


Division of Surface Water

Response to Comments

Project: LORCO Sanitary Sewer Project, Phase I
Ohio EPA ID #: 083343

Agency Contacts for this Project

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Ohio EPA conducted a public hearing on February 18, 2009, regarding a section 401 Water Quality Certification (WQC) application submitted by LORCO and the city of Avon Lake (“applicants”) seeking authorization to construct new sanitary sewers and a force main to convey flows to Avon Lake. The phase I project area includes portions of Eaton and Carlisle townships in Lorain County, as well as North Ridgeville, Avon and Avon Lake. **Note that on October 19, 2009, the joint applicants requested that the 401 WQC be issued to the city of Avon Lake.**

Therefore, the city of Avon Lake has been authorized to impact 9.64 acres of wetlands and 1,850 linear feet of streams to construct the project. Ohio EPA accepted comments on the application through February 24, 2009. This document summarizes the comments and questions received.

Ohio EPA’s 401 Program considers only those comments that fall within its legal authority when evaluating public input. For instance, when public comments are submitted for a 401 Water Quality Certification application, Ohio EPA will focus on comments regarding the quality of streams and wetlands, the nature and scope of the proposed impacts, appropriateness of the project alternatives, justifications presented for the proposed lowering of water quality associated with the project, and quantity/quality of proposed compensatory mitigation for proposed stream and wetland impacts. Public concerns that fall outside the scope of Ohio EPA’s 401 Program authority such as project costs, project funding, whether a project meets local zoning regulations, how it may affect property values, impacts to local flooding, or compliance with safety regulations, are not included in Ohio EPA’s 401 application analysis. When appropriate, Ohio EPA will direct the commenter to those government agencies with authority over these issues.

Readers of this responsiveness summary are advised that, in some instances, it was necessary to summarize a comment, or several related comments. In other cases, the comments did not warrant a response and are not included. Every effort has been made to represent the key concern raised by the commenter.

COMMENTS REGARDING POTENTIAL WATER QUALITY IMPACTS

Comment 1: Several comments were received expressing concerns about a potentially significant increase in non-point source pollutant impacts to local ditches, streams, wetlands and groundwater once the sewer is installed and additional development occurs. In particular, concern was expressed that Eaton Township and all of Lorain County are not compliant with Phase II Storm Water Regulations. "I would question Ohio EPA as to how it is that you can approve a plan when the county/township are not in compliance." Another specific comment requested that the wording of the 401 permit include no construction during wet weather.

Response 1: The city of Avon Lake, rather than Lorain County or Eaton Township, is the 401 applicant. In addition, regulation of storm water quality associated with future development in the entire Lorain County Rural Wastewater District (LORCO) Phase 1 service area falls outside the scope of the WQC. Questions regarding this issue should be directed to Dan Bogoevski, Ohio EPA, Division of Surface Water, Northeast District Office (330) 963-1145.

Stormwater discharges during the construction of the LORCO Phase 1 sewer system are regulated by Ohio EPA's National Pollutant Discharge Elimination System (NPDES) permit #OHC000003 authorizing storm water discharges associated with construction activity and issued April 21, 2008. Ohio EPA has authorized LORCO to use this NPDES permit, also known as the Construction General Permit (CGP), to cover storm water discharges associated with the construction of contracts 1, 2 and 3 of the LORCO project. On March 31, 2008, the city of Avon Lake applied for authorization to use the CGP to implement contracts 4 and 5 of the LORCO project. Authorization to use the Construction General Permit will be issued concurrent with the issuance of the 401 WQC.

A copy of the Storm Water General Permit is available on Ohio EPA's Website at http://www.epa.state.oh.us/dsw/permits/GP_ConstructionSiteStormWater.aspx.

Questions about the stormwater permitting process can be directed to Michael Joseph, Ohio EPA Division of Surface Water, (614) 752-0782.

Item I.A.B.1.c of the CGP requires that appropriate controls and measures are identified in a storm water pollution prevention plan (SWP3). Copies of the applicable SWP3 plans are available from LORCO or the city of Avon Lake.

