

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 MARCH 15, 2002

The Massachusetts Water Resources Authority (the "Authority") submits the following quarterly compliance report for the period from December 17, 2001 to March 15, 2002, 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) North Dorchester Bay and Reserved Channel Consolidation Conduits and CSO Facility.

Since last reporting, the Authority has continued with activities associated with Phase I of its reassessment of combined sewer overflow ("CSO") control alternatives for the North Dorchester Bay and Reserved Channel Conduits and Reserved Channel CSO facility project in accordance with the June 8, 2001 Secretary of Environmental Affairs' certificate on the Notice of Project Change ("NPC"). As noted in last quarter's report, Phase I activities include updating baseline planning assumptions and water quality conditions, identifying a wide range of CSO control alternatives and conducting a preliminary evaluation of these alternatives in order to identify a smaller number most appropriate to carry forward to Phase II.¹ Phase II will include a more detailed evaluation and comparison of these alternatives and the selection of a new recommended CSO control plan.

Over the last quarter, the Authority made progress on several reassessment tasks. It completed updating the baseline conditions of the collection system and preparing design criteria for the range of control technologies, and is finalizing these interim reports. The Authority also prepared an initial list of a full range of CSO control alternatives, based on those identified in earlier planning documents (as required by MEPA) as well as input from the public, and began to develop a process for preliminary evaluation considering cost, performance and community impact. The number of alternatives and the complexity of a screening process necessary to maintain a level of public and regulatory support for the reassessment are greater than the Authority had anticipated at the outset of the reassessment. The Authority now realizes that the screening and evaluation of alternatives will take longer to complete than originally estimated. The Authority plans to meet with the United States Department of Justice ("DOJ"), the United States Environmental Protection Agency ("EPA"), and the Massachusetts Department of Environmental Protection ("DEP") on April 1 to discuss the range of CSO control alternatives, the process for preliminary evaluation and the current schedule.

In addition, as noted last quarter, the Authority was unable to complete the wet weather sampling program portion of the Phase I activities last fall, as scheduled, due to the lack of rainfall. The sampling program must be completed prior to finalizing other Phase I activities because updated assessments of CSO and stormwater pollutant loadings and receiving water quality are necessary to evaluate properly the performance and benefits of the various CSO control alternatives. The Authority was able to sample during one storm event last fall but needs three more events in order to complete the sampling program. The Authority plans to complete the program in late Spring or early Summer, weather permitting. Due to this delay and the complexity of conducting a preliminary evaluation of alternatives, the Authority now anticipates that it will not be able to complete its Phase I activities until the fall of 2002 and the reassessment and the Supplemental Environmental Impact Report until March 2003.

In the meantime, the Authority continues to move ahead on other activities, including those designed to inform the public and other interested parties about the issues to be addressed and general options available. In January 2002, the Authority held its second public meeting in South Boston. The meeting provided a background on the existing CSO system in South Boston, covering how the combined sewer system works, where the flows come from, where and why the overflows occur along the beaches and Reserved Channel, and the types of control technologies available. Based on attendance at the first two meetings, the Authority believes that the South Boston community's interest in the reassessment is significant and growing and represents a fairly broad set of neighborhood perspectives and concerns. The Authority scheduled another public meeting for April 9, 2002, to begin discussions regarding CSO control alternatives. In addition to the public meeting, the Authority met with DOJ, EPA and DEP on February 11, 2002, to discuss the status of the reassessment.

(b) Upgrades to CSO Facilities.

Since last reporting, the Authority has been unable to complete the acceptance testing phase for the Prison Point, Fox Point, Commercial Point, and Somerville Marginal CSO facilities because there has been insufficient rainfall for facility activations that allow acceptance testing. 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.²

(c) Cambridge Sewer Separation.

