



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

SEP 29 2009

REPLY TO THE ATTENTION OF:

WC-15J

CERTIFIED MAIL 7001 0320 0006 0190 8193
RETURN RECEIPT REQUESTED

Honorable Deborah L. Sutherland
Mayor of Bay Village
350 Dover Center Road
Bay Village, Ohio 44140

Dear Mayor Sutherland:

I am writing with regard to the sewer system operated by the City of Bay Village ("City" or "you"). The U.S. Environmental Protection Agency is issuing an administrative order (Order) and request for information to the City of Bay Village, pursuant to Sections 309(a) and 308 of the Clean Water Act (CWA), 33 U.S.C. §§ 1319 and 1318. In the Order, EPA alleges that the City has violated the CWA.

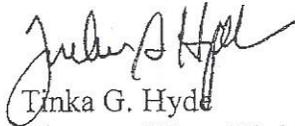
In March and April of 2009, representatives of EPA and the Ohio Environmental Protection Agency ("Ohio EPA") conducted a Sanitary Sewer Overflow ("SSO") inspection of the Rocky River, Ohio, waste water treatment plant ("WWTP") service area, to evaluate compliance with CWA provisions related to SSOs. The Rocky River WWTP operates as a joint venture among other cities, including Bay Village, in accordance with a joint venture agreement dated July 27, 1982, as amended. The City of Bay Village owns and operates its sanitary sewer system and individually bills its residents for usage.

Information gathered during the inspection and additional information provided by Ohio EPA demonstrates that the City had discharged untreated sanitary waste, in the form of SSOs, to Waters of the United States without obtaining the required permit.

Before the Order becomes effective, we are extending to the City the opportunity to present any relevant information that you believe we should consider. Relevant information might include evidence that the City experienced no violations of the CWA; evidence that the City relied on compliance assistance from EPA or Ohio EPA; or evidence that the EPA identified the wrong violator. Paragraph 27 of the Order explains how the City can take advantage of this opportunity.

If you have any questions or concerns, please contact Noel Vargas at either 312-353-3575 or vargas.noel@epa.gov. If you are represented by legal counsel, your counsel may contact Robert Guenther, Associate Regional Counsel, at (312) 886-0566 or guenther.robert@epa.gov.

Sincerely,



Tinka G. Hyde
Director, Water Division

Enclosure

cc: Mr. Paul Novak, Ohio EPA

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)

CITY OF BAY VILLAGE, OHIO,)

RESPONDENT.)

DOCKET NO.: V-W-09-AO-12

PROCEEDING UNDER
SECTIONS 308 and 309(a)
OF THE CLEAN WATER ACT

ORDER

STATUTORY AUTHORITY

1. The Director of the Water Division, U.S. Environmental Protection Agency (EPA), Region 5, makes the following **FINDINGS** and issues the following **ORDER AND REQUEST FOR INFORMATION** pursuant to the authority of the Administrator of EPA under sections 308 and 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1318 and 1319(a). The Administrator delegated this authority to the Regional Administrator, EPA, Region 5, who then re delegated the authority to the Director of the Water Division, EPA, Region 5.

2. Section 309(a)(3) of the CWA, 33 U.S.C. § 1319(a)(3), states that whenever the Administrator finds a person in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), she may issue an order requiring that person to comply with the requirements of the Act.

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants to the waters of the United States by any person except in compliance with a permit issued under the authority of the CWA.

4. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the Administrator to require the owner or operator of any point source to establish and maintain records, make reports, install, use and maintain monitoring equipment, sample effluent and provide any other information she may reasonably require to carry out the objectives of the CWA.

FINDINGS

5. The City of Bay Village is a municipality organized under the laws of the State of Ohio. The City maintains a system of sewers to convey sanitary sewage to treatment in the neighboring community of Rocky River, Ohio.

