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March 11, 2005

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MAR 15 2005
OHIO E.P.A.
N.W.D.O.

Nicole Cantello
Office of Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

RE: City of Lima, Ohio Docket No.: V-W-05-AO-08

Dear Ms. Cantello:

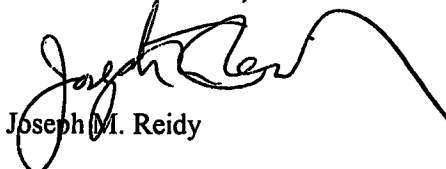
As indicated in my February 18, 2005 letter and our subsequent telephone conversation, the City of Lima (City) is unable to meet the deadlines imposed in the February 7, 2005 Order. As you know, that Order required the submission of a detailed Sanitary Sewer Overflow Elimination Plan (SSOEP) within 30 days of its receipt. The City is working on its SSOEP, but does not anticipate completing it until approximately June 20, 2005. We will submit the SSOEP to U.S. EPA and Ohio EPA as soon as it is completed.

The Order also required the City to begin sampling its SSOs for fecal coliform, e-coli and ammonia, which is something the City had not been doing historically (only CSOs were sampled). The City has identified representative SSOs, which they will begin sampling this month, and are working with their consulting engineers to determine if there is a reliable method to sample its other SSOs. Per the Order's requirements, the City will be submitting Compliance Progress Reports as it collects sampling data on its SSOs.

We will continue to advise you as we work to address the City's elimination of its SSOs and CSOs. If you have any questions, please call me directly.

Very truly yours,

SCHOTTENSTEIN, ZOX AND DUNN


Joseph M. Reidy

cc: David J. Berger, Mayor
Gary Sheely, Director of Utilities
Tony Geiger, City Attorney
David Schnipke, Environmental Compliance Manager
Paul Novak, Ohio EPA, DSW-CO
Mark Mann, Ohio EPA, DSW-CO
X Tom Poffenbarger, Ohio EPA, DSW-NWDO
Stephen P. Samuels, Esq.

JOSEPH M. REIDY
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February 18, 2005

DELIVERY VIA FEDERAL EXPRESS

Jo Lynn Traub
Director, Water Division (WC-15J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

RECEIVED
FEB 23 2005
OHIO EPA
N.W.D.O.

RE: City of Lima, Ohio Docket No.: V-W-05-AO-08

Dear Ms. Traub:

I have been asked to respond to your February 7, 2005 letter and accompanying Order Pursuant to Sections 308 and 309(a) of the Clean Water Act ("Order") regarding the City of Lima's Sanitary Sewer Overflows ("SSO") and the general subject of wet weather discharges to the Ottawa River. The City of Lima takes these matters quite seriously and has been actively working with the Ohio EPA for a number of years to address them within the context of its NPDES Permits. However, while the City of Lima is committed to complying with the Clean Water Act and, specifically, the need to eliminate the discharge of untreated wastewater to the Ottawa River, it is unable to accept the Order as proposed.

The City of Lima understands and appreciates U.S. EPA's desire for an enforceable schedule to eliminate the discharge of untreated wastewater to the Ottawa River and to collect the information necessary to measure the City's progress on that schedule. Accordingly, the City of Lima is willing to negotiate a Consent Order with U.S. EPA in order to achieve this end. Assuming this is acceptable, please have your staff contact me to discuss this further.

Very truly yours,

SCHOTTENSTEIN, ZOX AND DUNN

Joseph M. Reidy

cc: David J. Berger, Mayor
Gary Sheely, Director of Utilities
Tony Geiger, City Attorney
Paul Novak, Ohio EPA, DSW-CO
Mark Mann, Ohio EPA, DSW-CO
X Tom Poffenbarger, Ohio EPA, DSW-NWDO
Stephen P. Samuels, Esq.

EPA order could drive sewer rate increase

By JIM SABIN

419-993-2091

jsabin@limanews.com

LIMA — Upgrading Lima's sewer system to comply with federal orders could cost up to \$147 million — and still fix only half of Lima's flooding problems.

The U.S. Environmental Protection Agency ordered the city to eliminate all overflows from its sanitary and combined sewer systems, whether they're flowing into the Ottawa River, creeks or even basements, Lima Utilities Director Gary Sheely said. Paying for the necessary work could result in an 83 percent increase in sewer rates during the next four years.

