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
FEBRUARY 2000 AND PROGRESS REPORT AS OF MARCH 15,2000

The Massachusetts Water Resources Authority (the "Authority") submits the following monthly compliance report for the month of February 2000 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.

1. Schedule Six.

A status report for the scheduled activities for the month of February 2000 on the Court's Schedule Six, certified by Douglas B. MacDonald, Executive Director of the Authority, is attached hereto as Exhibit "A."

A. Activities Completed.

1. Combined Sewer Overflow Annual Report.

In accordance with Schedule Six, the Authority submitted its "1999 Annual Progress Report on the Combined Sewer Overflow Control Plan" on February 15, 2000.1 The Annual Report summarized the progress made in planning, design and construction on various projects during the past year, identified issues that have affected or may affect the schedule of some projects and outlined objectives for the current year.

2. Floatables Control Final Report.

On February 15, 2000, in accordance with Schedule Six, the Authority submitted the final report on its program for field testing underflow baffles for combined sewer overflow ("CSO") floatables control.2 The final report presents the results of the field activities conducted from 1997 to 1999 and, based on the data collected, explains why the Authority is unable to complete the study fully, as originally conceived. Nevertheless, the results of the study led the Authority to conclude that underflow baffles are an effective floatables control device at many CSO locations.

B. Progress Report.

1. Harbor Management.

(a) Construction of Effluent Outfall Tunnel.

The Authority has worked diligently during the past month toward establishing a course that will result in a workable plan for removing the remaining plugs in the diffusers at the end of the outfall tunnel and completing the tunnel at the earliest possible date.

At a meeting on February 25, 2000, the Authority presented to representatives of the United States, the Environmental Protection Agency ("EPA") and the Massachusetts Department of Environmental Protection ("DEP") an overview of the obstacles and complexities involved in obtaining both the contractor's commitment to prepare and implement a plan and various regulatory agencies' acceptance of that plan. The presentation appeared useful in achieving better understanding of the difficulties and challenges involved, and the Authority looks forward to having the support and cooperation of the United States as they are addressed.

The Authority believes that it would be useful to give the Court (as well as other parties) the benefit of a similar presentation and hereby requests that the Court schedule a hearing on the matter at an early date. As efforts to achieve a workable plan continue during the coming weeks and months, the Authority believes it will be constructive and important for the Court to be informed on the details of the program. The Authority has received a commitment from the contractor for the outfall tunnel (the joint venture Kiewit/Atkinson/Kenny) to appear along with the Authority at such a hearing.

In the meantime, at an all-day meeting with representatives of the Authority on March 7, 2000, the contractor committed to developing a plan for plug removal and a projected schedule for preparing and implementing the plan. This task is complicated by the recent findings and citations issued by the Occupational Safety and Health Administration ("OSHA") regarding the use of self-contained breathing apparatus in the initial effort to remove the plugs.3 As a result, it now appears that the contractor will supply air to the entire tunnel before plug removal can resume. The conventional means of reventilating the tunnel would be to install a ventilation line similar to the one that previously supported construction of the tunnel. The plan that the Authority had previously reported the contractor was developing was based on the conventional approach. However, the contractor then raised several issues with the ventilation line method, stating that its inability to resolve these issues presented obstacles to finalizing the plan. For now, the Authority is investigating this approach further, with a focus on the implementation issues raised by the contractor. In the meantime, in an effort that may advance completion of the task and reduce the time workers must spend in the tunnel, the contractor is focusing on an alternative involving use of an off-shore platform (as was used for construction of the diffusers themselves in 1991-1992) to stage a ventilation system through one or more of the diffusers from which the safety plugs have already been removed. The engineering and regulatory questions associated with either approach mean that a plan cannot be fully elaborated for some months.

The development of the plan for plug removal will be a concurrent and cooperative effort among contractor, engineer and owner. At the contractor's request, the Authority is simultaneously attempting to resolve certain financial issues that are critical to the contractor. In this regard, the parties have agreed to attempt to mediate in early April two large claims related to prior phases of the work that remain unresolved.

