

J. Dwight Poffenberger Jr., Esquire
2700 Carew Tower
441 Vine Street
Cincinnati, OH 45202

August 21, 2003

Ohio Environmental Protection Agency
Division of Surface Water
Attn: Permits Processing Unit
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

Re: Comments
Proposed Wastewater Treatment Plant on Wards Corner Road
NPDES Permit Application
Submitted by Clermont County Commissioners

Dear Division of Surface Water:

I represent an Ohio non-profit organization, Rivers Unlimited, comprising hundreds of individuals concerned about the health and cleanliness of Ohio's waterways.

Rivers Unlimited has the following comments regarding the Director of Ohio EPA's (Director's) consideration of a NPDES permit application submitted by the Clermont County Commissioners for a proposed plant on Wards Corner Road. These comments are being timely made and must be addressed in the Responsiveness Summary.

Rivers Unlimited objects to the Director's grant of the above-identified NPDES permit application for the following reasons, inter alia.

First, the Little Miami River is a national, wild and scenic river and therefore is per se an outstanding national resource water. As a Tier III water, it may not be degraded. Therefore, under federal and state law, such waters may not be degraded under any circumstances. Degradation, as defined by the Ohio Supreme Court, means any lowering of water quality. See Columbus & Franklin County Metro. Park Dist. v. Shank, 600 N.E.2d 1042 (Ohio 1992). This NPDES permit, if granted, would unlawfully degrade the waters of an outstanding national resource water.

Second, rare and potentially federally listed endangered species, freshwater mussels, may be located in the surrounding watershed.

Third, the affected citizens have a right to know where their sewage is flowing and how much is going into the Little Miami River. The Director is attempting to sneak this

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permit through without a separate antidegradation hearing. A separate antidegradation hearing is legally required in this case.

Fourth, Rivers Unlimited objects to several conditions and limits of the NPDES permit, if one is granted; for example, no limit on the discharge of fecal coliform from November 1 until April 30 of each year. The public needs to know there are no limits on fecal coliform and other chemicals.

Fifth, it is important to ensure that the system will not overflow in heavy rains. What safeguards are being put in place to prevent overflows of untreated sewage in the collection system?

Sixth, Rivers Unlimited would like to know how many inspections of this facility by the Director will occur per year and whether they will be announced.

Seventh, according to the Ohio Department of Natural Resources many people canoe and otherwise recreate in the Little Miami River. The proposed plant will interfere with the designated uses. These figures support our contention that this watershed is of great public interest and should be protected.

Eighth, does this NPDES permit require an industrial pretreatment program? Are there any significant industrial users that discharge to the treatment works? We would like more information regarding this issue including who may be significant industrial users.

Ninth, since this would be a "major" facility and require U.S. EPA approval, does the U.S. EPA know that the discharge is into a national and state scenic river? They must be made aware of this fact.

Tenth, is the Little Miami River on Ohio's §303(d) list of impaired waterways. If so it may not be further degraded.

Lastly, does the proposed plant not use best available demonstrated technology? The Director has approved zero discharge systems including some in the surrounding area. A zero discharge option would be the best available demonstrated technology.

Rivers Unlimited asks that Ohio EPA stop the degradation of the water quality of the Little Miami National Wild and Scenic River and Ohio State Scenic River. The proposed plant needs to flood proof, provide a level of treatment that improves, not degrades the water quality of the Little Miami, stop the sewer overflows and the violations at its treatment plants. It is not in the public interest to allow increased pollution. The public wants its rivers cleaned up, not degraded.

We suggest that this entire facility be protected against floods. Otherwise it is a certainty that the plant will again and again be overwhelmed by flooding and the creek and river will be grossly polluted with raw sewage. There will be basement sewer backups, fish kills and other losses.

We suggest that *economic* justification of any alternatives that will degrade the receiving waters cannot be alleged from facts and factors considering the consequences of further degrading these waters.

We assert that *social* justification of any polluting alternative is likewise unwarranted. Present and new tap-in ratepayers can afford more stringent wastewater treatment to avoid degrading the Little Miami's water. Degradation is a social detriment to downstream and regional users, residents, tourism, public image etc., whether or not the pollution exceeds "designated use" limits.

The Director should seriously consider the comments of Rivers Unlimited. Rivers Unlimited founded the Mill Creek Restoration Project (1993), now working to restore this most polluted Ohio stream, building a greenway along it and receiving considerable federal, state and local funds for restoration. Rivers Unlimited has now sponsored (since 1997) six years of River Resource Economics studies at Ohio State University. Subject rivers thus far have been the Muskingum - the basic methodological study - the Maumee, the Mahoning, the Sandusky and the Great Miami. Rivers Unlimited founded Friends of the Great Miami, with present efforts concentrated in Hamilton and Butler Counties (1999). The Ohio River Foundation (formerly Ohio River Advocacy) (2000) and the Ohio River Way (formerly Ohio River Corridor Initiative) (2002) are both working for the environmental improvement of the Ohio River and tributaries.

