



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
Five Post Office Square, Suite 100
Boston, MA 02109-3912

DEC 28 2009

VIA CERTIFIED MAIL

Eurika Durr, Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board (MC 1103B)
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460-0001

Lisa Peterson, Commissioner
City of Cambridge
Department of Public Works
147 Hampshire Street
Cambridge, MA 02139

**RE: Notice of Contested and Uncontested Conditions
NPDES Permit No. MA0101974
City of Cambridge, Department of Public Works
NPDES Appeal No. 09-17**

Dear Ms. Durr and Ms. Peterson:

On November 3, 2009, Stephen H. Kaiser, PhD, filed a petition for review of NPDES Permit No. MA0101974 ("Permit") with the Environmental Appeals Board ("Board"), pursuant to 40 CFR § 124.19(a). The U.S. Environmental Protection Agency, Region 1, had reissued the Permit to the City of Cambridge, Department of Public Works on September 30, 2009. The Permit superseded the permit issued by the Region on March 26, 1993. On December 3, 2009, the City of Cambridge ("City") moved to intervene as a party respondent in this matter. By Order dated December 9, 2009, the Board granted the City's motion.

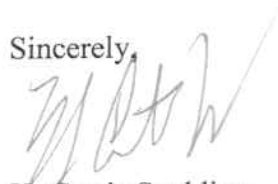
In his petition, Mr. Kaiser contests the Region's alleged failure to sufficiently limit combined sewer overflow ("CSO") inflow from Alewife Brook floodwaters in the Permit. Pursuant to 40 CFR §§ 124.16(a)(2)(ii) and 124.60(b), contested permit conditions, and uncontested conditions that are not severable from contested conditions,

are stayed upon the filing of a petition for review until final agency action under 40 CFR § 124.19(f). In this case, I find that none of the conditions in the Permit are contested. Rather, Mr. Kaiser is contesting the absence of conditions related to CSO inflow and flood levels in Alewife Brook.

All conditions of the Permit are uncontested and severable from the issues raised in Mr. Kaiser's petition for review. Therefore, none of the conditions are stayed, and all will become fully effective, enforceable obligations of the Permit on February 1, 2010, pursuant to 40 CFR § 124.16(a)(2)(i).

If you have any questions regarding this correspondence, please feel free to contact Amanda Helwig, the Region's legal counsel in this matter, at (617) 918-1180, or Brian Pitt, the Region's Manager of the Municipal Permits Branch, at (617) 918-1875.

Sincerely,



H. Curtis Spalding
Regional Administrator

cc: Stephen H. Kaiser, PhD.
Hetal Dhagat, Esq., Anderson & Kreiger
Amanda J. Helwig, Esq., U.S. EPA
Brian Pitt, U.S. EPA
Denny Dart, U.S. EPA

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. SUCV2007-05011-F

CAMBRIDGEPARK TEN CITIZENS
GROUP

Plaintiffs,

v.

DEPARTMENT OF
ENVIRONMENTAL PROTECTION
AND THE CITY OF CAMBRIDGE,
Defendants

) notice sent 5/6/09

) R.A.N.JR.

) L D N

) J.G.

) N.E.G.

) E.A.L.

) (mm)

**CITY OF CAMBRIDGE'S MOTION TO DISMISS
APPEAL FILED ON JANUARY 16, 2009 BY CLAREY AND MIETH**

Now comes the Defendant City of Cambridge ("Cambridge") and hereby moves to

dismiss the January 16, 2009 appeal filed by Richard D. Clarey ("Clarey") and Carolyn Mieth

("Mieth"), as the Court has already ruled that Clarey and Mieth cannot appeal because they are

not parties to this litigation. Clarey and Mieth filed an initial Notice of Appeal on December 11,

2008, and in response, Cambridge filed an unopposed Motion to Dismiss Appeal, which was

allowed. In allowing the Motion to Dismiss Appeal, the Court on January 12, 2009 underlined

the statement that "Clarey and Mieth are not parties to this litigation." See Order on

Cambridge's Motion to Dismiss Appeal, dated January 12, 2009. Moreover, the January 12,

2009 ruling of this Court was not the Court's first determination that Clarey and Mieth are not

parties. On October 3, 2008, the Court denied the Plaintiff group's motion seeking to amend its

Complaint to substitute Clarey and Mieth for itself. See Order on Motion to Amend Plaintiffs'

Complaint and Response to Defendant's Motion to Dismiss, dated October 3, 2008. As the

Court has previously ruled on two prior occasions that Clarey and Mieth are not parties to this

case and therefore that they cannot appeal, the appeal that Clarey and Mieth filed on January 16,

*The Court has previously addressed the same issue in the matter, and
again finds that Richard Clarey and Carolyn Mieth are not parties to this litigation.
Motion to Dismiss is ALLOWED. Order 09-5-5-09*

NOTICE

Not Reported in F.Supp.2d, 2005 WL 2542921 (D.Mass.)
(Cite as: **2005 WL 2542921 (D.Mass.)**)

HOnly the Westlaw citation is currently available.

