BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
FEB 11 2009
ENTERED DIRECTOR'S JOURNAL

In the Matter of:	:	
	:	
City of Dublin, Ohio	:	**Director's Final Findings and Orders**
	:	
	:	
	:	

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By: Dwyla Lassiter Date: 2-11-09

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are being issued to the City of Dublin, Ohio ("Satellite Community" or "Satellite"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 6111.03, 6111.46 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Satellite Community, and successors in interest liable under Ohio law.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 6111., and the rules promulgated thereunder.

"Sewer System" means all parts of the sanitary sewerage system, including interceptor sewers, the Satellite Community owns or over which it has operational control.

"Sanitary Sewer Overflow" or "SSO" means an overflow, spill or release of wastewater from a sanitary sewer system that occurs on a street or the ground such that it has reasonable potential to reach waters of the state without treatment. SSOs do not include WIBs unless the WIB is discharged or otherwise released to a stream or street or where it can enter a storm sewer system.

"Water in Basement" or "WIB" means wastewater that backups into buildings and that are caused by blockages or flow conditions in a sanitary sewer other than a building

lateral. WIBs do not include the backup of sewage caused by a blockage or other malfunction in a building's lateral sewer.

IV. FINDINGS

The Director of Ohio EPA has made the following findings:

1. Satellite Community owns and operates a Sewer System which collects sanitary flow from the City of Dublin, Ohio and transports it to the City of Columbus sanitary sewerage system for treatment at a wastewater treatment plant owned and operated by the City of Columbus.

2. The City of Columbus entered into a Consent Order on August 1, 2002, in *State of Ohio, ex rel. Montgomery v. City of Columbus,* Franklin County Court of Common Pleas, Case No. 02 CVH-05-5768 ("Consent Order"), which requires Columbus to properly operate and maintain its wastewater treatment plants, sewer system, and any associated equipment and structures, including elimination of unpermitted discharges from its collection system and its wastewater treatment plants.

3. Among other things, the Consent Order requires Columbus to develop and implement a program to address the capacity, management, and operation and maintenance of its sewers, including establishing legal authority to address flows from satellite collection systems.

4. The Consent Order further requires Columbus to submit to Ohio EPA for approval a System Evaluation and Capacity Assurance Plan ("SECAP") and implementation schedule with the purpose of providing adequate capacity to convey and treat base flows and peak flows for all parts of the Columbus sewer system, the satellite collection systems, and the maintenance contract areas (areas outside Columbus' corporate limits where Columbus is contractually bound to provide the maintenance on the sewers and accept the sanitary flow). Another goal of the SECAP and the SECAP implementation schedule is to take all feasible steps to stop and to mitigate the impact of SSOs, bypasses and WIBs.

5. Columbus cannot fully comply with the Consent Order unless accurate information about sanitary flow and clear water infiltration and inflow ("I&I") from each satellite collection system is developed, and satellite communities take steps to mitigate the impact of I&I from satellite collection systems on Columbus SSOs, treatment plant bypasses and WIBs.

6. According to the United States Environmental Protection Agency ("U.S. EPA"), SSOs of raw or diluted sewage pose a risk to public health and the environment.

See, *Compliance and Enforcement Strategy for CSOs and SSOs*, April 27, 2000 ("U.S. EPA Strategy"). The U.S. EPA Strategy states at p. 8:

> "SSOs typically have high concentrations of bacteria from fecal contamination, pathogens and nutrients, all of which are significant contributors to the impairment of lakes, rivers, and streams. Aside from the pollutant impact on surface waters, sanitary sewer overflows frequently occur in areas that may be frequented by pedestrian traffic and pets, providing a likelihood of direct contact with pathogenic bacteria and viruses in the wastewater, and posing a significant public health risk."

7. The U.S.EPA Strategy was developed "to address and remedy the threat to public health and the environment caused by overflows from municipal sewer collection systems." See, U.S. EPA Cover Memorandum accompanying the U.S. EPA Strategy, also dated April 27, 2000.

8. SSOs from some of the City of Columbus' satellite collection systems have been reported to the City of Columbus or to the Ohio EPA. I&I from the City of Columbus' satellite collection systems contributes to SSOs and treatment plant bypasses in the Columbus system.