The Authority will continue intensive efforts to work through the many issues and to report a plan and schedule for completing the outfall tunnel to the Court as early as possible. The Authority looks forward to having an opportunity to appear before the Court regarding the matter in the near future.

(b) Construction of Secondary Battery C.

As ordered by the Court, the Authority will explain in more detail the reasons for the contractor's delays in completing construction of Secondary Battery C and address both the measures that the Authority could have taken and those that it is now taking to minimize these delays.4

The Authority completed design of Secondary Battery C, including modifications resulting from the elimination of Secondary Battery D, in September 1996 and awarded the contract in January 1997.5 The original schedule provided 34 months for the contractor to complete construction sufficiently to permit start up. Although this duration was shorter than the planned construction duration of either Secondary Battery A or B, it was achievable. The Authority expected that late changes to the project and start-up problems typical of prior construction projects would be reduced, based on lessons learned with Secondary Batteries A and B.6 In addition, the Authority provided the contractor with the largest on-site construction laydown area available to any contractor on Deer Island and an expanded resident engineering staff composed of the construction manager's ("CM's") most experienced and qualified staff. Furthermore, because Secondary Battery C was largely a "stand-alone" project unaffected by other construction, the Authority expected no delays or access restrictions attributable to other contractors, such as affected construction of Secondary Clarifiers A and B.

The contractor completed mobilization in January 1997, commenced site work in February and made good progress during 1997. By mid-1998, concrete placement for the clarifiers fell behind schedule. In order to support erection of the formwork for the concrete placement activity, the contractor hired a foreman and an additional safety officer to supervise a planned second shift. However, the contractor was unsuccessful in finding skilled carpenters for a second shift, due to competition from the Central Artery/Third Harbor Tunnel project, where a significant amount of work is performed at night. Unable to add the second shift, the contractor revised the duration of the remaining activities required to achieve the milestone.7

Although the revised schedule continued to be reasonable, the contractor reduced the anticipated schedule for some activities and made assumptions about performing other activities concurrently. In hindsight, the contractor could have increased the number of forms available and placed more concrete on the day shift, but at the time, this effort did not appear to be necessary.

The contractor maintained the revised schedule until Spring 1999, at which time the Authority became increasingly concerned about the potential effect that construction delays could have on meeting the milestone. In an effort to mitigate that potential, the Authority developed and implemented a recovery plan during the Summer when the contractor would achieve the most benefit during the longer days and good weather conditions. Identifying critical path activities for which the contractor was already entitled to receive more time, the Authority increased its level of compensation to support the contractor's working additional hours, in an attempt to regain lost time and restore positive float to the overall schedule.8 Over a period of three months, the Authority expended $415,000, which resulted in the contractor's recovering about one week. Despite these efforts, the contractor continued to fall behind.

Given the contractor's rate of progress and the large number of activities on the critical path, the Authority concluded that spending additional monies was unlikely to be cost effective in recovering schedule and thus suspended the recovery program.9 Another factor was loss of productivity. During prolonged periods of working extended hours, overall productivity of the workforce diminishes. The most effective work production would have been from a second shift, for which, as noted earlier, only limited workers were available. Nonetheless, the contractor was working extended hours with selected trades to minimize its delays where possible.

Once construction activity moved primarily to mechanical and electrical installation, the contractor was unable to sustain the projected pace. It became clear that the contractor could not recover from the earlier delays in completing the concrete placement and perform activities concurrently to the extent anticipated. In addition, little

or no float existed in the schedule to correct any problems encountered. Under these circumstances, delays during the later stages of construction and testing resulted in a day-for-day loss on the project schedule. Eventually, weather conditions became a factor, with the prolonged periods of extremely cold weather experienced in January adversely affecting overall productivity and, in particular, water testing.

