

Stephen P. Samuels
Counsel
614.559.7259 (t)
614.464.1737 (f)
ssamuels@fbtlaw.com

May 1, 2024

Ohio EPA-DSW
Attn: Permits Processing
P.O. Box 1049
Columbus, Ohio 43216-1049
Epa.dswcomments@epa.ohio.gov

Re: Application for NPDES Permit
Raccoon Creek Wastewater Treatment Center
ID No. 4PQ00007*AD

Dear Sirs and Mesdames:

The following comments, submitted on behalf of the City of Johnstown and the Village of Granville, pertain to the referenced NPDES Permit application submitted by Southwest Licking Community Water and Sewer District (“SWL” or the “District”), and more specifically, to the myriad shortcomings in the Anti-Degradation Addendum that is an essential element of the application. As Ohio EPA is aware, the Addendum contains an outline of the requirements of OAC 3745-1-05 that, in essence, requires an applicant whose proposed project may degrade a water body to demonstrate that (1) the project is needed—*i.e.*, the benefits of the proposed project outweigh the adverse environmental, economic, and social benefits consequences that may result—and (2) there is no less destructive alternative than the proposed project.

SWL has conceded, as it must, that its proposed treatment plant will adversely impact the receiving stream. The proposed point of discharge is in the headwaters of a (likely) zero low-flow pristine stream, Moots Run, immediately above its confluence with Raccoon Creek. To our knowledge, this is the only new major wastewater treatment plant that has ever been proposed in Ohio at such an (inappropriate) location. Moreover, as the comments below detail, SWL has failed to perform a good faith evaluation of the alternatives, provide *any* chemical or biological data on the existing quality of the receiving streams or the uses the public make of them, much less any analysis of the impacts the discharge would have.

Equally, the Addendum assumes that the single rationale SWL advances to justify the plant—to allow/encourage significant economic development—justifies the adverse impacts the facility

will have on the interests of the vast majority of the local residents and political subdivisions—not the least of which are the school districts, which are adamantly opposed to the grandiose development schemes of the District.

These deficiencies, among others, are detailed in the comments below, which follow the format of the Addendum. (The relevant language from the Addendum is quoted in italics, followed by the comment.) The volume and significance of these shortcomings are such that they demand Ohio EPA deny the permit application.

Addendum, Section 4. For all projects that do not qualify for an exclusion, a report must accompany this application evaluating the preferred design alternative, non-degradation alternatives, minimal degradation alternatives, and mitigative techniques/measures for the design and operation of the activity. The information outlined below should be addressed in this report.

- a. Describe the availability, cost effectiveness and technical feasibility of connecting to existing central or regional sewage collection and treatment facilities, including long range plans for sewer service outlined in state or local water quality management planning documents and applicable facility planning documents.*

It is axiomatic that water and sewer service allows, indeed encourages, development. A substantial facility such as the one proposed will accelerate and alter the development pattern in the region, impacting multiple jurisdictions and numerous residents. Such decisions should be made collaboratively with all other service providers and local governments. SWL has not done so.

Section 4.a. of the Addendum requires an applicant to “describe the availability, cost effectiveness and technical feasibility of connecting to existing central or regional . . . facilities.” There are no fewer than five reasonably proximate such facilities: Columbus, Johnstown, Granville, Alexandria, and SWL’s own Gale Road WWTP. However, the application contains no documentation of capacity reviews about or from any of them, or their willingness (individually or collectively) to accept the projected flows. Indeed, to our knowledge, the Gale Road facility alone currently will soon have sufficient excess capacity to treat all the “expected” flow.

Clearly, channeling the “expected” flow to one or more of these existing facilities, which are already permitted and are located along already impacted streams with substantially greater assimilative capacity, would prevent the environmental degradation and other adverse impacts that the proposed Raccoon Creek WWTP would have. The Addendum, however, utterly fails to identify, much less evaluate, these alternatives.

SWL’s “preferred” alternative also suffers from the significant defect that the location of it is at one of the highest elevations along the 161 corridor. For example, Alexandria’s WWTP is nearly 110 feet lower in elevation, and Granville’s plant is 135’ lower than the District’s

proposed location. The projected service area also includes a significant watershed divide. This will require the installation of numerous pump stations and force mains which will increase the energy, operation, and maintenance costs associated with the proposed facility. There has been no effort by SWL to evaluate alternative sites that would allow for more efficient service. It appears that this land was purchased and the environmental and financial costs to “make it work” were not considered.