6. Cahoon and Wischmeyer Creeks flow through Bay Village and are tributaries of Lake Erie, a water of the United States and thus a "navigable water" pursuant to section 502(7) of the CWA, 33 U.S.C. § 1362(7).

7. Any constructed overflow point or other discrete fissure in Respondent's sanitary sewer system from which sewage has been or may be discharging constitute a "point source", pursuant to section 502(14) of the CWA, 33 U.S.C. § 1362(14).

8. Sanitary sewage is a "pollutant", pursuant to section 502(6) of the CWA, 33 U.S.C. § 1362(6).

9. On the following dates, the City of Bay Village discharged overflows of sanitary sewage from its sanitary sewage system:

EVENTS:

Date of SSO event	Location	Receiving water
7/1/09	Cahoon Park Sledding Hill Area storm manhole	Cahoon Creek
6/25/09	Glen Park (SSO 304)	Wischmeyer Creek
5/28/09	302 Aberdeen	Cahoon Creek
5/27/09	301 Lincoln	Cahoon Creek

10. The City of Bay Village, Ohio, has never held a permit issued under the authority of the CWA permitting the discharges described in the previous paragraph.

11. The discharges listed in paragraph 9, above, constitute discharges of pollutants from point sources to the navigable waters of the United States without a permit issued under the CWA and consequently are violations of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

ORDER FOR COMPLIANCE AND REQUEST FOR INFORMATION

12. **BASED ON THE FOREGOING FINDINGS** and the authority vested in the undersigned Director, Water Division, **IT IS HEREBY ORDERED** in accordance with sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), that Respondent complete the actions detailed in the following paragraphs.

13. Within 5 calendar days of receipt of this Order, Respondent must submit a written certification of its intent to comply with this Order.

14. Respondent must immediately begin forwarding copies of all notifications it makes to the Ohio Environmental Protection Agency ("Ohio EPA") under state law regarding the unauthorized discharge of sanitary sewage from its collection system to EPA at the following address:

Noel Vargas (WC-15J)
Water Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, Illinois 60604

15. Respondent must properly manage, operate, and maintain all parts of its sewer collection system at all times. This requirement includes:

- a. Providing adequate capacity to convey base flows and peak flows for all parts of the sewer system;
- b. Eliminating all known SSOs, continuing to monitor for the existence of new SSOs for all parts of the sewer system, and mitigating the effects of SSOs on human health and the environment;
- c. Notifying all parties who may be exposed to pollution associated with any overflow event.

16. Within five calendar days of receipt of this Order, Respondent must implement a procedure to report all SSOs from its sewers. This procedure must include:

- a. Notification to Ohio EPA (1-800-282-9378) and the Cuyahoga or Lorain Board of Health, as appropriate, within one hour of learning of the SSO. Notification will include the location of the SSO, the receiving water, if any, and an estimate of the volume of the SSO.
- b. A written report to Ohio EPA (with a copy to EPA) within five calendar days of the date Respondent became aware of the overflow. The written report must contain:
 - i. The location of the SSO;
 - ii. The receiving water, if any;
 - iii. An estimate of the volume of the SSO;
 - iv. A description of the sewer component from which the release occurred;
 - v. The estimated date and time when the overflow began and stopped or will be stopped;
 - vi. The cause or suspected cause of the overflow;

- vii. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the overflow and a schedule of major milestones for those steps; and
- viii. Steps taken or planned to mitigate the effects of the overflow and a schedule of milestones for those steps.

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17. Within 60 calendar days of receipt of this Order, Respondent must identify and implement an ongoing public notification program to inform the public of: the locations of any SSOs; SSO occurrences; the possible health and environmental impacts associated with SSOs; the potential health risks associated with contact recreation when bacterial levels are elevated; and potential impacts of SSO events on downstream public water supplies. At a minimum, the public notification program must include signs at recurring SSO locations, internet postings, billing inserts, and notice to potentially affected public water supply operators, as applicable.