Throughout the Summer and Fall, the Authority and CM had continued to monitor the contractor's progress closely, encouraging the contractor to intensify its efforts and avoid falling further behind. As late as the end of October, the contractor was still projecting a completion date of December 1999, and the CM believed it to be achievable, given an appropriate level of effort by the contractor. However, by November 15, 1999, after receiving an updated schedule from the contractor, the Authority reported to the Court that it now projected completion of construction for mid-January.10

Thereafter, the Authority and CM further increased their efforts to work with the contractor to complete Secondary Battery C in as timely a manner as possible. The Authority provided the contractor with a heat exchanger to support the water testing program during the winter months, and the CM began meeting with the contractor on a daily basis to review in detail the activities needed to complete the work to support start up. Since that time, the contractor has shifted, re-sequenced and doubled up work activities continually to minimize the impacts of problems. The Authority also has ensured that critical vendors and design consultants are onsite to troubleshoot and respond immediately to problems encountered during testing. In addition, in the past few weeks, the contractor has expanded its extended hour and Saturday work program to include all trades, not just selected trades, in a final push to expedite project completion.

Since last month, the contractor has made considerable progress in the clarifier tanks. The contractor has completed dry run tests in 12 tanks, wet run tests in ten tanks and leak tests in five tanks. The contractor has also completed installing more than 60 percent (45 of 72) of the scum tip tubes and continues to work two crews on this effort to complete the final field modifications to the scum tubes. The contractor has completed installing sludge collection equipment (drive chains and collector drives) in 16 of 18 tanks and is now making additional welds to the return sludge pipe saddles to correct the pipe support issues in the clarifier gallery referred to in last month's report.

In the reactor battery, attempts to determine the source of a major leak in Train 1 delayed air testing. The contractor injected concrete cracks and joints with grout to stop the leak. Last week, the contractor discovered that the problem was attributable to one of the valves in the piping system's not operating correctly and remaining in an open position, despite indications that it was closed. Air testing has since been completed successfully in Trains 1 and 3. Testing in Train 2 will commence shortly. In the meantime, the contractor was able to take advantage of the delay, using two teams to install weirs in the reactor trains, an activity scheduled to occur later. In addition, the vendor for the oxygen generation equipment has been onsite performing wiring "loop" checks of its equipment controls.

In spite of the progress made in the past month, the contractor has been unable to meet the mid-March target reported last month. However, in a letter received yesterday, which the Authority attaches to this Report as Exhibit "B," the contractor's owner has asked the Authority to inform the Court that he has directed his staff "to do whatever is necessary to complete . . . the Project as quickly as possible." The contractor expects to be able to turn Secondary Battery C over the Authority by April 15, 2000. The Authority regrets the succession of incremental delays it has had to report to the Court in the past several months as a result of the contractor's having set and missed a succession of completion dates. To have advised the Court some time ago of an outside, conservative completion date would, in the Authority's view, have indicated to the contractor that the Authority was not relying on his assurances and likely delayed completion. The Authority will move forward immediately upon turnover to conduct inter-CP tests and to prepare for operational testing.

2. Residuals Management.

(a) Pelletizing Plant Expansion.

After reviewing further air emissions testing data, the Authority determined that the two new dryer trains installed at the pelletizing plant were substantially complete and accepted them from the contractor. The two trains are now in operation. The facility modifications necessary for processing sludge produced by secondary treatment (an August 1997 milestone) are now complete and in operation.

(b) Management of Pelletizing Operations.

The Authority is continuing its review of the consultant's recommendations for the process for re-bidding the management of operations at the pelletizing plant.

3. CSO Program.

(a) Cambridge Sewer Separation.

The Authority and the City of Cambridge are continuing activities to support the reevaluation of CSO control alternatives for areas of Cambridge connected to CSOs along Alewife Brook. In early March, the Authority's CSO planning consultant submitted a Draft Report on Reevaluation of CSO Control Alternatives for Alewife Brook in Cambridge, MA. The report summarizes the consultant's efforts to update and recalibrate the CSO planning model for the Alewife Brook area, using new information obtained from recent field investigations and flow metering. The report also presents the results of the reevaluation of CSO controls for Alewife Brook performed to date. The Authority, Cambridge and their respective consultants are reviewing the report in anticipation of completing the reevaluation and presenting a revised recommended CSO control plan to the Authority's Board of Directors at their meeting on April 16, 2000.

In the meantime, Cambridge is continuing the design of sewer separation in the CAM 004 area and the construction activities previously approved by the Authority.