United States District Court,
D. Massachusetts.
UNITED STATES OF AMERICA, Plaintiff,
v.
METROPOLITAN DISTRICT COMMISSION, et
al., Defendants.
CONSERVATION LAW FOUNDATION OF NEW
ENGLAND, INC., Plaintiff,
v.
METROPOLITAN DISTRICT COMMISSION, De-
fendant.
No. Civ.A.85-0489 RGS, Civ.A.83-1614 RGS.

Oct. 12, 2005.

[Elizabeth Yu](#), [Joseph McGovern](#), [Lawrence Liebesman](#), U.S. Dept. of Justice, Washington, DC, [George B. Henderson](#), United States Attorney's Office, Carol Lee Rawn, Michael Wagner, Boston, MA, for Plaintiff.

[John R. Hitt](#), [Edward J. Deangelo](#), [John R. Hitt](#), Attorney General's Office, [John M. Stevens, Jr.](#), Foley Hoag LLP, [Laura Steinberg](#), Sullivan & Worcester LLP, [John W. Giorgio](#), Kopelman & Paige, PC, [William M. Connolly](#), Coyne, Kennedy & Kerr, Carol Lee Rawn, [Ann P. Ogilby](#), Ropes & Gray LLP, [Peter L. Koff](#), Engel & Schultz, P.C., Boston, MA, [Christopher L. John](#), Charlestown, MA, [Nancy C. Kurtz](#), Medford, MA, [Arthur P. Kreiger](#), [Stephen D. Anderson](#), Anderson & Kreiger, LLP, Cambridge, MA, [Christopher Little](#), Little, Bulman, Medeiros & Whitney, PC, Providence, RI, John M. Pourbaix, Jr., Norwood, MA, for Defendants.

SCHEDULE SIX COMPLIANCE ORDER NUMBER
197

[STEARNS, J.](#)

*1 This is the one hundred and ninety-seventh Compliance Order that has issued in this litigation. On September 16, 2005, the Massachusetts Water Resources Authority (MWRA) filed its Quarterly Compliance and Progress Report (Quarterly Report). The

United States, the Conservation Law Foundation (CLF), and the Commonwealth of Massachusetts, acting by and through its Department of Environmental Protection (DEP), have all filed responses. I accept the MWRA's Quarterly Report and make the following findings.

I. *Schedule Six*

A. *Activities Completed*

There were no scheduled activities for the preceding quarter on the court's Schedule Six.

B. *Quarterly Progress Report*

1. *Combined Sewer Overflow Program*

(a) *Long-Term CSO Control Plan*

The MWRA reported that it had reached an agreement in principle with the United States Department of Justice (DOJ), the Environmental Protection Agency (EPA), and the DEP on the appropriate level of combined sewer overflow (CSO) control and the recommended plans for the Charles River, the Alewife Brook/Upper Mystic River, and East Boston. In addition, the MWRA announced an agreement in principle with regard to the revised long-term CSO master control plan.

The agreement is outlined as follows. With regard to the Charles River and Alewife Brook/Upper Mystic River plans, the DEP will issue five consecutive three-year variances modifying water quality standards through the year 2020. The Regional Administrator of the EPA will retroactively approve the variances that were issued by the DEP in 2004, and will approve the reissuance of the variances through 2020, subject to the required public notice period. The EPA will also issue National Pollutant Discharge Elimination System (NPDES) permits authorizing discharges from the CSO outfalls consistent with the variances.

The MWRA states that once this plan is incorporated by the court into a Scheduling Order, it will join the United States in withdrawing the Stipulation on Re-

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(Cite as: **2005 WL 2542921 (D.Mass.)**)

sponsibility and Legal Liability for Combined Sewer Overflow Control executed on February 27, 1987. Thereafter, the MWRA will be responsible only for the CSO outfalls that it owns and operates, excepting for the obligations imposed by Schedule Six. The MWRA reports that the estimated cost to complete the revised long-term CSO plan will be more than \$850 million, a considerable charge over and above that already being borne by ratepayers.

The MWRA reports that on September 14, 2005, its Board of Directors authorized the filing of a Joint Motion to Amend Schedule Six. The MWRA and the United States intend to move for deletion of the milestones relating to the completion of sewer separation at CAM002 and CAM004, and the completion of construction of interceptor relief for BOS003-014. Milestones related to the revised CSO plan for Alewife Brook/Upper Mystic River, interceptor relief for BOS003-014, and the revised plan for the Charles River CSO controls will be added to Schedule Six after the close of the public notice period.

