

UPDATE OF STATE WATER QUALITY MANAGEMENT PLAN
Ohio EPA Addendum to
Wastewater Management Facility Planning - NEFCO

This document is an addendum to Clean Water Plan 208 Lake Erie Basin Water Quality Management Plan dated June 19, 2003 adopted by the Northeast Ohio Four County Regional Planning and Development Organization (NEFCO). Ohio EPA prepared the addendum in consultation with NEFCO officials for the purpose of clarifying several issues that arose after NEFCO's General Policy Board adopted the plan.

NEFCO's Clean Water Plan Chapter 3 covers background information about Wastewater Management Facility Planning as well as detailed information on the specific entities responsible for wastewater planning and the provision of sewage collection and treatment services. NEFCO has continued to refer to these responsible entities as Designated Management Agencies (DMAs). Through this addendum, Ohio makes a clarification that it is not seeking DMA designations under Section 208(c)¹, but rather is certifying updated management agency responsibilities in the general sense under Section 208(b) of the Clean Water Act and CFR Section 130.6. This addendum also clarifies certain background information about the overall State Water Quality Management Plan written by NEFCO:

"In response to a court challenge, Ohio EPA has established a standard process for the review of NPDES permit and Permit to Install (PTI) applications statewide. (In areas of the state outside of the jurisdiction of areawide planning agencies, the Ohio EPA has begun the process of updating 208 Plans. In designated areas of the state, the Ohio EPA has requested that area wide agencies update the corresponding areawide 208 Plan element for municipal waste treatment.) The Ohio EPA addresses the full scope of Ohio's Water Quality Management planning in its Continuing Planning Process (CPP) document." Clean Water Plan, Chapter 3, I. Introduction, page 3-2.

Federal and State laws require the Director of Ohio EPA to consider aspects of Section 208 plans in the issuance of NPDES permits and PTIs. The court challenge referred to involved a specific situation and set of circumstances which led to inclusion of language in the 1993 State Water Quality Management Plan Certification and the completion of Section 208 Plan updates applicable to the Blacklick Creek watershed in Central Ohio. Additional 208 plan updates by Areawide Planning Agencies and Ohio EPA, either completed or ongoing, have been undertaken pursuant to applicable laws and regulations, not as a result of the court challenge.

¹ The requirements in Section 208(c) were purposefully established for, and used as part of, the now defunct federal construction grants program. U.S. EPA has indicated there is little to nothing gained by having entities approved as DMAs under Section 208(c) since the federal construction grants program is a relic of the past. However, U.S. EPA believes it is still obligated to apply the requirements of Section 208(c) to current day "updates" of DMA assignments if a State requests such designation under Section 208(c). (Modified from language of letter, Morris to Traub (11/06/03)).

Amendments to the Areawide Waste Management Plan (Section 208 of the Clean Water Act) prepared and adopted by the NEFCO that address wastewater management facility planning are listed below.

- ! Clean Water Plan, 208 Lake Erie Basin Water Quality Management Plan. Chapter 3 and Appendices 3-1 through 3-14. June 2003

- ! Lake Erie Basin Plan amendments (adopted separately by NEFCO's General Policy Board):
 1. Consistency review for the Fishcreek Wastewater Treatment Plant in Stow
 2. Update for the Kent Sanitary Sewerage Improvements
 3. City of Kent Sanitary Sewerage Improvements, South Central Sanitary Trunk Sewer Phase 2
 4. Establishment of the Randolph Facilities Planning Area
 5. City of Ravenna 201 Facilities Plan Update
 6. Ravenna and Fish Creek FPA Update
 7. Springfield, Franklin-Green, and Barberton-Wolf Facilities Plans (201) update for the City of Green
 8. Twinsburg Facilities Plan 201 Update for the City of Twinsburg
 9. Update for the Yellow Creek Service Area Wastewater Treatment Prescriptions
 10. Akron Facilities Plan Update for a portion of the Yellow Creek Service Area in Bath Township

A number of important operating policies and procedural guidelines are included in Chapter 3 that describe in detail the process put in place by NEFCO to update and maintain the roles and responsibilities for wastewater collection and treatment in the planning area (see below). These policies are functioning for the entire 4 county area (Joseph Hadley, personal communication). Therefore, the policies listed below govern the changes to Designated Management Agencies and Facility Planning Areas and the procedures for making wastewater management plans consistent with the Clean Water Plan in all of NEFCO's designated planning area (Summit, Portage, Wayne and Stark counties). The policies are:

- 3-1 DMAs and their current FPA boundaries for wastewater management planning;
- 3-2 Endorsements of Modifications to FPA Boundaries;
- 3-3 Development of Local Wastewater Management options and prescriptions;
- 3-4 208 Plan Consistency Actions for Ohio EPA and USEPA;
- 3-5 Utilization of Areawide Population Projections;
- 3-6 Updating and/or Revising the Facilities Planning Area of Designated (a,b) Management Agencies
- 3-7 Nomination of New Designated Management Agencies (DMAs).

Clarification is needed regarding how and when a NEFCO Clean Water Plan amendment, adopted under the preceding policies, is effective from the standpoint of the issuance of permits by Ohio EPA. The following text, written with the input of NEFCO officials, provides clarification on several NEFCO policies.

Under State and federal law, permits issued by the Director of Ohio EPA are reviewed to ensure there is no conflict with 208 plans. In many sections of the NEFCO Clean Water Plan the phrase “consistent with the CWP” is used in reference to this aspect of law. Policy 3-4 specifically addresses this:

Policy 3-4: 208 Plan Consistency Actions for Ohio EPA and USEPA

Consistency with this CWP update will be required whenever an application is made to the Ohio EPA for (a) a permit to discharge pollutants into the waters of the state (NPDES Permit) or (b) a Permit-to-Install. Also, as per Ohio EPA’s Division of Environmental and Financial Assistance (DEFA) policy, a consistency review will also be required of applicants for grants or loans under the Clean Water Act.