(b) Cottage Farm CSO Facility Upgrade.

Last month, the Authority reported that it was continuing to encounter operational problems with the flow meters and sampling systems associated with the automatic controls installed at the upgraded Cottage Farm CSO facility. Since then, the Authority, its design consultant and the construction contractor have taken a number of actions to attempt to resolve the problems.

The contractor determined that the flow meter problems stemmed from poor hydraulic conditions at the location of the meter probes and from lack of proper calibration. To remedy these problems, the contractor relocated the flow sensors during a dry weather standby period in February. During a subsequent dry weather test of the facility, with flows contained within the detention tanks (resulting, therefore, in no overflows to the Charles River), the contractor conducted calibration measurements and adjustments. The contractor expects the meters to perform well and to measure flows accurately across the full range of expected wet weather flow conditions. The Authority is now reviewing the meter data collected during a wet weather activation on March 11 and plans to continue to verify the accuracy of the meters during upcoming wet weather events.

The problems encountered with the automatic sampling systems consisted of plugging of the piping that delivers continuous wastewater flow to the electronic chlorine analyzers. The flows contain a high density of solids, oil and grease typical of CSO flow. The Authority's design consultant is now redesigning the piping system, and in particular, the filter elements. The Authority anticipates that the new design will be complete by the end of March and that installation of the redesigned piping and testing will occur in April. In the meantime, the Authority will continue to provide manual control of the disinfection and dechlorination systems during any facility activation, as it did during the activation on March 11.

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

On March 8, 2000, the Board of Directors gave further consideration to alternative approaches for attempting to resolve the controversy over the siting of the CSO treatment facility associated with the North Dorchester Bay/Reserved Channel CSO control projects. The Board took note of the Court's comments on the matter in Compliance Order Number 170 (at pp. 18-20), including the Court's support of the United States' suggestion that the Authority seek the assistance of the Governor in filing the legislation necessary to allow the projects to move forward with the treatment facility at "Site J," as recommended by the Authority.11 While respectful of the Court's position, the Board expressed strong reservations about EPA's approach, which could have the effect of hardening community opposition and further complicating the course of finding an implementable solution to current project obstacles, yet offering little prospect of a favorable legislative outcome. The Board asked staff to explore a different approach first, namely to present to EPA, DEP and, eventually, all parties the prospect of reopening the process of environmental review under MEPA (the Massachusetts Environmental Policy Act).

A further period of environmental review would very likely result in a later start date than would - should it be possible to do so - successfully overriding strongly supported community opposition. However, returning to MEPA would be useful and indeed necessary, if there is to be a study of the Conley Terminal site advocated by neighbors of Site J as the preferable location for the treatment facility or any other possible sites.12 In addition, it would allow for reopening the public participation process associated with MEPA review to include a wider cross-section of South Boston residents with an interest both in realizing the significant improvements to South Boston beaches the projects will provide and in the specific location of the treatment facility. The Board believes that affording the opportunity for renewed study and discussion is probably the quickest way of reaching an acceptable resolution of the controversy with the community and ultimately achieving support for the legislation needed to proceed with the project.

Some preliminary discussion of this approach to the North Dorchester/Reserved Channel projects took place when Authority staff met with EPA, Department of Justice and DEP staff on February 25. To pursue the matter as now directed by the Board, Authority staff have scheduled another meeting with those parties on April 7, 2000, to present the Board's views and explore whether it may be possible to reach agreement on a proposed schedule for conducting such a reassessment for subsequent presentation to the Court. EPA, the Department of Justice and DEP have agreed to meet to discuss the matter. The Authority respectfully requests the Court's forbearance until the Authority is in position to report on the outcome of the planned deliberations with the parties. The Authority will report on the status of those discussions in its next monthly report.

(d) Interceptor Relief for BOS 003-014.

Today, the Authority issued the Notice to Proceed on the contract for design of the East Boston Branch Sewer Relief project, in accordance with Schedule Six.13 The project involves relief of the Authority's interceptor system serving most of East Boston, to minimize CSO discharges to Boston Harbor and the Chelsea Creek through outfalls BOS 003-014. The contract also includes engineering services during construction. Construction is scheduled to commence by March 2003, in compliance with Schedule Six.

