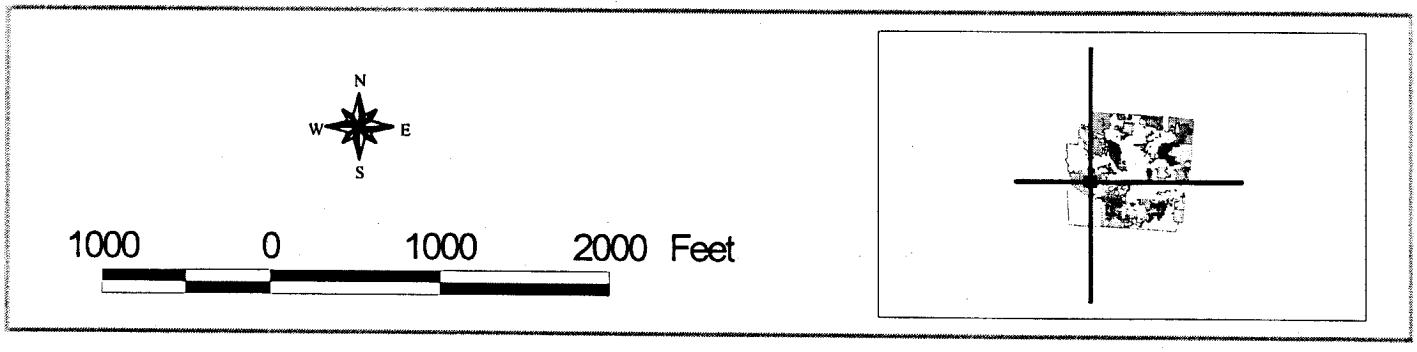
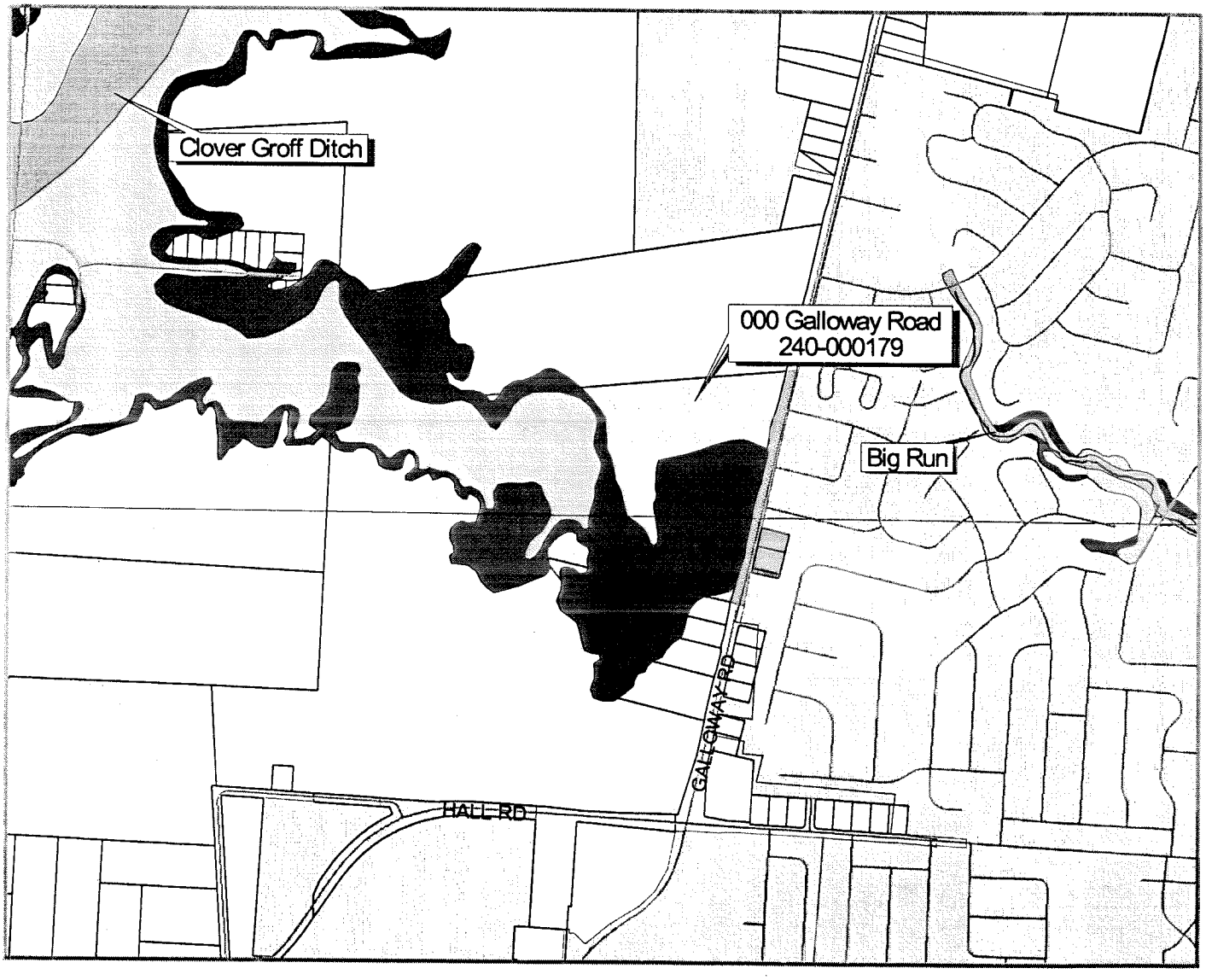
ATCH 5

FRANKLIN COUNTY DEVELOPMENT DEPARTMENT

373 South High Street, 15th Floor
Columbus, Ohio 43215
Tel: 462-3094
Daniel J. Nichter, Director

Parcel Attribute Report





Jefferson Water & Sewer District

Richard E. Fridley, Director

September 7, 2000

Cheryl Roberto
Policy Officer
City of Columbus
City Hall
90 West Broad Street
Columbus, OH 43215

Lisa Morris
Chief, Division of Surface Water
Ohio EPA
Lazarus Government Center
122 South Front Street
Columbus, OH 43215

Re: Comments on City of Columbus Draft Metropolitan Facilities Plan Update

Dear Mses. Roberto and Morris:

The Jefferson Township Water & Sewer District and the Jefferson Township Board of Trustees respectfully submit the following initial comments on the draft Metropolitan Facilities Plan Update prepared by the City of Columbus which provides the City's view of regional wastewater management needs through the year 2020. We are encouraged by the City's recognition of Jefferson Township's establishment of a self-sustaining and well-operated wastewater treatment system and we look forward to working with the City to cooperatively assure that the future wastewater treatment requirements of the City and the Township are addressed in a mutually advantageous and cost-effective manner. We also plan to continue to strive to assure that Jefferson Township retains the tools it has successfully used to facilitate development in the Township in a manner which protects its unique resources and heritage. With these principles in mind, we provide the following comments and/or questions.