18. Within 60 calendar days of receipt of this Order, Respondent must submit to EPA for approval an Overflow Emergency Response Plan that identifies measures to mitigate the impacts of any SSO and protect public health and the environment. In addition to the public notification program described in the preceding paragraph, this plan must include:

- a. a mechanism to ensure that Respondent is promptly made aware of all SSOs from the sewer system;
- b. procedures to ensure appropriate responses to SSOs, including ensuring that reports of overflows are immediately communicated to personnel for investigation and response;
- c. procedures to ensure that personnel are aware of and follow the Overflow Emergency Response Plan and are properly trained in that plan; and
- d. emergency operations procedures.

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19. Within 30 calendar days of approval by EPA, Respondent must implement the approved Overflow Emergency Response Plan.

20. Within one year of receipt of this Order, Respondent must submit to EPA for approval a sewer system evaluation survey (SSES), including a schedule for implementation of all cost-effective rehabilitation or replacement work. The goals of the SSES are to identify sources and quantities of clear water inflow and infiltration into all publicly- and privately-owned portions of Respondent's sewer system, take all feasible steps to eliminate the clear water entering the sewer system, and establish means of mitigating the impact of I/I on SSOs within Respondent's sewer system.

- a. At minimum, the SSES must include:

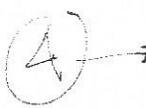
- i. an evaluation of the Respondent's entire sewer system;
 - ii. a physical survey of the sewer system and confirmation of the location, size, and capacity of all sewers, manholes, pump stations, overflow points, cross-connections with storm sewers, and any other appurtenances specific to Respondent's system;
 - iii. flow monitoring at all interceptors within the sewer system, at a minimum. This monitoring must adequately characterize collection system performance during wet and dry weather between February 15, 2010, and June 30, 2010. Flow monitoring also must be provided at all points of connection into downstream sewers owned by the City of Rocky River, at all known overflow points, immediately upstream of all pump stations, and at any other points deemed necessary to complete the rest of the evaluation detailed below;
 - iv. estimates of peak flows (including flows from SSOs that escape from the system) associated with wet weather conditions;
 - v. identification of the locations of any hydraulic deficiencies (including components of the system with limiting capacity) that are generating SSOs themselves;
 - vi. identification of the locations of sources of clear water entry into the sewer system, and an estimate of the benefit (in terms of flow removed) of eliminating each source; and
 - vii. determination of the need for permanent flow meters to be installed and maintained at all connection points to the downstream sewers that are owned by the City of Rocky River, and that are less than twelve inches (12") in diameter.
- b. The SSES must be conducted consistent with procedures outlined in the 1991 EPA "Handbook: Sewer System Infrastructure Analysis and Rehabilitation." Information on obtaining a copy can be found at <http://www.epa.gov/OWM/secttre.htm>.
- c. The SSES must recommend short- and long-term actions to eliminate each hydraulic deficiency identified. The recommendations must:
- i. list all technically feasible alternatives to eliminate the deficiency;
 - ii. estimate the costs for each alternative;

- iii. identify recommended alternatives for eliminating the deficiency;
 - iv. group the alternatives in projects as appropriate; and
 - v. prioritize the projects and provide a schedule for implementation of all recommended projects. If a project is not recommended, or if an implementation schedule is determined principally by the affordability of the project, Respondent must provide an analysis of the cost effectiveness of the project, including impacts on user rates and the frequency, volume and duration of overflows.
- d. The SSES must identify both short- and long-term actions to eliminate each source of clear water entry into the sewer system. For each source, the SSES must identify:
- i. alternative actions to eliminate the source;
 - ii. the costs for each alternative; and
 - iii. the recommended alternative for eliminating the source. Group the alternatives in projects as appropriate, prioritize the projects and provide a schedule for implementation of all recommended projects. If a project is not recommended, or if an implementation schedule is determined principally by the affordability of the project, Respondent must provide an analysis of the cost effectiveness of the project, including impacts on user rates and the frequency, volume and duration of overflows.

