UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA, .
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Plaintiff, .
. CIVIL ACTION
v. . No. 85-0489-MA
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METROPOLITAN DISTRICT COMMISSION, .
et al., .
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Defendants. .
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CONSERVATION LAW FOUNDATION OF .
NEW ENGLAND, INC., .
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Plaintiff, .
. CIVIL ACTION
v. . No. 83-1614-MA
.
METROPOLITAN DISTRICT COMMISSION, .
.
Defendants. .
.
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MWRA MONTHLY COMPLIANCE REPORT
FOR JANUARY 1999 AND
PROGRESS REPORT AS OF FEBRUARY 12, 1999

The Massachusetts Water Resources Authority (the "Authority") submits the following monthly compliance report
for the month of January 1999 and supplementary compliance information in accordance with the Court's order of December 23, 1985, subsequent orders of the Court and undertakings of the Authority.

I. Schedule Six.

There were no scheduled activities for the month of January 1999 on the Court's Schedule Six.

A. Progress Report.

1. Fiscal Matters.

(a) State Funding.

On January 27, 1999, the Governor submitted his recommendations for the Commonwealth's Fiscal Year ("FY") 2000 budget to the Massachusetts Legislature. The proposed budget includes $53.9 million in statewide debt service assistance for sewer projects, $38.9 million to support the state's contribution to the Federal Clean Water Act State Revolving Fund ("SRF") (an increase of $7 million from last year's appropriation) and $1.8 million to

support the SRF for safe drinking water projects. The Governor's budget recommendations support assumptions regarding state assistance used in the Authority's own preliminary FY 2000 budget.

(b) Current Expense Budget.

On February 10, 1999 the Board of Directors transmitted a Proposed FY 2000 Current Expense Budget for the Authority to the Advisory Board for its review and comment. The Board of Directors will hold a hearing on the budget in May after receiving a response from the Advisory Board and will approve a final budget for the upcoming fiscal year in June.

The proposed $437.5 million budget includes funding for operations and maintenance of Authority facilities and programs, as well as funds to pay for debt service on bonds issued to support the Authority's capital program.1 In fact, 53 percent of the total spending will be for debt service. Wastewater transport and treatment account for another 18 percent of the budget. An additional eight percent of projected spending supports drinking water and wastewater facilities planning, design and construction management, metering and monitoring systems and water quality monitoring. As in the past several years, the proposed increase in base operating costs is less than 2.5 percent. However, costs of starting up new facilities, primarily for wastewater treatment, will add another $7.5 million in operating costs.

Ratepayers are expected to provide 76 percent of the revenue needed to support the proposed budget. The Authority anticipates that the balance will come from the Commonwealth's debt service assistance program, income from the investment of various reserves and $13.4 million in non recurring revenues, including $2 million related to the sale of the Fore River Shipyard and prior year surpluses which have been deposited in a bond redemption account and the rate stabilization fund. The $370.8 million in revenue from community rates and charges represents a projected average 7.3 percent increase in combined water and sewer charges over FY 1999. On average, water charges would increase 13 percent, and sewer charges would increase 5.8 percent. As in prior years, actual increases in charges for individual communities will vary significantly because of annual variations in each community's share of total water and wastewater flows.

The Authority has revised its ten-year estimate of future increases in rate revenue requirements, based on the latest budget information. These updated figures indicate that rates must increase at approximately the same 7.3 percent rate each year through FY 2006 to meet anticipated budget requirements. These increases will be necessary to support continued spending on water and sewer system improvements and the new operating costs associated with these facilities. The extended period of relatively large projected increases also reflects strategies the Authority has developed to spread what would otherwise be a more precipitous increase over more years into the future.

2. Harbor Management.

(a) Thermal Plant.

During the past month, emissions testing in the thermal plant using the newly completed digester gas system was completed successfully. On February 2, 1999 the contractor turned the digester gas system over to the Authority's treatment plant operators. The turnover of this last component of the thermal/power complex marks the full completion of another key facility in the Boston Harbor Project, and one that proved particularly challenging at many points.2 The thermal plant is now burning between 130 and 160 thousand cubic feet per hour of digester gas to meet the plant's heating requirements and a portion of its demand for electric power.

(b) Construction of Effluent Outfall Tunnel.