6455 Taylor Road ~ P O Box 116 ~ Blacklick, Ohio 43004

Phone: 614-864-0740 ~~ Fax: 614-864-9192 ~~ Email: RF1006@aol.com

1. The format and ultimate use of the Facilities Plan Update in the Section 208 planning process is confusing and perhaps inappropriate. The Facilities Plan Update focuses solely on establishment of a broad service area without evaluation of the many factors required by the Clean Water Act. Moreover, we request additional information on how this process will be coordinated with the Section 208 plan being developed for the Blacklick Creek. It certainly seems that these areas will overlap and that the Blacklick Creek Section 208 plan will affect portions of Jefferson Township. We understand that Ohio EPA is preparing the Section 208 plan for the Blacklick Creek and we request the opportunity to discuss the status of this plan with Ohio EPA and to assess how it might affect the Section 208 plan for the metropolitan area.

2. It is our understanding that the intent of the Section 208 process is to provide adequate planning for areas with substantial water quality control problems. Generally speaking, the water quality in Jefferson Township (and the surrounding area) is good to exceptional. The City has not provided justification for including the service area legally served by the Jefferson Township Water & Sewer District within the FPA boundaries.

3. We do not believe that the Section 208 planning process authorizes the planning entity to restrict or limit the authority or jurisdiction of any sewer district created and operated under state law. Once created, sewer districts have the authority, right and obligation to provide sewer service within their designated service areas. These rights cannot be abrogated through a planning document.

4. While we support the important goals of protecting water resources and incorporating watershed planning, we cannot agree with the broad statements in the Facilities Plan Update with respect to the perceived threats presented by alternative wastewater systems. We are aware that these systems are used successfully throughout the United States and, in many instances, provide for the productive and safe reuse of valuable water resources. In addition, the Clean Water Act specifically requires evaluation of alternative treatment technologies, particularly the potential to reclaim or recycle treated wastewater. See 33 U.S.C. §1281. Alternative wastewater systems can be an important tool in wastewater treatment planning. Moreover, the availability of wastewater treatment options in properly zoned areas provide local government with direct control over growth patterns within their jurisdiction and can provide positive fiscal impacts. Absent a meaningful technical and/or programmatic basis for an outright ban on alternative wastewater systems, we could not support the approach taken in the Facilities Plan Update.

5. We agree that watershed planning can provide significant benefits; however, effective watershed planning often mandates the careful evaluation of alternative treatment systems to address localized areas and maintain water quality. Again, we are opposed to a ban on these systems where they may play an important future role.

6. It does not appear that the draft Facilities Plan Update includes any evaluation of the potentially significant economic effects of mandating connection to the municipal wastewater system. An update on the Section 208 plan should not be a substitute for regional cooperation on economic development and appropriate local land use control.

We have not had the opportunity to review the existing Section 208 plan for the Columbus metropolitan area, and it is difficult to fully evaluate the potential impact of the Facilities Plan Update without additional information on the standards in the existing plan. Moreover, we anticipate additional discussions with the City and Ohio EPA representatives to better understand the ultimate coordination with the metropolitan area Section 208 process and the Blacklick Creek Section 208 process. In that regard, we look forward to working with the City and Ohio EPA to assure that the Section 208 planning process moves forward in a manner that provides all communities in Central Ohio with the assurance of protection of our water resources while allowing local oversight of development. In the meantime, please call me if you have any questions.

Very truly yours,

R.E. Fridley

Richard E. Fridley

REF/kse

Jerome Township Trustees

JOHN R. WOERNER
CLERK

11111 JEROME RD.
PLAIN CITY, OHIO 43064
614-873-4480

9/8/00

Cheryl Roberto
City of Columbus
Mayor's Office
90 W. Broad Street
Columbus, Ohio 43215

Dear Ms. Roberto

This afternoon I attended a meeting with you and one other representative from your office in regards to what I believe what is called PL208 or the water shed plan for the Big Darby Creek area that is around Plain City, Madison County and Union County. The areas included not only Plain City but significant portions of Madison County including the townships of Cannan and Darby in Madison County. It also included areas of Union County, which primarily encompasses Jerome Township.

We (representatives from Union County) which included one Commissioner, Union County Engineer and two Trustees from Jerome Township were stunned that you had included us in your water shed (sewage) program. We (Union County and Jerome Township) have been working together for the last five to years developing our water and sewer facilities some which are already in place in the areas which you had proposed to control. You seemed enlightened when you were notified of this, however or question is either you did not do your homework or this was an attempt to circumvent what we have in place for the benefit of Columbus or possibly to the benefit of surrounding communities with which you have contractual agreements for water and sewer. In either case, thank you, buy no thank you. The Commissioners and the County Engineer of Union County have done and excellent job in planing for our future.

I think that if input is to mean anything in this case , the message should be quite clear that the entities involved within your proposed area are quite concerned and verbally have requested that you withdraw all plans for the watershed that directly or indirectly impacts the Counties of Union and Madison which is to exclude but not limited to the Village of Plain City, and the Townships of Jerome (Union County), Cannan ,Darby, (Madison County).

On behalf of the residents of Jerome Township and Union County we respectfully request that you withdraw our areas from your proposal. Union County is fully capable and willing to service the areas which have drawn on your plan that you wish to control within the proposed watershed (sewage area).