In addition to Ohio EPA's authorization to use the CGP during project construction, the 401 WQC for the LORCO project requires the use of appropriate sediment controls, construction practices, and sequencing to protect wetlands and streams during construction (reference Items II.A-U and III.A-O of the WQC). All impacted streams and wetlands within the temporary construction easement for the LORCO project will be restored subsequent to installation of the sewers as part of the required mitigation for the project (see Response 2 for further details).

Future development within the LORCO service area that results in fill impacts to wetlands or streams will be subject to the same regulations that were used to issue the WQC for the LORCO project. Applications for 401 and 404 permits requesting authorization to implement the applicable fill impacts must be submitted by the developers.

Comment 2: **One commenter requested that Ohio EPA investigate why mitigation for wetlands impacts is proposed at an existing wetland in Lorain, instead of within the Phase 1 LORCO service area. Eaton Township has a nature preserve, Margaret L. Peak Preserve, that includes wetlands. The commenter would like to see money from user fees spent on improving wetlands in the community, rather than one that is very far away. Background information on the 98 acre preserve was provided as an exhibit.**

Response 2: Ohio EPA did not accept the applicant's original proposal to implement mitigation at the Elmwood Preserve in the city of Lorain. Instead, the WQC for the LORCO project requires that all impacted streams and wetlands within the temporary construction easement be restored on-site (reference Item IV of the WQC). Because the majority of the construction impacts will occur within maintained utility, railroad, or road

rights-of-way, trees will not be replaced in impacted wetlands and riparian zones along streams on-site.

Instead, forested wetlands and riparian corridors will be constructed at a mitigation site along Elk Creek (reference Attachment 4 of the WQC), in the same watershed as the LORCO Phase 1 project and one township south of the facilities planning area boundaries for LORCO Phase I. Specifically, Elk Creek is a 5.7 mile long (7.3 square mile drainage area) tributary of the West Branch of the Black River in LaGrange Township, Lorain County. Elk Creek joins the West Branch of the Black River approximately 0.3 miles downstream from the mitigation site.

The off-site wetland mitigation project will restore wetland hydrology by decommissioning farm field drainage tiles. Forested wetland tree plantings will occur when hydrology has become stable. The created wetlands will be surrounded by buffer zones including the upland and headwater tributary buffer areas being implemented for stream mitigation.

Comment 3: I am concerned that LORCO will not return the wetlands to their original condition unless they are being constantly supervised.

Response 3: The WQC is an action of Ohio EPA's Director and is enforceable by law. The WQC contains very specific timing, planting, monitoring/reporting requirements (reference Item IV and Attachment 5 of the WQC) and performance standards for restored wetlands and streams. The WQC obligates the city of Avon Lake to a minimum five year monitoring period of the mitigation wetlands and streams. The annual reports submitted to Ohio EPA following construction of the mitigation wetlands and streams will provide the information needed to determine whether the mitigation areas are meeting established performance criteria.

If it becomes apparent that the mitigation streams and wetlands are not achieving the performance criteria set forth in the 401 WQC, the city of Avon Lake is obligated to either remedy identified problems at the approved mitigation site and/or provide additional wetland mitigation elsewhere.

PROJECT PURPOSE AND DESIGN

Comment 4: Commenters questioned the validity of septic system failure estimates used to document the need for the project.

Response 4: The Ohio EPA's 401 application review does not duplicate planning and economic analyses conducted by the applicant. Rather, Ohio EPA is required by Ohio Administrative Code (OAC) Section 3745-1-54, otherwise known as the Wetlands Antidegradation Rule, to assess whether the proposed wetland and stream fill impacts associated with a project will meet Ohio's water quality standards. Based on the information provided in the 401 application and subsequent responses to Ohio EPA comments, appropriate and practicable steps have been taken to minimize potential adverse impacts on the wetland and stream ecosystems within the project construction boundaries. Consequently, Ohio EPA's Director made a decision to allow the impacts associated with the LORCO Phase 1 project.

