



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 1  
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Boston, MA 02109-3912

SEP 15 2016

Mark Young, Executive Director  
Lowell Regional Wastewater Utility  
First Street Boulevard (Route 110)  
Lowell, MA 01850

Re: U.S. Environmental Protection Agency Comments on CSO Long-Term Control Plan Submitted Pursuant to Administrative Order Docket No. 010-026

Dear Mr. Young:

This is to inform you that the U.S. Environmental Protection Agency ("EPA") has reviewed the CSO Phase 2 Long-Term Control Plan (August 2014) (the "LTCP") submitted by the Lowell Region Wastewater Utility ("LRWWU") pursuant to the above-referenced Administrative Order (the "Order"). The LTCP does not include some key elements required by the Order. As discussed below, our review shows that the LTCP does not meet the basic requirements for such a plan as set forth in EPA's Combined Sewer Overflow Policy (1994) <https://www3.epa.gov/npdes/pubs/owm0111.pdf>. ("CSO Policy"). Moreover, based on the information provided, EPA believes that LRWWU can afford a significantly more ambitious CSO abatement program than that proposed in the LTCP. Given the public drinking water supplies downstream of the CSOs, we find that a higher level of CSO control, implemented sooner, is appropriate.

The Order required that the LTCP conform to EPA's CSO policy. The CSO Policy requires, among other things, evaluation of a reasonable range of alternatives including complete elimination of CSO discharges, and evaluation of the permittee's financial capability. The LTCP fails to satisfy either of these requirements.

Instead of evaluating the measures needed to achieve CSO control for a range of design storms, including complete elimination, the LTCP focuses on projects included in Phase 2 and Phase 3 of LRWWU's Capital Improvement Plan ("CIP"). The Phase 2 projects include modifications to the treatment plant to allow it to more reliably operate at peak wet-weather capacity, modifications to the Read Street Pump Station to maximize in-system storage and provide for a future wet-weather treatment capacity, construction of relief sewers to relieve hydraulic restrictions at Marginal Street and Middlesex Street, and some sewer separation in the Tilden Street Basin. The LTCP estimates that \$47 million will be spent on CSO projects during Phase 2. The estimated baseline annual CSO discharge is 171.1 MG. The LTCP estimates CSO discharges will be reduced by 9 MG

by the Read Street in-system storage and 4 MG by the Tilden Street separation. The CSO reductions from the other projects were not estimated.

The Phase 3 Projects include construction of the Read Street Wet-Weather Treatment Facility, additional sewer separation in the Tilden Street area, construction of wet-weather storage at Walker Street, Peavey Street, and Douglas Road, and expansion of the Beaver Brook Siphon. The scope and estimated cost of these projects is to be determined, although the LTCP estimates \$56 million will be spent on all the Phase 3 CSO projects. There is no estimate of the CSO reduction from these projects either. Under the LTCP, future CSO abatement projects will be determined after evaluating the results of Phases 2 and 3.

The LTCP proposes that LRWWU spend approximately \$103 million for the Phase 1 and 2 CSO projects between 2014 and 2024<sup>1</sup>. EPA recognizes that this is a substantial effort. However, the LTCP does not explain how this level of expenditure was established, nor provide a financial capability analysis to demonstrate that Lowell cannot afford to spend more on CSO abatement. Absent an evaluation of the control measures needed to achieve various levels of control (e.g., 3-month storm, 6-month storm, 1-year storm, or complete elimination), their estimated CSO reduction and their cost, it is not clear that the projects selected are the most cost-effective. There are several public water supplies located downstream of Lowell's CSO discharges, so a reduction in Lowell's CSO volume and frequency will reduce a risk to human health.

The transmittal letter characterizes the LTCP as an integrated plan, addressing all of LRWWU's obligations under the Clean Water Act ("CWA"). EPA is amenable to an integrated planning approach, but to prioritize various projects and establish a schedule, the permittee must identify all the work that needs to be done, what it will cost, and what the permittee can afford to spend. This would include a proper CSO alternatives evaluation and financial capability analysis, as well as an assessment of work needed to prevent sanitary sewer overflows, remove illicit connections from the stormwater system, and meet NPDES permit requirements for the treatment plant.

EPA's Combined Sewer Overflows- Guidance for Financial Capability Analysis and Schedule Development (1997) <https://www.epa.gov/sites/production/files/2015-10/documents/csofc.pdf> characterizes a cost per household of less than 1% of median household income as "low". Per the Census Bureau, Lowell's median household income (in 2014 dollars) is \$49,164. Per the Tighe & Bond 2014 Massachusetts Sewer Rater Survey, Lowell's annual average wastewater cost per household based on actual water usage is \$176, about 0.36% of MHI. If this information is correct, LRWWU can afford to spend substantially more for CSO controls than proposed. We note that most communities, and in particular most CSO communities, have substantially higher sewer user charges than LRWWU, both in gross dollars and as a percentage of MHI.

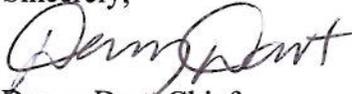
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<sup>1</sup> The CIP includes non-CSO projects, including non-Clean Water Act flood control projects required by the Army Corps of Engineers, and totals \$123 million between 2014 and 2024.

The 1988 Consent-Decree is still in effect, and provides that "if the parties are unable to agree on the nature of the Combined Sewer Overflow projects or a schedule for their implementation, then any party may move this Court to order that a proposed schedule or plan be incorporated as part of this Decree." We propose that within the next 30 days we meet to discuss the work that LRWWU needs to undertake to further CSO control. At that meeting, we will also discuss a schedule for LRWWU to provide additional information, i.e. an alternatives analysis and financial capability analysis as required by the CSO Policy, and a more detailed discussion of the work required to maintain the collection system. If we are unable to reach agreement, EPA is prepared to move the Court to order LRWWU to eliminate its CSO discharges by a certain date.

If you would like to discuss this matter, and to schedule a meeting, please contact George Harding, P.E., of my staff at 617-918-1870 or have your legal counsel contact Tonia Bandrowicz, Senior Enforcement Counsel, at 617-918-1734.

Sincerely,



Denny Dart, Chief  
Water Enforcement  
EPA New England

cc: Kevin Brander, MassDEP NERO  
Tonia Bandrowicz, Regulatory Legal Office  
George Harding, Water Enforcement Unit