

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

.....
UNITED STATES OF AMERICA,

Plaintiff,

CIVIL ACTION

v. No. 85-0489-MA

METROPOLITAN DISTRICT COMMISSION,

et al.,

Defendants
.....

CONSERVATION LAW FOUNDATION OF

NEW ENGLAND, INC.,

Plaintiff,

CIVIL ACTION

v. No. 83-1614-MA

METROPOLITAN DISTRICT COMMISSION,

Defendants.
.....

MWRA QUARTERLY COMPLIANCE AND
PROGRESS REPORT AS OF SEPTEMBER 15, 2003

The Massachusetts Water Resources Authority (the "Authority") submits the following quarterly compliance report for the period from June 16, 2003 to September 15, 2003, 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 Schedule Six.

A. Progress Report.

1. Combined Sewer Overflow Program.

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

The Authority continued to work toward completing Phase II of its reassessment of combined sewer overflow ("CSO") control alternatives for North Dorchester Bay and Reserved Channel in South Boston, pursuant to the Secretary of Environmental Affairs Certificate issued on June 8, 2001.¹ During the past quarter, the Authority focused its efforts on developing and evaluating two modular concepts that were derived from the CSO control options presented in Phase I. As noted last quarter, modular implementation would allow the Authority to implement a high level of CSO control in the near term, while conducting a water quality monitoring program to examine the incremental performance of the system and the resulting receiving water quality benefits. Additional measures, identified as later modules of the plan, could then be implemented to meet the Authority's goal of CSO elimination to North Dorchester Bay. The Authority also continued to evaluate system optimization measures and system-wide modifications to ensure that a full range of alternatives have been considered and can be presented in the Supplemental Environmental Impact Report ("SEIR"). The Authority expects to be able to complete Phase II and submit the SEIR, including a new recommended plan for CSO control, by March 2004.

In addition, the Authority held internal workshops to pursue evaluations of the engineering feasibility, cost and hydraulic performance of the CSO control alternatives. The Authority also met with the Environmental Protection Agency ("EPA"), the Massachusetts Department of Environmental Protection ("DEP"), the Conservation Law Foundation, elected officials, community members, the Boston Harbor Associates and Save the Harbor/Save the Bay, and held a public meeting on June 26, 2003 to present and discuss the two modular concepts.

Over the next quarter, the Authority will continue to meet with interested parties with the goal of achieving consensus on the recommended plan. The Authority expects to provide some preliminary results of its reevaluation in the next compliance and progress report. The Authority remains on schedule to submit its recommended plan to the Secretary by March 2004.

(b) Alewife Brook and Upper Mystic River Basin Variance.

In accordance with condition C.(1). of the Variance for the Alewife Brook and Upper Mystic River Basin, the Authority submitted the final variance report on July 1, 2003. The report provides an analysis of the cost and benefit of higher levels of CSO control using updated CSO and stormwater data collected during the variance period. It also includes a description of the financial impact of the final recommended CSO control plan on the Authority's ratepayers. The report confirms that the current recommended CSO control plan of targeted sewer separation is the appropriate cost-effective plan for this receiving water. The recommended plan will result in a reduction of annual activation frequency of CSO discharges to Alewife Brook from 63 to seven and an annual reduction of CSO volume from 50 to 7.4 million gallons. After implementation of the recommended plan, the receiving water will meet the Class B water quality criteria approximately 98 percent of the time, when taking into consideration CSO discharges only.

In addition, on August 25, 2003 DEP noticed its Tentative Determination to extend the Variance from September 2003 to June 2004, in the Environmental Monitor. In its Tentative Determination, DEP noted that the additional time was necessary to allow thorough consideration of the report and accommodate a full public input process. DEP plans to hold a forum for public discussion and comment on the final variance report and a subsequent public hearing on its Tentative Determination on the water quality standard and level of CSO control. The agency expects to issue a final determination on the water quality standard and level of CSO control for Alewife Brook and the Upper Mystic River Basin in June 2004.

Over the next quarter, the City of Cambridge will continue its efforts to implement the remaining recommended work.

(c) Charles River Variance.

DEP issued a notice in the August 25 Environmental Monitor of its intent to extend the Variance from October 2003 to June 2004, primarily to allow additional time for thorough consideration of the Authority's pending variance report and to accommodate a full public input process during DEP's variance decision making period. As described below, the Authority now expects to submit the required report in November. Following this

submittal, DEP plans to hold a forum for public discussion and comment on the report and a subsequent public hearing on its Tentative Determination on the water quality standard and level of CSO control. DEP expects to issue a final determination on the water quality standard and level of CSO control in June 2004.

