

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

.....

UNITED STATES OF AMERICA,

Plaintiff,

v.

METROPOLITAN DISTRICT COMMISSION,
et al.,

Defendants.

.....

CONSERVATION LAW FOUNDATION OF
NEW ENGLAND, INC.,

Plaintiff,

v.

METROPOLITAN DISTRICT COMMISSION,

Defendants.

.....

CIVIL ACTION
No. 85-0489-MA

CIVIL ACTION
No. 83-1614-MA

MWRA QUARTERLY COMPLIANCE AND
PROGRESS REPORT AS OF MARCH 15, 2006

The Massachusetts Water Resources Authority (the "Authority") submits the following quarterly compliance report for the period from December 16, 2005 to March 15, 2006 and supplementary compliance information in accordance with the Court's order of December 23, 1985 and subsequent orders of the Court.

I. Schedule Six

There were no scheduled activities for the last quarter on the Court's Schedule Six.

A. Progress Report.

1. Combined Sewer Overflow Program.

(a) Long-Term CSO Control Plan.

The Authority recently reached agreement with the United States and the Massachusetts Department of Environmental Protection ("DEP") on the appropriate levels of Combined Sewer Overflow ("CSO") control and recommended plans for the Charles River, the Alewife Brook/Upper Mystic River, and East Boston, and on its overall long-term CSO control plan. A summary of the recommended plans for the Charles River, Alewife Brook/Upper Mystic River and East Boston is provided in *MWRA's August 2, 2005 Recommendations and Proposed Schedule for Long-Term CSO Control for the Charles River, Alewife Brook and East Boston*.¹ The Authority and the United States are filing a joint motion with the Court today seeking to modify the milestones in Schedule Six related to the recommended CSO control plans for Alewife Brook/Upper Mystic River and East Boston, and to add milestones related to the Charles River.

¹ See Attachment "A" to the September 15, 2005 Compliance and Progress Report.

As part of the agreement, DEP has agreed to reissue and the United States Environmental Protection Agency (“EPA”) has agreed to approve five (5) consecutive variances of no more than three years' duration each, through the year 2020, for the Charles River and Alewife Brook/Upper Mystic River that are consistent with and limited to the requirements in the Authority's revised Long-Term CSO Control Plan (the “LTCP”) upon the condition that the variances as reissued require the Authority to comply with the requirements of Schedule Six relating to the Charles River and Alewife Brook/Upper Mystic River added pursuant to the joint motion, including the CSO milestones and levels of control set forth or referenced therein. In addition, the United States and the Authority have agreed to withdraw the February 27, 1987 Stipulation of the United States and the Massachusetts Water Resources Authority on Responsibility and Legal Liability for Combined Sewer Overflows once this plan is embodied into a Scheduling Order by the Court and to replace it with a Second Stipulation that will require the Authority to implement the CSO requirements set forth in Schedule Six and related orders of the Court and to meet the levels of control described in the Authority's long-term CSO control plan.² Upon completion of the long-term CSO control plan and with results that demonstrate performance parameters are as predicted, the stipulation

² The documents that comprise the Authority's long-term CSO control plan are identified in the March 15, 2006, Second Stipulation of the United States and the Massachusetts Water Resources Authority on Responsibility and Legal Liability for Combined Sewer Overflow Control.

makes the Authority responsible for only those CSO outfalls which it owns and operates.

This comprehensive agreement will allow the Authority to continue to implement a CSO control plan that will remain at the forefront of CSO control nationally, and dramatically improve water quality, as well as provide a 15-year period of stability for the Authority's CSO obligations allowing the Authority more certainty in managing its capital program and rate increases. With this agreement, the estimated cost to complete the Authority's long-term CSO control plan is now \$855 million, including contingency and escalation of unawarded contracts.

