

## **AVON LAKE COMMUNITY IMPROVEMENT CORPORATION**

Regular Public Meeting  
Avon Lake City Hall Council Chambers  
and Virtual  
January 11, 2024  
7:00 P.M.

### **I. Attendance**

Directors attending in person were Mayor Spaetzel, Councilman Arnold, Ron Kovach and Ted Esborn. Nathan Deutsch attended virtually.

### **II. Approval of Minutes from November 17 Meeting**

Ron Kovach made a motion to approve the minutes, Mayor Spaetzel second. Motion approved, 5-0.

### **III. Update on CIC Finances**

- a. Account Balance of \$37,242.25

### **IV. Status Updates since November Meeting from ALERG**

#### **a. Safety**

Dan Rogatto of ALERG began: "I'm the site manager for ALERG with the former Avon Lake Power plant. First, I'd like to talk about safety. That's our number one priority and we are now up to 58,260 hours accident free since March 10th of last year. Security issues. We've had no trespassers seen in the past few months. We have had a few repeat cuts in the fence again along Miller Rd. Park. But amazingly, it was quiet through the extended holiday break while there were no workers were on site. We did not have any issues at all. So that's a good thing. Our safety committee continues to meet biweekly and we did sponsor a Thanksgiving meal that was catered. We got the food catered from Fligners. Great, great, great job. The food was delicious. Everybody was raving about it. For some of them it was the first time they had pigs in a blanket. Another thing I like to draw your attention to is something that we've been doing all along. The ALERG team members conduct monthly a minimum of 10 safety inspections of the contractors, reporting any unsafe conditions—it is a way for us to make sure we are out there looking at safety of all the all the workers."

#### **b. Environmental**

"On the environmental side," said Mr. Rogatto, "we did bump up the universal waste—the amount off site is now at 85%. Our off-site fly ash removal is now up to 90% complete. We just have one more silo that has some fly ash in it and then that'll be complete. As far as the permanent removal of hazardous substances, we're now up to 3,557 tons of fly ash removed from the site and we did have a few

additional batteries removed from the site during the month of December. We had 12 batteries from one of the former cell towers that was located on the roof of the plant.”

Mr. Rogatto continued: “Now I'd like to talk a little bit about what has become a hot topic here. That's the mercury exceedance of our NPDES permit back in May of 2023. We had one exceedance of our permit. I know there's a lot of different things being said out there. Our monthly average permit limit is 2.6 parts per trillion, and I'm going to explain a little bit about parts per trillion for people in the audience that maybe don't understand it. And our monthly average was 4.8. Now at no time did we exceed our daily limit and our daily limit is 1,700 parts per trillion. And we took eight samples of this discharge. The first one was a high average number. So we tried to do take additional samples. That's why I think people are talking about us exceeding it eight times. We did not exceed it eight times, those eight times were daily samples for which our limit was 1,700. Nowhere do we even come close to 1,700 parts per trillion. Those eight samples were taken to try to get that average down lower. Try to get it to meet our 2.6. So that's why we took eight samples. That's why we had eight discharges.”

Councilman Shahmir asked: “Those samples were taken on the same day or across different days?”

“No, 8 different days,” said Mr. Rogatto. “And of those eight samples, three of them were high. Two of them were right at our average, three of them were below so just to kind of give you an idea. It was definitely all coming down.”

“Let's continue with our discussion,” said Mr. Rogatto. “Like I said, none of those eight samples even came close to the 1700 daily limit. None of the samples exceeded the US EPA drinking water limit for mercury, which is 2000 parts per trillion. Our average was 4.8.”

Mr. Rogatto went on, “Ohio EPA was immediately notified and they felt that our response was well done. And personally, I believe they thought there was no danger to this number at all. We did not have a violation in April or June. We only had a violation in May.”

“Now let me kind of talk a little bit about one part per trillion,” said Mr. Rogatto. “We keep talking about parts per trillion. One part per trillion is analogous to one drop of water or one drop of a contaminant in an Olympic sized swimming pool. That Olympic size swimming pool holds 600,000 gallons. One part per trillion, is taking one drop of water and dropping it in an Olympic size swimming pool. That kind of gives you an idea of the magnitude of one part. Our limit is 2.6. Also, when we were taught to get these samples, they told the sampling person do not breathe on the sample, because if you have mercury or amalgam fitting fillings in your mouth, that could contaminate the samples. So these are extremely low levels of mercury. If you take the amount of mercury that we put in the lake during these readings, it was like 5 milligrams. That's the equivalent weight of 94 grains of salt. I wanted to bring a little bag of 94 grains of salt, but it's pretty tough to count.”