- b. List and describe all government and/or privately sponsored conservation projects that may have been or will be specifically targeted to improve water quality or enhance recreational opportunities on the affected water resource.*

The application lists the Raccoon Creek Partnership as the only privately sponsored conservation organization focused on the “affected water resource,” *i.e.*, Raccoon Creek, and identifies Amy Mackey as its coordinator. We contacted Amy Mackey. She informed us that her organization is in no way engaged with this watershed. Rather, that organization’s focus is the Raccoon Creek located in Athens County.

The Addendum also fails to note that one of the key functions of the Licking County Soil and Water Conservation District is the protection and enhancement of the waterways in the County. One may assume, therefore, that SWL failed to contact that organization. There are only two explanations for these errors: outright duplicity or gross negligence. In either event, the errors and omissions are serious and justify denying the application.

- c. Provide a brief description of all treatment/disposal alternatives (preferred, non-degradation, minimal degradation and mitigative technique/measure) evaluated for this application and their respective operational and maintenance needs.*

In addition to consideration of other central and regional wastewater treatment providers, the alternative evaluations must include the use of existing infrastructure that the District owns and operates. SWL is currently building the Wagram WWTP at a cost of approximately \$100,000,000 to alleviate excess flows and other problems in its collections system. This project will immediately remove approximately 1 mgd of flow that currently is treated at the Gale Road WWTP. As the Gale Road facility *already* has approximately 2.5 mgd excess capacity, the addition of another 1 mgd of excess capacity at that facility should be more than sufficient to accommodate any reasonable projection of flows from the area for the foreseeable future. A regional pump station and force main could be constructed to pipe flows from the area to the Gale Road plant. This alternative was not evaluated and would likely be more cost effective. In addition, the Gale Road plant discharges to the South Fork of the Licking River, which has a much higher assimilative capacity, so no lowering of water quality would be required.

By the same token, the application should have evaluated the utilization of the *existing* and potential excess capacity available at other treatment facilities—Columbus, Johnstown, Granville, and Alexandria.

It is not the job of the commenters, or Ohio EPA, to analyze these alternatives and demonstrate they are technically feasible, cost effective, less environmentally harmful, or cause fewer adverse consequences. That is the applicant’s burden, and it has failed to do so in good faith.

The application is also devoid of any discussion of mitigative techniques to reduce the overall lowering of water quality. As has been done in numerous other instances—one needs go no further than the wetlands that will be constructed as part of the New Albany business park to minimize the environmental impact that development will have—the District should have considered, and proposed to install, mitigative wetlands, stream buffers, planting of cover, and/or other measures, on site and/or off site, to offset the lowering of water quality. Had SWL worked in good faith with Ohio EPA, the Licking County Soil and Water District, or other local governments, it seems certain that productive mitigative measures could have been proposed.

At a minimum, the following information must be included in the report for each alternative evaluated.

d. Outline of the treatment/disposal system evaluated, including the costs associated with the equipment, installation, and continued operation and maintenance.

Even if locating a wastewater treatment plant at the proposed location made sense, which it does not, the proposed facility is severely oversized. Although SWL postulates virtually immediate and massive growth will occur due to Intel, this supposition is highly speculative and grossly inconsistent with the data.¹ For over forty-five years, Licking County has been one of the fastest growing areas in Ohio, adding approximately 60,000 residents. Despite that, SWL’s Gale Road plant, built thirty-five years ago with a capacity of 4.3 mgd, has only just now reached an average daily flow of approximately 2.5 mgd. During that time, the District has added approximately 200 connections per year.

Even assuming the townships’ zoning codes would allow substantial growth, much of it will occur in areas other than St. Albans and Jersey Township: Columbus, Eastern Licking County, New Albany, Knox and Fairfield Counties. The best predictor of what will happen in the future is what happened in the past. It is far more reasonable to assume, as MORPC has, that

¹ Without citing any supporting documentation, the District’s so-called “Master Plan” predicts that the plant’s service area—consisting of portions of three townships—will serve 25,000 new residents in the first ten years, another ~25,000 in the following decade, and an additional ~31,000 thereafter. For the reasons set forth above, this speculation should be totally discounted. By comparison, MORPC predicts growth of ~25,000 residents in the *entire County* over the next ten years.

comparable growth will occur in the St. Albans and Jersey Township areas that the Raccoon Creek WWTP proposes to serve.