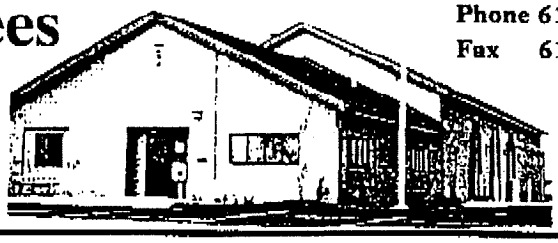
Respectfully
Ronald L.Rhodes
Chairman
Jerome Township Trustees

Ronald L Rhodes

Cc: Union County Comissoners
Union County Engineer
Village of Plain City

Scioto Township Trustees

6752 State Route 762
P.O. Box 40
Commercial Point, Ohio 43116



Phone 614-877-4452
Fax 614-877-4952

September 6, 2000

Comments
c/o Policy Unit
Office of the Mayor
City of Columbus
90 West Broad Street
Columbus, Ohio 43215

Dear Policy Unit:

Scioto Township, in Pickaway County, is requesting that the City of Columbus withdraw the proposed boundary line for the designated waste water district that is being requested by the City of Columbus from the United States Environmental Protection Agency. According to maps, the proposed southern boundary reaches approximately 1.5 miles into Scioto Township. The majority of the southern boundary follows the Franklin/ Pickaway County line. We are requesting that the boundary be moved north to follow the county line across Scioto Township as well.

At this time, Scioto Township does not have a need for and has no interest in the City of Columbus supplying water or sewer services to our area. As well, we have no interest in becoming part of an annexation that would be required by the City of Columbus if we chose to receive water or sewer services. As Scioto Township Trustees, we are positive that none of our northern residents that would fall within your proposed boundaries have an interest in their children attending Columbus City Schools.

Once again, we do not feel that there is a need for and certainly no desire for Scioto Township to become part of the service district you are proposing to the United States Environmental Protection Agency.

Sincerely,

Fredrick O. Dounts
Michael E. Struckman
Trustees of Scioto Township/Pickaway County, Ohio

MES/dhb

DOROTHY S. TEATER ARLENE SHOEMAKER DEWEY R. STOKES

September 12, 2000

Cheryl Roberto, Policy Advisor
Office of the Mayor
City of Columbus
90 W. Broad Street
Columbus, OH 43215

Re: Columbus Metropolitan Facilities Plan Update
City of Columbus and Franklin County, Ohio

Dear Ms. Roberto:

This letter and the attached "Initial Comment and Objections of the Board of Commissioners" will serve as Franklin County's initial response to the Columbus Metropolitan Facilities Plan Update. As you are aware, the Federal Water Pollution Control Act ("the Clean Water Act") mandates continuing area-wide waste treatment management planning. This regional cooperative planning is essential to protecting critical water resources in Central Ohio.

The proposed update will have a substantial impact on waste treatment and land use development in Central Ohio for many years. Your proposed expansion of the facilities plan boundary extends further into the unincorporated areas without regard to the land use plan of the townships and usurps the authority of the county commissioners who retain primary responsibility for sewage treatment services to over 25,000 residents in the unincorporated areas of the county pursuant to Chapter 6117, Ohio Revised Code. Therefore, we wish to participate in any further development of your plan update and will actively participate with Ohio EPA in developing 208 area-wide wastewater management plans for each watershed in Franklin County.

Franklin County has hired Benesch, Friedlander, Coplan and Aronoff as legal counsel on this issue and URS Greiner, Woodward and Clyde as consulting engineers. They have worked with us to develop the attached "Initial Comments and Objections" providing detailed objections to the Columbus Metropolitan Plan Update both on a technical and policy level. In summary however, the predominant objections of Franklin County to the city's plan are summarized as follows:

- The Columbus Plan continues the city's policy of conditioning sewer service upon forced annexation. The Franklin County Commissioners vigorously oppose any requirement that mandates annexation as a precondition for sewer service.

373 SOUTH HIGH STREET COLUMBUS, OHIO 43215-6314 (614) 462-3322 FAX (614) 462-5999
WEB ADDRESS: WWW.CO.FRANKLIN.OH.US/COMMISSIONERS/INDEX.HTM

- Over $134 million in federal grants and $215 million in federal loans were used to assist the city in constructing many of the facilities proposed in the city's original "Columbus Metropolitan Facilities Plan". Now, these same facilities purporting to be metropolitan facilities are being used as leverage for annexation while ignoring the fact that all citizens of Franklin County have already monetarily contributed to their construction. All residents pay into the federal tax system, which helps provide the federal grants and loans, used to construct what was reportedly to be a metropolitan wastewater treatment system. In return, as Commissioners for the entire county, we believe that the entire citizenry of Franklin County should receive equitable service without distinctions being place upon them.

- The Columbus Plan seeks to create essentially a monopoly for sewer services in Franklin County and portions of adjoining counties by precluding any alternative sewage service in these areas.

- The Columbus Plan absolutely prohibits alternative wastewater systems within the Facilities Planning Area even though Section 208 mandates that alternative waste treatment facilities shall be fully reviewed in the Section 208 plan (33U.S.C. §1288 (b)(2) and even though the City of Columbus itself, in its 1990 Intercepting Sewers Facilities Plan, recognized the effectiveness and environmental soundness of land application systems. This absolute prohibition unlawfully usurps the authority of the Director of the Ohio EPA to consider and permit alternative waste treatment systems under Chapter 6111, Ohio Revised Code.

- The Columbus Plan does not insure that existing municipal and county contracts will be fully honored or that existing land use planning accords will be honored and does not assure that presently unsewered areas within and outside the City of Columbus will necessarily receive sewer service.

- The Columbus Plan fails to address "urban sprawl" and instead purports to unilaterally dictate sewage treatment services and land use planning and development in the unincorporated areas of Franklin County and even into areas of adjoining counties.

- Development tied to a central sewer itself does not curb sprawl. As we have experienced over the past decade, unplanned, high-density growth

can have a negative impact on our environment. Your plan fails to address several key development issues including:

- ✓ Stormwater: In order to be considered complete, the plan must address how the City plans to address storm water and other non-point sources. This is required by Section 304 of the Clean Water Act. Runoff from the developed areas in the City would appear to have an adverse impact on water quality and downstream reaches of the river.