Comment 5: A question was raised about whether an accurate calculation of the average amount of water used by a household was done. This calculation, if not done correctly, would result in inaccurate design flows, estimated monthly user costs and estimated decreases in untreated sewage flowing into the Black River.

Response 5: The application for the Permit-to-Install (PTI) for the LORCO Phase I project includes a question to be answered regarding how the project design flows were calculated. In this case wastewater flow projections were calculated based on standard engineering design criteria from "Ten States Standards," of 100 gallons per capita per day, three persons per home, and a peaking factor of 2.5 for the estimated peak hourly flow rate. This information was reviewed and accepted by Ohio EPA prior to PTI issuance. For further information on the PTI review and issuance, contact Chuck Allen, Ohio EPA Division of Surface Water, (330) 963-1110.

POTENTIAL IMPACTS OF CONSTRUCTION PRACTICES

Comment 6: A question was received regarding potential issues with field tiles, downspouts and foundation drains to ditches along proposed sewer alignment. These drainage pipes are not typically mapped. Will construction block these

pipes, fail to re-route them or fail to repair them properly, resulting in flooding? The commenter requested strong assurance that each field tile in the 37 mile alignment would be addressed.

Response 6: A note has been included on each applicable construction drawing for the project stating: "contractor shall repair or replace any storm drainage or field drainage tiles which are disturbed by construction."

Comment 7: Concern was expressed about the number of large trees that may be cut down as part of construction. Easement documents state that the disturbed land will be put back as close as possible to its original condition. Mature trees that are capable of removing hundreds of gallons of water a day from the watershed will likely be replaced by the same number of immature trees that do not have the same capacity for water uptake.

We would like to see Ohio EPA intervene to address replacing single mature tree loss with multiple small trees, where agreed to by the homeowner, to come as close as possible to matching the amount of water uptake from the mature trees that will be lost.

Response 7: Ohio EPA's 401 review authority regarding tree removal is limited to the potential impacts to wetland or stream quality resulting from tree removal. Ohio EPA's 401 Program has no authority to assess tree removal in areas outside wetlands and streams, such as those on private residential lots.

The impacts of tree removal on stream and wetland quality were thoroughly reviewed and off-site forested stream riparian areas and wetlands will be created to compensate for those impacts (see also, Response 2).

PHASE 1 SERVICE AREA BOUNDARIES

Comment 8: Questions and comments were received about apparent discrepancies between sewer size and location details presented in the 401 application and more recent information provided by LORCO. Specific comments were provided about the following locations:

- “. . .the current proposed sewer alignment is leaving out significant sections of North Island Road that were originally included.”
- “. . .on South Reed Road it appears that a sewer line will serve four homes, but the remainder of Reed Road, with 49 homes, will not be served by the new sewer system.”
- “. . .a 3-inch diameter sewer is shown on the maps included in the 401 application for Dye Road in Eaton Township, but maps provided to residents by LORCO show sewer diameters ranging from 1.25 to 2 inches.”
- “. . .the plan includes directing waste from Cooley Road north to a pumping station at Rt. 83 and Lorain via gravity feed. That waste, coupled with the low density of houses on Rt. 83, will be sent via force main from the pump station, back down past Cooley Road to Rt. 82. There appears to be no current justification for the installation of that pump station, other than to accommodate speculative development between Cooley Road and Route 10/Butternut Ridge.”
- “. . .as of 2/18/09, a most frequently asked question on the LORCO Web site continues to reference an extension into LaGrange Twp. on Indian Hollow Road that is no longer part of the Phase I plan.”

Response 8:

The design parameters and physical location of the LORCO Phase I sewer project are subject to other regulatory requirements outside of the scope of Ohio EPA's 401 review (see Response 1 regarding regulation of stormwater and Responses 5, 8, 9 and 11 regarding the PTI). Ohio EPA's 401 review is required to assess whether the proposed wetland and stream fill impacts associated with a project will meet Ohio's water quality standards.

However, in response to these questions, LORCO provided the following in a May 29, 2009 letter to Ohio EPA.