The application also suggests that the initial development surge will be in Jersey Township. In order to service Jersey Township from this location, the District will need to install nearly seven miles of force mains and sewers connected by multiple pump stations to start providing service. According to the District's master plan, this will add \$112,000,000 in startup collection system costs to the \$88,200,000 price tag of the WWTP before the plant can service a single customer.² And the District admits (see page 127 of the Master Plan) that the number of new customers that will connect to the plant in the first several years of its existence is minimal.

- e. Identify the substances to be discharged, including the amount of regulated pollutants to be discharged in terms of mass and concentration.*

The application only identifies the BADCT pollutants—CBOD, TSS, NH₃, DO, P, N, Oil and Grease, pH and *E.coli*—as being in the discharge. However, the Addendum states that the proposed facility will *initially* serve over 1,000 acres (in proximity to the New Albany Industrial Park) zoned manufacturing. Manufacturing facilities discharge a myriad of exotic and potentially toxic compounds. As Moots Run has negligible assimilative capacity, in order to meet Ohio's water quality standards, much less anti-degradation requirements, the facility will need to incorporate sophisticated technology or impose draconian local limits, which are likely—at least for some potential users—to be technically infeasible or prohibitively expensive. The application fails to consider this issue.

- f. Describe the reliability of the treatment/disposal system, including but not limited to the possibility of recurring operation and maintenance difficulties that would lead to increased degradation.*

The Raccoon Creek WWTP has a much greater potential for operation and maintenance difficulties compared to the other existing nearby wastewater plants that could accommodate the flow. As mentioned previously, the location is problematic, the pumping requirements to collect the wastewater are immense, and the effluent will dominate the proposed receiving stream network. Also, due to the low flow at the point of discharge, any upset at the plant would have a significant adverse impact on the biota in the stream.

² The impact of this on the District's customers would be staggering. Assuming a 3% interest rate—recent OWDA loans bore interest at rates between 1.8-3.67%—and a 20-year repayment term for the ~\$200MM, the Ohio Water Development Authority's ("OWDA") on-line rate calculator computes that each of the District's ~7,000 sewer customers' bills would have to increase by \$159 per month. Adding the \$100MM price tag for the Wagram WWTP would force the District to charge each sewer customer an additional \$239/month.

One Columbus Center | 10 West Broad Street, Suite 2300 | Columbus, OH 43215 | 614.464.1211

- g. Describe any impacts to human health and the overall quality and value of the water resource.*

First, SWL has failed to conduct any sampling of the water quality and biota in the receiving streams, or to assess what uses—e.g., fishing, wading, swimming—are currently made of them. Therefore, it is impossible to determine, much less quantify, the nature and magnitude of the adverse impacts the proposed facility will have.

Second, the above omission has precluded Ohio EPA from being able to make an informed decision on the amount of nutrients the facility should be permitted to discharge. Although the Agency has suggested that it might impose phosphorus (“P”) limits of 0.7/1.0 mg/L, the basis for these numbers is not apparent. The 1999 *Associations Report*, which Ohio EPA has used as the basis for numerous NPDES permits, suggests that many small Ohio streams are adversely impacted when the phosphorus concentration exceeds 0.11 mg/L. While it is certainly the case that the amount of phosphorus (or nitrogen) that a water body can safely assimilate varies depending on the amount of cover, slope, and other factors, the failure of SWL to provide *any* information that would allow Ohio EPA to be able to calculate limits that will not degrade the stream is a glaring omission.

Third, constructing a major wastewater treatment plant at the headwaters of a watershed will convert the stream network to nearly 100% effluent. During “low flow” conditions—and the application provides no data to indicate how often the receiving streams contain water or how much—there will be no assimilative mixing. An average discharge rate of 3 mgd (which equals 2,083 gpm), not to mention the peak flow of 9 mgd (>6,000 gpm), will scour the stream bed and create significant erosion, thereby decimating the natural habitat of Moots Run (and perhaps portions of Raccoon Creek), destroying the macroinvertebrates and fish habitat. According to the application, this plant will ultimately be a 10 mgd plant that will add peak flows of 30 mgd (>20,000 gpm), which would likely scour thousands of feet of the stream network. However, the Addendum fails to discuss this significant environmental issue, much less present data and analysis to attempt to quantify the nature and degree of harm . . . or how to mitigate it.

SWL also intends to build a water treatment facility on this site and, according to its “master plan,” will withdraw water from Raccoon Creek. This variable creates serious complexities in overall lowering of water quality in Raccoon Creek. Granville and Alexandria both have existing NPDES permits and withdrawing water from this stream network will lower the regions’ ability to assimilate future flows and will limit growth opportunities.