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

*2 On September 8, 2005, the MWRA issued the notice to proceed for the Pleasure Bay storm drain improvements construction contract. This project will result in the elimination of Department of Conservation and Recreation (DCR) stormwater discharges into the popular swimming area in South Boston. The construction is scheduled to be completed by May of 2006, prior to the start of the bathing season.

The MWRA has received the 90 percent final design submission, draft easement plans, and the Geotechnical Baseline Report for the North Dorchester Bay tunnel project. An outside team of tunnel experts, as well as various stakeholders and agencies from which the MWRA will seek permits or easements, are reviewing the documents. The MWRA is in the process of scheduling meetings with these parties to gather comments on the 100 percent submission, which is due in January of 2006.

The MWRA has largely completed its negotiations with Massport concerning a Memorandum of Understanding (MOU) governing MWRA construction on Massport property. The MWRA Board of Directors has approved the MOU, which the MWRA expects to

execute shortly. In addition, the MWRA has received the Final Preliminary Design Report (PDR) for the dewatering pumping station and the related forced main at Conley Terminal. The MWRA plans to award the contract for construction management services in October.

The MWRA notes that the North Dorchester Bay and Reserved Channel project is the single most expensive component of the CSO control plan, consuming nearly half of the entire CSO program budget. The MWRA states that it continues to move forward with the implementation of the plan, even in the absence of an agreement on the appropriate level of CSO control and the recommended control plans for the Charles River, Alewife Brook, and East Boston.

(c) Cambridge Sewer Separation

As noted in the most recent Quarterly Reports, the City of Cambridge has yet to finalize a Second Supplemental Preliminary Design Report for the revised recommended plan for the Alewife Brook/Upper Mystic River. The MWRA explains that progress towards implementing the revised sewer separation plan for Alewife Brook has been delayed by the previously noted appeal of the DEP's March 31, 2005 Superseding Order of Conditions approving Contract 12 work in adjacent wetlands. A hearing on the appeal was held on July 27, 2005. To date, no decision has issued.

The MWRA has implemented a portion of the Cambridge/Alewife sewer separation project, which involves the installation of an overflow control gate and floatables control at outfall MWR003 and the hydraulic relief of an MWRA siphon. The work is, however, contingent on the City of Cambridge's completion of sewer separation in the CAM004 tributary area. Because of delays associated with Contract 12, the schedule for the MWR003 improvements and the Rindge Avenue Siphon has been pushed back to April of 2009, with completion expected in January of 2012. The MWRA reports that once a decision is rendered on the appeal, it will reopen discussions with the City of Cambridge in an effort to reach an agreement on the project cost and a cost sharing agreement.

(d) Union Park Detention and Treatment Facility

Not Reported in F.Supp.2d, 2005 WL 2542921 (D.Mass.)
(Cite as: **2005 WL 2542921 (D.Mass.)**)

*3 The MWRA continues to make progress on the construction of the Union Park facility, which is now 80 percent complete. Although the milestone called for completion of construction by September of 2005, the contractor has requested time extensions that could extend the completion date into the fall of 2006.

(e) *Interceptor Relief for BOS003-014*

The MWRA reports that the current interceptor relief project, at a total estimated capital cost of \$68 million, will reduce CSO discharges in a typical year from thirty-one incidents to six, and reduce the annual discharge volume from 41 million gallons to 8.6 million gallons.^{FNI} The MWRA believes that the current plan is cost-effective and will significantly reduce CSO discharges at all East Boston outfalls to greater than 95 percent compliance with Class B water quality standards. In addition, ongoing work by the Boston Water and Sewer Commission (BWSC) and others to separate sewers in East Boston will further reduce CSO discharges. As part of its recent negotiations with the EPA and the DEP, the MWRA has proposed extending the milestone for the completion of construction from September of 2005 to June of 2010.

^{FNI}. The 1997 Final CSO Facilities Plan and Environmental Impact Report listed goals of five activations and 4.0 million gallons of discharge in a typical year.

II. *Residuals Back Up Plan*

On September 9, 2005, the MWRA filed a Motion to Vacate the Second Long-Term Residuals Management Scheduling Order dated October 8, 1993. The United States assented to the motion, and the CLF did not file a response. The City of Quincy, an Interested Party, filed an opposition. The MWRA's motion was allowed by the court on September 28, 2005.

III. *Comments*

In its response, the United States objected to the MWRA's announcement of an "agreement in principle" regarding long-term CSO control. While the United States is hopeful that a final agreement will be reached in the near future, it characterizes the

MWRA's report of an imminent agreement as premature. The United States stresses that the final official approvals have yet to be obtained, and that certain elements of the proposed agreement remain controversial.

The DEP's response echoes the concerns of the United States, while agreeing with the MWRA that substantial progress has been made in achieving a final agreement.