21. If EPA, in consultation with Ohio EPA, determines that the proposed SSES implementation schedule is unacceptable, EPA will so notify Respondent and provide corrective comments as appropriate. Respondent must revise the schedule, incorporating EPA's comments, within 30 calendar days of the date of the notification from EPA.

22. Within 30 calendar days of SSES approval, Respondent must begin implementing the recommendations of the SSES on the schedule contained in the approved SSES. This Order will automatically incorporate the implementation schedule as approved by EPA.

23. The SSES must be reviewed and updated by Respondent as needed to reflect current information on the performance measures that have been implemented.

24. Within 180 calendar days of receipt of this Order, Respondent must:  prepare a Capacity, Management, Operation and Maintenance (CMOM) Program, in accordance with the following paragraph, for all parts of its sewer system; and submit a written description of its CMOM program to EPA for approval. Respondent must

implement the CMOM program beginning within 30 calendar days after approval by EPA.

25. At a minimum, Respondent's CMOM program must:
- a. establish goals to achieve the elements set forth in paragraph 15, above;
 - b. identify all administrative and maintenance positions responsible for implementing measures to achieve the elements established in paragraph 15, above;
 - c. identify the chain of communication for reporting SSOs from receipt of a complaint or other information to the person responsible for reporting each SSO incident to Ohio EPA or, where necessary, the public;
 - d. establish legal authority through sewer use ordinances, service agreements, or other legally binding documents, to:
 - i. control infiltration and connections from inflow sources;
 - ii. require that sewers and connections be properly designed and constructed;
 - iii. ensure proper installation, testing and inspection of new and rehabilitated sewers (such as new or rehabilitated collector sewers and/or new or rehabilitated service laterals); and
 - iv. control discharges of grease which may constrict flow through receiving sewers.
 - e. provide adequate maintenance facilities and equipment for the sewers;
 - f. maintain a map of the sewer system and SSO locations;
 - g. establish proper management of information and use timely, relevant information to establish and prioritize appropriate capacity, management, operation and maintenance activities (such as the immediate elimination of dry weather overflows or overflows into sensitive waters such as public drinking water supplies and their source waters, waters where swimming or public contact occurs, waters within state or local parks, as well as waters containing threatened or endangered species or their habitat);
 - h. conduct routine preventive operation and maintenance activities for the sewers;

- i. develop and implement a permanent program to assess the capacity of the sewer system and the flows discharged into the sewers owned by Respondent; including installation and maintenance of flow meters at all 12-inch or larger diameter sewer connection points to downstream sewers;
- j. identify and prioritize structural deficiencies and identify and implement short- and long-term rehabilitation actions to address each deficiency;
- k. provide all necessary training to staff on a regular basis;
- l. establish an inventory of all equipment and replacement parts, including identification of critical replacement parts;
- m. establish and implement requirements and standards for the installation of new sewers, pumps and other appurtenances, and rehabilitation and repair projects;
- n. establish and implement procedures and specifications for inspecting and testing the installation of new sewers, pumps, and other appurtenances for rehabilitation and repair projects;
- o. monitor the implementation and, where appropriate, measure the effectiveness of each element of the program; and
- p. establish and implement a system for updating the program elements as appropriate based on monitoring or performance evaluations.

26. Commencing immediately, Respondent will prepare annual reports for submission to EPA. The annual report will convey the following information:

- a. Respondent's progress on the projects described in the SSES implementation schedule, once approved and incorporated into this Order, including specific references to the projects in that schedule. Respondent must identify any deficiencies and all steps that have been taken or will be taken to correct the deficiencies.
- b. Respondent's progress in implementing the CMOM program, once approved and incorporated into this Order.
- c. an inventory of all SSOs from Respondent's sewers for the previous year, identifying the dates, sources, estimated volumes, receiving waters and principal pollutants contained in the discharges. Respondent must also issue a press release informing the public of the availability of the inventory and make the inventories available on its principal webpage.

