

UTILITIES

*Shut-offs, Liens,
and More*

ILMCT Fall District Meeting

October 28 & 29, 2020



Discontinuance of Service – When & How



Statutory References for Discontinuation of Water Service

- [IC 8-1-5-3-4](#)
- [IC 36-9-23-6](#)
- [IC 36-9-25-11.5](#)

All are relative to nonpayment of wastewater services

We aren't aware of any statutory authority or process for the discontinuation of water service for nonpayment of water billing.

Discontinuance of Service – When & How



IC 8-1.5-3-4(d) states:

“The board may discontinue water service by a waterworks to:

- (1) a water consumer; or
- (2) any property;

upon failure by the water consumer or the property owner to pay charges legally due for sewer or sewage disposal plant service. However, the water service may not be discontinued for nonpayment of sewer or sewage disposal plant service charges until the charges have been due and unpaid for at least the time fixed by the board governing the sewer or sewage disposal plant service.” [Emphasis added]

Discontinuance of Service – When & How



IC 8-1.5-3-4(e) states:

“Before water service is discontinued under subsection (d), the board must give written notice to the water consumer or property owner of its intention to discontinue water service if the unpaid sewer or sewage disposal plant service charges are not paid before a date specified in the notice. The notice must be mailed not less than ten (10) days before water service is to be discontinued and addressed to the water consumer or the property owner at the consumer's or owner's last known address.” [Emphasis added]

Discontinuance of Service – When & How



IC 36-9-23-6(d) provides a sewage works governing body may contract with a water utility to:

- (1) ascertain the amount of water consumed,
- (2) compute the bill for sewer services,
- (3) bill and collect payment for the sewer services, and
- (4) discontinue water service to a delinquent account

Furthermore, IC 36-9-23-6(e) states:

“The procedures in IC 36-9-25-11.5(a) through IC 36-9-25-11.5(e) apply to the discontinuance of water service to a delinquent sewer user under a contract between the board and a water utility described in subsection (d).”

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Discontinuance of Service – Sanitation Departments



IC 36-9-25 applies:

- To a 2nd class city in a county with population between 111,000 and 115,000 (Delaware Co.)
- In a county with population between 400,000 & 700,000 (Lake Co.)
 - cities and towns who have adopted 36-9-25 by ordinance

IC 36-9-25-11.5(b) – Fees not paid by established time, notice sent to delinquent user notifying of the delinquent amount and water service may be disconnected.

IC 36-9-25-11.5(c): - User fails to pay the delinquent amount, the board shall give written notice to the water utility to discontinue water service.

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Discontinuance of Service – Electric & Gas



Local Rate Ordinance:

- Should define when payments are due, how they can be paid, and when shut-offs occur

IC 8-1-2-121 – No residential shut off for electric and gas customers who are eligible for and have applied for help from a heating assistance program under IC 4-4-33.



www.wessexwater.co.uk

➤ **Exceptions** (*subsection e*):

- **Dangerous conditions**
- **Court Order**
- **Customer using service fraudulently**
- **Evidence meter tampered with**

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Discontinuance of Service – Electric & Gas



IC 8-1-2-121(b)

- Customer given opportunity to enter into a reasonable amortization agreement
- Agreement has to give customer a chance to apply for public assistance benefits
- Subject to amendment on customer's request if there is a change in customer's financial circumstances

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Discontinuance of Service – Electric & Gas



IC 8-1-2-122

- If service is being terminated, can't be turned off until 14 days after notice is served
- Language in the notice must be clear and concise
 - ❖ Date to be terminated
 - ❖ Reason
 - ❖ Phone number customer can call
- Notice mailed or personal delivery
- Notice can't be served before the date the account is delinquent

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Discontinuance of Service – Notification



A court ruling from a case in March 2012 found that a customer facing the discontinuation of water service:

- ✓ Must be adequately notified; and
- ✓ Must be given an opportunity to be heard *before* disconnection

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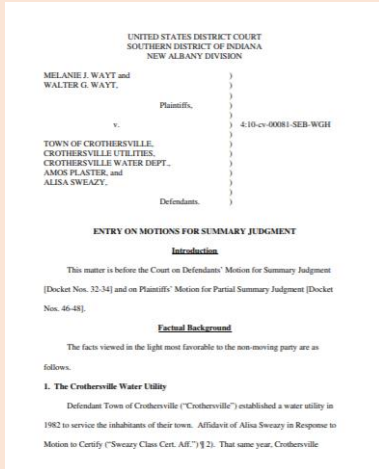


Discontinuance of Service – Notification

Wayt & Wayt v. Town of Crothersville

Heard and decided in U.S. District Court for the Southern District of Indiana, New Albany Division

- Plaintiff's 14th Amendment rights violated because they were not afforded adequate notice and an opportunity to be heard

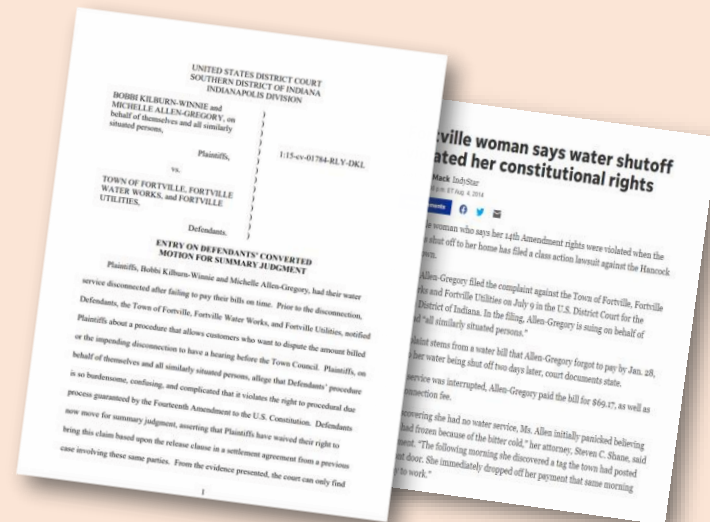


<https://cases.justia.com/federal/district-courts/indiana/insdce/4:2010cv00081/29470/63/0.pdf?ts=1376971922>