"There is no doubt that a sanitary sewer overflow is a violation of the Clean Water Act as we know it," Sheely told members of Lima City Council's Utilities Committee on Tuesday.

The EPA served its ruling on the city Feb. 7, and gave the city 15 days to certify that it will comply with the order; 30 days to submit a plan for complying; and 180 days to implement the plan.

Committee members Tom Tebben, John Nixon and Kyle Lewis voted to support the administration's efforts to comply with the EPA's order.

For years, the city has been weighing its options, whether it should build oversized holding tanks to catch extra water or overhaul the city's sewer lines, including those on private property, to keep storm water out of the sanitary system.

Sheely recommended the holding tank option, which would cost about \$72 million. However, borrowing the money on a 30-year loan could drive the cost up to about \$147 million.

The problem is, simply keeping storm water out of the sanitary system won't be enough, Sheely said. Doing that would cause increased street flooding and basement flooding during storms, though at least the water would be clean.

To fix the storm sewer system as well, he recommended the creation of a separate utility that would collect a fee dedicated to storm sewer upgrades. The Utilities Committee plans to refer that question to the Public Works Committee for discussion, with members saying it would be easier to upgrade both systems at once, and possibly cheaper, as well.

Paying for just the sewer portion would hurt people on the system financially, including those in the Allen Water District, Sheely said. The department projected increases of 35 per-cent in 2006, 30 percent in 2007, 15 percent in 2008, and 3 percent in 2009 to raise the money. That would take an average sewer bill of \$30 per month to \$50 per month, he said.

"It pulls \$3.8 million out of our economy and puts it into our sewers," committee chairman Tebben said.

Sheely said the department will file a letter of intent to comply with the order. Further action would likely be taken after public hearings, he said.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

RECEIVED
FEB 10 2005

OHIO E.P.A.
N.W.D.O.

REPLY TO THE ATTENTION OF:

WC-15J

FEB 07 2005

CERTIFIED MAIL 7001 0320 0006 0292 5151
RETURN RECEIPT REQUESTED

Mr. David J. Berger
Mayor of Lima
Lima Municipal Center
50 Town Square
Lima, Ohio 45801

Subject: Order Pursuant to Sections 308 and
309(a) of the Clean Water Act
Docket No.: V-W-05-AO-08

Dear Mayor Berger:

Enclosed is the above-referenced Administrative Order issued pursuant to Sections 308 and 309(a) of the Clean Water Act.

Compliance with the terms of this Order is required within the time period specified in the Order. Failure to comply with the Order may subject the City of Lima to further enforcement action pursuant to Title 33 U.S.C. § 1319.

If you have any questions concerning this matter, please contact Kate Balasa of my staff at (312) 886-6027.

Sincerely yours,

% Lynn Traub
Director, Water Division

Enclosure

cc: Tom Poffenbarger, Division of Surface Water, Ohio EPA

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**THE CITY OF LIMA
LIMA, OHIO**

**NPDES PERMIT NO. OH0026069
LIMA, OHIO**

**PROCEEDING UNDER SECTIONS 308
AND 309(a) OF THE CLEAN WATER ACT,
AS AMENDED**

) **DOCKET NO. V-W- 05- A0-08**
)
) **FINDINGS OF VIOLATIONS,**
)
) **ORDER FOR COMPLIANCE**
) **AND**
) **REQUEST FOR INFORMATION**
)
)
)

STATUTORY AUTHORITY

The following FINDINGS are made and REQUEST and ORDER issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (U.S. EPA) under Section 309(a) of the Clean Water Act (CWA), 33 U.S.C. §1319(a). The Administrator has delegated this authority to the Regional Administrator of U.S. EPA, Region 5, who has duly redelegated this authority to the undersigned Director, Water Division, U.S. EPA, Region 5, who hereby issues this Findings and Order. Access to the records described herein must be provided notwithstanding the possibility that the records contain information that may be characterized as confidential information or trade secrets. Should you so request, however, any information (other than public information) which the Administrator of this Agency determines to constitute methods, processes, or other business information entitled to protection as trade secrets will be maintained as confidential or trade secret. Request for confidential treatment must be made when information or access to records is provided, since any information

not so identified will not be accorded this protection by the Agency.