The CLF states in its response that in light of the reservations expressed by the United States, it will reserve comment on the outlines of the agreement. Nonetheless, the CLF is encouraged by the revised CSO control plan for the Charles River. The CLF hopes that the final agreement will provide the opportunity for meaningful public participation. (The same sentiment has been expressed by Save the Harbor/Save the Bay in a letter to the court of September 12, 2005, which has been incorporated in the case record).

After the submission of the above responses, the MWRA filed a Supplemental Report indicating that it now understands that the DOJ has not yet reached a final position with respect to long-term CSO controls, and that without the support of the DOJ, a joint plan cannot be proposed to the court. The MWRA remains firm in its conviction that the agreement under consideration is in the best interest of the Boston Harbor and its tributary waters.

IV. *Conclusions*

*4 I am pleased to note that the North Dorchester Bay and Reserved Channel project is progressing on schedule. Comment by the court with respect to the long-term CSO control plan would not be appropriate at this time, as the parties have yet to come to an agreement. The court expects that negotiations on any outstanding issues will be concluded expeditiously.

As a final matter, my staff and I spent an instructive day in September touring the Deer Island treatment facility as the guests of Director John Vetere. While I do not expect ever to be as conversant as was Judge Mazzone with the many components of the Harbor project, I look forward to future visits to Deer Island and the other sites that collectively comprise this im-

Not Reported in F.Supp.2d, 2005 WL 2542921 (D.Mass.)
(Cite as: **2005 WL 2542921 (D.Mass.)**)

pressive public works.

ORDER

The parties are ordered to report to the court as scheduled.

SO ORDERED.

D.Mass.,2005.
U.S. v. Metropolitan Dist. Com'n
Not Reported in F.Supp.2d, 2005 WL 2542921
(D.Mass.)

END OF DOCUMENT

Not Reported in F.Supp.2d, 2008 WL 2699771 (D.Mass.)
(Cite as: **2008 WL 2699771 (D.Mass.)**)

HOnly the Westlaw citation is currently available.

United States District Court,
D. Massachusetts.
UNITED STATES of America, Plaintiff,
v.
METROPOLITAN DISTRICT COMMISSION, et
al., Defendants.
Conservation Law Foundation of New England, Inc.,
Plaintiff,
v.
Metropolitan District Commission, Defendant.
Civil Action Nos. 85-0489-RGS, 83-1614-RGS.

July 3, 2008.

[Elizabeth Yu](#), Environmental Enforcement Section,
[Joseph McGovern](#), [Lawrence Liebesman](#), U.S. De-
partment Of Justice, Washington, DC, [George B.
Henderson](#), United States Attorney's Office, Michael
Wagner, Environmental Protection Agency, Boston,
MA, for Plaintiff.

[Edward J. Deangelo](#), [John R. Hitt](#), [Pierce O. Cray](#),
Attorney General's Office, [John M. Stevens, Jr.](#),
Foley Hoag LLP, [Laura Steinberg](#), Sullivan &
Worcester LLP, Carol Lee Rawn, Conservation Law
Foundation, Boston, MA, [Christopher L. John](#),
MWRA, Charlestown, MA, [Nancy C. Kurtz](#), Med-
ford, MA, for Defendants.

Carol Lee Rawn, Conservation Law Foundation,
Boston, MA, for Plaintiff.

[John R. Hitt](#), Attorney General's Office, [John M. Ste-
vens, Jr.](#), Foley Hoag LLP, Boston, MA, for Defen-
dant.

SCHEDULE SEVEN COMPLIANCE ORDER
NUMBER 208

[STEARNS](#), District Judge.

*1 This is the two hundred and eighth Compliance
Order that has issued in this litigation. On June 13,
2008, the Massachusetts Water Resources Authority
(MWRA) filed its Quarterly Compliance and Pro-

gress Report (Quarterly Report). Both the United
States and the Conservation Law Foundation have
declined to file responses. I accept the MWRA's
Quarterly Report and make the following findings.

I. *Schedule Seven*

A status report on the activities for the previous quar-
ter was certified by Frederick A. Laskey, Executive
Director of the MWRA, on June 13, 2008.

A. *Activities Completed*

On March 14, 2008, the MWRA submitted its Com-
bined Sewer Overflow (CSO) Annual Progress Re-
port in compliance with Schedule Seven.

B. *Progress Report*

1. *Combined Sewer Overflow Program*

(a) *North Dorchester Bay Storage Tunnel and Re-
lated Facilities*

The MWRA reports that from April 11, 2008, to May
19, 2008, mining of the North Dorchester Bay stor-
age tunnel was temporarily suspended to allow the
supplier of the concrete tunnel liner segments to keep
pace with better than expected progress, and to per-
form maintenance on the tunnel boring machine. To
date, a total of 7,121 feet have been mined, amount-
ing to approximately 66 percent of the 2.1 mile tun-
nel.

