

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 DECEMBER 17, 2001

The Massachusetts Water Resources Authority (the "Authority") submits the following quarterly compliance report for the period from September 17, 2001 to December 17, 2001 and supplementary compliance information in accordance with the Court's order of December 23, 1985, and subsequent orders of the Court.

I. Schedule Six

A status report for the scheduled activities for the month of October 2001 on the Court's Schedule Six, certified by Frederick A. Laskey, Executive Director of the Authority, is attached hereto as Exhibit "A."

A. Activities Completed.

1. Report on Backup Disposal Plan.

On October 15, 2001, the Authority submitted its report on actions taken pursuant to its backup residuals disposal plan over the past six months in compliance with Schedule Six. In addition, the Authority and the Commonwealth filed their Joint Report on the implementation of the Memorandum of Understanding regarding the beneficial use of biosolids.

B. Progress Report.

1. Boston Harbor Project.

On November 30, 2001, the Authority declared substantial completion for the last construction contract of the Boston Harbor Project. This contract consisted of final grading of the northern and western landforms, soil stabilization and erosion control, paving of the roads and parking lots, and creating 60 acres of public access lands around the perimeter of Deer Island. With the completion of this contract, the Authority will be able to open Deer Island for public access in the spring of 2002. A letter to the Court from the Authority's Board of Directors, its Executive staff and its Advisory Board notes the significance of this milestone. A copy of the letter is attached as Exhibit "B."

2. Motion To Vacate Industrial Pretreatment Order and Amend Second Long-Term Residuals Management Scheduling Order.

On October 2, 2001, the Authority filed a motion to vacate the Industrial Pretreatment Order and to amend the Second Long-Term Residuals Management Scheduling Order, which the Court allowed on October 5, 2001. Under the Court Order issued on October 5, 2001, the obligations associated with the Industrial Pretreatment Order were vacated; the reporting requirements associated with the Second Long-Term Residuals Management Scheduling Order will be deleted effective upon a report to this Court by the United States and the Authority that the Authority's NPDES permit has been amended to provide for an annual residuals report; the Second Long-Term Residuals Management Scheduling Order will terminate at the end of 2008 or upon completion of the last project required under Schedule Six, whichever is later; and the requirement for the submission of an annual combined sewer overflow ("CSO") progress report in February of each year has been moved to March 15 of each year.

3. Combined Sewer Overflow Program.

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

As reported in last quarter's report, the Authority was in the process of performing Phase I of its reassessment of CSO control alternatives in accordance with the Secretary of Environmental Affairs' certificate on the Notice of Project Change for the North Dorchester Bay and Reserved Channel Conduits and Reserved Channel CSO facility project.¹ Phase I of the MEPA reassessment includes such tasks as updating baseline planning assumptions and water quality conditions, identifying and evaluating a wide range of CSO control alternatives and shortlisting those to approximately six to be carried forward to Phase II. Phase I tasks were originally scheduled to be performed from August 2001 to April 2002. Phase II which will include a more detailed evaluation of the shortlisted alternatives and the selection of a new recommended CSO control plan was originally scheduled to commence in May 2002.

An integral part of the Phase I activities involves an update of water quality information by means of a sampling program during wet weather. The Authority had planned to conduct the sampling program in the period October 2001 through December 2001. However, due to lack of rainfall during this period, the Authority was unable to sample any wet weather events and therefore was unable to complete this portion of the Phase I activities, as scheduled. The Authority now plans to perform the sampling program in the spring of 2002, as it is not feasible to do so in the winter, because wet weather characteristics in the non-recreational winter months are considerably different from those in other seasons. For example, the survival rate of bacteria is different during cooler temperatures; road salt in the runoff interferes with bacteria in storm drains and combined sewer lines; the snow melt has different characteristics from rain; and frozen ground changes the nature of the runoff.

Although other Phase I activities are continuing, the delay in the sampling program will effect the efforts to evaluate CSO control alternatives, because the water quality information gathered during the sampling program is an important evaluation factor. Thus, the completion of Phase I will be delayed. As Phase II activities are dependent upon completion of Phase I, there will be a related delay of Phase II efforts. Staff are currently developing a revised schedule and expect that the reassessment will be completed no later than the end of 2002. Staff will report further in its next Compliance and Progress Report in March 2002.

