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

MAY 07 2015

REPLY TO THE ATTENTION OF:

WC-15J

CERTIFIED MAIL 7014 2870 0001 9580 7788
RETURN RECEIPT REQUESTED

The Honorable Larry Mulligan Jr.
Mayor City of Middletown
One Donham Plaza
Middletown, Ohio 45042

Subject: Amended Request for Information Pursuant to Section 308 of the Clean Water Act (33 U.S.C. § 1318) Docket No. V-W-15-308-18

Dear Mayor Mulligan:

On March 27, 2015, the U.S. Environmental Protection Agency issued a request for information under the authority provided by Section 308 of the Clean Water Act (CWA), 33 U.S.C. § 1318(a), requiring that the City of Middletown perform combined sewer overflow and receiving stream sampling, beginning May 1, 2015. On April 10, 2015, Middletown sent EPA a letter expressing concerns regarding the request. EPA discussed those concerns with Middletown by phone on April 22, 2015, and in meetings in Middletown on April 30 and May 1, 2015. In an effort to address those concerns, EPA has revised the request and is issuing the enclosed Amended Request for Information, which includes the changes EPA discussed with Middletown. Please note that the obligation to perform the sampling begins June 1, 2015, and will continue until it is fulfilled, or October 30, 2015, unless EPA informs Middletown that the sampling can cease at an earlier date.

Please exercise care to assure that responses are complete and accurate, because Section 309(c)(2) of the Act, 33 U.S.C. § 1319(c)(2), provides for the imposition of criminal penalties where false information is knowingly provided to EPA.

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Thank you for your cooperation in this matter. If you have any questions concerning this matter, please contact Jonathan Moody of my staff at (440) 250-1708. Please send your written responses to the address specified in the enclosed documents.

Sincerely,

Dean Maraldo
Chief, Water Enforcement &
Compliance Assurance Branch

Enclosures

cc: Vincent Atriano, Squire, Sanders & Dempsey L.L.P.
Robert Darnell, DOJ
Ron Ware, Ohio EPA, SWDO

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	**AMENDED**
	)	**REQUEST PURSUANT TO SECTION**
	)	**308(a) OF THE CLEAN WATER ACT**
THE CITY OF MIDDLETOWN, OHIO	)	**33 U.S.C. SECTION 1318 (a)**
NPDES No. OH0026522	)	
	)	**DOCKET NO. V-W-15-308-18**

Pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency by Section 308 (a) of the Clean Water Act (CWA), 33 U.S.C. § 1318 (a), EPA is requiring that the City of Middletown sample its discharges relating to combined sewer overflows (CSOs) and in-stream monitoring points, prepare reports and provide information in accordance with this request. EPA is requiring Middletown to perform this sampling for the purpose of determining whether Middletown is in violation of the General Effluent Limitations in Part III.2 of Middletown's NPDES permit. The Administrator has delegated this authority to the Regional Administrator of EPA, Region 5, who has re-delegated this authority to the Director of the Water Division, EPA Region 5. On January 29, 2015, the Director of the Water Division, EPA Region 5, re-delegated this authority to the Chief of the Water Enforcement and Compliance Assurance Branch, EPA Region 5.

Access to records and information described herein must be provided notwithstanding the possibility that the records contain information that may be characterized as confidential information or trade secrets. Should you so request, however, any information (other than public information) which the Administrator determines to constitute methods, processes, or other business information entitled to protection as trade secrets will be maintained as confidential or trade secret. Request for confidential treatment must be made when information or access to records is provided, since any information not so identified will not be accorded this protection by the Agency.

EPA has the authority to use the information generated in response to this request in an administrative, civil or criminal action. There are significant civil and criminal penalties pursuant to Section 309 of the CWA, 33 U.S.C. § 1319 for violations of Section 308.

This request is being sent to Middletown via certified mail. It shall become effective seven calendar days after the date Middletown receives the request, as shown on the certified mail receipt (effective date). We encourage Middletown to contact Jonathan Moody of my staff at (440) 250-1708, or Gary Prichard in the Office of Regional Counsel at (312) 886-0570, if you have any questions about this request.

I. INSTRUCTIONS AND DEFINITIONS

The term "combined sewer overflow" or "CSO" refers to discharges (as defined by Section 502(12) of the Clean Water Act) from any of the "overflow" locations identified in Part II E. of Middletown's NPDES Permit for its CSOs.

The term "combined sewer overflow outfall" or "CSO outfall" refers to the specific point source at a particular location from which a CSO occurs.

The term "Middletown" shall mean the City of Middletown and any agents, employees or contractors or other entities that performed work or acted in any way on behalf of or at the direction of the City of Middletown.

The term "NPDES Permit" refers to the National Pollutant Discharge Elimination System Permit No. OH0026522, issued by the Ohio EPA to the City of Middletown with an effective date August 1, 2009 and an expiration on January 31, 2014. At the time of the effective date of this Information Request, the NPDES Permit was administratively extended.