Discontinuance of Service – Notification



- Similar to Crothersville
- Generated media coverage
- Case was settled out of court



Discontinuance of Service – Notification



As a result, SBOA recommends and advises:

- **Consultation with your attorney regarding disconnect notifications and these cases**
- **Printing a shutoff date on a billing form is *not* considered proper notice**
- **A separate disconnect notice be send to a delinquent **water**, **electric**, or **gas** customer**
- **Separate notice communicate:**
 - Disconnection due to nonpayment is pending
 - Customer has a right to a hearing before the utility governing body

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Discontinuance of Service – Notification



City of Salem adopted a resolution for conducting a hearing

- Resolution mentions Crothersville case
- States in part:

“BE IT FURTHER RESOLVED that any person who is delinquent on their combined water/sewer bill and is subject to disconnection for nonpayment thereof must be notified of their right to a hearing before the Salem Water Works Management Committee, consisting of the Mayor, Utility Office Manager, and the Water Work Superintendent, to determine the appropriateness of the disconnection.”

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Discontinuance of Service – Notification



City of Salem’s resolution continues:

“BE IT FURTHER RESOLVED that if a Salem Municipal Utilities customer desires to request a hearing contesting the fairness of disconnection for nonpayment of their combined water/sewer bill, the customer must request such hearing in writing at the Office of the Salem Municipal Utilities, 201 E. Market Street, Suite 106, Salem, IN 47167, within seven (7) business days after the date of the mailing of a disconnection notice.”

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Wastewater Lien Process



Statutory References for Delinquent Wastewater Accounts & Recording Liens

- [IC 36-9-23-31](#)
- [IC 36-9-23-32](#)
- [IC 36-9-23-33](#)
- *Dept of Sanitation: IC 36-9-25-11*

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Wastewater Lien Process



IC 36-9-23-31

- ✓ **Fees assessed not paid by due date = delinquent**
- ✓ **Penalty of 10% attaches to the delinquent fees**
- ✓ **Fee, penalty, & attorney fees may be recovered in civil action**



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Wastewater Lien Process



IC 36-9-23-32

- ✓ **Fees assessed constitute a lien & attach when recorded with the county recorder**
- ✓ **Superior to all other liens (except tax liens)**
- ✓ **Attach to property occupied by someone other than owner only**
 - ❖ Owner notified by mail < 20 days after fees delinquent 60 days
 - ❖ First class mail or certified with return receipt (or equivalent service)
 - ❖ Sent to address of property owner on file with County Auditor or to another address specified by owner (mailing costs are administrative costs that can be billed to owner)

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Wastewater Lien Process



IC 36-9-23-32 (continued)

- ✓ **Provides an “except as otherwise provided” in an ordinance adopted under IC 36-9-23-25(f)(3):**
 - ❖ Fees assessed do *not* constitute a lien against property occupied by someone other than the owner if council adopts an ordinance stating so
- ✓ **Property sold? – Fees not enforceable as a lien against subsequent owner unless lien was filed before the conveyance to subsequent owner**
(subsection b)
 - ❖ Notify prior owner – inform payment due < 15 days. If payment not made within 180 days, governing body can write off as bad debt

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Wastewater Lien Process



IC 36-9-23-33

- ✓ **Officer charged with collection shall enforce payment** (subsection c)
- ✓ **Prepare list of delinquent fees** (subsection c)
- ✓ **Record with County Recorder** (subsection d)
- ✓ **Officer mails to each property owner that lien has been recorded** (subsection d)
- ✓ **Counties other than Marion:**
 - ❖ Service Charge (\$5) is added (subsection d)
 - ❖ Officer (within 10 days) certifies to County Auditor a list of unpaid liens for collection with the next May installment of taxes (subsection f)

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Wastewater Lien Process



Record:

- ✓ **Delinquent amount**
 - Can include account balance plus cost of mailing notice
- ✓ **Recording fees**
 - Record and release fees
- ✓ **Service Charge** - \$5.00
- ✓ **No “administrative fee”**
- ✓ **Contact County Recorder to ensure what they expect and what you need to file**
 - Might save you a trip

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Wastewater Lien Process



IC 36-9-23-33 (continued)

- ✓ **After certification to County Auditor, the Officer may *not* collect or accept delinquent fees, penalties, etc.** (subsection i)
- ✓ **What happens next? – Delinquent amounts recorded and certified are**
 - ❖ entered on the tax duplicate for the municipality,
 - ❖ billed to the property owner during the next property tax cycle, and
 - ❖ collected as with any other property tax (subsection h)
- ✓ **County Auditor pays over to municipality amounts collected (less service charges & certification fees)** (subsection k)

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Wastewater Lien Process



IC 36-9-23-33 (continued)

- ✓ **The governing board may write-off a delinquent fee & penalty that is less than \$200** (subsection m)



*a purchaser who, in the manner prescribed by section 32(a) of this chapter, files a verified demand with the court.
 (m) A board may write off a fee or penalty under subsection (b) that is for less than two hundred dollars (\$200).
 (The Local Government Reorganization Citation: 19, 2, 5, 24.1)*



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