The report must be postmarked by January 31 of the year following the year subject to reporting and must be submitted to Mr. Noel Vargas at the address provided in paragraph 14, above.

27. This Order will become effective immediately from the date the Respondent receives it, **unless within 5 days** of receipt Respondent requests an informal conference to discuss the Findings, the Order for Compliance or the Request for Information and to present any information it wishes EPA to consider regarding this document. Unless it is withdrawn or modified based on information presented in the informal conference, the Order will become effective five days from the informal conference. If an informal conference is requested, it will be held at EPA's Region 5 offices at 77 West Jackson Boulevard, Chicago, Illinois. Alternatively, it can be conducted by telephone at Respondent's request. Respondent may be represented by counsel at the informal conference, but the conference will not take the form of a hearing. To request an informal conference, Respondent should contact Mr. Noel Vargas (312) 353-3575, or Respondent's attorney may contact Robert S. Guenther of our Office of Regional Counsel at (312) 886-0566.

28. The requirements of this Order will terminate upon written request from Respondent after all requirements of this Order have been satisfied and Respondent can demonstrate continuous compliance with the CWA for a period of at least two years.

GENERAL PROVISIONS

29. Written statements submitted pursuant to this Order must be returned under an authorized signature certifying that all statements contained therein are true and accurate to the best of the signatory's knowledge and belief. The signatory must possess the authority to sign NPDES permit applications and reports described in 40 C.F.R. § 122.22. Any documents submitted to EPA pursuant to this Order should be certified as authentic to the best of the signatory's knowledge and belief using the following statement:

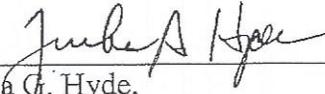
I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

30. Should the signatory find at any time after submittal of the requested information that any portion of its response is false or incorrect, Respondent must notify EPA Region 5 immediately. Respondent's failure to fully comply with this Order may subject Respondent to an enforcement action under section 309 of the CWA, 33 U.S.C. §.1319. Knowing submittal of false information to EPA in response to this request may subject you to criminal prosecution under section 309(c) of the CWA, 33 U.S.C. § 1319(c), as well as 18 U.S.C. §§ 1001 and 1341.

31. Pursuant to 40 C.F.R. part 2, subpart B, Respondent is entitled to assert a claim of business confidentiality regarding any portion of the information submitted in response to this request, except effluent data, as defined at 40 C.F.R. § 2.302(a)(2). If Respondent fails to assert a claim of business confidentiality, EPA may make all submitted information available to the public without further notice. Information which is subject to a claim of business confidentiality may be available to the public only to the extent provided in 40 C.F.R. part 2, subpart B.

32. Any information submitted in response to this Order may be used by EPA in support of an administrative, civil, or criminal action against Respondent. The CWA includes provisions for administrative penalties, for civil injunctive relief and penalties, and for criminal sanctions for violations of the CWA. Specifically, EPA may assess civil administrative penalties of \$11,000 per day of violation, up to a maximum of \$157,500 under 33 U.S.C. § 1319(g), and 40 C.F.R. part 19, for violations occurring after March 15, 2004, and \$16,000 per day of violation up to a maximum of \$177,500 for violations occurring after January 12, 2009. Additionally, EPA may seek civil judicial penalties of \$32,500 per day of violation occurring before January 12, 2009, and \$37,500 for violations occurring thereafter. The CWA also provides for civil injunctive relief for violations of the CWA under 33 U.S.C. § 1319(b). Furthermore, EPA may seek criminal sanctions, including fines and imprisonment, for negligent or knowing violations of the CWA under 33 U.S.C. § 1319(c).

33. This request is not subject to the Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520, because it seeks collection of information in an enforcement action or investigation involving EPA and specific individuals or entities.



Tinka G. Hyde,
Director Water Division
U.S. Environmental Protection Agency, Region 5

Date: 9/28/09