In addition, the emergency tunnel access shaft at
Ticknor Street was completed, as was restoration
work at Moakley Park, and the installation of power
cables at outfall BOS087 and the remote odor control
facility. Finally, the storm drain associated with the
outfall BOS086 sewer separation work to Logan Way
was installed.

(b) *Interceptor Relief for BOS003-014*

On May 10, 2008, the MWRA advertised for bids for
the project's contract two, which involves the installa-

Not Reported in F.Supp.2d, 2008 WL 2699771 (D.Mass.)
(Cite as: **2008 WL 2699771 (D.Mass.)**)

tion of 2.5 miles of relief sewers along Border, Con-dor, East Eagle, and Chelsea Streets, and along Mar-ginal, Orleans, and Bremen Streets using microtun-neling methods. The MWRA reports that it extended the bid period from June 19, 2008, to July 9, 2008 in order to provide potential bidders with sufficient time to address several geotechnical and contract ques-tions that have arisen.

(c) *Brookline Connection and Cottage Farm*

The MWRA reports that it intends to issue the Notice to Proceed with the construction of the Brookline connection, Cottage Farm Overflow Chamber Inter-connection, and Cottage Farm Gate Control Project by the end of June, in compliance with Schedule Seven.

(d) *Cambridge Sewer Separation*

The MWRA estimates that the appeal process related to the Superseding Order of Conditions issued for Contract 12 has resulted in a 24-month delay of the long-term CSO control plan for Alewife Brook. De-spite the delay, the MWRA reports that it expects to finalize negotiations with the City of Cambridge re-garding the CSO Memorandum of Understanding (MOU) and Financial Assistance Agreement. The MWRA and the City intend to proceed with the de-sign of Contract 12 once the MWRA's Board of Di-rectors approves the revisions to the MOU.

(e) *Prison Point*

*2 The MWRA reports that on April 23, 2008, it sent a letter to the United States Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection (DEP) confirming the im-plementation and performance of improved opera-tional procedures for the Prison Point facility dis-cussed in previous Orders.

(f) *Dorchester Brook Conduit*

In October of 2007, the Boston Water and Sewer Commission (BWSC) completed a detailed study of its Lower Dorchester Brook Sewer, which carries flow from North Dorchester and lower Roxbury and connects to BWSC's New Boston Main Interceptor at CSO regulator RE070/11-2. This regulator is one of

nine that have the capacity to direct CSO to the Dor-chester Brook Conduit. Results of the BWSC's study indicates that the Lower Dorchester Brook Sewer and its connection at regulator RE070/11-2 contribute more overflow to the Dorchester Brook Sewer than was previously estimated in 2002.

To bring CSO discharges to the Dorchester Brook Conduit in line with the long-term level of control, the MWRA will fund two projects, at a cost of \$2,030,000. First, regulator RE070/11-2 will be re-lo-cated further upstream to a connection with BWSC's old Boston Main Interceptor. This will relieve the system of stormwater from a 250-acre area. Sepa-rated stormwater from an additional 25-acre area will also be diverted from the system. Once these two measures are completed, the BWSC will reevaluate system performance and determine whether addi-tional work is necessary.

(g) *Bulfinch Triangle Sewer Separation*

BWSC has completed final design of the Bulfinch Triangle Sewer Separation project, and advertised the construction contract on May 14, 2008. The cost es-timate is now \$10.2 million, which represents an in-crease of \$5.5 million over the \$4.7 million budgeted in the MWRA's proposed Fiscal Year 2009 Capital Improvement Plan.

(h) *Quarterly Progress Report*

The MWRA has submitted its Quarterly CSO Pro-gress Report in compliance with Schedule Seven.

II. *Other Matters*

The MWRA informs the court that on May 15, 2008, a resident of Arlington, Massachusetts, submitted to the EPA a notice of intent to file a citizen's suit pur-suant to the Clean Water Act. The putative suit takes issue with the EPA's extension of the three-year vari-ance for the Alewife Brook/Upper Mystic River. The EPA has sixty days to respond before the citizen suit can be filed. The court expects to be apprised of en-suing litigation, if any. The court remains concerned about the continued delay of the Cambridge sewer separation project, but is pleased that the MWRA and the City of Cambridge are making progress on the amended MOU.

Not Reported in F.Supp.2d, 2008 WL 2699771 (D.Mass.)
(Cite as: **2008 WL 2699771 (D.Mass.)**)

In addition, the MWRA reports that the United States has asserted claims that several operational practices at the Deer Island Treatment Plant were in violation of the MWRA's permit. The court notes that on July 1, 2008, the United States filed leave to file a Supplemental Complaint against the MWRA. On the same date, the United States filed a Proposed Stipulation and Order. If necessary, the court will deal with any issues related to these filings under separate cover.