- The remaining homes on Reed Road are planned to be served in a future phase of sewer construction.
- Island Road, north of Dye Road, is not being served at this time because of the requirement and cost of two duplex lift stations with an estimated cost of \$80,000/each. This portion of Island Road will be

served when future development justifies the cost for a gravity pipeline and the two lift stations.

Clarification regarding the proposed size of sewer lines can be obtained by reviewing the applicable construction drawings available from the city of Avon Lake.

Comment 9: LORCO stated at a February 11, 2009 meeting that the county commissioners addressed the issue of 28 homes that LORCO has included in its planning that are not actually part of LORCO's District. Those homes are part of the Elyria sewer system. Again, we express grave concern that LORCO has stated that it has bids ready to send on 2/28/09, after the EPA public hearing, yet this organization has just become aware that its plans include homes not under its jurisdiction.

Response 9: Part of Ohio EPA's review of a PTI application is an assessment of whether the proposed project is consistent with an area-wide waste treatment management plan adopted in accordance with Section 208 of the Federal Water Pollution Control Act. To complete this assessment, Ohio EPA relies on a determination by the local area-wide planning agency, in this case, the Northeast Ohio Area-wide Coordinating Agency (NOACA). Specifically, NOACA provides a written certification to Ohio EPA affirming that the proposed project is consistent with the applicable management plan.

NOACA originally provided this certification to Ohio EPA for the LORCO project on March 30, 2007. Since the original PTI application was submitted, LORCO and the city of Avon Lake reviewed the project boundaries and made the applicable adjustments to the detailed plans in the PTI submittal. As result, one of the PTI conditions is that the LORCO Phase I project will not serve any properties outside the NOACA approved facilities planning area. Based on these revisions and commitments, NOACA provided an updated facilities planning area certification on July 23, 2009.

For further information on the PTI review process, contact Chuck Allen, Ohio EPA Division of Surface Water at (330) 963-1110. For further information on NOACA's certification of facilities planning area boundaries, contact NOACA at (216) 241-2414.

Comment 10: Questions were submitted regarding Phase I being limited to serving only Carlisle and Eaton townships, and the apparent focus on serving future development versus current users. Citizens stated that LORCO has provided conflicting information about its future plans to expand sewers to additional communities within its district.

Response 10: See Response 8.

Comment 11: LORCO's initial feasibility study and plan included using the North Ridgeville sewer system at French Creek for waste disposal at the original cost of \$17.9M. However, negotiations failed and now 12 years later and another \$14M (bringing the total to \$31 million) and 17 miles of pipe to Avon Lake have materialized.

Response 11: Based on the information provided during Ohio EPA's review of the PTI application, LORCO originally considered utilizing the North Ridgeville French Creek wastewater treatment plant (WWTP) as a possible sewage treatment option in initial planning stages. However, the city of North Ridgeville WWTP was not a viable option for the following reasons:

- the city of North Ridgeville indicated that there was no interest in providing service to the LORCO Phase I area;
- the North Ridgeville French Creek WWTP does not have sufficient treatment capacity to provide for LORCO Phase I wastewater flows;
- French Creek, as the receiving stream for the North Ridgeville WWTP may not have sufficient capacity to assimilate additional loadings from the LORCO Phase I wastewater flows, should a WWTP upgrade be considered.

The city of Avon Lake WWTP does have sufficient treatment capacity to serve the LORCO Phase I project wastewater flows.

POTENTIAL IMPACTS TO LOCAL LAND USE

Comment 12: Numerous comments were received expressing concerns about potential adverse impacts to local land use resulting from future development associated with

installing the sewer system. Issues raised include potentially significant increases in the quantity of surface water run-off to local ditches, streams, and wetlands resulting in flooding and “dry” land becoming wetlands; majority of service area acreage has zero slope; lack of ditch maintenance by local landowners will magnify the problem; current lack of legal authority to address the above-referenced issues on a township-wide or county-wide basis; development of 3,700 additional homes will have a negative impact on the valuable rural characteristics of the two townships and will also negatively impact wildlife diversity and quantity, air, noise, and light pollution; will LORCO project be required to comply with proposed Eaton Township wetlands and riparian setbacks; none of the speculative residential development in Eaton Township [currently zoned as agricultural use] has been zoned or approved by the township. Several speculative developments are located in recently remapped flood zones.