The City of Cambridge expects to complete the ongoing construction of Contract 2B by July 2002. At that point, the City will have completed construction of four contracts. These construction efforts have significantly reduced annual CSO activations and volumes from 63 activations and 50 million gallons to 25 activations and 33 million gallons. All additional construction contracts associated with the CAM 002 and CAM 004 sewer separation project have been postponed pending completion of the MEPA process on the NPC for the Authority's and City's revised sewer separation plan.³ At this time, the Authority and the City anticipate that additional construction contracts will not commence until the summer of 2003, because of the additional time needed to complete MEPA requirements set forth in the Secretary of Environmental Affairs' Certificate on the NPC.

On February 11, 2002, the Authority met with DOJ, EPA, and DEP to provide an update on the status of the project, the additional evaluations, and the anticipated schedule for the completion of the MEPA process, design and construction. At the meeting, DOJ, EPA, and DEP expressed concern with Cambridge's proposed construction schedule, which has a completion date of 2009. The Authority and the City are currently evaluating the possibility of completing portions of the project on a more accelerated schedule and expect to meet with DOJ, EPA, and DEP later this month to discuss the proposed schedule in more detail.

In addition, the Authority and the City continue to work on preparing responses to issues and questions raised during the NPC public comment period. Over the last quarter, the City developed and calibrated a more sophisticated modeling tool to evaluate potential flooding impacts related to stormwater discharges to portions of the Alewife Brook. It anticipates being able to run this model and analyze the results this spring. The Authority and the City also held a public meeting on January 24, 2002, to update interested parties on the progress in preparing responses to comments. Citizens attending the meeting expressed a desire to be briefed periodically before the responses are submitted to MEPA. In order to be responsive, the Authority and the City plan to hold a public meeting in the spring to discuss relevant issues and present results of the additional flood modeling work. The Authority and the City also met with the Metropolitan District Commission ("MDC") to discuss coordinating the design of the proposed wetland detention basin with the objectives of MDC's Alewife Reservation Master Planning effort.

With respect to the Alewife Brook/Upper Mystic Basin variance, DEP issued a public notice of the proposed 18-month variance extension in late December 2001.⁴ In February 2002, DEP and EPA held a public meeting in Arlington to address questions on the variance extension. The public comment period closed on February 22, 2002. The Authority anticipates that DEP will issue its decision soon.

(d) Floatables Control and Outfall Closings.

As previously reported, the Authority completed the construction of its floatables controls and outfall closing projects as recommended in its *1997 Final CSO Facilities Plan and Environmental Impact Report* ("Final FP/EIR"), with the exceptions of closing outfall MWR 010 and installing underflow baffles for floatables control at seven of the CSO regulators tributary to outfalls MWR 018-020, which discharge to the Lower Charles River Basin.⁵ At that time, the Authority recommended that MWR 010 not be closed, as was originally recommended in the Final FP/EIR, because the model predicted that closure of the outfall would result in upstream flooding in areas tributary to the Brookline sewer during extreme conditions. The model also predicted that outfall MWR 010 would not discharge in a two-year storm if the Town of Brookline's primary 18-inch connection to the Authority's interceptor were restored. In addition, the Authority recommended an alternative to floatables control at the seven remaining CSO regulators tributary to outfalls MWR 018-020 that would eliminate overflows to the Charles River from these outfalls in a typical rainfall year. The proposed alternative involved raising overflow weir elevations at three outfalls and modifying operational procedures at the Prison Point CSO facility.

In January 2002, the Authority, in conjunction with the Town of Brookline, completed the cleaning of Brookline's 18-inch connection to the Authority's interceptor, thereby eliminating the potential for CSO discharge at outfall MWR 010 during a two-year storm. The Authority also completed raising overflow weir elevations at three outfalls and modifying operational procedures at the Prison Point CSO facility, eliminating overflows to the Charles River from outfalls MWR 018-020 in a typical rainfall year. In addition, the Authority

completed cleaning of the Boston Marginal Conduit of sediment, which will further reduce CSO discharges at outfalls MWR 018-020.

The Authority expects to submit letter reports summarizing activities related to MWR 010 and MWR 018-020 to EPA and DEP later this month. It plans to meet with EPA and DEP to discuss its recommendations for long-term floatables control at the remaining seven CSO regulators tributary to outfalls MWR 018-020 and for outfall MWR 010 after it submits the reports.