*3 Finally, on May 9, 2008, the court was pleased to tour the tunnel during the mining suspension. The tour was highly informative, and the court was impressed by the exceptional progress being made on this complex project by the contractor and a skilled work force. The court looks forward to an opportunity to inspect the completed tunnel in the near future.

ORDER

The parties are ordered to report to the court as previously scheduled.

SO ORDERED.

D.Mass.,2008.
U.S. v. Metropolitan Dist. Com'n
Not Reported in F.Supp.2d, 2008 WL 2699771
(D.Mass.)

END OF DOCUMENT

Slip Copy, 2009 WL 57090 (D.Mass.)
 (Cite as: **2009 WL 57090 (D.Mass.)**)

HOnly the Westlaw citation is currently available.

**This decision was reviewed by West editorial staff
 and not assigned editorial enhancements.**

United States District Court,
 D. Massachusetts.
 UNITED STATES of America, Plaintiff,
 v.
 METROPOLITAN DISTRICT COMMISSION, et
 al., Defendants.
 Conservation Law Foundation of New England, Inc.,
 Plaintiff,
 v.
 Metropolitan District Commission, Defendant.
Civil Action Nos. 85-0489-RGS, 83-1614-RGS.

Jan. 8, 2009.

Anton P. Giedt, [George B. Henderson](#), Michael Wagner, United States Attorney's Office, Boston, MA, [Elizabeth Yu](#), [Joseph McGovern](#), [Lawrence Liebesman](#), U.S. Department of Justice, Environmental Enforcement Section, Washington, DC, for Plaintiff.

[Edward J. Deangelo](#), Attorney General's Office, [John R. Hitt](#), Cosgrove, Eisenberg & Kiley, PC, [Pierce O. Cray](#), Attorney General's Office, [John M. Stevens, Jr.](#), Foley Hoag LLP, [Laura Steinberg](#), Sullivan & Worcester LLP, Steven A. Remsberg, Massachusetts Water Resources Authority, [Peter Shelley](#), Conservation Law Foundation, Boston, MA, [Christopher L. John](#), MWRA, Charlestown, MA, [Nancy C. Kurtz](#), Medford, MA, for Defendants.

SCHEDULE SEVEN COMPLIANCE ORDER NUMBER 210

[STEARNS](#), District Judge.

*1 This is the two hundred and tenth Compliance Order that has issued in this litigation. On December 15, 2008, the Massachusetts Water Resources Authority (MWRA) filed its Quarterly Compliance and Progress Report (Quarterly Report). The United States has indicated that it declines to file a response.

The Conservation Law Foundation has not stated its intent. The Massachusetts Department of Environmental Protection (DEP) has filed a brief response. I accept the MWRA's Quarterly Report and make the following findings and comments.

I. *Schedule Seven*

A status report on the activities for the previous quarter was certified by Frederick A. Laskey, Executive Director of the MWRA, on December 15, 2008.

A. *Activities Completed*

1. *Sewer Separation Projects*

As noted in previous Orders, the South Dorchester Bay sewer separation project was completed in November of 2007. Construction is now underway on two other sewer separation projects. On September 29, 2008, the Boston Water and Sewer Commission (BWSC) issued a notice to proceed with the Bulfinch Triangle sewer separation project, two months ahead of schedule. The MWRA additionally reports that on November 21, 2008, the Town of Brookline issued a notice to proceed with its first construction contract for the Brookline sewer separation project, which will separate approximately 72 acres of the Town's remaining combined sewer systems.

B. *Progress Report*

1. *Combined Sewer Overflow (CSO) Program*

(a) *North Dorchester Bay Storage Tunnel and Related Facilities*

Progress continues on the construction of the tunnel, including the installation of the CSO and stormwater diversion chambers and piping connections at outfalls BOS081, BOS082, and BOS084. With regard to the concerns about the design of the odor control facility recently expressed by an abutter, the MWRA reports that although it has engaged in discussions with the abutter, it is proceeding with completion of the original above-ground design. The MWRA is mindful of the need to complete construction of the facility by

Slip Copy, 2009 WL 57090 (D.Mass.)
 (Cite as: **2009 WL 57090 (D.Mass.)**)

May of 2011, as set forth in the court's Schedule Seven, and is confident that the odor control technology will be effective. The design of the pump station and 24-inch force main at Conley Terminal remain on schedule.

(b) *Cambridge Sewer Separation*

Since last reporting, the MWRA and the City of Cambridge have executed amendments to their Memorandum of Understanding and Financial Assistance Agreement regarding the long-term CSO control plan for Alewife Brook. The City of Cambridge has commenced design of three of the plan's five projects.

In an important development, the City of Cambridge's motion to dismiss the citizens' appeal (that has long been a topic of the MWRA's Quarterly Progress Reports and the court's prior Orders) was allowed in Suffolk Superior Court. The DEP reports in its response that the dismissal has been appealed, and that the City of Cambridge has moved to dismiss the appeal. Barring any further litigation delays (which to date have resulted in a 27-month hold on progress), the MWRA expects that the City of Cambridge will commence construction of the CAM004 stormwater outfall and detention basin and the CAM400 manhole separation projects no later than October of 2009.