9. SSO discharges to waters of the state, as defined in ORC § 6111.01, which can occur through storm water sewers, are prohibited under ORC § 6111.04, except in accordance with a valid, unexpired permit. Columbus satellite communities do not hold valid, unexpired permits for SSO discharges to waters of the state.

10. Pursuant to ORC § 6111.03(H), the Director may issue, modify or revoke orders to prevent, control, or abate water pollution by prohibiting or abating discharges of sewage, industrial waste, or other wastes into the waters of the state;

11. Pursuant to ORC § 6111.46, the Ohio EPA is required to exercise general supervision of the construction, operation and maintenance of sewage collection, treatment and disposal systems, and may adopt and enforce orders governing such systems and requiring submission of records of construction, operation and maintenance, including plans and descriptions of existing sewage treatment and disposal systems.

12. Satellite Community has represented to Ohio EPA that it has implemented or intends to implement a Capacity, Management, Operation, and Maintenance (CMOM) Program for all parts of its sewer system by no later than three years of the date of these Orders. The CMOM Program is used to manage collection system assets and consists of best management practices developed by the industry that are applied over the life cycle of the collection system.

13. The following Orders do not constitute authorization or approval of the construction of any physical structure or facilities, or the modification of any existing treatment works or sewer system. Any such construction or modification is subject to the plan approval and permit to install requirements of ORC §§ 6111.44 and 6111.45 and Ohio Administrative Code (OAC) Chapter 3745-42.

14. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with these Orders and to evidence relating to conditions calculated to result from compliance with these Orders, and its relation to the benefits to the people of the State to be derived from such compliance in accomplishing the purposes of ORC Chapter 6111.

V. ORDERS

1. It is the goal of these Orders that Satellite Community properly manage, operate, and maintain all parts of its Sewer System at all times in accordance with these Orders and to:

   a. Provide adequate capacity to convey base flows and peak flows for all parts of the sewer system;

   b. Take all feasible steps to stop SSOs and WIBs and to mitigate the impact of SSOs and WIBs from the Sewer System;

   c. Minimize excessive I & I; and

   d. Provide notification to parties with a reasonable potential for exposure to pollutants associated with any overflow event.

2. No later than one hundred eighty (180) days after the effective date of these Orders, Satellite Community shall submit to Ohio EPA for review and comment a schedule for conducting a Sewer System Evaluation Study ("SSES") for the Satellite's entire Sewer System, which will specify major tasks and the estimated time for completion of these tasks. Satellite Community shall submit a schedule to either complete the SSES (a) within five (5) years of the effective date of these Orders for the entire Sewer System, or (b) within a reasonable period of time which shall not exceed fifteen (15) years of the effective date of these Orders that involves a phased area-by-area evaluation of, and Remediation and implementation of Actions in, the Satellite's entire Sewer System ("Phased Schedule") (which schedule shall generally assign a higher priority to areas with larger amounts of I&I, SSOs and/or WIBs). The Phased Schedule shall indicate the estimated date that the SSES of each area shall commence. It is been represented to Ohio EPA that the fifteen (15) year period may not be sufficient time for certain satellite communities to complete all work necessary to comply

with Order 2(b) and that certain satellite communities may propose a schedule that exceeds 15 years. If, after reviewing the proposed schedule and the Satellite Community's justification for the schedule, Ohio EPA determines that the request is not acceptable, the Director shall so notify the Satellite Community in writing. The Director and the Satellite Community will use their best efforts to resolve the schedule dispute. If the parties are unable to resolve the schedule dispute within 90 days of the Director's letter, these Orders will be deemed automatically terminated by mutual agreement of the Parties. Evaluations performed prior to the date of these Orders may be utilized, in whole or in part, to meet the obligations of Order 2.