- ✓ Densities: The City's plan does not address development densities- one of the major points of conflict between the City and adjacent Townships. Townships plan at one density level, Columbus at a much higher one. When the City annexes these areas, they immediately allow a density higher than prior planning envisioned and existing infrastructure was designed to handle.

- ✓ How will the projected growth that the City anticipates over the duration of the Facilities Planning period impact the water quality of our area streams and tributaries? Of special concern to us here is the Hellbranch Run. Development within the city has caused problems for the County in the downstream reaches of that significant tributary to the Darby.

- Furthermore, the City has a number of combined sewer overflows (CSOs) and sanitary sewer overflows (SSO's). During rainfall events, the City discharges a combination of storm water and untreated raw sewage into area waterways through these outfalls. This practice has been going on for years. Will the Ohio EPA allow the City to continue this practice in the future? Or will future restriction to the City's discharge permits require a phased elimination of this practice? We are troubled by the fact that you are continuing to add additional wastewater into a system that is currently overloaded in various areas. To bring more wastewater into a system that currently experiences overflows does not seem to be in the best interest of area-wide water quality planning.

- You have requested your Facilities Plan update be incorporated into the Ohio EPA's 208 Area-Wide Waste Treatment Management Plan. Your plan, however fails to adequately address virtually every mandatory element for plan updates as required by the Clean Water Act and implementing federal regulation.

- The Columbus Plan also fails to adequately address sewer extension policies in critical environmental areas, such as the Big Darby Creek

area. The City of Columbus has opposed development in these critical resource protection districts. Now you outline plans to allow development within them, obviously when you are ready and the area is part of the City of Columbus.

The issue of regional facilities planning is one that strikes on several sensitive areas. The Franklin County Commissioners oppose the Columbus Metropolitan Facilities Plan Update for the reasons cited and will continue to oppose the plan until a mutually acceptable consensus can be achieved that will promote sound wastewater planning as well as proper development planning in our region over the next twenty (20) years. The Franklin County Commissioners request that the City and the Ohio EPA cooperate in a regional planning process under Section 208. This process will take time to implement and cannot realistically be achieved immediately. The Franklin County Commissioners stand ready to engage in a meaningful dialogue to achieve a plan that will equitably serve this community through the year 2020.

If you have any questions or wish to discuss our comments further, please feel free to contact me at 462-5530.

Sincerely,

Barry A. Burton

Barry A. Burton
Deputy County Administrator

Enclosure

CC: Franklin County Commissioners
Robert Taft, Governor of Ohio
Franklin County Municipal Mayors
Franklin County Village Mayors
Franklin County Township Trustees
Christopher Jones, Director of Environmental Protection Agency
Lisa Morris, Chief, Division of Surface Water, Ohio EPA

INITIAL COMMENTS AND OBJECTIONS OF THE BOARD OF COMMISSIONERS OF FRANKLIN COUNTY TO THE COLUMBUS METROPOLITAN FACILITIES PLAN UPDATE

I. INTRODUCTORY STATEMENT

In order to fully comprehend the scope and basis for the comments and objections of the Board of Commissioners of Franklin County to the Columbus Metropolitan Facilities Plan Update, it is necessary to first review the scope and requirements of Section 208 of the Federal Water Pollution Control Act, the proposed Columbus Facilities Plan Update and the role of Franklin County for sewage services and land use planning in the unincorporated areas of the county.

As part of the 1972 Amendments to the Federal Water Pollution Control Act (the "Clean Water Act"), Section 208, 33 U.S.C. §1288, requires the development and implementation of areawide waste treatment management plans by state agencies having responsibility for enforcing state laws relating to the abatement of pollution. 33 U.S.C. §1288(b) sets forth the required elements of the areawide waste treatment management plans. These required elements are further defined in the federal regulations, 40 CFR parts 25, 130 and 131.

Proper Section 208 planning involves broad ranging consideration of population projections, treatment resources, including alternative waste treatment systems, open space and recreational opportunities, point sources, nonpoint sources and agricultural sources, land use planning and economic, social and environmental impacts. Further, proper Section 208 planning clearly requires a management structure, including <u>all</u> responsible agencies, necessary to implement and carry out the plan.

Pursuant to 33 U.S.C. §1288(b)(2), the minimum mandatory elements of an acceptable Section 208 plan include:

A. The identification of treatment works necessary to meet anticipated municipal and industrial waste treatment needs of an area over a twenty-year planning period, annually updated (including an analysis of alternative waste treatment systems), including any requirements for the acquisition of land for treatment purposes; the necessary waste water collection and urban storm water runoff systems; and a program to provide the necessary financial arrangements for the development of such treatment works, and an identification of open space and recreational opportunities that can be expected to result from improved water quality, including consideration of potential use of lands associated with treatment works and increased access to water-based recreation;

B. The establishment of construction priorities for such treatment works and time schedules for the initiation and completion of all treatment works;

C. The establishment of a regulatory program to implement waste treatment management requirements, regulate the location, modification and construction of any facilities within such area, which may result in any discharge in such area and assure that any industrial or commercial waste discharged into any treatment works in such area meet applicable pretreatment requirements;

D. The identification of those agencies necessary to construct, operate and maintain all facilities and otherwise to carry out the plan;

E. The identification of measures necessary to carry out the plan, including financing, the period of time necessary to carry out the plan, the costs of carrying out the plan and the economic, social and environmental impact of carrying out the plan within such time;

F. A process to identify agriculturally related nonpoint sources of pollution, including return flows from irrigated agriculture, and their cumulative effects, and procedures and methods (including land use requirements) to control such sources;

G. A process to control the disposition of all residual waste generated in such area which could affect water quality; and

H. A process to control the disposal of pollutants on land or in subsurface excavations within such area to protect ground and surface water quality.

Section 303 of the Clean Water Act, 33 U.S.C. §1313(c), requires that each State shall have in place a continuing planning process ("CPP") approved by the Administrator of the U.S. EPA and implemented jointly by the Administrator, the State and areawide local and regional planning organizations. This continuing planning process requires, inter alia, certified and approved annual updates to the areawide waste treatment management plans. See also, 33 U.S.C. §1288(b) and 40 CFR §§130.5(a), 130.6(a), 130.6(e) and 130.10. As part of the continuing planning process, areawide planning agencies are required to comply with the public notice, hearing and public participation requirements of 33 U.S.C. §1251(e) and 40 CFR, parts 25 and 130.