(c) *Interceptor Relief for BOS003-014*

*2 The MWRA reports that the contractor for the micro-tunneling portion of this project is in the process of conducting utility coordination meetings to identify and address utility conflicts at the mining shaft locations in East Boston. In order to mitigate delays, the MWRA and the contractor are evaluating potential strategies to compress the construction schedule. Over the next quarter, the MWRA will continue to evaluate the project and address any work and/or schedule changes. The MWRA anticipates that the contractor can bring the project to substantial completion by June of 2010.

(d) *Quarterly CSO Progress Report*

The MWRA additionally has submitted its Quarterly CSO Progress Report in compliance with Schedule Seven.

C. Fore River Pelletizing Plant

As the MWRA reported to the court in a Special Report dated October 31, 2008, the Fore River plant experienced a fire on October 28, 2008. While the plant was out of commission, New England Fertilizer Company (NEFCO) arranged for dewatered biosolids to be trucked to various locations throughout New England and New York. At all times, the MWRA remained in full compliance with its National Pollutant Discharge Elimination System Permit. The MWRA reports that NEFCO has substantially completed repairs to the facility, and resumed pelletizing operations on December 8, 2008, with approval from the Quincy Fire Chief. NEFCO has updated its preventive maintenance program and is in the process of installing a fire suppression system.

II. *Comments*

It appears that the bulk of the scheduled projects are proceeding as planned. The court is pleased that the MWRA is sensitive to the need to complete construction of the disputed odor control facility in compliance with Schedule Seven. The MWRA has an excellent record in addressing odor control, and the court is confident that experience with the above-ground facility will be no different. The court is optimistic that the external impediments that have inhibited progress with the Cambridge sewer separation project will soon be dissolved.

ORDER

The parties are ordered to report to the court as previously scheduled.

SO ORDERED.

D.Mass., 2009.
 U.S. v. Metropolitan Dist. Com'n
 Slip Copy, 2009 WL 57090 (D.Mass.)

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United States District Court,
 D. Massachusetts.
 UNITED STATES of America, Plaintiff,
 v.
 METROPOLITAN DISTRICT COMMISSION, et
 al., Defendants.
 Conservation Law Foundation of New England, Inc.,
 Plaintiff,
 v.
 Metropolitan District Commission, Defendant.
Civil Action Nos. 85-0489-RGS, 83-1614-RGS.

July 6, 2009.

Carol Lee Rawn, Conservation Law Foundation, Anton P. Giedt, [George B. Henderson](#), United States Attorney's Office, Michael Wagner, Boston, MA, [Elizabeth Yu](#), Environmental Enforcement Section, [Joseph McGovern](#), [Lawrence Liebesman](#), U.S. Department of Justice, Washington, DC, for Plaintiffs.

[John R. Hitt](#), Attorney General's Office, [John M. Stevens, Jr.](#), Foley Hoag LLP, [Edward J. Deangelo](#), [Pierce O. Cray](#), Attorney General's Office, [John R. Hitt](#), Cosgrove, Eisenberg & Kiley, PC, John M. Stevens, Jr. Foley Hoag LLP Steven A. Remsberg, Massachusetts Water Resources Authority, [Laura Steinberg](#), Sullivan & Worcester LLP, Boston, MA, [Christopher L. John](#), MWRA, Charlestown, MA, [Nancy C. Kurtz](#), Medford, MA, for Defendants.

SCHEDULE SEVEN COMPLIANCE ORDER NUMBER 212

[STEARNS](#), District Judge.

*1 This is the two hundred and twelfth Compliance Order that has issued in this litigation. On June 15, 2009, the Massachusetts Water Resources Authority (MWRA) filed its Quarterly Compliance and Progress Report (Quarterly Report). The United States has indicated that it declines to file a response. The Conservation Law Foundation has not stated its intent. I accept the MWRA's Quarterly Report and make the following findings.

I. Schedule Seven

A status report on the activities for the previous quarter was certified by Frederick A. Laskey, Executive Director of the MWRA, on June 15, 2009. The status report confirms that on March 16, 2009, the MWRA submitted its Combined Sewer Overflow confirms(CSO) Annual Progress Report, in compliance with Schedule Seven.

A. Other Activities Completed

1. Reserved Channel Sewer Separation

On May 26, 2009, the Boston Water and Sewer Commission (BWSC) issued a notice to proceed with the first construction contract for the Reserved Channel sewer separation. Nine construction contracts are associated with this project, which is expected to reduce the number of overflows in the Reserved Channel from thirty-seven to three in a typical year. The project is scheduled to be completed by December of 2015.