3. If, subsequent to the issuance of these Orders, the Director becomes aware (a) of an SSO that may imminently and substantially endanger human health (as described in Order 8; or (b) that there has been a substantial increase in the number or frequency of WIBs in a particular area (circumstances "(a)" and "(b)" are collectively referred to below as a "Priority Area of Concern" or "PAC""), the Director shall request the Satellite Community to revise the Phased Schedule (applicable to the Satellites proceeding under Order 2b) or implement specific actions (applicable to the Satellites proceeding under Order 2a) as are necessary to abate the PAC. The parties shall negotiate in good faith for a reasonable period of time to attempt to agree to a revised schedule or specific actions, as appropriate. If the parties are unable to agree to a revised schedule or specific actions, as appropriate, the Director may issue administrative orders or initiate a civil action to seek injunctive relief to require the satellite community to abate the PAC and may seek civil penalties for violations occurring after the date that the Director gives notice that negotiations have reached impasse. The parties agree that the revision to a Phased Schedule, or the implementation of specific actions, whether mutually agreed to or ordered by administrative or court order, may be grounds for an extension or other adjustment of the schedule within which other Remediation or Actions are performed.

4. The SSES will identify (a) sources and quantities of clear water infiltration and inflow ("I&I") entering Satellite Community's Sewer System, and (b) all feasible cost-effective actions needed to eliminate or minimize excessive I&I entering the Sewer System that causes or contributes to SSOs and WIBs ("Remediation") within Satellite Community's Sewer System as well as all downstream sewer systems. The SSES will be performed using sound engineering practices and consistent with procedures outlined in the 1991 US EPA Handbook, "Sewer System Infrastructure Analysis and Rehabilitation" and/or applicable manuals from the National Association of Sewer Service Companies ("NASSCO"). The SSES shall include, but not be limited to:

   a. An evaluation of the Sewer System, including:

      i. A physical survey of the Sewer System and confirmation of location, size, and capacity of all sewers, manholes, pump stations, overflow points (if they exist), cross-connections with storm sewers

(if they exist), and any other appurtenances specific to the Sewer System;

ii. Flow monitoring to adequately characterize the Sewer System during wet and dry weather. Flow monitoring should be considered at all points of connection into downstream sewers owned by a different entity (*e.g.*, Columbus), at all overflow pipes, immediately upstream of all pump stations, and at any other points deemed necessary to complete the rest of the evaluation detailed below. Meters may be rotated to different locations to provide the necessary information.

iii. Estimates of peak flows (including flows that escape from the Sewer System) associated with wet weather conditions;

iv. Identification of the locations of any hydraulic deficiencies within the Sewer System (including components of the System with limiting capacity) that are causing or contributing to SSOs or WIBs;

v. Identification of the locations of material sources of I&I entry into the Sewer System; and an estimate of the benefit (in terms of flow removed) of eliminating each material source of I&I entry;

vi. The usefulness of permanent flow meters at connection points to the downstream sewers that are owned by a different entity;

vii. Identification of the locations of structural deficiencies within the Sewer System that are causing or contributing to SSOs or WIBs.

b. The identification of short and long term actions to eliminate each material structural and hydraulic deficiency within Satellite Community's Sewer System ("Actions"). For each such deficiency, the SSES will identify alternatives to eliminate the deficiency, the costs for each alternative, and the recommended alternative for eliminating the deficiency. The SSES will 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 impacted due solely to the affordability of the project, Satellite Community will provide an analysis of the cost effectiveness of the project, including impacts on user rates.

c. The identification of Remediation to minimize each material source of excessive I&I into the Sewer System. The SSES will identify alternatives to minimize each such source, the costs associated therewith, and the recommended alternative for minimizing them. The SSES will 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 impacted due solely to the affordability of the project, Satellite Community will provide an analysis of the cost effectiveness of the project, including impacts on user rates.

d. The SSES will be reviewed and updated as needed to reflect current information.

5. If Satellite Community conducts its SSES in accordance with Order 2a, then Satellite Community shall, within five (5) years after the effective date of these Orders, submit to Ohio EPA for review and comment a completed SSES, which shall include a schedule for the implementation of any Remediation in accordance with Order 4a to 4d above. If Ohio EPA believes that the proposed SSES Remediation implementation schedule or selected projects for Remediation are deficient, Ohio EPA will so notify Satellite Community. Within ninety (90) days of the date of the notification from Ohio EPA, Satellite Community will either incorporate Ohio EPA's comments or discuss any areas of disagreement with Ohio EPA. Ohio EPA and Satellite Community may enter into a separately negotiated agreement if they agree on the Remediation projects and implementation schedule therefor.