Section 208 planning is significant in two respects. First, state and federal grants and loans are predicated on consistency with the approved areawide waste treatment management plan under Section 201 of the Clean Water Act. See 33 U.S.C. §1288(d) and Ohio Revised Code §6111.036. Second, federal and state law requires that NPDES permits and permits to install shall not conflict with the approved areawide water treatment management plan. See 33 U.S.C. §1288(c) and Ohio Revised Code §6111.03(J).

Accordingly, once a Section 208 plan is certified by the Ohio EPA and approved by the Administrator of the U.S. EPA, that Section 208 plan becomes the implementation plan for the construction, operation and extension of sewage treatment facilities. Once approved, no state permit for a proposed discharge or source may issue if the permit conflicts with the approved Section 208 plan. The approved Section 208

plan significantly affects environmental protection, pollution control, land use planning, development and other ancillary economic, social and environmental considerations.

It is, therefore, critical that all affected political jurisdictions and planning and sewage treatment service providers participate in the development of the Section 208 plan and that the Section 208 plan reflect the prior approval and continuing participation by all affected political jurisdictions and planning agencies in the management and implementation process. These entities include cities and villages, the county, the townships, local planning agencies, environmental planning agencies and other affected stakeholders.

In 1974, the City of Columbus was purportedly designated a "Designated Management Agency" ("DMA") for purposes of facilities planning. In 1976, the City was awarded a grant to implement facilities planning. This initial plan was submitted to the Ohio EPA and to the U.S. EPA. However, the U.S. EPA determined it necessary to require an Environmental Impact Statement ("EIS") to consider the environmental consequences of the initial plan. The EIS was completed in May 1977. However, it was not until 1985 that the City updated its facilities plan. This plan recommended abandonment of the Jackson Pike Wastewater Treatment Plant and expansion of the Southerly Wastewater Treatment Plant. A Supplemental EIS was then required to more fully address population projections and development in planning areas, the environmental effects of sludge treatment and disposal alternatives, reliability of the sole remaining plant and the impacts of induced growth and secondary environmental impacts.

In Columbus and Franklin County Metropolitan Park District et al. v. Director Environmental Protection et al., Case Nos. 90AP-516-90AP-521 (10th District Court of Appeals, Opinion rendered June 27, 1991), the City of Columbus argued that the Ohio EPA's 1979 Scioto River Basin plan and the City's Section 201 facilities plan prohibited permitting for an alternative treatment system in Jefferson Township. The Franklin County Court of Appeals concluded that the Scioto River Basin plan did not expressly prohibit the alternative treatment system. Further, the Court of Appeals concluded that the City's facilities plans, prepared under Section 201, did not constitute an approved Section 208 plan justifying denial of a permit for an alternative sewage system under Ohio Revised Code §6111.03(J). The Court of Appeals concluded:

> . . . A Section 201 plan is an analysis of alternatives designed to address water quality problems in a given area, which is prepared by an applicant in the Federal Construction Grant program for a grant of federal funds in order to finance the construction of a publicly owned treatment facility. . . It would appear reasonable that the existence of a Section 201 facilities plan not mandate denial since the purpose of such a plan only advances the narrow interests of a single community within a given area, unlike a Section 208 plan which balances the interests of all residents and communities within an entire geographical planning area so as to foster proper management and protection of water resources. Thus, even had it been proved that the plants in the present case conflicted with the Section 201 facilities plan, R.C. 6111.03(J) would not have required that the Director deny the requested permits. (Emphasis added, p. 27 of Opinion).

Therefore, it is clear that whatever facilities planning the City of Columbus has prepared in the past for purposes of Section 201 does not constitute Section 208 planning within the meaning of the Clean Water Act and state law and cannot serve as the basis for precluding alternative waste treatment systems in the Central Ohio area.

On February 12, 1996, the Director of the Ohio EPA entered into a Consent Decree in the action styled City of Reynoldsburg v. Browner, et al., United States District Court, Southern District of Ohio, Case No. C2-92-882 (Judge George C. Smith). In that case, the Director of the Ohio EPA agreed to comply with the Section 208 planning requirements and to prepare and certify to the U.S. EPA, not later than December 29, 2001, an areawide plan for the Blacklick Creek Drainage Basin. Further, the Ohio EPA agreed, after December 29, 2001, to annually certify and submit updates to the Blacklick Creek AWTMP to the U.S. EPA in accordance with Section 208.

Accordingly, there is no viable Section 208 planning currently in effect in the Central Ohio area. The Ohio EPA is now under a federal court mandate to finally prepare and submit for approval by the U.S. EPA a Section 208 plan for Central Ohio.

Recently, the City of Columbus has submitted an updated Facilities Plan to address regional wastewater management needs through 2020. The City acknowledges a need to update the 1976 and 1984 facilities plans, as these plans are clearly outdated. The City further requests the Ohio EPA to approve the plan and incorporate it into the Section 208 plan for Central Ohio. Presumably, the update is further required to enable the Ohio EPA to comply with the federal court's mandate in the City of Reynoldsburg v. Browner case.

The Columbus Facilities Plan Update fails to provide a specific management structure so that all affected political jurisdictions may fully participate in the mandatory Section 208 continuing planning process. The danger of the Columbus Facilities Plan Update is that the plan purports to unilaterally dictate sewage treatment services and

land use planning and development in the unincorporated areas of Franklin County and even into areas of adjoining counties. Specifically:

$ The Columbus Plan seeks to create an absolute monopoly throughout Franklin County and portions of adjoining counties by precluding any alternative sewage service in the unincorporated and unsewered areas of Franklin County and adjoining areas.