As reported last quarter, the Authority anticipated that it would be unable to submit its July 1, 2003 report reassessing the relative impacts of CSO and stormwater pollutant loadings to the lower basin, and evaluating the cost and benefit of higher levels of CSO control associated with the Cottage Farm facility, until September 2003 because there had been too few storm events of sufficient sizes to complete its sampling program. The Authority anticipates that sufficient size storm events may occur in later summer/early fall allowing the Authority to submit this report by the end of November 2003.

(d) Storage and Consolidation Conduit for BOS 072-073.

As reported last quarter, the Authority filed the Notice of Project Change ("NPC") with the MEPA Unit of the Executive Office of Environmental Affairs in June for the storage and consolidation conduit project for BOS 072-073, which discharge into Fort Point Channel. The NPC recommended that the storage and consolidation conduit project be replaced with a plan for localized sewer separation and system optimization. The NPC concluded that sewer separation in the BOS 073 tributary area, along with optimization at the BOS 072 CSO regulator, would meet or exceed the CSO control goals (annual activation frequency and discharge volume) that were established in the 1997 Final CSO Facilities Plan and Environmental Impact Report for these outfalls. The NPC also demonstrated that, although the previous recommended plan would impact the neighborhood in the form of a permanent CSO facility, the revised plan would have only temporary construction impacts over a shorter construction duration, with no facilities necessary.

On August 14, 2003, following an extended public comment period and two public meetings, the Authority received a Certificate from the Secretary of Environmental Affairs accepting the NPC. The Certificate is attached as Exhibit "A." The Secretary's Certificate noted that through the MEPA process and "by the initiative of the MWRA, the public has received significant opportunity to provide input."

The Secretary's Certificate made several findings regarding the Authority's revised plan. It noted that the NPC had adequately explained the environmental impacts of the proposed changes and demonstrated that the impacts do not warrant the preparation of a Supplemental Environmental Impact Report. It required the Authority to continue with its commitment to participate in the Water Quality Task Force to be formed as part of the Boston Redevelopment Authority's 2002 Watersheet Activation Plan for the Fort Point Channel. The Certificate also requires the Authority to "look towards feasible methods of increasing the rate of inflow removal in this project as the final design process progresses." Specifically, the NPC conservatively assumed that 70 percent of the inflow sources to the sewer system could be eliminated. The Certificate notes that up to 90 percent removal has been achieved on other sewer separation projects and should be examined for the Fort Point Channel. The Authority is now evaluating the technical feasibility, cost and benefit of higher levels of inflow removal during preliminary design.

On September 17, 2003, the Authority will seek approval from its Board of Directors to negotiate with the Court parties on revisions to Schedule Six to change the scope of the project, and possibly its construction milestones, to reflect the new recommended plan. The Authority and the Boston Water and Sewer Commission ("BWSC") recently met to discuss cooperation in managing the final design and construction of the sewer separation and system optimization project. The Authority will propose that these phases of work be managed by BWSC and funded by the Authority, similar to other sewer separation projects in the Authority's long-term CSO control plan.

(e) Quarterly CSO Progress Report.

Pursuant to Schedule Six, the Authority submits as Exhibit "B" its [Quarterly CSO Progress Report](#) (the "Report"). The Report summarizes progress in the design and construction of the CSO projects during the past quarter and identifies issues that have affected or may affect compliance with Schedule Six. The Report also notes the status of certain planning and regulatory efforts.

B. Revisions to Schedule Six.

The Authority submits as Exhibit "C" a proposed revision to the Court's Schedule Six. The proposed schedule amends Schedule Six by incorporating Orders entered by the Court through May 28, 2003. The amendments include the deletion and addition of milestones to reflect changes to CSO projects and the elimination or rescheduling of reporting requirements.

By its attorneys,

Foley Hoag LLP

155 Seaport Boulevard

Boston, Massachusetts 02210

(617) 832-1000

Of Counsel:

Nancy C. Kurtz,

General Counsel

Christopher L. John,

Senior Staff Counsel

Massachusetts Water Resources

Authority

100 First Avenue

Boston, Massachusetts 02129

(617) 242-6000

Dated: September 15, 2003

Notes:

1. See Compliance and Progress Report for [September 17, 2001](#), p. 5.