6. If Satellite Community conducts its SSES in accordance with Order 2b, then Satellite Community shall submit each phase of the SSES, and the proposed Remediation and implementation schedule (which shall be reasonably consistent with the schedule submitted pursuant to Order 2) for such phase, to Ohio EPA. If Ohio EPA believes that any aspect of the SSES, the proposed Remediation or the implementation schedule therefor is deficient, Ohio EPA will so notify Satellite Community. Within ninety (90) days of the date of the notification from Ohio EPA, Satellite Community shall either incorporate Ohio EPA's comments in a revised SSES or discuss any areas of disagreement with Ohio EPA. Upon approval of the Remediation and implementation schedule, Satellite Community shall implement the approved Remediation in accordance with the approved schedule. If the parties can not agree, Ohio EPA may exercise its rights under Section XI.

   If, at any time, Ohio EPA determines that the overall Phased Schedule proposed by the Satellite for the work called for by the SSES is significantly longer than is reasonably necessary (which determination shall consider, inter alia, the affordability of the work), it may issue an administrative order requiring the acceleration of the overall schedule. Notwithstanding the issuance of such an order, if the Satellite thereafter experiences a material change in circumstances, it may request an extension of the accelerated schedule, which the Director shall act upon by the issuance of a final action.

7. By no later than three years of the date of these Orders, Satellite Community shall provide a report to Ohio EPA for review and comment summarizing its Capacity, Management, Operation, and Maintenance (CMOM) Program

referenced in Finding 12. On a biannual basis thereafter, Satellite Community shall provide a written summary to Ohio EPA describing the actions and activities that have occurred under this program during the preceding two years.

8. Satellite Community shall report SSOs from Satellite Community's Sewer System that may imminently and substantially endanger human health in accordance with the terms of this paragraph. SSOs that may imminently and substantially endanger human health include dry weather overflows, major line breaks, overflow events that result in fish kills or other significant harm, and overflow events that occur in sensitive waters and high exposure areas such as protection areas for public drinking water intakes and waters where primary contact recreation occurs. These reports will include:

   a. Notification to the Ohio EPA (1-800-282-9378) and the appropriate Board of Health (i.e., city or county) within one hour of learning of the SSO. The report will be in accordance with the procedures set forth in the Overflow Emergency Response Plan.

   b. Notification to the public of SSOs from its sewers in areas where an SSO has a potential to affect human health. The notification will be in accordance with the SSO Emergency Response Plan required by 11a - 11e below.

   c. A written report to Ohio EPA within five days of the date Satellite Community became aware of the overflow. The written report will 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 impact(s) of the overflow and a schedule of milestones for those steps.

9. Satellite Community shall prepare an annual report of all SSOs and WIBs from its Sewer System on a form acceptable to Ohio EPA. For each SSO, the annual report will include the date, the location, any receiving water, and the estimated volume of the flow. The annual report will additionally include a summary section describing overflow events by severity, frequency, and location. The annual report will summarize the WIBs by setting forth the total number of WIBs and by listing the number of WIBs in each location. The report will also include a narrative analysis of patterns of the WIBs by location, frequency and cause, as well as any resultant changes in operations and maintenance procedures. The annual report will be submitted to Ohio EPA by February 15 of the following year.

10. Satellite Community will maintain the following records for at least three years or until a complaint has been satisfactorily resolved, whichever is longer.

    For each SSO and WIB:

    i. The location of the SSO or WIB and the receiving water, if any;

    ii. The estimated volume of the SSO;

    iii. A description of the sewer component from which the release occurred;

    iv. The estimated date and time the SSO or WIB began and ended;

    v. The cause or suspected cause of the SSO or WIB;

    vi. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the overflow and a schedule of milestones for those steps;

    vii. Work orders that are associated with the investigation of system problems related to SSOs or WIBs;

    viii. A list and description of complaints from customers or others;

    ix. Documentation of performance and implementation measures.

11. Not later than ninety (90) days after the effective date of these Orders, Satellite Community shall identify and implement a Public Notification Program to: inform the public of the locations of any SSOs; to inform the public of SSO occurrences; inform the public of the possible health and environmental impacts associated with SSOs; and advise the public against contact recreation when elevated bacterial levels may endanger public health. At a minimum, the public notification program will include signs at SSO locations, newspaper notices, internet postings, and billing inserts, as applicable. Not later than ninety (90) days after the effective date of these Orders, Satellite Community shall provide a summary of the Public Notification Program to Ohio EPA.