$ The Columbus Plan guarantees forced annexation of unincorporated areas since the City of Columbus' long standing policy has been to deny sewer service without annexation;

$ The Columbus Plan mandates that existing commercial, industrial, institutional and residential properties be required to connect to the Columbus sewer system when the system is extended to within 200 feet of the service structure;

$ By the same token, the Columbus Plan does not correspondingly assure that presently unsewered areas within and outside the City of Columbus will necessarily receive sewer service;

$ The Columbus Plan does not insure that existing municipal and county service contracts will be fully honored or that existing land use planning accords will be honored;

$ The Columbus Plan absolutely prohibits alternative wastewater systems within the Facilities Plan Area even though Section 208 mandates that alternative waste treatment facilities shall be fully reviewed in the Section 208 plan (33 U.S.C. §1288(b)(2)) and even though the City of Columbus itself, in its 1990 Intercepting Sewers Facilities Plan, recognized the effectiveness and environmental soundness of land application systems. This absolute prohibition unlawfully usurps the authority of the Director of the Ohio EPA to consider and permit alternative waste treatment systems under Chapter 6111, Ohio Revised Code;

$ The Columbus Plan completely fails to address "urban sprawl" and seeks to enable the City of Columbus to unilaterally dictate development in the unincorporated areas through its sewer extension and annexation policies;

$ The Columbus Plan fails to adequately address sewer extension policies in critical environmental areas, such as the Big Darby Creek area; and

$ The Columbus Plan fails to recognize the responsibility of other political jurisdictions, most notably Franklin County, for wastewater treatment services and land use planning and development. Section 208 clearly requires the effective participation of all political jurisdictions in the planning process.

By letter dated August 1, 2000 to the City of Columbus, the Chief of the Division of Surface Water of the Ohio EPA observed that the effective participation by all affected political jurisdictions and stakeholders is vital to effective Section 208 planning. Further, the City must review its policy of forced annexation. The Ohio EPA Chief of the Division of Surface Water stated:

> The City will review its draft Facility Plan Update with all affected jurisdictions and stakeholders. These other participants are a vital component in reaching a final plan that achieves what is best for public health, the environment and overall sound planning for regional growth. (Emphasis added).

The Ohio EPA further stated:

> Ohio EPA encourages the City to explore logical and cost-effective adjustments in the FPA boundaries. Naturally, the City should seek stakeholder involvement and support in this process. A respect for natural watershed boundaries and a policy shift of providing service without the requirement of annexation appear to offer win/win opportunities in many communities. If all affected jurisdictions and stakeholders support changes in the FPA boundaries, I would expect Ohio EPA to concur with such changes. If consensus is not reached, the Agency will need to assess the matter and determine if a change in the FPA boundary is appropriate. (Emphasis added).

The Franklin County Board of Commissioners joins in these admonitions expressed by the Ohio EPA. The Columbus Facilities Plan Update must be significantly modified to permit full participation and consensus by all affected political jurisdictions. The purpose of Section 208 planning is to promote environmental planning and not to foster a policy of forced municipal annexation and unilateral development control.

Perhaps the most disturbing aspect of the Columbus Facilities Plan update is the Plan's failure to recognize the vital role of Franklin County in managing wastewater treatment facilities and land use planning in the unincorporated areas of the county.

Pursuant to Chapter 6117, Ohio Revised Code, Franklin County has the paramount responsibility for sewage treatment services in the unincorporated areas of the county. This responsibility includes the responsibility to plan, construct and operate sewage treatment and collection facilities in the county, to administer and enforce rules and regulations for service, to fix rates and assessments and to secure funding for facilities. Pursuant to this authority, Franklin County has established a sewer district physically composed of the unincorporated areas of the County.

The Franklin County Department of Sanitary Engineering is responsible for providing water and sewer services to approximately 25,000 residents in the county. The Department operates four sewage treatment plants throughout the county. In addition, the Department maintains more than ten sewer systems where discharge eventually is processed under contract with the City of Columbus. Two major areas of responsibility are the Rickenbacker Port Authority (including the Village of Lockbourne) and New Rome/Lincoln Village area. Other contract service areas include Briarbank, Briarwood Hills, Brookside Estates, Century Acres, Forrest Ridge, Hamilton Meadows, Holton Park Estates, Oakhurst Knolls, Ridgewood Estates, Taylor Estates, Timberbrook Estates, Village Park, Windsong Village Estates, Worthington Hills and Young Estates. County sewer district contracts include Clinton Township, District 2 and 3; Franklin Township, District 1; and Truro Township, District 1.

To protect county water resources, the County has established comprehensive rules for treated effluent to be reused for irrigation. The Ohio EPA has approved over forty (40) such systems in Ohio. These systems have been in use for over twenty-five years.

Sludge and residual treatment and management is an important concern for the environment. Indeed, sludge management and residual treatment and disposition is a necessary element of Section 208 planning. For the City of Columbus to absolutely prohibit alternative waste treatment facilities, including spray irrigation systems, and to totally ignore sludge and residual treatment and management as it does in the Facilities Plan Update is absurd environmental planning.

The City of Columbus treats 151.3 million gallons of discharge per day. The City annually processes over 740 wet tons of sludge, 151 tons being composted, 9 tons landfilled, 234 tons land processed and 350 tons incinerated. Proper treatment and disposal of sludge and residuals is absolutely necessary for proper environmental planning. Yet, the Columbus Facilities Plan Update totally ignores these issues.

The Franklin County Development Department has responsibility for building, zoning, annexation and floodplain management in the unincorporated areas of the county. The Department enforces land use regulations and reviews applications for annexation of township lands.

The Franklin County Greenways Planning Project is a joint effort by the Mid-Ohio Regional Planning Commission (MORPC) and the Franklin Soil and Water Conservation District (FSWCD). This project is financed by the Franklin County Commissioners, the Columbus Recreation and Parks Department, the Metropolitan Parks District and others. The long-term objectives of the project are to protect and enhance waterways in the area. These protected areas are important environmentally since the areas provide a natural absorption for stormwater runoffs.

The Franklin County Development Department has also established new zoning districts - Stream Resource Protection Districts (SRPD) - to protect and enhance stream resources.

In short, Franklin County plays a significant role in wastewater treatment, stormwater management, land use planning and environmental resource conservation. This vital role must be recognized in any Section 208 planning.

II. SPECIFIC OBJECTIONS

The following are the Board's initial objections to the Columbus Metropolitan Plan Update. Because the City of Columbus has not sought the input of the Board or attempted to coordinate its Plan Update with the Board, these comments are initial comments. The Board reserves the right to further supplement these objections once additional information is obtained from the City and the Ohio EPA by public records requests.