In the Effluent Outfall Tunnel, during the past month the contractor completed the removal of utilities from the tunnel. After positioning the east dam car to block groundwater flows and pump them into a new discharge line, the contractor was able to proceed with lining the 300-foot starter tunnel. The concrete pour of the starter tunnel is complete, and the contractor is in the process of stripping the steel forms. Once the forms are removed, the starter tunnel will be complete, with the exception of minor repair work.

The contractor will focus next on relocating the pumps to the recently completed starter tunnel (adjacent to the shaft) and setting forms for the concrete pour to form the elbow and the bulkhead of the tail tunnel. The contractor is preparing a third concrete drop hole for use in placing the concrete for the elbow.

(c) Electrical System Modifications for Deer Island Pump Stations.

As reported last month, four of the eight modified harmonic filters to be installed in the Lydia Goodhue Pump Station arrived at Deer Island. Installation of all four is now complete, and they await future testing. Although some production delays occurred, two of the remaining four filters are now on site, with installation in progress, and the Authority expects the last two to arrive shortly.

At the North Main Pump Station, the construction support contractors have completed the preparatory work required for the installation of additional harmonic filters at that location. With the exception of a few capacitors (12 of 48), which are in shipment, all of the components for those filters have arrived at Deer Island.3 The contractor has completed installing the reactors and cabinets for the filters and is now working on the capacitors. Testing of equipment, prior to connection, is also underway.

The Authority expects that installation of the new filters for both pump stations will be complete by the end of the month. Functional testing will proceed in March, or as soon as sufficient flows are available to perform testing with multiple pumps.

(d) Demolition and Construction on Nut Island.

On Nut Island, demolition of all buildings and digesters associated with the Nut Island Treatment Plant is now complete. The contractor has also finished importing fill from Deer Island and is shaping the final contours at the southern part of the island nearest the adjacent community to prepare for landscaping and completion of the public park in that area.

With respect to the work on the chamber beneath the new headworks, the contractor has resumed work to convert the old effluent channel into a new surge containment area. This work is designed to help protect the new headworks and upstream locations from flooding in the event of any future power and pumping failure at the Lydia Goodhue Pump Station.

3. Residuals Program.

(a) Pelletizing Plant Operations and Construction.

As reported last month, a December 16, 1998 fire at the pelletizing plant caused a significant interruption in pelletizing operations and has delayed the completion and testing of the two new dryer trains, #5 and #6. Since the incident, the Authority has used its backup residuals disposal plan to transport dewatered sludge cake for landfill disposal, without interrupting the transport of liquid sludge from Deer Island to the sludge processing plant. Partial pelletizing operations resumed on December 29, 1998 in dryer train #1.

During the past month, workers have completed repairs to the regenerative thermal oxidizers ("RTOs") associated with dryer trains #2 and #3 that were damaged in the fire. They have also installed additional supports to all existing gas piping and process ductwork related to dryer trains #2, #3 and #4. With three dryer trains now available, pelletizing has returned to near normal operation. The installation of additional supports to process ductwork on dryer train #1 is expected to be complete February 15, at which time the shipment of cake to a landfill is expected to end.

As noted last month, the Authority contracted with Camp, Dresser & McKee ("CDM") to perform an independent safety assessment of the plant, which resulted in a number of recommendations related to the construction of the two new dryer trains, #5 and #6. Based on CDM's assessment, the Authority has reviewed the list of remaining construction work required for trains #5 and #6. The list has been divided into work that is safety-related and must be addressed prior to a re-start of trains #5 and #6 for testing and work that may be

addressed following a re-start. Given the rather extensive list of safety-related items, the Authority now estimates that the contractor will not be ready to re-start the two new trains for another eight to ten weeks. Once performance testing is completed successfully, the Authority will accept the new trains. The contractor is proceeding with construction, and the Authority has scheduled a meeting with the contractor on February 25, 1999 to explore all means available to speed the completion of work on trains #5 and #6.

(b) Residuals Backup Disposal Plan.

With regard to the Town of Walpole's request to seek elimination of the requirement for an in-state backup sludge disposal site, the Authority recently forwarded to representatives of both the Environmental Protection Agency ("EPA") and the Massachusetts Department of Environmental Protection ("DEP") a detailed report regarding the successful implementation of the backup disposal procedures in response to the December 16 incident at the pelletizing plant. The Authority has scheduled a meeting with EPA and DEP on February 26, 1999, to discuss the continued need for the Authority to retain the landfill site.