12. Not later than one hundred eighty (180) days after the effective date of these Orders, Satellite Community shall prepare, and submit to Ohio EPA for review and comment, an SSO Emergency Response Plan ("ERP") that identifies measures to protect public health and the environment in the event of an SSO. If Ohio EPA believes that the proposed SSO ERP is deficient, Ohio EPA will so notify Satellite Community. Satellite Community will use best efforts in incorporating Ohio EPA's identified deficiencies, or discuss any areas of disagreement with Ohio EPA, within ninety (90) days of the date of the notification from Ohio EPA. The SSO ERP will include, but not be limited to:

    a. A mechanism to ensure that Satellite Community is made aware of all SSOs and WIBs from the sewer system;

    b. Procedures to ensure appropriate responses to SSOs, including ensuring that reports of overflows are promptly dispatched to appropriate personnel for investigation and appropriate response;

    c. Procedures to ensure that appropriate personnel are aware of and follow the SSO ERP and are appropriately trained;

    d. Emergency operations; and

    e. Procedures to ensure prompt appropriate notification of the public, the appropriate board of health, and the Ohio EPA. These procedures should be developed in consultation with potentially affected entities.

13. Not later than one hundred eighty (180) days after receipt of Ohio EPA comments on the SSO ERP, Satellite Community shall implement the SSO ERP.

VI. TERMINATION

For Satellite Communities electing to proceed in accordance with the schedule in Order 2a, these Orders shall terminate upon either the issuance of Director's Final Findings and Orders or other legal mechanism which incorporates an SSES implementation schedule, or within 90 days after Ohio EPA's submission of comments to the Satellite Community's SSES, whichever occurs sooner. For Satellite Communities electing to proceed in accordance with the schedule in Order 2b, the Orders will terminate when the Satellite Community (1) certifies in writing and (2) demonstrates to the satisfaction of Ohio EPA that Satellite Community has performed all obligations under the Orders; and the Chief of Ohio EPA's Division of Surface Water acknowledges that conditions (1) and (2) have been met. If Ohio EPA does not agree that all such obligations have been performed, then Ohio EPA will notify Satellite Community of the obligations that have not been performed, in which case Satellite Community shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that, to the best of my knowledge and belief, the information contained in or accompanying this certification is

true, accurate and complete." This certification shall be signed by a responsible official of Satellite Community. For purposes of these Orders, a responsible official is defined in OAC Rule 3745-33-03(D)(1).

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation not a party to these Orders, for any liability arising from, or related to the subject matter of these Orders.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to Satellite Community.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Satellite Community pursuant to these Orders shall be addressed to:

Ohio EPA
Central District Office
Division of Surface Water
50 West Town Street
P.O. Box 1049
Columbus, Ohio 43216-1049

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA reserves the right to seek legal and/or equitable relief to enforce the terms and conditions of these Orders, including penalties against Satellite Community for noncompliance with these Orders.

Except as provided herein, Satellite Community reserves any rights it may have to raise

any legal or equitable defense in any action brought by Ohio EPA, including but not limited to an action to enforce the terms and conditions of these Orders and that the Ohio EPA does not have the right to take the actions that the Ohio EPA has reserved herein.

Ohio EPA reserves the right to take any action against Satellite Community, including but not limited to (a) an action for civil or administrative penalties for matters not specifically addressed by these Orders, (b) an action to challenge/enforce the Phased Schedule, and (c) an action contemplated by Order 3.

XII. WAIVER

In order to resolve disputed claims, without admission of fact, law, violation or liability, Satellite Community consents to the issuance of these Orders and agrees to comply with these Orders.

Satellite Community hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Satellite Community hereby waives any and all rights it may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Satellite Community agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Satellite Community retains the right to intervene and participate in such appeal. In such an event, Satellite Community shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

Ohio EPA and Satellite Community each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency

Chris Korleski
Director

Date 2/10/09

IT IS SO AGREED:
City of Dublin, Ohio

By

Date 12/2/08

Marsha I Grigsby
Print Name

Interim City Manager
Title