A. Failure To Comply With Essential Elements Of A Valid Section 208 Plan

1. First of all, the Columbus Plan should not be misconstrued as an "update" to any Section 208 planning. Since there is no valid or subsisting Section 208 plan currently in effect in Central Ohio, to suggest that the Columbus Plan is an "update" to Section 208 planning is a non-sequitur.

2. The City's prior Section 201 facilities planning does not constitute a valid and subsisting Section 208 plan within the requirements of the statute. Columbus and Franklin County Metropolitan Park District et al. v. Director of Environmental Protection, et al., Case Nos. 90AP516 - 90AP521,

3. The Columbus Plan itself provides for no Continuing Planning Process ("CPP") in compliance with Section 208 and the federal regulations to provide a management structure for Section 208 planning in Central Ohio nor is there any effective means for public participation in the planning process. Unless and until there is a proper CPP in place, there is no basis for lawful Section 208 Planning.

4. The purported Columbus Metropolitan Facilities Plan Update completely fails to comply with the mandatory requirements of Section 208 and the implementing federal regulations. See 33 U.S.C. §1288(b) and 40 CFR, parts 25, 130 and 131. Specifically:

a) The Plan fails to assess population growth over a twenty-year planning period, updated for current census information;

b) The Plan fails to identify areas for potential industrial, commercial or residential growth;

c) The Plan fails to coordinate planning strategies with utility improvements in any comprehensive manner;

d) The Plan fails to identify treatment facilities necessary to meet anticipated waste treatment needs over the required twenty-year planning period;

e) The Plan fails to include any analysis of alternative waste treatment systems as expressly required by Section 208. These alternative treatment systems include alternative municipal systems, county systems, regional districts and privately operated systems. Instead, the Plan purports to unilaterally preclude <u>any</u> alternative waste treatment system without <u>any</u> analysis of comparative costs or environmental impacts;

f) By unilaterally precluding <u>any</u> alternative waste treatment system, the Plan unlawfully usurps the authority of the Ohio EPA to permit such system under Chapter 6111, Ohio Revised Code.

g) The Plan's unilateral preclusion of any alternative waste treatment system is arbitrary and unreasonable. In the City's own 1990 Intercepting Sewers Facilities Plan, the City recognized that forms of land application systems were proven to be effective and environmentally sound alternatives. The City concluded:

> Even though land application of wastewater was eliminated as an alternative in the Jackson Pike and Southerly WWTP's facilities planning work, it will be evaluated as a viable alternative in the Intercepting Sewers Facilities Plan. <u>Land application has proven to be very effective in many northern states, and if land application is the cost effective and environmentally sound treatment alternative, the City of Columbus will consider it to maintain existing water quality upstream from the City.</u> (Emphasis added, page 12 of 23, Chapter 10.0, Intercepting Sewer Facilities Plan.)

h) The Plan fails to consider any requirements for land acquisition for treatment purposes, including sludge disposal;

i) The Plan wholly fails to address necessary wastewater collection and stormwater runoff systems. The City of Columbus has 31 Combined Sewer Overflows ("CSO") in its systems. Many other Sanitary Sewer Overflows ("SSOs") occur in the system. These discharges permit untreated sewage to flow into water resources threatening water quality. These critical issues are completely ignored in the Columbus Plan;

j) The Plan fails to establish any program to provide necessary financial arrangements for the development of treatment works;

k) The Plan fails to identify Best Available Technology ("BAT") alternatives for future planned facilities.

l) The Plan fails to establish costs requirements and least cost alternatives for planned facilities;

m) The Plan fails to analyze capacity considerations, not only in treatment facilities but also in collection facilities, and fails to analyze the impact on capacity in light of contemplated growth;

n) The Plan fails to identify open space and recreational opportunities that can be expected to result from improved water quality;

o) The Plan fails to establish construction priorities for treatment facilities and time schedules for the initiation and completion of facilities;

p) The Plan fails to identify <u>all</u> agencies necessary to construct, operate and maintain all facilities and to implement the Plan;

q) The Plan fails to identify all necessary measures to carry out the Plan, including financing, time requirements and costs;

r) The Plan fails to identify the economic, social and environmental impact of implementing the Plan;

s) The Plan fails to identify agricultural and non-point sources of pollution and cumulative environmental effects;

t) The Plan fails to identify any process to control the disposition of all residual waste, which could affect water quality. This is significant because the Columbus system produces over 740 wet tons of sludge annually. This sludge is disposed of by varying methods including composting, landfill, land application and incineration. The current and future disposition of sludge and related waste is a critical environmental issue;

u) The Plan fails to address current and future effluent limitations and requirements. The Plan fails to address Ohio EPA requirements for Antidegradation and total maximum daily loads ("TMDLs") now and over the planning period.

5. There is no explanation for the status or impact of the 1976 and 1985 federally mandated Environmental Impact Statement ("EIS") or Supplemental Environmental Impact Statement ("SEIS") on Columbus facilities planning. These mandated EISs were required to fully address population projections and development, the environmental effects of sludge treatment and disposal alternatives, reliability of the sole remaining plant and the impacts of induced growth and secondary environmental impacts. No Section 208 planning can be complete until the EIS and SEIS requirements are resolved.

B. Failure To Comply With Continuing Planning Process Requirements

6. The Plan fails to comply with mandatory elements of a continuing planning process as required by Section 208 and the regulations. See 33 U.S.C. §1288(b) and 40 CFR §§130.5(a), 130.6(a), 130.6(e) and 130.10.

7. The City has failed to provide for any effective public participation in the planning process, has established no role for alternative planning agencies and has provided no forum for public agency participation or dispute resolution in future planning.

8. The Plan fails to establish a process for updating and maintaining areawide waste treatment management planning, including schedules for revision.

9. The Plan fails to identify any process for assuring adequate authority for intergovernmental cooperation in the implementation of the State WQM program.

C. Forced Annexation/Tax Base Issues

10. The City of Columbus has a long-standing, uncodified policy to deny sewer services absent annexation. This policy of "forced annexation" has resulted in urban sprawl, unplanned development and erosion of local jurisdictional tax base. The Plan should expressly "de-link" forced annexation from areawide waste treatment management planning.