Ohio EPA is aware that Sierra Club is an intervenor in the joint lawsuit by USEPA and Ohio EPA against the Metropolitan Sewer District (2002) for violations of the Clean Water Act. From 1968 to the present, Little Miami, Inc. and Sierra Club continue their efforts to upgrade the river and protect it. Izaak Walton League has its regular river cleanup and carries out other supportive efforts with the same aim, and Rivers Unlimited and all of the above have worked since 1971 to prevent a major highway and bridge over the river at Horse Shoe Bend. Ohio EPA may have to consider an EIS on this issue soon. Greenacres Foundation conducts water quality training and monitoring on the Little Miami. The Little Miami River Partnership is a public/private watershed association concerned with water quality. Indian Hill saved Camp Dennison from a 625-unit housing development, in part to protect the Little Miami River, its wellfields and the regional environment - another \$7.5 million investment.

These are major, significant organizations working to restore and protect water quality as well as river corridor scenic beauty and environmental quality. All in this region. All in the past 10 years.

It is evident that there is a public determination here to improve our waterways: the Great Miami, Mill Creek, the Little Miami and the Ohio River.

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What all these organizations recognize is the intrinsic value to the public of clean water and scenic corridors. In Rivers Unlimited's River Resource Economic Studies, praised by OEPA Director Jones, we have set the methodology for assessing costs and benefits of restoring degraded streams, and willingness to pay for improved water quality. **It is currently impossible for Ohio or any other state to prove it in the public economic interest to degrade our waters. Only by resource economic studies can such decisions be legitimized.**

As we have often stated, the 40% of Ohio's river miles that are not fishable or swimmable hardly contribute to Ohio's economic vitality. Our lost opportunity to catch fish comes to perhaps \$600 million a year. In the instant case of the Little Miami at Sycamore Creek the water is not that bad except when the treatment plant can't handle the flow, however any additional pollution has a cost, and any reduction in pollution has a benefit.

There is an effort in court to require all state and national rivers to be declared Tier III, requiring the most stringent pollution controls. Its basis is the Clean Water Act's words "Outstanding National Resource Waters such as waters of national or state parks and wildlife refuges, and waters of exceptional recreational or ecological significance shall have their waters maintained and protected".

If it succeeds in court there will undoubtedly be many years of litigation, if not a change in the Clean Water Act. However, the trend is clear, it is certain that we undervalue water quality. That fact costs us heavily, our research proves it, and the public is coming to understand it. For further explanation, see our May 8, 2002 comments on the Proposed Antidegradation Rule, attached.

There is a 35-year record of public and private contributions to protecting and improving the water quality and scenic corridor. They come to over \$5 million, not including sewage treatment plant costs and operations, many times that amount. A permit to allow continued pollution would violate this investment and trust, and discourage efforts elsewhere to upgrade or at least protect our rivers.

Of the \$5 million, \$2 million bought us the Little Miami Scenic Trail, which returns to the region \$3 million in economic activity *every year* for over 10 years now. That is a very conservative figure because it does not consider the enhanced property value and thus tax base brought to the region by the mere presence of the trail.

We ask Ohio, through Ohio EPA, to *upgrade* effluents into the Little Miami, and "restore and maintain the chemical, physical and biological integrity" of these waters, waters of the state of Ohio, in accordance with the Clean Water Act, and thus help the Little Miami's communities with their remedial and protective work.

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There is no inherent right for developers and residents of upstream properties to externalize their costs of waste disposal upon downstream river residents, users – wherever they come from – and the public image and attractiveness of downstream communities. Yet proceeding downstream in the Little Miami, water quality worsens, at least partly because of the 20 sewage treatment plants discharging up to 70% of the dry-weather flow into the river. Any extra costs for adequate wastewater treatment at Sycamore Creek should be offset by impact fees in the new developments. Such subsidies should not show up as continued poor water quality downstream.

Some 60% of the Little Miami's riverbank lands are now protected by easements and public ownership. The Bikeway, or Little Miami Scenic River Park runs from Yellow Springs to Terrace Park and will continue to the Cincinnati waterfront.

Below Sycamore Creek the Little Miami is undammed, unchannelized and mostly natural. It is called a National Wild and Scenic River, an Ohio Scenic River, an Ohio Natural Heritage River, and it is a de facto Outstanding National Resource Water in accordance with the Clean Water Act.

To its communities – Cincinnati, Linwood, East End, Fairfax, Anderson Township, Mt. Washington, Mariemont, Terrace Park, Milford, Indian Hill – the Little Miami corridor is like Central Park is to New York City. This stretch of the river has enormous potential economic value to its surrounding communities because it is undeveloped and natural. Some public access points and woodland trails would lend an excitement that no other Hamilton County parks can match – for fish and fishing, canoeing, beach visits, birding and wildlife – it is more like New York City's Central Park, which has some of the world's most valuable real estate surrounding it, simply because of the quality of life and scenic beauty this little Park offers.

We are aware that non-point sources also pollute the Little Miami and we hope that Ohio EPA will take this same message into account in its consideration of TMDL's, NPDES's and 401 Certifications for this lower section of the river. We ask Ohio EPA to regard permit application proposals as capable of seriously influencing the welfare of this community, as we have set out above.

For the above-identified reasons, this NPDES permit violates the Clean Water Act. Therefore, this NPDES permit application should be denied.

Rivers Unlimited, by submitting this letter becomes a party to this application. Consequently, if the Director issues an NPDES permit as a result of this application, Rivers Unlimited has jurisdiction to appeal the Director's action to the Environmental Appeals Review Commission. If you have any comments or questions, please contact me.

Very truly yours,

J. Dwight Poffenberger Jr.

J. Dwight Poffenberger Jr., Esq.

Cc: Mike Fremont, Rivers Unlimited
Eric Partee, Little Miami Inc.

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