4. Combined Sewer Overflow Program.

(a) Cambridge Sewer Separation.

Last year, the Authority reported that the City of Cambridge had issued Notices to Proceed for three construction contracts to separate sewers tributary to combined sewer overflow ("CSO") outfalls CAM 002 and CAM 004, meeting the July 1998 milestone for commencement of construction.4 At the same time, the Authority informed the Court that Cambridge would be unable to meet the construction completion milestone of January 2000, because new information indicated that the extent of the work required for the project, although not yet fully defined, was clearly well beyond that assumed when the milestone was proposed and accepted.5

Information now available based on further investigations conducted since last year indicates that the scope and cost of the project may far exceed original expectations. A project originally estimated to cost $12 to $14 million is now estimated to cost as much as $72 million. Under the circumstances, the Authority hopes that the Court and the parties will recognize what the Authority believes to be a compelling need to take additional time to reevaluate the project, explore alternatives and confirm that the sewer separation project continues to be the appropriate and most cost-effective approach to providing CSO control at CAM 002 and CAM 004.

The Authority's 1994 CSO Conceptual Plan initially recommended sewer separation in the Cambridge combined sewer system tributary to outfalls CAM 002 and CAM 004 as the cost-effective approach to control CSO discharges to Alewife Brook, based upon a cost-performance comparison of alternative CSO control technologies (i.e., sewer separation and various consolidation and storage options). At that time, the cost of separation in these areas was estimated to be $12.1 million, compared to a range of $30 to $70 million for the other CSO control alternatives. The estimated cost for sewer separation increased in the 1997 CSO Facilities Plan to $13 million, which the preliminary design report, completed by Cambridge in March 1998, adjusted to $14.8 million. The basis for the Authority's estimated scope and the preliminary design for the sewer separation project was City of Cambridge sewer system maps and existing design plans for sewer separation in the same area, prepared by Cambridge several years earlier. Both the Authority and Cambridge assumed that relatively minor work would be necessary to update the design plans to reflect current conditions and that construction would not be markedly different than shown on the earlier plans. Consistent with the approach to other CSO projects taking place within local community systems, the City of Cambridge was to implement this particular project, which the Authority would fund, subject to a Memorandum of Understanding and a Financial Assistance Agreement entered into in 1996.

As design work was proceeding in 1998, Cambridge began to inform the Authority that new information collected in the field was indicating serious discrepancies between the information on Cambridge plans and the actual system conditions observed. Extensive reaches of the sewer and storm drain systems shown on plans as already separated appeared, in fact, to be combined; utility conflicts and traffic impacts were unusually and unexpectedly complex; and there was a previously unforeseen need for extensive lengths of new large-diameter and costly storm drain trunks to carry newly-separated storm flows to receiving waters.6

In September 1998, following review of the new information presented by Cambridge, the Authority instructed Cambridge to perform additional field investigations and evaluations to determine fully the extent and cost of what would be required to accomplish sewer separation. The Authority received Cambridge's Supplemental Preliminary Design Report (the "Supplemental Report") in December 1998. The Supplemental Report estimates the total cost for performing sewer separation in the areas originally included in the project to be $51.9 million, compared to the City's previous estimate of $14.8 million. In addition, the Supplemental Report indicates that the scope of the separation work may need to be extended to additional geographical areas to meet CSO control goals.7 Although more study is underway to determine the extent of any additional areas, Cambridge estimates that the construction cost for sewer separation in an extended area could be $15 to $20 million, bringing the possible total cost of the sewer separation project to as high as $72 million.

In view of the dramatically increased scope and costs that could now be involved in the Cambridge sewer separation project, the Authority believes certain additional steps are in order. First, it must complete the detailed review of Cambridge's Supplemental Report now underway and work with Cambridge's design team to confirm the level of sewer separation necessary to meet the CSO goals for Alewife Brook and to identify any possible ways to reduce the costs. Second, the Authority should update the cost and performance comparison of all CSO control alternatives for Alewife Brook performed for the 1994 CSO Conceptual Plan, to evaluate whether sewer separation remains cost-effective relative to the other alternatives.8 While the Authority will move forward with these steps as quickly as possible, it expects the full review called for may take as long as five months. By July 1999, the Authority anticipates it will be in position either to move forward as expeditiously as possible with the sewer separation project and to propose a new schedule for completing the work, or to propose an alternative project and schedule. In the meantime, the Authority has directed Cambridge to proceed with the four sewer separation contracts already in progress or awarded.