The Authority would like to acknowledge the effort that both DEP and the United States made over the past several months leading up to this comprehensive agreement. Without the effort and cooperation of the parties, the Authority and the United States would have been unable to file the joint motion today. The Authority continues to move forward with its recommended plans for the Alewife Brook/Upper Mystic River and East Boston and has made the necessary preparations to move forward with the additional wastewater system improvements and system optimization evaluations that will further reduce treated CSO discharges at the Authority's Cottage Farm CSO facility and potentially reduce CSO discharges to the Charles River at upstream untreated outfalls.

(b) **North Dorchester Bay and Reserved Channel Consolidation Conduits and CSO Facility.**

Since last reporting, the Authority completed 100-percent design plans and contract specifications for the North Dorchester Bay storage tunnel and related facilities and is continuing efforts to obtain all necessary permits and easements including Article 97 legislation. The Authority plans to advertise the tunnel contract in April and issue the notice to proceed with construction in July 2006 in accordance with Schedule Six. The Authority also has made substantial progress on the Pleasure Bay storm drain improvements and is currently ahead of schedule. The contractor has installed most of the new storm drains and catch basins along Day Boulevard and has removed the old storm drain outfalls from Pleasure Bay beach. The Authority expects that the Pleasure Bay storm drain improvements will be completed by May 2006 in accordance with Schedule Six.

(c) **Cambridge Sewer Separation.**

As noted in the Authority's last compliance and progress report, the City of Cambridge has been unable to move forward with the implementation of Contract 12 because it has not received wetland related approvals for the stormwater wetland detention basin necessary to support the sewer separation in the CAM004 area and the closing of the CAM004 regulator due to an appeal of a Superseding Order of Conditions that was issued by DEP on March 31,

2005.³ The Commonwealth's Division of Administrative Law Appeals has scheduled hearing dates for this appeal for May 31, June 1, 7 and 8, 2006. If the City of Cambridge is unable to receive the necessary wetland approvals in June 2006, there will be a day-for-day delay for each of the construction milestones for Contract 12 and the related sewer separation projects. Any delay will affect the schedule for Cambridge sewer separation set forth in the joint motion being filed today because the Authority based the proposed construction milestones for Contract 12 and the related sewer separation projects in Cambridge on the expectation that the necessary wetland approvals would be received in June 2006. The Authority will report next quarter on the status of this appeal.

(d) Union Park Detention and Treatment Facility.

The contractor is 90-percent complete with construction of the Union Park detention and treatment facility. The new influent conduit and chamber, new sluice gates 1 and 2 and coarse screens 1 and 2 are now operational, and the contractor has successfully started up the new CSO facility influent flow path, with flow entering into the wetwell through the emergency overflow weir gates. This accomplishment allowed the Contractor to commence demolition of the existing screening area and begin construction of the second phase of the

³ See Compliance and Progress Reports dated December 15, 2005, pp. 6-7; September 15, 2005, pp. 8-9; June 15, 2005, pp. 10-11; December 15, 2004, pp. 10-12; and September 15, 2004, pp. 6-7 for previous reports on the wetland permitting issue.

structural modifications, which involve the new hydraulics room and new chemical feed rooms. The contractor also completed the demolition and removal of all existing screening equipment, the installation of dewatering pumps 1 through 6 in the new detention basins, and the installation of all major equipment in the new facility. The contractor also completed the installation of the new pump 1 as part of the Boston Water and Sewer Commission improvements to the existing pump station. Work continues in both the new CSO facility and the existing pump station. The Authority expects that the contractor will complete construction, including testing, in December 2006.

As reported in its last quarterly compliance and progress report, the Authority is currently evaluating a request from the construction contractor for an additional extension of time that could extend the schedule for completion from September 23, 2006 to December 31, 2006. The additional delay is largely due to the critical nature of rehabilitating the existing flood control facility while maintaining facility operation and carefully phasing in new components of the work, including storm event testing, prior to demolishing existing facility components. The Authority will report further next quarter.

(e) Annual CSO Progress Report.

In accordance with Schedule Six, the Authority submits as Exhibit "A" its Annual CSO Progress Report (the "Report"). The Report summarizes progress

made in design and construction on the CSO projects during the past year and identifies issues that affect or may affect compliance with Schedule Six.

By its attorneys,

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