

NORTHEAST OHIO AREAWIDE COORDINATING AGENCY

MEMORANDUM

TO: NOACA Governing Board Members

FROM: Dave Ritter, Water Quality Planner

DATE: June 1, 2011

RE: **Resolution No. 2011-027 - Clean Water 2000 Plan Amendment – French Creek and Avon Lake FPA Joint Agreement**

Prior Resolution 2010-035: In 2006 the City of Avon applied for and received from the Ohio Environmental Protection Agency (Ohio EPA) a permit-to-install (PTI) for sanitary sewer service for a portion of the City of Avon. Avon's intent was to provide the service and have the wastewater flow to the wastewater treatment plant (WWTP) in the Avon Lake Facility Planning Area (FPA), rather than the WWTP in the French Creek FPA.

The area described in the PTI application, and later in the PTI, was not within the Avon Lake FPA but, instead, within the French Creek FPA for which the City of North Ridgeville is the Designated Management Agency. North Ridgeville notified all parties of the FPA boundary conflict in 2007 and an all-parties meeting was held at that time. The parties agreed to work cooperatively to resolve the issue. In 2010, North Ridgeville, dissatisfied with the lack of progress, approached the NOACA Board seeking assistance in resolving the problem. The NOACA Governing Board in Resolution No. 2010-035 found an inconsistency between the PTI previously issued by Ohio EPA and NOACA's *Clean Water 2000* Water Quality Management Plan. Avon Lake and Avon subsequently filed a request with NOACA for an FPA Boundary change that would remove the area covered by the errant PTI and adjacent tributary areas. If approved this request would remove the inconsistency and allow additional unsewered areas to be served by the Avon Lake WWTP.

Prior Resolution 2011-005: In February, in Resolution 2011-005, NOACA agreed to be the fiscal agent for a study of the French Creek FPA boundaries. This study is intended to examine the boundary of the French Creek FPA and identify alternative treatment options including their costs and benefits to all involved parties. The study would generate the technical information that could help the planning of future sewer service in the area. That study is underway and includes as participants the Cities of North Ridgeville, Avon, Avon Lake, Lorain, the Avon Lake Municipal Utilities, and the Village of Sheffield. The study is chaired by Lake County Engineer Jim Gills. Engineer Gills chairs NOACA's Water Quality Subcommittee and was NOACA's Governing Board President last year. Preliminary findings of this study indicate that the area of challenge in Avon can be sewerred in such a manner that would be capable of directing flows to either the French Creek or Avon Lake WWTP. All sewage from the affected area flows by gravity to a point or points that can ultimately be connected to either WWTP.

Request: During the study period and until the pending action before NOACA seeking modification of the FPA boundaries is resolved or the parties jointly agree otherwise, the parties, as of the time of this writing, are anticipated to have jointly requested (by the date of the Governing Board meeting on June 10, 2011) that a series of properties that would drain to the existing sewer along Jaycox Road in Avon be allowed to connect to this sewer, with flow to the Avon Lake FPA, without prejudice to any of the rights of the parties.

Analysis: The *Clean Water 2000* Water Quality Management Plan provides a framework for considering this request:

The Plan states the following on Page 4-3 of the March 2011 Update: *“For each area where sewer service was being planned, a single local management agency was designated for all facility planning. This agency became a Designated Management Agency (DMA) for wastewater planning under this element (of the Plan). DMAs include municipalities, counties, and sanitary sewer districts authorized under Ohio law to perform these functions. As part of the DMA designation process, the owners/operators of Publically Owned Wastewater Treatment Works (POTW) were designated by the 208 Plan to have authority over sewer-related planning in clearly demarcated boundaries A DMA of either type (counties could be made responsible for planning in unsewered areas) was recognized as the lead agency within its FPA by the 208 Plan and was charged with the responsibility of identifying plans to solve existing wastewater related problems and to accommodate projected growth over a twenty year time frame.”*

On page 4-4, it is stated that many facility planning areas encompass land areas that lie outside of the political jurisdiction boundaries of the DMA responsible for wastewater planning. The Plan recognizes all service agreements that exist among a POTW owner/operator and the jurisdictions serviced by that POTW. Those agreements can specify which wastewater planning functions are to be assumed by the satellite jurisdictions. Each satellite jurisdiction named in such an agreement is recognized as a DMA for wastewater management planning in accordance with the service agreement with the POTW owner/operator.

On page 4-5, it is stated that if a DMA planned to extend service outside of its established FPA boundary, consistency was not attained until all affected parties agreed to the need for the change. This means that Ohio EPA had to agree that the proposal represented a viable alternative for providing adequate waste treatment in an efficient manner. If a proposal infringed into the FPA of an adjacent DMA, the applicant had to secure the permission of the neighboring DMA.

Finally, on page 4-16, it is stated that conflicts stemming from problems related to officially recognized FPA boundaries are expected to occur from time to time. Furthermore, they may take on new dimensions that were not considered during the development of the original Plan.