II. REQUESTS

CSO Sampling and Reporting Requirements for the City of Middletown:

General Matters

1. Among other things, this Information Request requires that the City of Middletown sample its CSOs at representative locations at or prior to its CSO outfalls to the Great Miami River and the Hydraulic Canal during overflow events. For the purposes of this Information Request, an "overflow event' is defined as the time period beginning when one or more CSO outfalls starts to discharge in response to rainfall, following a period of at least 24 hours during which no Middletown CSO outfall has discharged. An "overflow event" ends when the last CSO outfall discharging ceases discharge, and that cessation is followed by a 24 hour period during which no Middletown CSO outfall discharges. To qualify as an "overflow event," one or more CSO outfall(s) must discharge continuously for at least 30 minutes. Although not a specific requirement of this request, it is anticipated that Middletown will employ appropriate health and safety procedures so as to allow its staff and/or contractors to carry out wet weather sampling of its CSOs and the Great Miami River during wet weather conditions in an acceptably safe manner. Appropriate procedures should allow sampling to be carried out in darkness and moderately severe rainfall. It is possible that extraordinary conditions (such as extreme rainfall, very high wind of gale force or greater, significant hail, lightning, or tornado) may preclude safe completion of the sampling activities included herein. When such extraordinary conditions preclude the safe completion of sampling in an otherwise qualifying "overflow event" Middletown shall fully document those conditions and include such documentation in its monthly report (see Paragraph 6).

2. All grab samples taken pursuant to this Request shall be handled and analyzed in accordance with 40 C.F.R. Part 136. The following parameters will be analyzed for all samples taken pursuant to the sampling required in Paragraphs 3 and 4:

   (a) *Escherichia coli (E. coli)*
   (b) Total Kjeldahl Nitrogen (TKN)
   (c) Nitrate-Nitrite
   (d) Total Organic Carbon (TOC)
   (e) Ortho-phosphate
   (f) Phosphorus, Total
   (g) Biochemical Oxygen Demand (BOD), 5 day
   (h) Total Suspended Solids (TSS)

CSO Samples

3. Beginning on June 1, 2015, and continuing until October 31, 2015, Middletown shall collect grab samples of CSOs from each of the CSO outfalls identified in Part II, D. of Middletown's NPDES Permit, in the following manner:

   a) Frequency of Sampling: Middletown shall conduct sampling during every "overflow event," at each CSO outfall that discharges continuously for 30 minutes or more, up to a total of 10 "overflow events." Sampling is only required for "overflow events" that begin Monday through Thursday, 4:00 am to 3:00 pm local time and is not required for "overflow events" that start on a federal holiday. An "overflow event" that meets this time restriction is a "qualifying overflow event."

   b) Number of Samples Obtained: At each CSO outfall sampled, Middletown shall obtain at least one grab sample of the effluent discharged during the first 30 minutes of the CSO discharge. If Middletown obtains a sample of a specific CSO discharge that does not last for 30 minutes or more, Middletown shall analyze such sample in accordance with Paragraph 3.d.

   c) Location of Sampling: The CSOs shall be sampled at the CSO outfall locations or a manhole on the CSO piping system, such that the samples taken are representative of discharges from the CSO outfall into the waterbody.

   d) Parameters Analyzed: Middletown shall analyze all CSO samples that it obtains, whether or not the discharge being sampled lasts for 30 minutes or more, for the parameters listed in Paragraph 2 of this Information Request.

In-Stream Samples

4. Concurrent with the CSO sampling described above, Middletown shall carry out In-Stream Monitoring at four additional sampling locations in the following manner:

   a) SR 122 Bridge: Middletown shall collect one sample mid-stream of the main channel at the bridge upstream of the CSO outfalls on SR 122 within one hour of the time the first CSO outfall is being sampled during the "overflow event."

b) SR 73 Bridge: Middletown shall collect one sample at the bridge downstream of the CSO outfalls on SR 73 at a time when the discharge from any specific CSO outfall sampled during the same "overflow event" would be expected, based on the analyses described below, to have reached the SR 73 downstream sample location. Prior to the initiation of sampling, Middletown shall carry out an analysis of the time necessary for discharges from its CSOs to travel from the CSO outfalls to the SR73 Bridge and boat sampling location (see below). This analysis should consider data from the USGS streamflow gauge located on the Great Miami River in Middletown and should result in a river flow to time of travel curve that Middletown will use, in conjunction with real-time data from the aforementioned USGS stream flow gauge, to determine the appropriate SR73 location sampling time and boat sampling location sampling time (see below) during each "overflow event" in which sampling is carried out.