- h. Describe and provide an estimate of the important social and economic benefits to be realized through this proposed project. Include the number and types of jobs created and tax revenues generated.*

Water and wastewater utility investments set in motion the economic development that impacts the quality of life for surrounding communities. Every new water/sewer line enables growth and

development, increasing demand for a wide range of other public services, like schools, roads, police, and fire. With little or no coordination with the respective jurisdictions, the projected increase in capital would not likely meet the required increase in expenditures leaving a deficit, which ultimately reduces the quality of life on all levels for the residents of the area. SWL is betting on complete and total growth in this area with little regard to the impacts on the surrounding community.

In the Addendum, SWL speculates that 34,335 jobs will be created in 15 years directly related to the availability of wastewater. Its long-term economic predictions are even more optimistic: “A financial assessment was completed for SWLC in December 2022. Based on assumptions made in the financial assessment, at build-out, gross building area totals 96,300,000 square feet and employment totals 72,800 jobs. Build-out is assumed to extend beyond 15 years.”

A comparison of this prophesy with actual data from one of the fastest growing, richest, and most aggressive communities in Ohio, reveals how greatly SWL has inflated the hypothesized benefits. According to the New Albany website: Since 1998, New Albany has attracted more than \$3 billion in private investment resulting in more than 11 million square feet of development, 15,000 jobs and more than \$100 million in income tax revenue.

i. Describe the environmental benefits to be realized through this proposed project.

The application cryptically states that the discharged effluent will add to the “natural buffering” capacity of Moots Run to absorb non-point source loads. What the application fails to do, however, is provide any actual information regarding the identity of the non-point sources that are generating pollutants or the nature, concentration, and loading of the putative pollutants, quantify (or even describe) the effect they are purportedly currently having on the receiving stream, and exactly how the discharge of substantial additional pollutants by the proposed facility will ameliorate this speculative problem.

j. Describe and provide an estimate of the social and economic benefits that may be lost as a result of this project. Include the impacts on commercial and recreational use of the water resource.

As with other sections of the application, the District has not made a good faith effort to answer the question. SWL is quick to speculate about (and even attempts to quantify) the tremendous amount of development the project will generate, but utterly fails to describe the potential adverse impacts that such rapid growth will have on a largely rural community, the vast bulk of whom ardently wish the area to remain so. To be certain, some growth will happen, even if this project is not constructed, but if development is enabled and encouraged—and that will be the effect of locating a large WWTP here—in advance of the finalization of comprehensive plans by the townships, that development will have adverse consequences on the bulk of the residents, the other political subdivisions, and particularly the schools. The addition of 25,000 new residents over the next ten years—not to mention the additional 50,000 residents the Districts says this project will eventually attract to this area—will significantly increase traffic, noise, pollution,

etc. It will also overwhelm the schools. They have been completely forthcoming with detailed information about their goals, limitations, and concerns, and would assuredly be willing to share this data with the District, if it had chosen to ask.

The application is equally devoid of any discussion of the possible adverse impacts the plant may have on the current uses—wading, swimming, fishing, etc.—of the downstream watershed.

k. Describe the environmental benefits lost as a result of this project. Include the impact on aquatic life, wildlife, threatened or endangered species.

This matter was addressed above, principally in section “g.” Also, the addition of 3 mgd and ultimately 10 mgd of wastewater to this watershed will have lasting adverse impacts on other local jurisdictions’ ability to grow and develop. Long term impacts to the receiving stream and overall reductions in its assimilative capacity need to be analyzed collectively with other NPDES permittees in the watershed.

In addition to the construction of the wastewater plant, the application contemplates the installation of \$112,000,000 of sewers, force mains and pump stations to begin operation. This will necessitate numerous stream crossings, the effect of which should be evaluated.

Finally, the Addendum references and relies upon various documents, including a SWLC January 2024 Draft Water and Sewer District Master Plan and a December 2022 SWLC Financial Assessment. These documents were not included as appendices to the application nor were they otherwise made publicly available for review as part of the public comment process. Without these documents being included with the application, Ohio EPA (as well as the public) cannot complete a full review of the Addendum to determine the reasonableness and accuracy of the information relied upon to reach the applicant’s conclusions.

As the comments above illustrate, the District did not make a good faith effort to respond to the important questions set forth in the Addendum. It is rife with serious omissions, errors, and speculation; and embarrassingly bereft of data and analysis. The number and significance of these deficiencies are such that Ohio EPA should deny the permit application.

Very truly yours,

/s/Stephen P. Samuels

Stephen P. Samuels