11. The Plan fails to address the issue of forced annexation, fails to create any consensus among local political jurisdictions for sewage extension absent forced annexation and fails to address the possibility of tax sharing arrangements with local political jurisdictions to mitigate the erosion of tax base. The primary purpose of a Section 208 plan is to preserve and manage critical water resources. The Section 208 plan should not be misused as a vehicle to compel forced annexation.

D. The Plan Fails to Adequately Address Any of The Goals Declared

12. The Plan defines several laudable goals but fails to adequately address any of these goals. Specifically:

a) The Plan fails to specifically address the protection and enhancement of critical water resources, most notably the Darby Watershed;

b) The Plan fails to specifically address means to maximize existing infrastructure;

c) The Plan fails to incorporate any consensus for watershed planning among other local political jurisdictions;

d) The Plan fails to specifically address mitigation of stormwater impacts from development; and

e) The Plan fails to define "urban sprawl" or to discuss measures to mitigate urban sprawl as opposed to cooperative, long term planning initiatives.

E. Management Structure/Role of Franklin County As A DMA

13. The Plan's Facility Planning Area boundaries, which incorporate all of Franklin County and portions of adjoining counties, are far too broad.

14. The Plan fails to substantiate any consensus among alternative service providers and other local political jurisdictions. Absent this consensus, the Columbus Facilities Plan boundaries must be reassessed and, if necessary, reduced. In this regard, the Board fully endorses the position of the Ohio EPA in its letter of August 1, 2000 to the City.

15. The Plan fails to recognize Franklin County's primary role and responsibility for planning, constructing and operating waste treatment and collection facilities in county sewer districts under Chapter 6117, Ohio Revised Code.

16. The Plan purports to limit flows to existing sewer facilities such that future flows may not be expanded or increased. There is no analysis of the economic, environmental or social consequences of such a requirement.

17. The Plan fails to recognize the responsibility of other political jurisdictions, most notably Franklin County, for wastewater treatment services and land use planning and development.

18. The Plan fails to address the possible role of Franklin County as Designated Management Agency for the unincorporated areas of the county.

19. The Plan fails to expressly acknowledge the existence and validity of Franklin County's contract service areas with the City. These contracts must be fully honored in the implementation of any Section 208 plan.

20. The Plan fails to recognize Franklin County's comprehensive rules governing treated effluent.

21. The Plan fails to recognize Franklin County's responsibilities for land use planning and flood plain management. The Plan fails to incorporate the Franklin County Greenways Planning Project. This project has important environmental consequences for recreation and open space and stormwater runoff control. The Plan fails to recognize Franklin County's initiatives for Stream Resource Protection Districts to protect and enhance stream resources.

F. <u>Environmentally Sensitive Areas, Recreation and Open Space</u>

22. The Plan fails to address opportunities for enhancement of environmentally sensitive areas, recreation and open space initiatives.

23. The Plan barely mentions the environmentally sensitive areas of the Big Darby and Little Darby. The Plan totally ignores environmental opportunities elsewhere in the Big Walnut Creek and Scioto River Drainage Basins.

24. The Plan fails to adequately address measures to protect and enhance the Big Darby and Little Darby as components of the National Wild and Scenic Rivers systems and as exceptional warmwater habitats.

25. The Plan presumes that the extension of centralized sewer to environmentally sensitive areas in the Big Darby Watershed is appropriate without ever analyzing the potentially adverse environmental consequences of this action.

26. The Plan fails to address existing land use and transportation, underlying geological conditions and air, water, mineral and wetlands resources.

G. Existing Contracts And Land Use Planning Accords

27. The Plan does not insure that existing municipal and county service contracts will be fully honored or that existing land use planning accords will be honored.

28. The Plan fails to address the relationship, if any, between the Plan and existing planning initiatives such as the Columbus Comprehensive Plan, the Rocky Fork-Blacklick Accord, which is a joint venture with the Village of New Albany to manage future growth and development in Northeast Franklin County, the Far North Plan, the Northwest Action Plan, the Sawmill Corridor Development Standards, the Southeast Area Plan and other initiatives. These accords must be expressly reflected and incorporated into any Section 208 planning.

H. Extension of Future Services To Unsewered Areas

29. The Plan does not assure that presently unsewered areas within and outside the City of Columbus will necessarily receive sewer service or that service will be provided at reasonable rates and in a non-discriminatory fashion.

30. The Plan fails to address the extension of sewer facilities into neighborhoods within the City of Columbus long recognized as in need of sewage services. In some

areas of the City, numerous residential sewage treatment devices discharge directly into the Columbus City Storm Sewers. These areas have been identified by the Columbus Health Department in its May, 1998 study entitled "Concerns and Recommendations Related to Unsewered Residential Areas of the City of Columbus" and include the Hilock area, the Barcher Road area, McDannald Estates, the Marsdale area, the Catalpa Park area, the Stringle Avenue area, the Francisco Road area, the Lockbourne Road area, the Park Road area and the Behm Road area.

31. The Plan fails to address the extension of sewer facilities into over twenty (20) unsewered areas outside the City of Columbus. These areas have been identified by Franklin County as high priority areas and include the Brown Road area, the Cleveland Heights area, the Englewood area, the Leonard Park area, Marsdale Subdivision, the Kanawha/Roslyn area, Eureka Park, Briggsdale, Edgewater Park, Ferris Road, the Greenvale/Brookside area, the Hague Avenue area, the Henderson Heights area, the Hyde Park area, the Homeacre/Maple Canyon area, the Mecca Road area, the Mount Air area, the Reese area in Hamilton Township, the San Margherita area in Franklin Township, the Stimmel Road area in Franklin Township, the Ventura and Casa Boulevard area in Jackson Township and the Wilson Road/Mon-E-Bak area in Franklin Township.

32. The Plan fails to address potential health concerns associated with unsewered residential areas. These health concerns, as identified by the City's own health department, include cryptosporidia and giardia and viral hepatitis.

33. Over the years, the City of Columbus has received nearly $135 million in construction grants and over $215 million in construction loans to finance waste treatment facility improvements. The City of Columbus has a responsibility to ensure that all residents in the Columbus service area receive non-discriminatory sewage service at fair rates. The Columbus Plan does not address these critical needs at all.