U.S. EPA has the authority to use the records and information contained therein in an administrative, civil or criminal action. There are significant civil and criminal penalties for failing to respond to requests issued pursuant to Section 308(a) in a timely, complete and accurate manner.

FINDINGS

1. The City of Lima, OH ("City"), owns and operates 120 miles of separate sewers and 204 miles of combined sewers and a Publicly Owned Treatment Works ("POTW") located at 1200 Fort Amanda Road, Lima, Ohio. The City uses 28 lift stations to convey sewage to the POTW.
2. The City of Lima is a person within the meaning of the definition set forth at Section 502(5) of the Act, 33 U.S.C. § 1362 (5).
3. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the Ohio Environmental Protection Agency ("OEPA") issued to the City of Lima a National Pollutant Discharge Elimination System ("NPDES") Permit No. OH0026069 ("Permit") on March 1, 2000. This Permit expires March 31, 2007.
4. According to OEPA records, Lima has 36 numbered sanitary sewer overflow ("SSO") discharge points in its separate system that discharge untreated sewage during wet weather to the receiving water. There are 6 additional SSO discharge points which are not numbered. These points are: (1) Rosedale at Ellison, (2) Burch at Ford, (3) Columbia at Allentown (SE of intersection), (4) Woodlawn at Ellison, (5) 418 S. Pears (MH 0-10)

and (6) Lakewood Avenue at Charles Street.

5. Pursuant to Part III, section 11 and 12 of Lima's NPDES Permit, unauthorized discharges, also referred to as bypassing or diverting of wastewater from the treatment works, are prohibited.
6. The Permit identifies its receiving water as the Ottawa River. The POTW discharges to the Ottawa River, which flows through the Auglaize River and the Maumee River into Lake Erie.
7. In its Discharge Monitoring Reports (DMRs), Lima has reported SSOs from 36 discharge points in the Permittee's sanitary sewer system resulting in discharge to waters of the United States in violation of the general prohibition in Part III, section 11 and 12 of the Permit, and Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311(a).
8. Section 308 of the CWA authorizes the Administrator to issue an information request to any person who is in violation of the CWA.
9. Section 309 of the CWA authorizes the Administrator to issue a Compliance Order or to commence a Civil Action for appropriate relief to any person who is in violation of the CWA.

ORDER AND REQUEST FOR INFORMATION

BASED ON THE FOREGOING FINDINGS and the authority vested in the undersigned Director, Water Division, Region 5, **IT IS HEREBY ORDERED:**

1. Within fifteen (15) calendar days of receipt of this Order, the City of Lima shall submit written certification of its intent to comply with this Order.
2. The Permittee shall immediately cease and desist all SSOs from all discharge points in its

sanitary sewer system.

3. If Permittee is unable to immediately cease and desist sanitary sewer overflows from all discharge points in its sanitary sewer system, the Permittee shall submit a detailed, written Sanitary Sewer Overflow Elimination Plan (SSOEP), within thirty (30) days of receipt of this Order for U.S. EPA approval. The SSOEP shall include the following: (a) a list of all SSO discharge points and a facility map which shows the locations of each SSO discharge point, (b) the frequency and magnitude in gallons of the discharge from the SSO discharge point, (c) any sampling results for each SSO discharge point, (d) any corrective measures taken by Lima to eliminate SSOs to date, (e) a plan to eliminate each sanitary sewer discharge and any previous plans developed to address the SSO problem, (f) a fixed date schedule for elimination of each SSO, (g) a description of capital costs and operation and maintenance costs of any improvements or construction which must be completed to eliminate SSOs and comply with the terms and conditions of the applicable NPDES permit. The SSOEP shall also eliminate any other sanitary sewer discharges, including those discharges to basements.
4. Within one hundred and eighty (180) days of receipt of this order, Lima shall implement the SSEP.
5. Within thirty (30) days of receipt of this Order, Lima shall begin sampling its SSO discharge points in accordance with paragraph 6.
6. From the date of receipt of this Order, for each precipitation event that causes a sanitary sewer overflow, an SSO discharge point that is discharging shall be grab sampled and analyzed for fecal coliform, e-coli and ammonia. Lima shall sample a variety of SSO

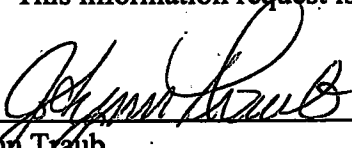
discharge points during the lifetime of this Order. Samples shall be taken and analyzed in accordance with 40 CFR Part 136.