(e) Hydraulic Relief for CAM 005.

The contractor for the hydraulic relief project at CAM 005 has completed the physical improvements to the combined sewer system at this location, ahead of schedule,14 and is now completing site restoration work. The new relief structure, modified overflow weir and underflow baffle for floatables control are in place and operational, as intended to meet the level of CSO control recommended in the Authority's final CSO plan.

(f) Outfall Closing and Floatables Control Projects.

The Authority completed construction work to permanently close CSO outfalls MWR 022 and MWR 021 on March 1 and March 13, respectively, well in the advance of the May 2001 milestone in Schedule Six that includes these projects.15 The two outfalls, along with three others that will remain open, have allowed the Authority's Boston Marginal Conduit ("BMC") to overflow to the Lower Charles River Basin during extreme storms.

On a related matter, the Authority reported last November and in its "1999 Annual Progress Report on the CSO Control Program" that it had identified significant design and construction hurdles to implementing floatables control by means of underflow baffles at seven CSO regulators tributary to outfalls MWR 018, MWR 019 and MWR 020, which also discharge to the Lower Charles River Basin.16 The Authority is continuing to evaluate possible options, including major reconstruction of existing regulator structures to allow installation of the recommended underflow baffles; use of alternative floatables control technologies, including means to reduce CSO discharges further; and the potential for closing these remaining three outfalls along the BMC.

(g) Fox Point Facility Upgrade.

The Authority recently completed an agreement with the Metropolitan District Commission (the "MDC") intended to facilitate the upgrade of the Fox Point CSO facility. As noted in the "1999 Annual Progress Report on the CSO Control Plan" (see p. 20), an MDC project to improve the Malibu and Savin Hill beaches is taking place concurrently with the Authority's Fox Point project, which includes construction of a sodium bisulfite force main along Malibu Beach. In order to coordinate the projects and minimize impacts, the parties have agreed that the MDC contractor will construct 2,500 feet of force main along the beach on behalf of the Authority. A Memorandum of Agreement ("MOA"), approved by the Authority's Board of Directors on March 8, 2000, sets forth the arrangements. The MOA stipulates terms for oversight of the project and identifies a process for resolving any disputes that arise. The MDC's contractor expects to install the sodium bisulfite line over the next several months.

4. Toxic Reduction and Control Program.

On March 8, 2000, the Authority's Board of Directors authorized the release of proposed revisions to the Authority's local industrial discharge limits for public review and comment.17 Since 1999, the Authority and its consultant18 have been reviewing data and running computer models to determine whether any discharge limits need to be changed to reflect the current conditions at the Deer Island Treatment Plant. The results of this review indicated that most of the existing local limits adequately protect the treatment system and support compliance with permit requirements. However, the Authority is proposing to increase the stringency of certain limits, primarily to provide a higher level of protection for workers in Authority facilities, and to relax others that proved to be unnecessarily restrictive. Once the Authority's 30-day public review process is completed, the Authority will submit the report to EPA for review and a subsequent public comment period.

By its attorneys,

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CERTIFICATE OF SERVICE

I, John M. Stevens, attorney for the Massachusetts Water Resources Authority, do hereby certify that I have caused this document to be served by hand or mail to all counsel of record.

John M. Stevens (BBO No. 480140)

Dated: March 15, 2000

Notes:

1. See February 15, 2000 Compliance and Progress Report, Exhibit "B," and pp. 12-15.

2. See February 15, 2000 Compliance and Progress Report, Exhibit "C," and pp. 15-18.

3. Although OSHA does not act in advance of construction to approve specified means and methods, given the history of events in this matter, it seems likely that OSHA would issue an order preventing any work from taking place under a plan relying on breathing apparatus similar to that used when the plug removal was attempted in July 1999. Because of the extremely serious nature of the citations issued by OSHA against four firms in relation to the July 1999 incident (which all four firms have contested), OSHA's position with regard to future work is a matter of significant concern. Wrongful death lawsuits filed on behalf of the victims have also complicated the matter.

