



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO ATTENTION OF
ECW-15J

VIA ELECTRONIC MAIL

The Honorable Steve Collier
Mayor of the City of Lawrence
9001 East 59th Street
Lawrence, Indiana 46216
mayormail@cityoflawrence.com

Re: Notice of Potential Violation and Opportunity to Confer
Proposed Clean Water Act Administrative Order on Consent

Dear Mayor Collier:

Information currently available to the U.S. Environmental Protection Agency, Region 5 suggests that the City of Lawrence, Indiana may have committed violations of Section 301 of the federal Clean Water Act (CWA), 33 U.S.C. § 1311. By this letter, EPA is extending to you an opportunity to advise the Agency via a video/telephone conference or in writing of any further information EPA should consider with respect to the potential CWA violations that EPA has identified as described below. Further, EPA is offering to negotiate an Administrative Order on Consent (AOC), which, EPA believes, will bring the facility into compliance with the CWA. The attached proposed AOC describes the currently identified potential CWA violations and provides actions to be taken for correcting the potential violations. The AOC may not be necessary if you demonstrate, to EPA's satisfaction, that no violation has occurred.

If you have information that you would like to share regarding the potential violations or would like to confer on the potential violations or the proposed AOC, please contact Ted Flatebo, the EPA technical assignee for this matter. Alternatively, if the attached proposed AOC is acceptable to you, you or an authorized representative of the City of Lawrence may sign and date the AOC and return it to him. You may call him at (312) 886-9402 or email him at Flatebo.Ted@epa.gov to request a meeting or provide a written submission. Any request for a meeting or submission of written materials in response to this letter should occur within 20 calendar days following receipt of this letter. We should hold any meeting within 30 calendar days following your receipt of this letter. Any legal inquiries should be directed to Deborah Carlson, Associate Regional Counsel. You may call her at (312) 353-6121 or email her at Carlson.Deboraha@epa.gov.

Background

Following a review of the documents the City of Lawrence has submitted to EPA pursuant to its Administrative Order, Docket No. V-W-08-AO-09 (2008 Administrative Order), EPA evaluated the City's compliance with its 2008 Administrative Order. This evaluation included, but was not limited to, the City's compliance with recordkeeping and reporting requirements, Operation and Maintenance (O&M) requirements, and preventing reoccurring Sanitary Sewer Overflows (SSOs) from June 2016 to May 2021. The information and documents reviewed included the City's SSO notification reports and Capacity, Management, Operations, and Maintenance (CMOM) submissions.

EPA's review identified multiple deficiencies regarding reoccurring SSOs as listed in paragraphs 37 through 39 of the enclosed proposed order. EPA believes that these deficiencies may constitute violations of the CWA.

Opportunity to Confer

EPA is extending to you an opportunity to advise the Agency, via a video/telephone conference call or in writing, of any additional information EPA should consider with respect to the potential violations.

If you request a meeting, we encourage you to submit to us information responsive to the potential violations prior to the meeting date. Please plan for your City's technical and management personnel to attend the meeting to discuss compliance measures and commitments, including those contained in the proposed AOC. You may have an attorney represent you at this meeting. Due to the COVID-19 pandemic, meetings must take place either by phone or video conferencing.

Alternatively, if the enclosed AOC is acceptable to you as proposed, please have an authorized representative of the City of Lawrence sign and date the proposed AOC and return it to EPA within 20 calendar days of your receipt of this letter. The final AOC will be subject to EPA management approval.

If you decide to submit additional information, as explained more fully in the enclosed Confidential Business and Personal Privacy Information, you may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B for any part of the information you submit to EPA. Information subject to a business confidentiality claim is available to the public only to the extent, and by means of the procedures, set forth at 40 C.F.R. Part 2, Subpart B. If you do not assert a business confidentiality claim when you submit the information, EPA may make this information available to the public without further notice.

The U.S. EPA Small Business Resources Information Sheet may be helpful if you are a qualified small business. For your convenience, the resource may be found at:
<https://www.epa.gov/compliance/small-business-resources-information-sheet>.

This letter is exempt from the Paperwork Reduction Act, 44 U.S.C. §§ 3518(c)(1)(B).

Pursuant to the Water Infrastructure Improvement Act, please be aware that you have the opportunity to develop an integrated plan, as defined in 33 U.S.C. § 1342(s), that may be incorporated into this AOC. See 33 U.S.C. § 1319(h). Copies of the Water Infrastructure Improvement Act (Public Law No. 115-436) and EPA's 2012 "Integrated Municipal Stormwater and Wastewater Planning Approach Framework" (Integrated Planning Framework) can be found online at <https://www.congress.gov/bill/114th-congress/senate-bill/612> and https://www3.epa.gov/npdes/pubs/integrated_planning_framework.pdf respectively. In addition, you may wish to consult EPA's 2014 "Greening CSO Plans: Planning and Modeling Green Infrastructure for Combined Sewer Overflow Control," which can be found at https://www.epa.gov/sites/production/files/2015-10/documents/greening_cso_plans_0.pdf. If you would like a hard copy of the "Greening CSO Plans" document, we are pleased to provide one upon request.