(e) [Annual CSO Progress Report.](#)

Pursuant to Schedule Six, the Authority submits as Exhibit "A" its [Annual CSO Progress Report](#) (the "Report"). The Report identifies planning, design and construction progress during 2001, notes delays or potential delays in completing projects on schedule, highlights accomplishments over the past year and sets forth key activities for 2002.

In 2001, the Authority completed construction of five CSO projects, bringing the number of completed projects to 13, out of a total of 25. The five projects included two related projects in Chelsea (Chelsea Branch Sewer Relief and CHE 008 Outfall Repairs) and upgrades at three CSO treatment facilities (Commercial Point, Fox Point, and Somerville-Marginal). An additional five projects are in construction.

The Authority also made substantial schedule progress in the design of two projects, East Boston Branch Sewer Relief and Union Park Detention/ Treatment Facility. By the end of 2001, the Union Park project progressed to the 50-percent design stage, as did one of the East Boston contracts while two additional contracts progressed beyond 30-percent design. However, the construction cost estimate for the East Boston project increased from \$30 million in the Final FP/EIR to \$50 million in the 2001 Preliminary Design Report. The increase is due primarily to new information about the cost of microtunneling, based on the actual costs of similar tunneling work. The preliminary design report indicated that the hydraulic performance of the relief project and attendant reduction in CSO discharges may not achieve the level predicted in the Final FP/EIR. While design efforts are proceeding as scheduled, Authority staff are conducting a reevaluation of the project, project costs and cost-effectiveness, in comparison to other CSO control options.

In addition to the Authority's progress, the Boston Water and Sewer Commission ("BWSC") continued to make progress in the design and construction of CSO projects that it is implementing under a financial assistance agreement with the Authority. BWSC has completed 27 percent of sewer separation activities in South Dorchester Bay and 13 percent of sewer separation activities in the Stony Brook area.

In 2002, the Authority expects to complete start-up of the upgraded CSO treatment facilities, continue with design and construction efforts, continue towards completing the work associated with the MEPA process for both the CAM 002 and 004 sewer separation project and the North Dorchester Bay and Reserved Channel Conduits and Reserved Channel CSO facility project, procure design services for Fort Point Channel and BOS 019 storage conduits, and continue to comply with the requirements associated with the Charles River Variance and Alewife Brook/Upper Mystic River Variance.

Even though the Authority and the CSO communities are making progress with respect to the Court schedule, it is important to note that the Authority's Advisory Board has expressed concerns with respect to moving forward with some of the CSO projects while the Authority is performing further investigation as to the appropriateness of the projects. Prior to the March 6, 2002 Authority's Board of Directors meeting, the Advisory Board sent a communication to the Board of Directors and Frederick A. Laskey, Executive Director of the Authority. The Advisory Board raised concerns over the increase in cost of the proposed CSO control plan and questioned the benefits of most ongoing and future projects. In particular, the Advisory Board recommended delaying the Fort Point Channel design, placing the design of the East Boston CSO project on hold until a hydraulic and cost-benefit reassessment is completed, seeking Board of Directors participation in the North Dorchester Bay reassessment, and reporting on the system-wide CSO impacts of BWSC's South End Facilities

Plan.⁶ Authority staff are preparing a response to the Advisory Board's recommendations for presentation at the April 10, 2002 Board of Director's meeting.

By its attorneys,

Dated: March 15, 2002

Notes:

1. See December 17, 2001 Quarterly CSO Progress Report, pp. 4-6.
2. 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.
3. On April 30, 2001, the Authority and the City 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 the Authority and the City to prepare a response to comments document. See September 17, 2001 Quarterly CSO Progress Report, pp. 7-8.
4. See December 17, 2001 Quarterly CSO Progress Report, pp. 7-8.
5. See June 14, 2001 Quarterly CSO Progress Report, pp. 4-8.
6. BWSC's plan addresses the causes of serious flooding in the South End over the last few years and recommends measures to control the risk of flooding in the future. See CSO Annual Progress Report 2001, p. 22.