The Authority met yesterday with EPA and DEP staff to present and discuss the dilemma it faces in this matter. It agreed to continue to apprise the agencies and to consult with them as further information becomes available. When the ongoing review, analysis and discussions bring the situation into sharper focus, the Authority will seek appropriate adjustments to Schedule Six. In the interim, the Authority hopes that the Court will find the Authority's intention to review the appropriateness of the project and ways to reduce the costs before moving forward to be justified under the circumstances.

(b) Cottage Farm Facility Upgrade.

As reported previously, the Authority is resolving the problems stemming from the deteriorated floor at the Cottage Farm CSO facility by installing an interim, flow-based, semiautomatic treatment control system (for chlorination and dechlorination) by March 1999, in compliance with the milestone for completion of construction, and pursuing repairs to the existing floor and installation of the new permanent control equipment by July 1999.9 The interim control system, for which design was completed in December, is currently under construction. Design of the floor repairs was completed in early February, and the Authority is awaiting information from the contractor to finalize construction documents. In addition, the Authority is preparing facility start-up plans in anticipation of putting the interim control system on-line in March 1999.

(c) Variance for Alewife Brook and Upper Mystic River Discharges.

As previously reported, the Authority submitted written comments to DEP on the draft conditions for the variance for the CSO discharges to Alewife Brook and the Upper Mystic River.10 The Authority has received copies of comments submitted by a number of other interested parties. One of the common themes throughout the comments concerns the need to coordinate the various data collection efforts anticipated to take place in compliance with the variance requirements and through separate ongoing activities of the Executive Office of Environmental Affairs' Basin Team for the Alewife-Mystic watershed, formed under the Commonwealth's Watershed Initiative. Some commenters also questioned how the new water quality information to be collected will be used to assess whether the level of CSO control proposed for the area by the Authority in its Final CSO Control Plan is appropriate.

The Authority understands that DEP has reviewed the comments and drafted modifications to the variance conditions to address issues raised in the comments. The Authority anticipates that it will have the opportunity to confer further with regulatory staff to discuss the changes and any remaining issues prior to DEP's finalizing and issuing the conditions.

(d) Field Testing for Floatables Control.

As reported last month, the Authority continues to implement its field program to test the performance of underflow baffles for CSO floatables control.11 Due, in part, to the recent mild weather conditions, the Authority has been able to make additional progress over the last month.

During two storms in January, the Authority conducted observations at the two CSO regulator locations, BOS 012 in East Boston and BOS 078 in South Boston, where prototype underflow baffles were installed last year.12 It also collected floatable materials from the end-of-pipe netting installation at BOS 004 in East Boston.13 The Authority is now evaluating the information and reviewing the related flow meter data to confirm CSO activation conditions.

The Authority expects to continue this work through the winter, as weather conditions allow, and eventually to install a prototype baffle at BOS 004, once it determines that sufficient information exists to characterize pre-baffle conditions statistically. After the baffle at BOS 004 is installed, the Authority will begin to collect floatable materials to characterize post-baffle conditions.

(e) Supplemental Environmental Impact Report for Fox Point CSO Facility Upgrade.

As reported last month, the Supplemental Environmental Impact Report ("SEIR") for the Fox Point CSO Facility Upgrade filed in December received notice in the January 10, 1999 *Environmental Monitor*, commencing a 30-day public comment period.14 On January 25, the Authority conducted a public meeting to discuss the recommended plan for the Fox Point upgrade with interested parties and to assist them in reviewing and commenting on the SEIR. Discussions at this meeting appeared to confirm that the force main option for dechlorination (described in last month's Report) has broad support within the neighboring community and among other stakeholders. The Authority expects to receive a Certificate from the Secretary of Environmental Affairs on February 16, 1999, and to move final design forward thereafter. In the meantime, preliminary design work continues. Construction is expected to begin in November 1999 on schedule, assuming no further MEPA review is required.

