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A \$6 Million Reminder to Observe Corporate Formalities: Environmental Prosecutors Pierce Another Corporate Veil with Ohio Decision

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By: [Timothy A. Wilkins](#)

With ever-growing concern about environmental liability exposures, many shareholders rely on corporate structures – both simple and complex – to help insulate themselves from direct responsibility for the acts and omissions of the companies they own.

Establishing that structure is only the first step in obtaining the desired protection. Last week's decision by an Ohio appeals court is just the latest reminder that enforcers of the environmental laws, both public and private, will pursue funds for penalties and cleanups wherever they may be found and that the failure to observe corporate formalities can help them hit shareholders directly in the pocketbook.

Long-standing precedents in environmental law – including under the Comprehensive Environmental Response, Compensation and Liability Act's joint and several cleanup liability scheme – recognize the general validity of corporate law protections for shareholders. See, e.g., *United States v. Bestfoods*, 524 U.S. 51 (1998). But these protections require the protected shareholder to act like one at all times. And if there are no other deep pockets readily available, environmental enforcers won't hesitate to try to reach behind the corporate veil and seek penalties or remediation funds directly from shareholders. In *State ex rel. Petro v. Pure Tech Sys., Inc.*, 2015-Ohio-1638 (App. 8th Dist. 2015), the Ohio Appellate Court was just the latest to uphold a judgment against a corporate shareholder based on his failure to follow corporate formalities.

In *Petro*, the Ohio Court described the shareholder's involvement as follows:

Kattula had a company, Mason Plastics, Inc., an Ohio corporation formed in 1998 and of which Kattula was the sole shareholder, purchase the Research Oil assets from Finova. Mason Plastics then transferred the assets to another of Kattula's businesses, appellant Pure Tech. Pure Tech was registered as an Ohio corporation on July 15, 1999, and the assets were transferred to it on July 26, 1999. Kattula was Pure Tech's sole shareholder.

Applying a test for piercing the corporate veil similar to those applied in most other states,¹ the court found that “Kattula exercised control over the appellant corporations in such a manner that it would be fraudulent not to hold him personally accountable for the violations at issue here”. Among the facts the court claimed in support of this conclusion were the following:

- Kattula entered into a consent order as president of Pure Tech with the city of Cleveland to address numerous violations at the Rockefeller facility.
- Kattula was in complete control of Pure Tech, K&B, Research Oil, TAJ, and Mason.
- He was the sole shareholder of at least Mason and Pure Tech, and K&B was his family's business.
- He used these companies to conduct his personal dealings.
- K&B conducted significant business activity in Ohio, including purchasing Pure Tech's assets and sale of the assets to GEM before it was even registered as a business in Ohio.
- TAJ engaged in real estate transfers with Research Oil prior to being registered as an Ohio business.
- Kattula personally paid \$1.5 million to GEM for environmental corrective actions.
- He conducted business for the companies on his own personal stationery.
- Kattula diverted or commingled the companies' corporate assets for personal use. Examples of this include Kattula:
 - conveying the Rockefeller Avenue property to TAJ, an entity that, at the time, was his wife's business (it was not registered as an Ohio business at the time);
 - transferring the Rockefeller Avenue facility from TAJ back to appellant Research Oil without a corporate resolution; and
 - seeking personal reimbursement from a private insurance policy established by Research Oil for closure services, despite his claim that TAJ performed the closure of Research Oil and Pure Tech's facility.

The ultimate result was a \$6.1 million dollar penalty judgment applicable directly against Kattula, notwithstanding the layered corporate structure which would have appeared to be insulating him from liability.

The moral of this story, of course, is to ensure that corporate entities always observe corporate formalities, wear the proper hat at all times, and ensure that corporate actions are always properly authorized and documented – agencies often look for additional deep pockets and

will not infrequently attempt to reach behind the corporate veil for assets to satisfy penalties or cleanup liabilities. Please don't hesitate to contact us if you have questions or concerns about issues of corporate form and formalities or if you would like a review of your practices and current operations to help maximize your legal protection.

¹ "The corporate form may be disregarded and individual shareholders held liable for wrongs committed by the corporation when (1) control over the corporation by those to be held liable was so complete that the corporation has no separate mind, will, or existence of its own, (2) control over the corporation by those to be held liable was exercised in such a manner as to commit fraud or an illegal act against the person seeking to disregard the corporate entity, and (3) injury or unjust loss resulted to the plaintiff from such control and wrong."