The commenters say it is irresponsible to proceed with construction without proper consideration of increased run-off associated with development.

Response 12: Ohio EPA’s 401 Program authority over future development is restricted to impacts to stream and wetland quality. See also Response 1.

As with any other local project, the LORCO project will be subject to current local zoning requirements. Compliance with those zoning requirements would be overseen by the applicable local authority.

PROJECT COSTS AND FINANCING

Comment 13: Numerous questions and comments were received about project costs and financing. Issues raised included apparent discrepancies in the number of taps included in agreements developers have signed committing to payment for future construction; the project is designed for triple the number of current homes; an exhibit was provided during the hearing signed by the executive director of LORCO stating, “. . . it is recognized that approximately 70 percent of the project will serve new homes and businesses to be built

following the installation of wastewater lines”; with our country in a recession, we will probably not see 3,700 new homes in five or even 10 years; this is not the time for us to be starting such a foolish project; 67 percent of the residents are on a fixed income; it is not economically feasible and far from being fair; the estimated monthly user cost has not been stated; the burden of \$36M in debt will fall on 1,271 homes in Carlisle and Eaton townships; I feel that LORCO has been fiscally irresponsible in accumulating debt of ~\$2M without completing or even beginning construction on this project; LORCO has stated that there could be grants available to assist low income residents, however, they have not provided documents about specific grants or funding organizations; the average income estimate for Eaton Township residents may not be representative of the income levels for those who are actually being served by the sewer because several affluent communities with Eaton Township are served by other sewers; we are concerned that aspects of this project have not been designed, sourced or priced in the most economical and efficient manner; we ask that Ohio EPA seriously consider the financial burden that this will throw on the residents of the township.

Response 13:

The costs and means of financing a proposed project seeking 401 WQC are outside of the scope of the review required by Ohio EPA per Ohio Revised Code (ORC) section 6111.30 and Ohio Administrative Code (OAC) sections 3745-1-05 and 3745-32-05. Rather, Ohio EPA’s 401 review is required to assess whether the proposed wetland and stream fill impacts associated with a project will meet Ohio’s water quality standards.

However, Ohio EPA recognizes the need for project funding and has added the city of Avon Lake, as the LORCO Phase I permittee, to the list of municipalities potentially eligible for American Re-investment and Recovery Assistance (ARRA) funds. For further information, please contact Mary McCarron, Ohio EPA Public Interest Center, (614) 644-2160.

In addition, in a May 29, 2009 letter to Ohio EPA, LORCO provided the following information regarding costs.

- the total project construction costs based on the bids received are approximately \$20.2 million;

- the estimated total project costs, which include debt service, engineering, land and easement costs, financing fees, capitalized, and other interest, various reserves, contingencies and other typical project costs are approximately \$32.5 million;

The response also included a “worst case” estimated average monthly user cost, which is now outdated due to changes in the project financing. For up-to-date information, please contact John Kniepper, city of Avon Lake, (440) 933-6226.

In a June 4, 2009 letter to Ohio EPA, LORCO addressed the issue of the future user base for Phase 1 as follows:
“We have lately revised our user base, consisting of the 1178 [existing] units to be connected and 1,200 to 1,400 developer units added ratably over a 10 year period commencing at the end of the construction period. . . . The revised position is that, in addition to the known user base, we have added approximately 120 to 140 units per year.”

REPRESENTATION ON LORCO BOARD

Comment 14: **Several comments were received about whether representation on the LORCO board of directors complies with the requirements of ORC 6119.**

Response 14: Ohio EPA does not have the authority to regulate participation on the LORCO board of directors and therefore cannot address comments and concerns regarding this issue.

End of Response to Comments