5. Braintree-Weymouth Relief Facilities.

As previously reported, the design of improvements to the Braintree Weymouth interceptor and related facilities serving six communities south of Boston has been underway for several years. In January 1999, the Authority advertized for bids on the first construction contract for the new facilities, a deep rock tunnel connecting Weymouth to Nut Island, with construction expected to be underway by June.15

For the past several months, the Authority has been meeting with DEP to discuss the terms of an Administrative Consent Order regarding the Braintree-Weymouth project.16 Authority and DEP staff recently concluded discussions, and on February 10, 1999, the Authority's Board of Directors accepted the terms of a proposed Administrative Consent Order. In addition to a schedule for completing design and construction of the various phases of the project,17 the Consent Order includes a number of commitments by the Authority to undertake related activities. These include investigating the condition of the existing Braintree-Weymouth system and possible steps to minimize and mitigate the effects of any overflows that occur while the Braintree-Weymouth Relief Facilities are in construction and evaluating the impact the Authority's Braintree-Weymouth relief project will have on overflows occurring in Weymouth's and Braintree's local collection systems.

One particularly significant issue addressed in the Consent Order concerns how interested parties will work together to address infiltration and inflow ("I/I") in both the Authority's and community sewer systems. The Authority is pleased that the Consent Order recognizes the work to be undertaken by the regional I/I Task Force

formed following the South System I/I Workshop held in December 1998 and described previously to the Court.18 The Consent Order anticipates that the Authority and DEP will enter into a further agreement by July 2000, based on the work of the Task Force, to address how the Authority, its sewer system communities and regulatory agencies shall address infiltration and inflow to reduce the frequency and duration of sewer overflows.19

6. Infiltration and Inflow Program.

As noted above, the decision to form an I/I Task Force originated from the South System I/I Workshop held in December 1998. The purpose of the Task Force is to work cooperatively to develop goals and implementation strategies to reduce I/I in order to optimize local and regional sewer service. Since December, the Authority has taken steps to create and organize the Task Force, which held its first meeting on February 4, 1999. The members include representatives of local communities (including two Advisory Board representatives on the Authority's Board of Directors), regulatory agencies, business and local watershed associations. Future meetings will be held monthly and will be open to all interested parties, with the Authority providing administrative and technical support. The Task Force anticipates developing written recommendations regarding I/I strategies over the next 12 to 14 months.

In the meantime, the Authority has planned a second I/I Workshop to take place on February 25, 1999, with representatives of the Authority's North System communities. After the Workshop, which will be similar in format to the South System Workshop, the Authority expects several additional representatives to join the regional Task Force.

7. Toxic Reduction and Control.

The Authority is required by both EPA's Pretreatment Regulations and its NPDES permit for the Deer Island Treatment Plant to conduct periodic analysis of the discharge limits applicable to local industrial discharges. Under these requirements, the Authority must review the adequacy of existing discharge limits and determine whether alternative limits are required to meet its permit limitations and conditions. With the completion of a substantial portion of the new Deer Island facilities and a new NPDES permit expected soon, the Authority is beginning a new cycle of review.

To facilitate the local limits review process, on February 10, 1999 the Authority's Board of Directors approved the award of a contract for consulting services. The consultant will analyze available information and propose appropriate local discharge limits for the Authority's service area, using Authority data and a model prescribed by EPA. The Authority will submit draft and final reports on the local limits study to EPA, with public comment periods following each submission. Eventually, after receiving final EPA approval, the Authority will incorporate appropriate modifications into its regulations governing industrial discharges.

8. Year 2000 Update.

On February 10, 1999, Authority staff made a presentation to the Board of Directors regarding progress in planning for the uncertainty presented by the Year 2000 date change. The Authority's Year 2000 program has been underway for some time to identify potential problems, prepare and implement remediation plans and develop contingency plans for situations beyond the Authority's direct control. The Authority's goal is to avoid service disruptions and ensure that no unanticipated events occur triggered by the date change.

The Authority has taken inventory of the risks associated with the majority of its computer hardware and software technology, process control systems, embedded computer chips and vendor-supplied goods and services. The Authority has already implemented numerous remedial measures, including installation of upgraded products or patches, many of which have been successfully tested. System audits, implementation of remediation measures and further testing will continue in the coming months.

