

**STAFF REPORT ON PROPOSED AMENDMENT #34  
TO  
OKI'S REGIONAL WATER QUALITY MANAGEMENT PLAN**

**Background**

OKI completed the original Regional Water Quality Management (WQM) Plan in 1977, as called for by Section 208 of the Federal Water Pollution Control Act Amendments of 1972. A key aspect of "208" planning involves identifying facility planning areas (FPAs) to enable analysis of alternatives for wastewater treatment and designating management agencies (DMAs) for the FPAs.

Federal law also requires that local wastewater facilities planning must be consistent with "208" plans in order for local wastewater facility permits to be granted. As a result, updates and amendments to the "208" plan may be needed periodically to reflect changing circumstances. OKI is currently undertaking a major update of the "208" plan for the entirety of Dearborn County, Indiana with federal stimulus funding made available through the Indiana Department of Environmental Management (IDEM).

In Dearborn County, the original "208" plan prepared in 1977 identified much of Dearborn County as an FPA called "Rural Areas of Dearborn County" and did not identify a management agency for this large FPA, because the lack of development in those areas at the time did not warrant the provision of centralized sewer service. In the ensuing years, development has expanded and three additional wastewater management agencies have been established within the county: Logan-Miller-Harrison Utilities; the St. Leon Sewer Board; and the Dearborn County Regional Sewer District (DCRSD). Accordingly, as part of the "208" plan update begun in February 2010 and scheduled for completion this summer, OKI staff have been working with an advisory committee of such agencies and other organizations in the county to propose new FPA boundaries and designated management agencies for them throughout the county.

The Dearborn County Board of Commissioners has requested Amendment #34 to the "208" plan at this time to enable the DCRSD to provide wastewater treatment expeditiously for the West Harrison Tax Increment Financing (TIF) District in northeast Dearborn County. Development prospects in the West Harrison TIF District and the jobs associated with them are contingent on the availability of sewers and wastewater treatment, such as a major potential business operation with 140 jobs which has stated a need for sewer line construction in part of the TIF to be completed by midsummer this year. The DCRSD has held discussions with both the Town of St. Leon (Indiana) and the City of Harrison (Ohio) regarding sewers and wastewater treatment for the West Harrison TIF District and conducted a preliminary engineering study of multiple service options with these entities in the summer and fall of 2010. Subsequently, the DCRSD has committed funds to construct a sewer line in the eastern portion of the West Harrison TIF District as soon as possible and has an interlocal agreement with the City of Harrison to provide wastewater treatment subject to the approval of OKI.

## **Recommendation**

OKI staff recommend that the "208" Plan be amended to enable updating boundaries for wastewater facility planning areas (FPAs) in northeast Dearborn County as shown on the attached map and to enable designating the Dearborn County Regional Sewer District as the management agency responsible for wastewater collection and treatment in the newly identified FPA. The text of the plan amendment is provided in the attached resolution.

## **Rationale for the Recommendation**

OKI staff is making this recommendation to enable systematically planned development and water quality protection for a sensitive water resource, the Whitewater River, by providing timely wastewater treatment. Dearborn County Commissioners created the West Harrison TIF District in 2000 and have long recognized the need for centralized sewers to serve it, especially as most soils in the county and in the West Harrison TIF District are unsuitable for septic tank systems. Since its inception, the DCRSD has established several interlocal agreements for centralized wastewater treatment to address public health and water quality problems created by failing septic systems. In recent decisions, the County Commissioners and County Council both voted unanimously to support the DCRSD's request for \$1.3 million in local funds to construct a collection system in the eastern portion of the West Harrison TIF District and convey sewage to Harrison for treatment.

In making this recommendation, OKI staff recognize the time-sensitive availability of local funds to the DCRSD for the West Harrison TIF District project, the timeliness and extent of service that could be provided by the DCRSD in agreement with Harrison, the lack of agreement between St. Leon and the DCRSD, and the absence of any authority to compel agreement between St. Leon and the DCRSD.

OKI staff also makes this recommendation with the understanding that costs to the user arising from treatment at either St. Leon's plant or Harrison's plant are similar, with construction costs and timing associated with St. Leon options being more significant. For example, although St. Leon has a six-inch force main and pump station installed by a developer adjacent to the proposed FPA, the DCRSD's proposal calls for ten-inch sewer lines that could ultimately be expanded to the full extent of the proposed FPA, which would require costly upgrading of St. Leon's facilities.

In addition, DCRSD has explained that its preference for conveying wastewater to Harrison rather than St. Leon is based not only on cost but also on other technical, policy and operational issues:

--Harrison has significantly greater treatment capacity available at its plant, an existing 1.50 million gallons per day (mgd) of excess capacity, even when St. Leon's current capacity expansion project is considered (which will result in .355 mgd of excess capacity available).