B. Activities Not Completed

1. Design of Control Gate/Floatables Control at Outfall MWR003 and MWRA Rindge Avenue Siphon Relief

Because of the citizens' appeal affecting Contract 12, the MWRA was unable to commence design of the control gate and floatables control at outfall MWR003, as well as and the MWRA Rindge Avenue siphon relief project. The appeal has resulted in twenty-seven months of delay to the five projects that comprise the Alewife Brook CSO plan.

C. Progress Report

1. Combined Sewer Overflow Program

(a) Brookline Connection and Cottage Farm

As of the filing date, the MWRA anticipated that

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substantial completion of this project, which involves placing the 54-inch Brookline Conduit into service, would be substantially completed by June 30, 2009. The contractor has completed installation of the new 60-inch pipe interconnection between the North and South Charles relief sewer overflow chambers on the Cambridge side of the Charles River. New sluice gates have been installed at both of these chambers, as well at the Brookline chambers. On the Boston side of the Charles River, all chamber work has been completed.

(b) *Morrissey Boulevard Storm Drain*

The BWSC has notified the MWRA that the completion of the Morrissey Boulevard Storm Drain will be delayed beyond the June 30, 2009 milestone as a result of the discovery of an impeding concrete structure on the site. The BWSC has redesigned the culvert crossing to accommodate the structure (thought to be an encasement used to repair the BWSC's Boston Main Interceptor many years ago), and the contractor has begun work. The anticipated three-week delay will not affect system performance or water quality.

(c) *North Dorchester Bay Storage Tunnel and Related Facilities*

*2 Progress continues to be made on the connections from the tunnel to the existing CSO and stormwater outfalls. The MWRA expects that the contractor will substantially complete all of the remaining construction work on the storage tunnel during the coming quarter. The MWRA's Board of Directors has voted to award the \$25.9 million construction contract for the dewatering pump station at Conley Terminal and the 24-inch force main. In addition, the design contractor for the tunnel ventilation building near the State Police barracks has submitted draft design documents for the facility, which will now be sited below ground in response to abutter complaints.

(d) *Interceptor Relief for BOS003-014*

The MWRA reports that all design work for the \$84.5 million project in East Boston has been completed, and that the three related construction contracts have been awarded. The MWRA anticipates that the contractor will bring the project to substantial completion by July of 2010.

(e) *Charles River Valley Sewer/South Charles Relief Gate Controls*

In January of 2009, the MWRA submitted a report to the Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection. The report indicated in pertinent part that while modifying three existing connections between the two sewers would reduce CSO discharge at the Cottage Farm facility, higher fixed weirs are likely to increase hydraulic grade lines to unacceptable levels in extreme storms. The MWRA reports that its consultant has since concluded that there is no interceptor optimization alternative that would reduce CSO discharges to the Charles River without increasing the risk of system flooding.

(f) *Alewife Brook CSO Plan*

The MWRA reports that on May 5, 2009, the Suffolk Superior Court granted the City of Cambridge's motion to dismiss the January 16, 2009 notice of appeal. Cambridge is making progress in the design of three of the four projects for which it has assumed responsibility. The MWRA, meanwhile, plans to commence design of the control gate and floatables control at outfall MWR003, as well as the Rindge Avenue Siphon Relief Project in June of 2011. This is in compliance with the City's current schedule. The MWRA reports that it is working with the City of Cambridge to develop new construction milestones for the five Alewife Brook projects, which will be submitted for the court's approval during the coming quarter.

(g) *Quarterly CSO Progress Report*

The MWRA additionally has submitted its Quarterly CSO Progress Report in compliance with Schedule Seven.

II. *Comments*

The court is pleased with the continuing progress on all scheduled projects. It is especially gratifying to see the Alewife Brook project finally underway. The court had the pleasure of being present at the Deer Island facility on June 15, 2009, during the visit of Lisa Jackson, the newly-appointed EPA Administrator. Ms. Jackson announced the grant of \$185 million

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in Recovery Act funds to Massachusetts. Among the funded projects is a \$1.2 million, 180 kilowatt solar photovoltaic system to be installed on the roof of the maintenance/warehouse building on Deer Island. In brief remarks to MWRA staff and guests at the grant ceremony, the court noted the public confidence generated by the employees and administrators of the MWRA as the Boston Harbor clean-up and associated projects have progressed. The court made specific mention of the virtual absence of complaints it has received from ratepayers regarding allegations of waste or mismanagement of taxpayer funds, while noting the numerous compliments extended to the MWRA for the visible and beneficial improvements that have been made to Boston Harbor, its beaches and environs, and the water system as a whole.

ORDER

*3 The parties are ordered to report to the court as previously scheduled.

SO ORDERED.

D.Mass.,2009.
U.S. v. Metropolitan Dist. Com'n
Slip Copy, 2009 WL 1941719 (D.Mass.)

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