With regard to external risks, the Authority has identified three key areas of concern: power, communications and chemicals. At the February 10 meeting, the Board approved an approach to contingency planning for a power

emergency, which includes, among other elements, acquiring additional generators and ensuring availability of adequate fuel supplies to run all generation equipment, including the power plant on Deer Island, for extended periods, should that become necessary. Contingency planning is also underway to address communication concerns and to ensure a sufficient supply of chemicals required to maintain various treatment operations.

The Authority's program to achieve Year 2000 readiness is on schedule to be complete by June 30, 1999, in compliance with Executive Order No. 408 issued by the Governor and with EPA and DEP policies.

By its attorneys,

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Notes:

1. As anticipated, the Authority completed another borrowing of $195 million in funds on January 29, 1999, based on the favorable results of the interest rate swap reported last month. See January 15, 1999, Compliance and Progress Report, p. 11.

2. As previously reported, the Authority accepted the new power plant in August 1995, and the thermal plant, except for the digester gas system, in July 1998.

3. Unlike the new harmonic filters for the Lydia Goodhue Pump Station, which were fabricated off-site, assembly of the new filters for the North Main Pump Station will take place on location at Deer Island.

4. Since that time, Cambridge has awarded a fourth construction contract.

5. See August 17, 1998 Compliance and Progress Report, pp. 4-5.

6. The preliminary plans assumed existing storm drain trunks would have sufficient capacity for the increased storm drainage following sewer separation.

7. The goal of the project in the Authority's Final Facilities Plan is to eliminate CSO discharges at CAM 002 and to reduce other CSOs to Alewife Brook to four or less discharges per year on average.

8. In addition, the Authority has indicated to Cambridge that it would like to explore the City's willingness to pay portions of the separation costs.

9. See December 15, 1998 Compliance and Progress Report, pp. 10-11.

10. See January 15, 1999 Compliance and Progress Report, pp. 22 25.

11. Id., pp. 3-6.

12. Observations at these baffle locations take place during and after CSO activations to assess the potential for operation and maintenance problems due to the baffles and the general performance of the baffles in blocking floatable materials from entering the outfall pipe.

13. This information will be used to quantify and characterize the floatable material discharged at the overflow location prior to and after the installation of the underflow baffles, to assist in evaluating their effectiveness.

14. See Progress and Compliance Report dated January 15, 1999 pp. 7-10.

15. In addition, the tunnel will be extended to the Fore River Staging area to carry wastewater from the pelletizing facility (discharged currently into City of Quincy sewers) to join the flow to Deer Island. The new tunnel will also contain two pipes to connect with those already installed in the Inter-Island Tunnel to carry liquid sludge from Deer Island to the pelletizing facility in lieu of the barges now in use.

16. As reported, the Authority received a Notice of Enforcement Action from DEP in April 1998 in response to overflows that have occurred from the Braintree-Weymouth system in wet weather. See May 15, 1998 Compliance and Progress Report, pp. 11-12. DEP has issued Administrative Consent Orders to the Towns of Weymouth and Braintree as well, to address deficiencies in the local community systems.

17. In addition to the tunnel, the project includes a new intermediate pump station in Weymouth, a replacement for the Braintree Weymouth pump station in Quincy on the same site, new relief sewers and rehabilitation of existing sewers.

18. See December 15, 1998 Compliance and Progress Report, pp. 15-16. See also section below for an update on the I/I Task Force.

19. The Authority is constructing the new Braintree-Weymouth relief facilities, as well as all of its interceptor improvement projects, according to design standards set by DEP and facility plans approved by DEP. Therefore, the Authority expects the discussion regarding future efforts to reduce I/I to include a further description and articulation by DEP, as well as EPA, of the appropriate performance standard to which the Authority, member communities and other sewer system operators should be held. Because sewer overflows can never be eliminated completely under extreme weather circumstances, the Authority hopes that regulators will develop appropriate policy guidelines for determining reasonable cost-effective approaches to controlling sewer overflows,

comparable perhaps to those in the National CSO Policy, issued by EPA in 1994, reflected in DEP's CSO Policy and followed in the development of the Authority's long-term CSO Control Plan.