--Harrison has an existing pretreatment program to manage industrial waste and the experience that goes with such management, which will facilitate offering service to a variety of potential developments, and St. Leon does not have such a program because its treatment plant does not receive industrial waste.

--Because of funding for sewers and the treatment plant received from the U.S. Department of Agriculture (USDA), St. Leon has been required to have an extremely unpopular policy of forced hook-ups for customers in proximity to its sewer lines. DCRSD has not sought USDA funding and thus does not have a forced hook-up policy.

--By beginning to install sewer lines going east toward Harrison's plant, DCRSD will be able to serve approximately 25 residential properties and some commercial properties should their septic systems fail, thereby protecting the Whitewater River from pollution.

OKI staff has thoroughly reviewed comments made by representatives of St. Leon and DCRSD in conjunction with advisory committee work on the "208" plan update over the past year and during fact-finding interviews by OKI staff in the summer of 2010. OKI staff has also thoroughly reviewed comments received at a February 28, 2011 public hearing attended by 21 people, and additional comments provided by St. Leon and DCRSD upon OKI's request for some clarifications after the hearing. (A 45-day public comment period preceding the public hearing was advertised and no comments were received during that period.) The nine attendees providing comments at the public hearing represented either St. Leon or DCRSD, except for one individual who is both a council member for the City of Harrison and superintendent of the South Dearborn Regional Sewer District in Dearborn County; that individual explicitly stated that he was not speaking as a representative of Harrison and his comments focused on the resources required for pretreatment and treatment capacity based on his wastewater management experience.

The St. Leon Sewer Board has maintained on a continuing basis that it is prepared to provide service and anticipates providing service to the West Harrison TIF area, as documented in meeting summaries of the plan update advisory committee, correspondence with DCRSD and OKI, and the transcript of the February 28<sup>th</sup> public hearing. St. Leon Sewer Board representatives have also stated repeatedly, however, that if the DCRSD installs sewer lines in the West Harrison TIF area and conveys flows to the St. Leon treatment plant, St. Leon would not have to require forced hook-ups because the DCRSD would control the lines, and St. Leon representatives have never indicated that they currently have funding available to install sewer lines in the West Harrison TIF District themselves.

In correspondence with OKI and comments at the February 28<sup>th</sup> public hearing, St. Leon representatives have also maintained that they had an understanding from meetings with DCRSD that they would be the treatment provider for the West Harrison TIF rather than Harrison. In related correspondence with OKI, DCRSD representatives

provided a copy of a March 2007 memorandum from St. Leon suggesting that DCRSD pay a capacity fee of over \$2 million dollars for treatment at the St. Leon plant, and noted that Harrison is not requiring a capacity fee. At the February 28<sup>th</sup> public hearing, and in a March 8<sup>th</sup> letter to OKI, DCRSD representatives stated that no commitments had been made nor had written agreements with St. Leon ever been signed.

St. Leon representatives have stated that references to a \$2 million capacity fee that they would require of DCRSD were outdated and misleading in terms of adding cost to the St. Leon option and should not have been cited in DCRSD or OKI documents. DCRSD representatives responded that they had not included the \$2 million capacity fee as part of cost comparisons in their preliminary engineering report completed in the fall of 2010, but that at no time since St. Leon's initial proposal for a \$2 million capacity charge had this item been removed from negotiations. At the February 28<sup>th</sup> public hearing, OKI staff clarified that February 28, 2011 was the first time that they had received a statement from the St. Leon Sewer Board that the \$2 million capacity fee was no longer being sought.

St. Leon representatives have continued to maintain that the cost analysis conducted by the DCRSD's consultant was flawed and did not fully indicate annual costs to the user. DCRSD consultants have responded that their cost analysis was as thorough as a preliminary engineering report will allow, given that interlocal agreements were still being negotiated. In addition, DCRSD consultants state that their cost analysis meets the strict requirements of the USDA for preparing such reports for wastewater projects. They point out that if only the needs of the single property to be immediately developed were being addressed, a St. Leon treatment option could be more cost-effective, but the County's preferred alternative also has the potential for growth to other parts of northeast Dearborn County. Given St. Leon's projections of 100,000 gallons per day (gpd) for commercial/industrial growth as provided to OKI, DCRSD's consultant foresees inadequate treatment capacity for the areas to be served by the DCRSD's preferred alternative.

In written comments dated February 28, 2011 the St. Leon Sewer Board chairman stated that Amendment #34 fails to recognize years of planning and expense by the Town of St. Leon toward the provision of wastewater treatment and collection to the West Harrison TIF area, including a statement that the current St. Leon wastewater treatment expansion includes capacity to serve the West Harrison TIF District. This statement is at odds with an earlier statement made in a July 13, 2010 letter to OKI from the St. Leon Town Board President that the design capacity of the plant expansion to .57 mgd is based on projected development within the current St. Leon service area, including specific developments for which planning and zoning approval have been secured, as indicated in a list that was attached to the letter.