Next Steps

If the Agency ultimately determines that the facility is not in compliance with applicable requirements of the CWA or your NPDES permit, EPA will ask that you enter into an administrative agreement to return the facility to compliance, either in the form of the enclosed proposed AOC or as negotiated between the City of Lawrence and EPA. If you decide not to agree to an AOC, then EPA will consider other enforcement options available under Section 309 of the CWA, which may include the issuance of a unilateral administrative compliance order and/or pursuing a judicial civil action. Please note that issuance of an AOC does not resolve liability for violations alleged in the AOC or for other violations of the CWA. As stated in the proposed AOC, neither issuance of the AOC nor compliance with its terms precludes further enforcement action by EPA, including actions for penalties, under the CWA. Nonetheless, a quick and satisfactory return to compliance may be considered by EPA in determining any further enforcement action.

Please note that to the extent there is ongoing noncompliance with the CWA within the City of Lawrence, such noncompliance should be corrected immediately. EPA specifically reserves the right to use any enforcement tools at its disposal to address ongoing violations at the Facility regardless of any future discussions in response to this letter.

We look forward to receiving your response.

Sincerely,

**MICHAEL
HARRIS**

Digitally signed by
MICHAEL HARRIS
Date: 2021.06.22
11:14:17 -05'00'

Michael D. Harris
Division Director
Enforcement and Compliance Assurance Division

Enclosure(s): Proposed Administrative Order on Consent
Confidential Business and Personal Privacy Information

Confidential Business and Personal Privacy Information

Assertion Requirements

You may assert a business confidentiality claim covering any parts of the information requested in the attached Appendix B, as provided in 40 C.F.R. § 2.203(b).

To make a confidentiality claim, submit the requested information and indicate that you are making a claim of confidentiality. Any document for which you make a claim of confidentiality should be marked by attaching a cover sheet stamped or typed with a caption or other suitable form of notice to indicate the intent to claim confidentiality. The stamped or typed caption or other suitable form of notice should employ language such as “trade secret” or “proprietary” or “company confidential” and indicate a date, if any, when the information should no longer be treated as confidential.

Information covered by such a claim will be disclosed by EPA only to the extent permitted and by means of the procedures set forth in 40 C.F.R. Part 2. Under 40 C.F.R. § 144.5, the following information is not entitled to confidential treatment and claims of confidentiality will be denied: name and address of any permit applicant or permittee, and information which deals with the existence, absence, or level of contaminants in drinking water.

Allegedly confidential portions of otherwise non-confidential documents should be clearly identified. EPA will construe the failure to furnish a confidentiality claim with your response to the information request as a waiver of that claim, and the information may be made available to the public without further notice to you.

Determining Whether the Information Is Entitled to Confidential Treatment

Pursuant to 40 C.F.R. Part 2, Subpart B, EPA may at any time send you a letter asking that you support your confidential business information (CBI) claim. If you receive such a letter, you must respond within the number of days specified by EPA. Failure to submit your comments within that time would be regarded as a waiver of your confidentiality claim or claims, and EPA may release the information. If you receive such a letter, EPA will ask you to specify which portions of the information you consider confidential by page, paragraph and sentence. Any information not specifically identified as subject to a confidentiality claim may be disclosed to the requestor without further notice to you. For each item or class of information that you identify as being CBI, EPA will ask that you answer the following questions, giving as much detail as possible:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a special event or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, specify that event.
2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question number 1?

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
4. Is the information contained in any publicly available databases, promotional publications, annual reports or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
5. Has any governmental body made a determination as to confidentiality of the information? If so, attach a copy of the determination.
6. Do you assert that the information is submitted on a voluntary or a mandatory basis? Explain the reason for your assertion. If you assert that the information is voluntarily submitted information, explain whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.
7. Is there any other information you deem relevant to EPA's determination regarding your claim of business confidentiality?

If you receive a request for a substantiation letter from the EPA, you bear the burden of substantiating your confidentiality claim. Conclusory allegations will be given little or no weight in the determination. In substantiating your CBI claim(s), you must bracket all text so claimed and mark it "CBI." Information so designated will be disclosed by EPA only to the extent allowed by and by means of the procedures set forth in 40 C.F.R. Part 2, Subpart B. If you fail to claim the information as confidential, it may be made available to the public without further notice to you.

Please also note that pursuant to 40 C.F.R. § 2.204, EPA may determine that the information you claimed as CBI is clearly not entitled to confidential treatment and issue a final determination without providing you an opportunity to substantiate your claim. Examples of information clearly not entitled to confidential treatment include effluent data, as defined in 40 C.F.R. § 2.302(A)(2), and information in National Pollution Discharge Elimination System permit applications are not entitled to confidential treatment. See 40 C.F.R. § 122.7.

Personal Privacy Information

Please segregate any personnel, medical and similar files from your responses and include that information on a separate sheet(s) marked as "Personal Privacy Information." Disclosure of such information to the general public may constitute an invasion of privacy.