“Actually if I may, just for the layperson,” said Councilman Shahmir. “I just want to understand. So your permit number is in parts per trillion, and the EPA's Clean Water Act violation is at a level that is unreasonable, so you'd have a permit that is not reasonable. Is that what we hear?”

“You want my personal opinion?” asked Mr. Rogatto. “I'm just saying, yes. That is our permit. That's our permit. Limit 2.6 parts per trillion.”

“So you violated that permit?” asked Councilman Shahmir.

Mr. Rogatto answered, "We put out a monthly average greater than 2.6. Following the exceedance, our staff consulted with multiple contractors to try to figure out how to maintain compliance in the future. One of those contractors we brought on was a local contractor called Applied Specialties. And we were looking at different additives that we can add to this screen to try to potentially remove the mercury from the water. They conducted testing with a couple of different consultants to determine the most effective carbon pretreatment that we could put on site to handle this specific situation. We selected one of these pretreatments. It's basically a portable system on site. We went ahead with it in September or October. We had to file for a PTI, which is a permit to install, with the Ohio EPA. They inspected the system, took all kinds of notes and right now we are waiting for that PTI to be approved. We should not have this issue again. City and the public should rest assured, we take this very seriously. And this is not going to happen again."

Mayor Spaetzel said, "I think part of the issue is that we're the public and we found out later on. Do we have something in place that if this happens again, the city will be notified?"

Mr. Rogatto replied, "We do not feel this was an issue. The public wasn't in danger. Water supplies weren't in danger. We looked at the levels and we thought it really didn't need to be communicated. We did what we were required to do, which is contact OhioEPA. And as soon as you report it, you have to come up with an action plan to satisfy them. And, yes, to keep it from happening again."

"So in the future, just to alleviate this, can we be transparent, however minor?" Mayor Spaetzel asked. "I think that would be helpful."

Scott Reschly of ALERG replied along with Mr. Rogatto: "Yes."

### **c. Demolition**

"As reported earlier in the presentation," said Mr. Rogatto, "we've completed the removal of fly ash from the silos and the silo demo is complete. On the implosion schedule, one thing I'd like to let people know is that the demo contractor has decided that he can conventionally take down precipitator 6 and 7. So we will not have that implosion in late February of 2024. That will not take place. He's going to use his high reach excavator. He believes he can get up there and take down those precipitators. And I'll show you that picture. That was going to be our first implosion, and that is not going to happen. The first implosion is going to happen in May of this year."

Mr. Rogatto went on: "The multi-use trail is essentially complete. Green grass is growing where the coal yard was. I'm sure we'll be cutting next year. That bike trail is going to go down the side of the path and either go across Lake Rd. or come down on Lake Rd. We have a few things to take care of here. There's a pile of concrete that we have to break up and remove or actually put it in a hole that we have. That concrete was right in the middle of the bike path, so we have to get it out of the way. So that's why I'm saying it's essentially complete, it's almost complete."

Councilman Arnold asked: "Was that concrete from the supports?"

Mr. Rogatto replied, "Yes, it was from concrete supports and a building out in the yard."

"The other thing I'd like to talk a little bit about is the storm water redirect from the former coal yard pond to the Avon Lake storm system. We are now operating the yard under an NPDES construction site stormwater general permit. And that will continue that way until the treatment building and the pond

platform are demolished. When we had OhioEPA here, they looked at the new carbon pretreatment system, they did an inspection of the plant, the yard, and the coal pile area. And we told them what our plan was tying into the city stormwater system. They were OK with that. The only thing they said was that if we were going to demo the treatment building we needed to get a PTI. So we went ahead and resubmitted our original PTI for the treatment system for the mercury and we adapted it and put in the items of the coal pile treatment system. That's all being evaluated now by OhioEPA. And once we get that PTI approved, we will be demoing. OhioEPA knows we're not permitting the outfall from the pond anymore. Bramhall's design BMP's were reviewed and approved by the city and were constructed to meet the city of Avon Lake's MS-4, which is their stormwater permit requirements. So the whole design of the piping and everything from the stormwater pond was constructed to meet the permit requirements of Avon Lake."

"I have just a quick question if I could," said Steve Gross of Verdantas. "When you mentioned you were going to place the concrete into the voids on the south portion, is that concrete going to be characterized prior to placement subgrade?"

Mr. Rogatto answered: "That concrete meets EPA's approval to be able to be put in that hole. There are size restraints, they have to be free of any rebar that's poking out in the concrete and everything like that."

Gary Deigan of Deigan & Associates added, "I would just say, Steve, I inspected the concrete and it's clean concrete and our recommendation was just to get the rebar cut off of it and then it would meet the definition of clean hard fill."