The February 28<sup>th</sup> comments from the St. Leon Sewer Board chairman state that a 2007 study performed by Woolpert Engineering for the DCRSD reached the conclusion that

the West Harrison TIF would be served with St. Leon as the treatment provider. A review of the 2007 Woolpert report supports this comment, but also states that the future wastewater system customers in the West Harrison TIF District will be DCRSD customers, and notes that potential wastewater system customers in the eastern part of the West Harrison TIF District may be able to connect to the City of Harrison sanitary sewer collection system more readily than to the more distant St. Leon collection system. In any event, as noted previously, since the 2007 Woolpert report, the DCRSD and St. Leon have been unable to conclude an interlocal agreement for service to the West Harrison TIF.

St. Leon's February 28th comments also state that a specific federal statute prohibits sewer districts from extending lines into areas already served by other districts when the original district is indebted to the federal government, as St. Leon is indebted to USDA. St. Leon's February 28<sup>th</sup> letter also states that the proposed "incursion" of lines into this area, whether controlled by the City of Harrison or the DCRSD, would constitute a violation of federal law and would expose these entities, and perhaps OKI as well, to litigation in federal court.

OKI staff subsequently consulted on March 7, 2011 with Indiana's Chief Engineer for USDA Rural Development about these statements made by the St. Leon Sewer Board chairman, as the Chief Engineer is responsible for reviewing and concurring with the preliminary engineering reports that justify any Indiana applications for USDA Rural Development loans. Indiana's Chief Engineer stated that St. Leon's documentation for its current plant expansion did not include any references to serving development in the West Harrison TIF District. In addition, the map in St. Leon's preliminary engineering report with a cover page titled "Proposed Wastewater Utility Service Area Map" did not show St. Leon serving the West Harrison TIF District. The justification provided by St. Leon for its plant expansion described serving 140 homes and potentially a restaurant in the near term, along with additional capacity reserved for the rest of the 20 year planning period. The Chief Engineer said that USDA would expect to see the currently proposed user in the TIF district included in St. Leon's preliminary engineering report, along with its needed capacity, so as not to reduce capacity from the 20 year planning period and current specified expansion of 0.57 MGD—but no such references were made. (Earlier USDA loans to St. Leon pre-date the establishment of the West Harrison TIF District.)

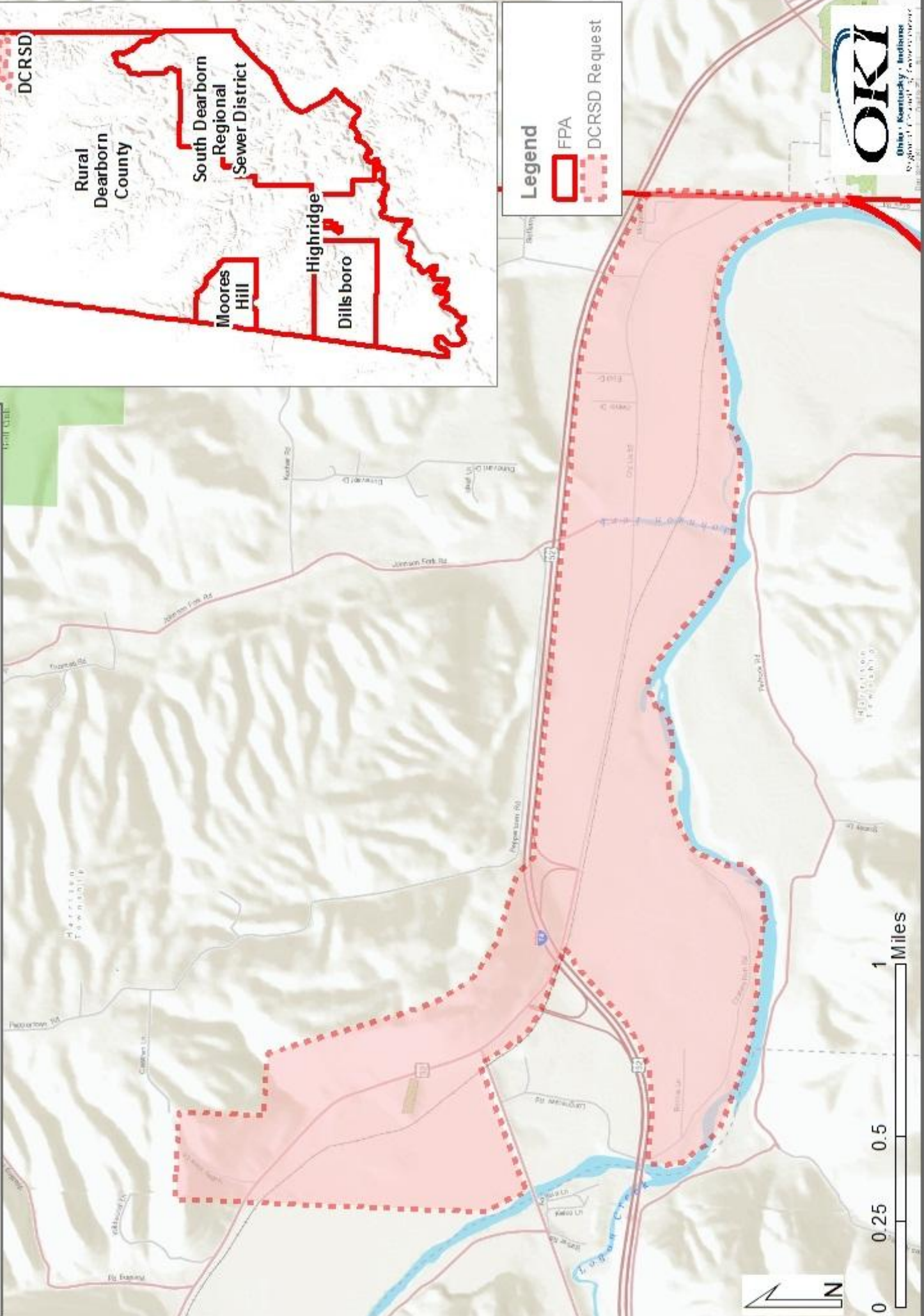
He stated that while USDA wants to support rural communities with essential services, their loans are not aimed at encouraging economic development, but rather long term sustainability. He observed that St. Leon's loan documentation did not seem to indicate that they were organized as a sewer district as implied by the federal statute they cited in written comments to OKI. He explained his understanding that if the Town of St. Leon is the sewer and treatment provider as indicated on USDA loan statements, they would have no boundary established for wastewater service beyond their corporate limits, unless otherwise legally organized.