7. Lima shall submit the SSO sampling data on a monthly basis in a Compliance Progress Report ("CPR"), which shall include detailed descriptions of the actions taken or completed in the previous month to achieve and maintain compliance with this Order. The CPR shall contain the results of the sampling program and the daily rainfall amount recorded on the closest rain gauge to the SSO discharge point within the sampling period. The Compliance Progress Report shall also include a copy of Lima's Discharge Monitoring Report for the month in question.
8. The submissions required by this Order shall be submitted to the Director, Water Division, Region 5, U.S. EPA, 77 West Jackson Blvd., Chicago, Illinois 60604-3590, Attention: Compliance Section, with a copy of all submittals to: (1) Nicole Cantello, Office of Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Blvd., Chicago, Illinois 60604-3590 and (2) OEPA, Division of Surface Water, P.O. Box 1049, Columbus, Ohio 43266-1049, Attn. Enforcement Coordinator. Any documents requested by this Order which have already been submitted to OEPA do not have to be resubmitted to OEPA.
9. The submissions required by Paragraph 1, 3 and 7 shall be accompanied by the following certification signed by an official or authorized agent:

I certify under penalty of perjury that the enclosed copies of records were generated under my direction or supervision in accordance with a system designed to assure that qualified personnel evaluated the United States Environmental Protection Agency's request for maintenance of and access to records and gathered and copied all records which were requested by the United States Environmental Protection Agency. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and making the enclosed copies, to the best of my knowledge and belief, the enclosed are true, accurate and complete copies of all

records requested by the United States Environmental Protection Agency. I am aware that there are significant civil and criminal penalties for submitting false or incomplete information, including the possibility of fine and imprisonment for knowing violations.

10. This information request is exempt from the Paperwork Reduction Act.



Jo Lynn Traub
Director, Water Division
U.S. Environmental Protection Agency
Region 5

2/7/05

Date

Attachment

AUTHORITY AND CONFIDENTIALITY PROVISIONS

Authority

Information requests are made under authority provided by Section 308 of the Clean Water Act, 33 U.S.C. 1318. Section 308 provides that: "Whenever required to carry out the objective of this Act, ...the Administrator shall require the owner or operator of any point sources to (i) establish and maintain such records, (ii) make such reports, (iii) install, use and maintain such monitoring equipment and methods (including where appropriate, biological monitoring methods), (iv) sample such effluent... and (v) provide such other information as he may reasonably require; and the Administrator or his authorized representative, upon presentation of his credentials, shall have a right of entry to...any premises in which an effluent source is located or in which any records...are located, and may at reasonable times have access to and copy any records...and sample any effluents..."

Please be advised that the submission of false statements is subject to federal prosecution under 18 U.S.C. §1001 and that this or any other failure to comply with the requirements of Section 308 as requested by U.S. EPA may result in enforcement action under the authority of Section 309 of the Clean Water Act, which provides for specified civil and/or criminal penalties.

Confidentiality

U.S. EPA regulations concerning confidentiality and treatment of business information are contained in 40 CFR Part 2, Subpart B. Information may not be withheld from the Administrator or his authorized representative because it is viewed as confidential. However, when requested to do so, the Administrator is required to consider information to be confidential and to treat it accordingly, if disclosure would divulge methods or processes entitled to protection as trade secrets (33 U.S.C. §1318(b) and 18 U.S.C. §1905), except that effluent data (as defined in 40 CFR §2.302(a)(2)) may not be considered by U.S. EPA as confidential.

The regulations provide that one may assert a business confidentiality claim covering part or all of any trade secret information furnished to U.S. EPA at the time such information is provided to the Agency. The manner of asserting such claims is specified in 40 CFR §2.203(b). In the event that a request is made for release of information covered by such claim of confidentiality or the Agency otherwise decides to make determination as to whether or not such information is entitled to such confidential treatment, notice will be provided to the claimant prior to any release of the information. However, if no claim of confidentiality is made when information is furnished to U.S. EPA, any information submitted to the Agency may be made available to the public without prior notice.

Note:

This information request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.