c) Boat Sampling: Middletown shall collect one sample at a center point in the Great Miami River that is downstream of all CSO discharges and upstream of Elk Creek. Middletown shall collect the sample at a time when the discharge from any specific CSO outfall being sampled during the same "overflow event" would be expected, based on the analyses described above, to have reached the downstream sample location. Boat sampling shall not be required when conditions in the Great Miami River make sampling unsafe (e.g., flow rates above 10,000 cfs, significant debris moving downstream), in spite of Middletown's use of appropriate health and safety procedures. When such conditions preclude the completion of boat sampling in an otherwise qualifying "overflow event," Middletown shall fully document those conditions and include such documentation in its monthly report (see Paragraph 6). The inability to complete boat sampling during a "qualifying overflow event" (see Paragraph 3.a) shall not relieve Middletown of the responsibility to complete all other sampling required by this Information Request during that "qualifying overflow event."

d) Hydraulic Canal: Middletown shall collect one sample from the Hydraulic Canal location described in the City of Middletown Wet Weather Sampling Plan dated June 25, 2014, within one hour after the time that any of the following CSO outfalls are being sampled: 2nd Avenue outfall, Lakeside Relief outfall, and Lakeside/Bulls Run outfall.

Additional Sampling

5. In addition to the CSO and In-Stream Monitoring required in paragraphs 3 and 4, Middletown shall carry out additional sampling for *E. coli* analysis in the following manner:

a) Frequency of Sampling: Middletown shall conduct additional sampling at each location described in this paragraph during "qualifying overflow events" (see Paragraph 3.a) in which the first 24 hours of rainfall is 0.75 inches or greater and 3 or more CSO outfalls discharge. Middletown shall carry out this additional sampling until 3 such additional sampling events have been completed. If Middletown performs this additional sampling when precipitation is forecast by the National Weather Service in its Hourly Weather Forecast Graphs to be 0.75 inches during the

first 24 hours of rainfall, and the actual rainfall during the first 24 hours is 0.5 inches or greater, and three or more CSOs discharge during that 24 hour period, then Middletown may submit the results of such sampling as one of the required 3 additional sampling events.

b) Number of Samples Obtained: At each location where additional sampling is required by this paragraph, Middletown shall collect one sample each hour for the first 6 hours after any specific CSO discharge begins, one sample 9 hours after any specific CSO discharge begins, and one sample 12 hours after any specific CSO discharge begins.

c) Location of Sampling: Middletown shall conduct the additional sampling pursuant to this paragraph at the upstream location described in Paragraph 4(a) and at the downstream location described in Paragraph 4(b).

d) Parameters Analyzed: The samples, at a minimum, shall be analyzed for *E. coli*.

Methodology and Reports

6. Middletown shall prepare and provide to EPA a written report of the results of all sampling and analysis required under this request within 30 days after the date that the sampling occurred. The reports shall specify each outfall that was sampled and the locations within the receiving stream where each sample was collected, the date of each sample and the most probable number of *E. coli* per 100 milliliters determined to be present in each sample. The report shall also include a summary of:
   a) the date and time of the beginning and end of the discharge for each CSO;
   b) an estimate of the total volume discharged from each CSO for every overflow event during the monitoring period described in Paragraph 3;
   c) the location of the rainfall gauge and the total rainfall for each overflow event as measured by that rainfall gauge;
   d) for downstream samples, an explanation of Middletown's basis for believing that the samples were taken at a time when effluent discharged from any specific CSO outfall being sampled would be expected to have reached the downstream sample location, including data from USGS Gauge 03272100 for the Great Miami River at Middletown, OH; and
   e) copies of the chain of custody forms and the laboratory analysis records for each sampling event with the monthly written reports.

7. Middletown shall submit the reports described in Paragraph 6 until November 30, 2015.

III. NOTIFICATION OF INTENT TO COMPLY

8. Within three calendar days of the effective date of this request, please notify EPA, in writing, as to whether Middletown intends to comply with this request. If Middletown does not intend to comply with any aspect of this request, please explain in writing the specific aspect of this request that Middletown does not intend to comply with and the reason Middletown does not intend to comply.

IV. REPORTS AND CERTIFICATION

9. Middletown shall submit the reports required by this Information Request to EPA at the address set forth below:

U. S. Environmental Protection Agency – Region 5
Water Enforcement & Compliance Assurance Branch (WC-15J)
77 W. Jackson Blvd.
Chicago, Illinois 60604
ATTN: Jonathan Moody
Facsimile Number (312) 697-2091

This information request is not subject to the Paperwork Reduction Act.

Please contact Jonathan Moody of my staff at (440) 250-1708, or Gary Prichard in the Office of Regional Counsel at (312) 886-0570, if you have any question about this request.

Dean Maraldo
Chief, Water Enforcement & Compliance Assurance Branch
U.S. Environmental Protection Agency, Region 5

5/7/15
Date