The Authority notes that the Suffolk County District Attorney recently issued a report based on the State Police investigation of the July 21, 1999 accident in the tunnel. The District Attorney found that no criminal prosecution was warranted.

4. At the February 25 meeting with the United States, EPA and DEP, referred to in the previous section of this Report, the Authority also made a presentation on Secondary Battery C, addressing a number of questions raised by EPA staff, in particular.

5. In contrast to Secondary Batteries A and B, where the reactors and clarifiers were constructed under separate contracts, the contract for Battery C includes construction of both the reactors and clarifiers.

6. To date, this expectation has proven to be accurate, with the change order percentage on Secondary Battery C currently at 2.6 percent of the award value, compared to 7.7 percent for the Secondary Battery A and B contracts at a similar stage of construction.

7. The Authority notes that the means and methods of completing the project are the responsibility of the contractor. The Authority and its CM can review schedule changes to determine if the contractor has allotted a reasonable duration for activities or sequenced activities correctly, but cannot direct the contractor to alter the sequence without issuing a change order that would be likely to entitle the contractor to additional time and/or compensation.

8 During construction of Secondary Batteries A and B, the Authority issued numerous change orders late in the construction period that entitled those contractors to contract time extensions. In such a situation, the Authority would have the option to pay premium costs to accelerate the work. With Secondary Battery C, change orders have not affected the progress of the work significantly, to date, and almost all delays have been the responsibility of the contractor, and so there has been little justification for paying for accelerated work. The Authority cannot responsibly reward the contractor for delays that are entirely the contractor's responsibility.

9. At the time, the Authority estimated that additional expenditures of as much as $2 million could not reliably be projected to recover even four to six weeks of schedule. Subsequent problems have shown that the Authority would have been unable to meet the milestone in any event.

10. November 15, 1999 Compliance and Progress Report, pp. 5-7. The Authority, upon review, recognizes that, in the November Report, it failed to elaborate that inter-CP testing would follow completion of construction by the contractor. Based on past experience, inter-CP testing could take up to seven weeks. The November Report did make note of Deer Island Treatment Plant ("DITP") operational tests, which will follow inter-CP testing before the Authority officially commences operation of Battery C. DITP staff perform the operational tests with effluent, so that the battery will actually come on line gradually over a period of several weeks, as the DITP test program progresses.

11. See Response of the United States to the MWRAs February 15, 2000, Compliance and Progress Report, February 24, 2000, pp. 5-7.

12. Although other Conley Terminal sites were included in earlier phases of siting assessment and environmental review and were rejected at that time for various reasons, the Authority has not studied the specific Conley Terminal site now advocated by the Site J opponents. In addition, a change in site may have a significant effect on the previous cost/benefit analysis that supported the recommended plan. Therefore, the scope of additional MEPA review must also include some reevaluation of other CSO control alternatives and/or modifications to the current recommended plan.

13. See Compliance and Progress Report dated February 15, 2000, pp. 21-23.

14. Schedule Six requires the Authority to complete the construction at CAM 005 by August 2000.

15. Although the Authority last reported that it planned to have an outside contractor perform this work, (see November 15, 1999 Compliance and Progress Report, pp. 14-15), the Authority ultimately determined that its own crew could accomplish it, using a modified construction approach. DEP staff were on site to inspect the work and confirm that the outfalls were permanently sealed.

16. See Compliance and Progress Report dated November 15, 1999, pp. 14-15 and "1999 Annual Progress Report on the CSO Control Plan," p. 25.

17. Pursuant to EPA's Pretreatment Regulations (40 CFR Part 403) and the NPDES permit for the Deer Island Treatment Plant, the Authority is required to conduct an analysis of its local discharge limits approximately every five years. The Authority must review the adequacy of existing limits and determine what limits are appropriate to protect treatment plant operations and the quality of the receiving waters and residuals products, such as fertilizer pellets.

18. See February 12, 1999 Compliance and Progress Report, p. 24, for a previous report concerning the hiring of a consultant to conduct a study and prepare recommendations.