Mr. Gross said, "OK, it does meet the definition of clean hard fill, but beyond that, if you're placing it in a void where there is water or groundwater or contact with groundwater or soils, then as the material is processed, it becomes more of a granulated material. I was just curious if that was going to be characterized prior to placement."

Mr. Rogatto went on, "Plant wide demolition is still looking at being finished in April of '25. There are really no changes here. And then I'd just like to talk a little bit about community. We're presently working with the Avon Lake Historic Historical Society and obtaining plant drawings and blueprints. Over the Christmas holidays, ALERG and all the employees participated in what we call our giving tree. We basically fulfilled the Christmas wish list for 20 children in the area through Community Resource Services (CRS). We continue to be a diamond sponsor for CRS charity ball."

Ted Esborn said, "I've gotten 2 variations on the same question in the last month. People notice that lights are no longer on two of the stacks. They raise the question: Aren't they required?"

Mr. Rogatto replied, "There is a requirement for the stacks to be lit but anytime the lights are no longer functional, you have to call the FAA and report the incident. They give you what they call a note Cam number, which is basically it's a notice to pilots or anybody flying air missions that these lights are out. It will basically extend out until we demo the stacks."

#### **d. Redevelopment / Zoning Discussions**

Todd Davis, Avon Lake's outside counsel, said, "We've had interchanges with respect to the development agreement, the last iteration of changes was sent back to ALERG in December and we are

awaiting comments back from ALERG. I think ALERG is digesting some of the questions or some of the changes and we're hopeful that they get back to us in the near future."

Todd Hunt, zoning counsel for ALERG, added, "We have heard from several vertical developers. We're hoping to get input from a vertical developer very soon to weigh in on the zoning issues on the project. We've been assuming that these are the types of things that a vertical developer will want, and so we obviously hope we have a vertical developer soon and the main issue that is in play is the parkland, and I think we need to move forward with some negotiations on the parkland issue with respect to acreage, the cost to purchase it, the financing, the timing of that and when we get some type of a commitment from the city for purchase, that will facilitate any disclosure of detailed environmental information at that time. The city does their due diligence. We still have a few issues with the zoning that we're working through. Things such as building heights, view sheds from Lake Rd. to Lake Erie, the types of dwelling units, the size of dwelling units. Generally that will be apartments. So those are the questions."

#### **V. Public Comment Period (3 minutes per speaker)**

Councilman Shahmir began: "First of all, EAAB had a presentation and questions that they wanted to present at this venue. However, CIC did not see it as something that should be done. That is being controlled by CIC board, which has effectively removed Environmental Affairs Advisory Board, the entity that actually found the violation that we've been talking about. We did have a violation of the Clean Water Act. That is what it was called. Now I see a lot of things here. But I don't see a root cause analysis, So what was the root cause? We do see an engineering control. No root cause. We were told that there is an NDA and they don't have to say anything. They told us they would come back in September of '22 to discuss. We asked in September, never heard an answer. So this is where we are now. We hear that we should be assured that they are doing everything. The thing that you need to remember, you are only as strong as your conviction. And the thing that we need to understand is that we need clarity—clarity that goes across the board. CIC didn't have the capacity on the environmental side until they brought Mr. Gross on. And CIC has never really been here. We've got this shadow group. As a Councilman in this community, I find that to be problematic. You need to have transparency and clarity at every level. Thank you."

"Thank you, Mr. Shahmir," said Mayor Spaetzel. "You know, Ted and I are just two parts of this group here, which is a nonprofit. But we have discussed a change in how we're doing the meetings as far as the agenda and minutes and so forth. We're discussing getting the agenda out to any stakeholders so they can respond and provide us what they want on the agenda and then we're going to get the agenda out earlier as well. So in response to your question, we're working towards changing that process. So it's more user friendly for all."

Councilman Shahmir said, "When I saw the agenda yesterday, I approached Mr. Esborn, and told him that EAAB needs to have this dialogue because I think it's important to build consensus. This is a time that ALERG and the community can come together and develop this thing and the fashion that it should be. This is not a time for fracturing and what this does today is fracturing. It is either caused by CIC or someone who does not want this thing to be brought together."

Councilwoman Fenderbosch said, "The question that I have Mr. Mayor, is, can you identify who the stakeholders are that you were referring to?"

"This is a close-knit community," responded Mayor Spaetzel. "I think everybody is a stakeholder, but when we put together this agenda, we're talking about the stakeholders that are present and have direct contact. I feel like EAAB is one of those stakeholder groups. Council members are. The administration is and other members of the CIC are. We have four citizen members on the board. There are also stakeholders, and we get input from them."