Finally, comments made by St. Leon's consultant at the public hearing of February 28, 2011 and by St. Leon's attorney in a letter of March 4, 2011 both refer to St. Leon's intent for its treatment plan expansion to support economic development and working with the Dearborn County Economic Development Initiative to serve the West Harrison TIF District. Dearborn County Economic Development Initiative staff, however, stated to OKI staff on March 8, 2011 that their discussions with the St. Leon Sewer Board have focused on the issue of forced hook-ups to residential properties.

**Conclusion**

OKI staff recommends passage of Amendment #34 because the DCRSD has conducted an analysis of alternatives and has secured the necessary resources to provide timely wastewater treatment in the proposed facility planning area, which will enable systematically planned development and water quality protection for a sensitive water resource, the Whitewater River.

Request for an Amendment to OKI's Water Quality Management Plan from the Dearborn County Commissioners



**RESOLUTION  
OF THE EXECUTIVE COMMITTEE OF THE  
OHIO-KENTUCKY-INDIANA REGIONAL COUNCIL OF GOVERNMENTS (OKI)  
  
CONCERNING AMENDMENT #34 TO  
OKI'S REGIONAL WATER QUALITY MANAGEMENT (WQM) PLAN**

**WHEREAS**, the governors of Ohio, Kentucky, and Indiana have designated OKI as the agency to carry out the planning requirements of Section 208 of the Federal Water Pollution Control Act Amendments of 1972 for Butler, Clermont, Hamilton, and Warren Counties in Ohio; Boone, Campbell, and Kenton Counties in Kentucky; and Dearborn and Ohio Counties in Indiana, and

**WHEREAS**, OKI has prepared a regional water quality management plan in accordance with applicable law, and

**WHEREAS**, OKI's Executive Committee adopted OKI's regional WQM Plan at its public meeting of February 23, 1978, and

**WHEREAS**, it is recognized that the regional WQM plan represents a dynamic planning process which needs to be amended from time to time to accommodate and reflect the ever changing circumstances resulting from urban activities and stemming from local, state, and federal policies and/or directives, now

**NOW, THEREFORE BE IT RESOLVED**, that OKI's Executive Committee at its regular public meeting of March 10, 2011 amends OKI's WQM Plan to permit:

1. Updating boundaries for wastewater facility planning areas (FPAs) in northeast Dearborn County as shown on the attached map, thereby enabling water quality to be protected through the provision of timely wastewater treatment; and
2. Designating the Dearborn County Regional Sewer District as the management agency responsible for wastewater collection and treatment in the newly identified FPA.

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EDWIN H. HUMPHREY, PRESIDENT

03/10/11