Additional language in the NEFCO 208 plan explaining Policy 3-4 includes the following:

The Ohio EPA will notify NEFCO of all permit applications that apply to a Publicly-Owned Treatment Works (POTW) within the NEFCO area. NEFCO must certify that proposed POTW actions are consistent with the current FPA boundary definitions, that they support the future sewerage declarations made by the local officials in the affected area, and that they conform to population projections contained in the CWP.

Clarification

The involvement of NEFCO in making an assessment of consistency with the current plan is appropriate, but it should be noted that the final determination regarding consistency and permit issuance rests with the Director of Ohio EPA. Furthermore, the applicable federal and State laws say no permit is to be issued if it would conflict with the approved 208 plan. “Consistent with” and “no conflict with” the 208 plan language are subtly different tests. The “no conflict with” test will be applied by NEFCO and Ohio EPA.

Policy numbers 3-1 and 3-6 (a & b) describe current Designated Management Agencies, Facility Planning Area boundaries, the roles for wastewater management planning and the procedures set forth in NEFCO’s Clean Water Plan to update and/or revise the DMAs and FPA boundaries.

Policy 3-1: DMAs and Current FPA Boundaries

With the adoption of this Plan update by the NEFCO General Policy Board, the local jurisdictions or agencies identified in Table 3-1 are confirmed as the DMAs for wastewater management planning within the FPAs set forth in Appendices 3-2 to 3-12.

Clarification

The State is not seeking DMA designations under Section 208(c), but rather is certifying updated management agency responsibilities in the general sense under Section 208(b) of the Clean Water Act and CFR Section 130.6.

Policy 3-6: Updating and/or Revising the Facilities Planning Areas of Designated Management Agencies

Designated Management Agencies that own a Publicly-Owned Treatment Works for wastewater have lead responsibility for sewer planning i.e. updating and/or revisions within the boundaries of the sewer districts in the Facilities Planning Area subject only to appeal to the NEFCO General Policy Board under Policies 3-6a and 3-6b below. However, the county will continue to have responsibility for sewer planning in conformity with any agreements with the DMA and 201 facility plan in all unincorporated areas, including those within an established FPA. County agencies will submit their sewer plans to the DMA to be incorporated into their facilities plan.

Policy 3-6a: Responsibility for sewer planning will be with the Primary Designated Management Agency(s) in each established Facilities Planning Area in all cases of challenge when they can demonstrate any of the following:

- a. that the system affordability would be negatively impacted by the suggested change;***
- b. that system efficiency, defined as the ability to meet its NPDES permit limitations, would be compromised by a suggested change; or***
- c. that the sewer system rated capacity will be exceeded;***
- d. the change would result in a violation of a condition of a Section 201 Facilities Construction Grant received through the USEPA or a provision of a State Revolving Fund administered by the Ohio EPA;***
- e. if the DMA can show that it will suffer undue harm, or if it can demonstrate that system integrity would be compromised by the change, it must be given the opportunity to maintain primacy;***
- f. if an existing primary and/or secondary DMA has constructed components of their sewer system (WWTP or collection system) to serve the requested change in FPA area, no change in the FPA would be allowed unless compensation is made for capital expenditures.***

Policy 3-6b: Planning responsibility for limited areas can be transferred from the Designated Management Agency in an established Facilities Planning Area in cases of challenge when the DMA applicant for change can demonstrate all of the following:

- a. that none of the conditions established by 3-6a apply;**
- b. that the existing DMA is unprepared or is unwilling to extend service to the challenged area, or that they have conditions that are unreasonable for the DMA applicant community;**
- c. that an alternative sewerage plan exists that protects the environment, and that the alternative plan is technically achievable, economically affordable, and politically acceptable;**
- d. that the proposed DMA has the legal authority to act.**

Clarification

NEFCO's explanatory text under Policy 3-6b states that the transfer of planning responsibilities for sewer and wastewater treatment will be for limited areas, are subject to a number of conditions, and must be approved by Ohio EPA prior to consideration by the NEFCO General Policy Board (emphasis added). Provided the policies and further guidelines of the explanatory text are followed, any such updates and revisions to NEFCO's Clean Water Plan shall be effective for the purpose of permit consistency reviews immediately upon adoption by the NEFCO General Policy Board.

Policy 3-7 describes the process used by NEFCO to consider nominations for new designated management agencies.

Policy 3-7: Nomination of New Designated Management Agencies
New Designated Management Agencies (DMAs) can be established to provide sanitary sewer service in newly created Facilities Planning Areas (FPAs). The proposed DMA and if applicable, new Facilities Plan will be submitted to the Ohio EPA for review and comment. Approval by the NEFCO Board is necessary for these DMAs and FPAs to be recognized by the Clean Water Plan (CWP). The new DMAs and FPAs will be incorporated into the CWP by amendment.

Additional language in the NEFCO 208 plan explaining Policy 3-7 includes the following:
Following the NEFCO Board approval, the Ohio EPA will utilize the new designation(s) in its permit decision process.

Clarification

The approval of new designated management agencies, per Policy 3-7, is something that should not be effective upon NEFCO General Policy Board approval. The preceding explanatory language that indicates otherwise is hereby removed from the content of NEFCO's Clean Water Plan update in the 2004 State WQM Plan certification. Additionally, if nomination of new DMAs did occur and were subsequently adopted by NEFCO and certified by the Governor, then the State would not seek DMA designations under Section 208(c), but would instead certify updated management agency responsibilities in the general sense under Section 208(b) of the Clean Water Act and CFR Section 130.6.