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February 28, 2011

Ms. Tinka Hyde
Director, Water Division (WD-15J)
United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Re: City of Akron Final Long Term Control Plan Update and Report

Dear Director Hyde:

As requested in your letter to Mayor Donald Plusquellic dated January 14, 2011, the City of Akron (the "City") is resubmitting our Final Long Term Control Plan ("LTCP") Update and Report. The enclosed LTCP Update and Report is intended to replace, in whole, our previous submittal dated October 15, 2010.

Within the January 14, 2011 letter, U.S. EPA claims that the City's October 15, 2010 LTCP Update and Report does not comply with the CSO Policy, the Clean Water Act, or R.C. Chapter 6111. U.S. EPA did not provide the City with any technical basis to support this claim. The City's October 15, 2010 submission included a detailed analysis demonstrating that the LTCP Update met all of the applicable requirements. Therefore, the City obviously disagrees with the claims made by U.S. EPA in the January 14, 2011 letter.

While the City disagrees with U.S. EPA's claims, the City re-evaluated the total program costs in order to find a way to provide for a higher level of control for the CSOs without further increasing sewer rates beyond the excessive levels associated with the October 15, 2010 LTCP Update. The result of this re-evaluation process led to a reallocation of program costs to provide for a higher level of control at the CSO facilities. Our recommended plan now provides for reducing overflow events from the City's combined sewer system to no more than three occurrences at any permitted overflow location during the typical precipitation year as defined in the proposed Consent Decree. As illustrated in Section 8, Figure 8-26 of the LTCP, our hydraulic modeling results show that this actually means that only two overflow events would occur during the recreation season as defined in the Ohio Water Quality Standards, which is from May 1 through October 31.

The Revised LTCP is Consistent with the 1994 CSO Policy

Our revised plan is an approvable plan for at least the following reasons:

- The Revised LTCP meets the CSO Policy. The proposed level of control of 3 overflows per year and 94% capture meets the criteria of the Presumption Approach as presented in the CSO Policy (4 overflows per year and 85% capture). Our proposed level of control is consistent with other Long Term Control Plans approved by U.S. EPA in Region 5 and throughout the United States.
- It provides for a level of control that is cost-effective consistent with the CSO Policy and the CSO LTCP Guidance. As shown in Section 7 of our LTCP, our proposed level of control (3 overflows per year) equates to the knee of the curve when evaluating the controls on a system-wide basis.
- It complies with the Sensitive Areas analysis within the CSO Policy. All of the City's CSOs discharge to sensitive areas or upstream of sensitive areas. The receiving streams are defined as sensitive areas because the receiving streams have been designated as primary contact recreation under Ohio's Water Quality Standards. It is not physically possible to relocate the CSOs to non-sensitive areas. In addition, since the cost to eliminate the CSOs is in excess of \$2 billion, elimination is not economically achievable.
- It provides for improvements to water quality by minimizing impacts from CSOs. Our revised plan reduces overflow volumes from approximately 1.2 billion gallons per year to 275 million gallons in a typical year. This is a reduction of almost 1 billion gallons, or over 77% of our typical overflow volume. A level of control beyond the proposed plan is simply not affordable.
- The total program represents an investment of over \$582 million (based on 2010 dollars). Applying yearly inflation over the full length of the program (2011 through 2028), the City's recommended plan will cost over \$860 million once it is completed. As shown in Section 8, this plan equates to a burden of almost 2.4% of median household income for Akron residential customers. In order to fund this program, the typical Akron residential customer's sewer bill will be approximately \$120 per month when the program is finished.

The Revised LTCP Allows For Additional Expansion of Secondary Treatment at Akron's WPCS

Based upon the reallocation of program costs our recommended plan also includes a commitment for an additional expansion of secondary treatment at the City's WPCS. Based upon the reallocation that is discussed below, the City's revised plan commits to expand secondary treatment to 170 MGD. It should be noted that your January 14, 2011 letter incorrectly states that the City's October 15, 2010 plan will result in 800 million gallons of annual secondary treatment bypasses at the WPCS in the typical year. That figure relates to the volume of bypasses under current conditions. Our October 15, 2010 plan reduced that volume to approximately 450 million gallons. Our revised plan further reduces the volume to 315 million gallons. These remaining bypasses are authorized under the CSO Policy based upon the City's NFA Analysis. In addition, all bypasses that occur in the recreation season receive disinfection.

The Revised LTCP's Significantly Higher Level of CSO Control is Based Upon a Reallocation of Total Program Costs

As you are aware, the City's Proposed LTCP (August 15, 2010) and Final LTCP (October 15, 2010) submittals presented recommended plans that provided for 12 overflows per year from our combined sewer system. These plans also identified additional Consent Decree required projects (WPCS Step Feed, Mud Run Pump Station, CMOM, post-construction monitoring), as well as other wastewater system improvements (existing system reinvestment, NPDES permit compliance, storm water, and disinfection improvements). These additional Consent Decree projects and wastewater system improvements are included within the City's total program costs for purposes of the City's financial analysis.