On November 29, 2001, the Authority met with the Environmental Protection Agency ("EPA") and the Massachusetts Department of Environmental Protection ("DEP") to present its plans for performing Phase I work. The Authority plans to continue to meet with EPA and DEP periodically throughout the reassessment. In addition, on December 5, 2001, the Authority conducted its first public meeting in South Boston to discuss the reassessment and the Supplemental Environmental Impact Report ("SEIR") preparation. Meeting attendees included residents, community organizations, elected officials, agencies and other interested parties. The Authority expects to hold additional informational meetings throughout the reassessment.

(b) Upgrades to CSO Facilities.

As reported in the last quarterly report, the Authority had substantially completed construction at the Prison Point, Fox Point, Commercial Point, and Somerville Marginal CSO facilities and was in the acceptance-testing phase.² The Authority also reported that it had completed the acceptance-testing phase for the Cottage Farm CSO facility and had commenced the start-up period.³ Since that report, there has been insufficient rainfall to perform acceptance testing or start-up optimization. The Authority still must complete three acceptance tests for the Fox Point, Commercial Point and Somerville Marginal facilities and one for the Prison Point facility prior to commencing the start-up period. The Authority will report further in its next Compliance and Progress Report in March 2002.

(c) Alewife Brook and Upper Mystic River Variance.

On December 14, 2001, the Authority submitted a letter to DEP requesting an 18-month extension of the Alewife Brook and Upper Mystic River water quality variance, from March 2002 to September 2003. The Authority is requesting this extension because it and the City of Cambridge will not be able to complete a report required by the Variance or confirm the plan for Alewife Brook CSO control prior to the current expiration date of the Variance.

During this period, the Authority and the City of Cambridge will prepare and submit to the Executive Office of Environmental Affairs ("EOEA") a Response to Comments document, which responds to issues and questions raised during the Notice of Project Change ("NPC") public comment period.⁴ Many of the comments on the NPC were related to potential flooding along portions of Alewife Brook, impacts of the proposed construction of a stormwater detention basin within the Metropolitan District Commission Alewife Brook Reservation, and the recommended level of CSO control. To enable it to respond adequately to public and agency issues regarding potential flooding, the City of Cambridge has begun significant additional modeling work, which it expects to complete by Spring 2002.

Once these modeling efforts are completed, the Authority and the City of Cambridge plan to engage in further discussions with both the permitting agencies and the public about the modeling results and implications for the proposed CSO control plan. If no significant issues that would preclude implementation of the proposed plan arise, the Authority and the City of Cambridge will proceed with the development of a Response to Comments and anticipate submitting that document to EOEA in Fall 2002.

In addition, the Metropolitan District Commission has indicated that Article 97 legislation is required for construction of the detention basin in the Alewife Brook Reservation. The Authority and the City of Cambridge expect to file legislation, if necessary.

After this process is complete, the Authority will submit the report required by the Variance conditions that summarizes the information developed during the variance period and reassesses the recommended level of CSO control in the context of water quality standards attainment. The Authority proposes to submit the Variance report to DEP by July 2003. During the proposed variance extension period, the Authority will continue to coordinate these efforts with the regulatory agencies.

(d) Quarterly CSO Progress Report.

Pursuant to Schedule Six, the Authority submits as [Exhibit "C" its Quarterly CSO Progress Report](#) (the "Report") [PDF] . The Report summarizes the progress made in design and construction of the CSO projects during the last quarter, identifies potential delays in design and construction and notes the status of certain planning and regulatory efforts.

By its attorneys,

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Dated: December 17, 2001

Notes:

1. See September 17, 2001 Quarterly CSO Progress Report at p. 4.
2. See September 17, 2001 Quarterly CSO Progress Report at pp. 5-6.
3. Footnote 35 of Schedule Six allows for a period of start-up and systems optimization after completion of construction consisting of five activations of at least four hours duration each in which to achieve effective treatment of flows, as defined by the NPDES permit.
4. As previously reported, on April 30, 2001, the Authority and the City of Cambridge submitted an NPC describing the revised plan to separate sewers to control CSO discharges to Alewife Brook. On June 15, 2001, the Secretary of Environmental Affairs issued a Certificate on the NPC, which required that the Authority and the City of Cambridge prepare a Response to Comments document. See September 17, 2001 Quarterly CSO Progress Report at pp. 7-8.