The action before the NOACA Board involves several considerations. North Ridgeville is the DMA that is responsible for identifying plans to accommodate growth over a 20-year period. According to the discussion of page 4-4 of the Plan, North Ridgeville is to work with Avon, its satellite DMA within the French Creek FPA, to provide this service in the Avon section of the French Creek FPA. The discussion on page 4-5 calls for all affected parties to attempt to reach agreement on sewerage issues. Lastly, page 4-16 authorizes the consideration of solutions to conflicts that have heretofore not been addressed by *Clean Water 2000*. In the interests of resolving the current stay upon pending and future development in the area, the parties of North Ridgeville, Avon, and Avon Lake are asking the NOACA Board to approve a temporary agreement allowing connections to the sanitary sewers in the vicinity of Jaycox Road in the French Creek FPA, which are connected to the sewer line that carries flows north to the Avon Lake WWTP at this time. This action does not affect the decision as to the ultimate destination of flow in the Jaycox sewer, which remains pending until the study is completed and the parties have had a chance to confer. However, the provision of needed wastewater service to growing portions of the City of Avon can be provided for as envisioned in *Clean Water 2000*.

By way of note, a similar situation already exists under *Clean Water 2000* for a portion of the Rocky River FPA. Rocky River has chosen to have a small portion of its FPA connected to the Lakewood WWTP for the foreseeable future. As long as all parties agree on this temporary solution, it is considered to be consistent with *Clean Water 2000*.

Consistency Finding: NOACA's agreement to this arrangement is necessary so that the prior inconsistency for the PTI involving the Jaycox Road sewer does not block issuance of the next PTI by the Ohio EPA on consistency grounds.

The parties ask Board approval of **Resolution No. 2011-027**.

RESOLUTION NO. 2011-027
(Clean Water 2000 Plan Amendment – French Creek
and Avon Lake FPA Joint Agreement)

RESOLUTION OF THE GOVERNING BOARD
OF THE
NORTHEAST OHIO AREAWIDE COORDINATING AGENCY

WHEREAS, the Northeast Ohio Areawide Coordinating Agency (NOACA) is the Metropolitan Planning Organization (MPO) for the counties of Cuyahoga, Geauga, Lake, Lorain and Medina Counties and the “areawide” pursuant to the federal Clean Water Act for those same counties; and

WHEREAS, NOACA, as the areawide planning agency designated by the Governor of Ohio pursuant to Section 208 of the federal Clean Water Act, as amended, must engage in water quality management planning in the Northeast Ohio Lake Erie Basin, including the Cuyahoga, Chagrin, Grand, Rocky, and Black River basins, on behalf of the counties of and municipalities and townships within Cuyahoga, Geauga, Lake, Lorain, and Medina; and

WHEREAS, NOACA, has adopted and continuously updated the Water Quality Management Plan required under the Clean Water Act (“*Clean Water 2000*” as updated); and

WHEREAS, pursuant to the Clean Water Act and Ohio Revised Code §6111.03(J)(2)(b), the Director of the Ohio Environmental Protection Agency cannot issue any permit-to-install (PTI) sanitary sewers that would be inconsistent with *Clean Water 2000*; and

WHEREAS, in 2010, NOACA found an inconsistency where flow from the French Creek Facility Planning Area (FPA) was being incorrectly sent to the Avon Lake FPA, and NOACA agreed in 2011 to be the fiscal agent for a study of the region; and

WHEREAS, the City of Avon, the City of North Ridgeville, and the Avon Lake Municipal Utilities have jointly agreed in writing that the sewage in the study area should continue to flow to the Avon Lake FPA during the study period, until the pending action before NOACA seeking modification of the FPA boundaries is resolved or the parties jointly agree otherwise, without prejudice to the rights of any parties, in order to facilitate sewer tie-ins by third parties who seek such service and who otherwise would have no remedy; and

WHEREAS, *Clean Water 2000* recognizes such permissive diversions from one FPA to another, with joint agreement of all parties, such as currently occurs in one other portion of the *Clean Water 2000* region.

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NOW, THEREFORE, BE IT RESOLVED by the Governing Board of the Northeast Ohio Areawide Coordinating Agency, consisting of forty-four principal officials serving general purpose local governments throughout and within the Counties of Cuyahoga, Geauga, Lake, Lorain and Medina Counties that:

Section 1. The *Clean Water 2000 Plan* is hereby amended to allow, on a temporary basis until the pending action before NOACA seeking modification of the FPA boundaries is resolved or the parties jointly agree otherwise, for sewage flow in the area noted on Attachment A to be diverted from the French Creek Facility Planning Area to the Avon Lake Facility Planning Area.

Section 2. The Executive Director is authorized to send a copy of this Resolution to the City of North Ridgeville, the City of Avon, the City of Avon Lake, Avon Lake Municipal Utilities, and the Director of the Ohio Environmental Protection Agency, with a special notation that Permits-To-Install may again be issued in the area noted on Attachment A as being fully consistent with *Clean Water 2000*.

Certified to be a true copy of a Resolution of the Governing Board of the Northeast Ohio Areawide Coordinating Agency adopted this 10th day of June 2011.

Secretary: 

Date Signed: 6-10-2011

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Attachment A