Malachi Witt said, "I'm a resident of Avon Lake. I'm also involved in the EAAB. I discovered the information that was not disclosed. I discovered that and shared it with everyone as it should have been, and that raises a lot of questions as far as transparency. We've been talking about what the EPA said, or whether the EPA agrees, or the EPA this or that. Now you know you have a damaged reputation with the stakeholders that you haven't been transparent or honest with. And so now we have to take what you are saying at face value. And so any information that you have on documentation would be really helpful so we can all be on the same page. We have the right of way to do our own testing of the sediments and the outfalls. The outcomes of that testing, if it doesn't match what you're saying and what you're claiming, that's would be very problematic. So we wouldn't want that to happen. Hopefully it would match with what you're saying. It seems that transparency and honesty is paramount in this scenario for everyone in this community, regardless of what's being built there. You know, there's been 100 years of pollution, whether it's been violations or not, 100 years of discharge of hundreds of millions of gallons with contaminants into that lake and it's sitting there in that sediment, and it needs to be evaluated whether ALERG's claiming that they're not going to test or they're going to. When that land lease expires, you have to restore that property back to its original state. When that zoning changes and when that land lease is no longer valid or transferred to the next landowner, you will be responsible for returning that land to what it once was. And it would be very problematic to start removing those structures that have been put in place without doing any testing. This is not trivial. It may be just a couple of drops in an Olympic size pool. But what if you were to take a sip of that one little drop in that Olympic size pool? If it's going to affect someone, it's still there. It's not OK to begin with; those are just what we've allowed because we have to have allow industry to function. We have these acceptable limits, but it's still not OK. As a stakeholder, it's insulting to hear the claim that it's not that bad. That's unfortunate."

Mr. Reschly responded: "I'll just say a couple of quick things. I appreciate the comments and first and foremost, we at ALERG/Charah, we do not ignore anything, I want to make sure that's clear to everybody. Second, we are a private land owner. I want to make sure everybody understands that as well. Three, we've been good stewards since the day we arrived here in Avon Lake. And we plan to continue to be good stewards throughout the time that we're here. We want to have a positive result. We've always wanted to work with the community and the CIC. We've been instructed to communicate with the CIC. That's our means to share information. And four, I think we've been really good communicators since we've got here. Yes, we've seen opportunities where we need to improve, Mr. Mayor asked us to improve in that aspect going forward and we're going to do that, but I want to make sure that everyone understands. I believe we've been good communicators with the entire city since we've been here."

"Just to put things in context," said Mr. Davis, "and notwithstanding any of the comments that have been made, I think what some people are missing is the major benefits to the community. We're focused on one exceedance in one month throughout an extraordinarily complicated process. Which they are doing, from what I've seen so far, incredibly well. Perhaps we'd like to hear Steve Gross's

perspective as well from an environmental consulting perspective. Candidly, I think they've done an incredible job, I hope they continue with the level of prudence that they have been conducting themselves. I think on any significant Brownfield redevelopment project like this, you're always going to have some minor problems or issues that you're going to have to deal with. And again, I don't want to lose the forest for the trees here. I think that people in the community should really recognize the service they're providing. I'm not excusing issues, but I'm telling you, in my vast experience of doing Brownfield redevelopment and complicated projects, the record so far has been exemplary. I would ask Mr. Gross to put this this one month of exceedance in context and just get his opinion."

Mr. Gross said, "Based on what I know and what I understand, and the data that was provided, that is not an unusual case in a demolition process like this. There does need to be checks and balances. And I think that based on what's been presented, it looks like they are moving forward in the right direction. They're having controls in place. The Community is on heightened awareness. And so they are concerned. So maybe it takes a little more communication in the areas of those concerns. So that you have the layperson that understands. I think it's going very well. Now you know I can't speak to where we are on the phase two assessment piece of it yet because we don't have any information on that. So I really can't speak to that piece."

Dino Polizzi said, "I'm here as a concerned citizen. It's about our electrical grid system. And I brought a little history with me. Avon Lake's had a long history of generating power for the North Coast. And that plant blew up in 1925 before they finished the present CEI plant. And they had a rush to get power from the Lorain CEI plant. So I just wanted to share that with everybody that Avon Lake has a long history of producing power. And I'd like it to continue to do so with the gas fired turbines that west Lorain is using. They're relatively quiet and I believe much less pollution than coal. There were two other power plants and they were just about 100 yards east of the present plant. And concerning pollution, we'll always have it because there are 50 volcano active volcanoes in the world. Thank you."

## **VI. Meeting Schedule**

- Friday, February 16, at 9am
  - Moved from the 9<sup>th</sup>
- Friday, March 15, at 9am

## **VII. Adjournment**

Ron Kovach made a motion to adjourn. Ted Esborn second. Motion passed, 5-0.