the permit, and it is the legal duty of those operating the facility to comply with the requirements of the permit when discharging wastewater to the Chattanooga collection system. The permit requires that the facility operator “shall at all times properly operate and *maintain all facilities and systems (and related appurtenances) for collection and treatment...*” Page 3, TDEC Permit (emphasis added).

The permit does not state that lateral lines are not included in the mandate that the collection system be maintained, but rather specifies that all sewer lines are considered part of the system to be maintained by the permit holder. When entering into the Agreement with the County Water and Wastewater Treatment Authority, the City transferred this permit for the operation of the facility. The Authority is therefore legally bound to abide by the permit requirements, including the maintenance of sewer lines. In fact, page 5 of the Agreement states that the Authority agrees to comply with all obligations of the permit. It is clearly the position of TDEC that the Authority must maintain all sewer lines.

Conclusion

In my opinion, the Agreement provides that all of the wastewater facilities previously owned by the City, including all lateral and main sewer lines, was transferred to the Authority and the Authority has the responsibility to maintain those lines. There is no language contained in the Agreement to support the Authority’s position that the lateral lines were not transferred.

Furthermore, state law makes it clear at *Tennessee Code Annotated* 68-221-209(b)(1), quoted above, that the responsibility to maintain lateral sewer lines up to the customer’s property line rests with the Authority. The TDEC permit under which the facility is operated further places responsibility on the operator, the Authority, to maintain all sewer lines as part of the collection system.

It is clear that the County Water and Wastewater Treatment Authority has the legal and contractual obligation to maintain all sewer lines, including lateral lines, connected to the City treatment facility.