Based on correspondence received from and discussions with U.S. EPA and Ohio EPA, the City understands that both agencies desire a higher level of control from our proposed CSO control facilities. As set forth above, in order to address U.S. EPA's and Ohio EPA's concerns the City re-evaluated the total program costs with the goal of providing a higher level of control while still taking into account the limitations set forth in the City's financial analysis. Thus, to develop this revised LTCP with a higher level of control, the City performed a reallocation of the total program costs. Therefore, the City's revised recommended plan of **3 overflows per year** is based upon the following qualifications and conditions regarding the reallocation of program costs:

- A CMOM implementation program over 10 year periods, as opposed to the 5 year periods provided for in the proposed Consent Decree. This implementation period is consistent with requirements of recent consent decrees negotiated by Region 5 with other CSO communities (i.e. Evansville, Indiana), industry standards for communities similar in size to Akron, and our experience from CMOM program implementation activities completed in 2010. This change results in our additional annual CMOM investment being \$2 million (as opposed to \$4.5 million per year as provided for in our earlier plans).
- Existing system reinvestment reduced from \$6.5 million per year to \$2 million per year. Note that any sewer system improvements identified by our CMOM program will be funded out of this expenditure category. The City will make needed collection system repairs based on funds available within this budgeted amount. While we believe this level of reduced funding to be problematic for sustaining our current and future wastewater infrastructure assets, this cut is required if we are to meet EPA's goal of a higher level of control.
- A revision to the City's NPDES permit to change our allowable phosphorous discharge limit at our WPCS. Our current permit provides that the phosphorous limit will be reduced to 221 kg/day 54 months from the permit's effective date. The latest data gathered in the Cuyahoga River confirms that the reduced phosphorous limit of 221 kg/day is no longer necessary. This would eliminate the need for the City to implement additional phosphorous controls at our WPCS at a cost of \$29 million. The City has filed an appeal of this permit and is in active negotiations with the Ohio EPA.

- The costs for funding storm water improvements have been removed from the total program costs. The costs of this program and any future storm water regulations imposed by U.S. EPA or Ohio EPA place an additional burden on our already heavily burdened customers.
- Improvements to existing WPCS disinfection facilities will be scaled back. Our current plan provides for \$7 million in capital improvements (down from \$17 million as proposed in our previous plans). While we currently believe that these scaled back improvements will achieve our current goals, any future regulatory requirements requiring additional investment may not be achievable under our current plan.
- No Enhanced High Rate Treatment ("EHRT"). As previously stated in discussions with U.S. EPA and Ohio EPA, employing EHRT in the collection system is not a cost-effective solution at this level of control, and will provide a very limited benefit for the significant cost. At a 3 overflow level of control, any EHRT facility would run a couple of times per year. Using a cost of approximately \$200 million to construct EHRT facilities at the Ohio Canal Tunnel and Northside Tunnel, it is fairly obvious that providing this large investment for these limited facilities is not a prudent use of the City's limited resources.

The 2028 Date Remains Critical to the City's Ability to Successfully Implement the Revised LTCP

The revised LTCP provides for implementing controls as soon as possible. The City acknowledges receipt of your letter dated February 15, 2011 which outlines U.S. EPA's latest thoughts on what an approvable LTCP should include. We were quite surprised to find that U.S. EPA believes that U.S. EPA's suggested plan as stated in the letter could be completed by October 15, 2022. To date all of our discussions regarding achievement of full operation of the City's CSO controls have centered on October 15, 2028. This is in fact the date listed in the proposed Consent Decree that was agreed to by U.S. EPA, Ohio EPA, as well as the City.

Your February 15th letter states that U.S. EPA believes that "...based on normal engineering and construction practices, [EPA's plan] would result in Achievement of Full Operation of all CSO Control Measures by October 15, 2022." Notably, your letter contains no analysis of engineering or construction related issues that would support this claim. It is our interpretation of your letter that the 2022 completion date is based solely on financial considerations, i.e., what U.S. EPA believes the City can "afford".

Our engineering and construction teams have evaluated the City's recommended plan to identify potential engineering and construction issues that could impact our overall implementation schedule. In considering issues such as land acquisition, availability of qualified contractors, future pricing of construction materials, and the City's ability to finance what will be the largest capital improvements program in our history, the schedule set forth in the enclosed plan does result in achievement of full operation of all CSO control measures as soon as possible.

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To the extent that U.S. EPA and/or Ohio EPA actually performed an engineering or construction analysis, we would welcome the opportunity to further discuss the statements made in your February 15th letter regarding an overall implementation schedule for our program.

It is worth noting that parts of your letter cite to provisions within the proposed Consent Decree. As to the date for achievement of full operation, U.S. EPA backed away from the October 15, 2028 deadline. This deadline is an important component of the proposed Consent Decree. The City has learned that U.S. EPA subsequently entered into at least two consent decrees with other CSO communities that provide for significantly longer compliance schedules, yet U.S. EPA is ignoring the timeframe that was agreed to in the Consent Decree, and now wants to reduce that timeframe. Even though the Consent Decree has not been entered as of this date, the City continues to voluntarily comply with its requirements. Our submission of this revised LTCP is a further demonstration of our commitment to the parties' agreement.

As stated above and in the revised plan, the City's revised LTCP meets U.S. EPA's desire for increasing our level of control as well as complies with the proposed Consent Decree. Please feel free to contact our Environmental Division Manager, Mr. Patrick Gsellman, at (330) 375-2357 or our CSO Program Manager, Mr. David Haywood, at (330) 375-2492 if you have any questions regarding our revised LTCP submittal.

Sincerely,



Richard A. Merolla, Director
Department of Public Service

RM/PDG/mm

Enclosures

c: Mayor Plusquellic
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