

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

.....
UNITED STATES OF AMERICA,

Plaintiff,

v.

METROPOLITAN DISTRICT COMMISSION,
et al.,

Defendants.
.....

CIVIL ACTION
No. 85-0489-RGS

.....
CONSERVATION LAW FOUNDATION OF
NEW ENGLAND, INC.,

Plaintiff,

v.

METROPOLITAN DISTRICT COMMISSION,

Defendants.
.....

CIVIL ACTION
No. 83-1614-RGS

MWRA QUARTERLY COMPLIANCE AND
PROGRESS REPORT AS OF MARCH 16, 2009

The Massachusetts Water Resources Authority (the "Authority") submits the following quarterly compliance report for the period from December 16, 2008 to March 16, 2009 and supplementary compliance information in accordance with the Court's order of December 23, 1985 and subsequent orders of the Court.

I. Schedule Seven

A status report for the scheduled activities for the months of December 2008 and January 2009 on the Court's Schedule Seven, certified by Frederick A. Laskey, Executive Director of the Authority, is attached hereto as Exhibit "A."

A. Activities Completed.

1. Complete Evaluation of Additional Charles River Interceptor Interconnection Alternatives and Submit Report to EPA and DEP.

On January 31, 2009, the Authority submitted its report on the evaluation of additional Charles River interceptor interconnection alternatives to the United States Environmental Protection Agency ("EPA") and the Massachusetts Department of Environmental Protection ("DEP"), in compliance with Schedule Seven. The report presents analyses of the hydraulic performance of alternatives that add interconnections within and between the Authority's South Charles River and North Charles River sewage interceptor systems. The analyses focused on four interceptors along the Charles River and were intended to determine whether an additional interconnection or interconnections could provide a meaningful, incremental reduction in combined sewer overflow ("CSO") discharges to the Charles River Basin from the Cottage Farm CSO treatment facility or the other CSO relief points along these interceptor systems. After performing extensive hydraulic modeling, the Authority concluded that additional interconnections among the four

interceptors would not provide hydraulic benefit beyond the benefits that will result from modifications to existing interconnections the Authority is evaluating and the interconnection of the interceptor overflow chambers at the Cottage Farm facility which the Authority is now constructing. Therefore, the Authority does not recommend the implementation of any additional interconnections between the interceptors along the Charles River.

B. Activities Not Completed.

1. Complete Construction of Interceptor Connection Relief and Floatables Control at CAM002, CAM401B, and SOM01A, and Floatables Control at CAM001.

As a result of the appeal of the Superseding Order of Conditions that was issued for the City of Cambridge Department of Public Works Cambridge Park Drive Drainage project (Contract 12 - CAM004 stormwater outfall and wetlands basin) pursuant to the Wetlands Protection Act¹, the five projects that comprise the Alewife Brook CSO plan have been delayed at least 27 months beyond their respective design and construction milestones in Schedule Seven. Accordingly, the Authority and the City of Cambridge were unable to complete construction of the project for interceptor connection relief and floatables control at CAM002

¹ See Compliance and Progress Reports dated December 15, 2008, pp. 6-7; September 15, 2008, pp. 5-6; June 13, 2008 pp. 6-7; March 14, 2008, pp. 4-5; December 14, 2007, pp. 5-6; December 15, 2006, pp. 9-10; September 15, 2006, pp. 6-7; December 15, 2004, pp. 10-12; and September 15, 2004, pp. 6-7 for previous reports on the wetland permitting issue.

and CAM401B, and floatables control at CAM001 project in accordance with Schedule Seven.²

After the Department of Environmental Protection upheld its issuance of the Superseding Order of Conditions for Contract 12, Contract 12 as well as the other Alewife projects were able to move forward. In October 2008, Cambridge resumed design for Contract 12 and commenced design for two of the other projects: CAM400 manhole separation (Contract 13) and interceptor connection relief and floatables control at CAM002, CAM401B, and CAM001 (Contract 4). In addition, Cambridge plans to resume design this summer for CAM004 sewer separation, a fourth Alewife project it is implementing (Contracts 8A, 8B and 9). Cambridge expects to commence construction of the CAM004 stormwater outfall and wetland basin and the CAM400 manhole separation projects in late 2009/early 2010, barring any further delays. As design and permitting is completed for these projects, Cambridge will develop updated schedules for the commencement and completion of construction.

The Authority will implement the fifth Alewife project, control gate/floatables control at Outfall MWR003 and MWRA Rindge Avenue siphon relief. This project is intended primarily to provide long-term hydraulic control of the Authority's Alewife interceptor system, and design work cannot commence until the designs for the other Alewife projects are complete. The

² The City of Cambridge will manage implementation of the interceptor relief and floatables control project at Outfalls CAM002, CAM401B and CAM001. The Authority plans to implement the SOM01A floatables control project separately, in coordination with the City of Somerville.

Authority plans to commence design of this project in July 2011, in accordance with the original sequencing plan for the Alewife work.

The now-dismissed appeal remains pending before the Massachusetts Suffolk Superior Court with respect to post-judgment motions. As noted in the Authority's last quarterly compliance and progress report, the Suffolk Superior Court allowed Cambridge's motion to dismiss the case on October 1, 2008. Following the dismissal, the plaintiffs filed a notice of appeal on December 11, 2008, which was dismissed on January 12, 2009 and re-filed on January 16, 2009, and a motion requesting reconsideration of the dismissal and relief from judgment. Cambridge filed an opposition to the motion for reconsideration together with a motion to dismiss the second notice of appeal on February 17, 2009.

C. Progress Report.

1. Combined Sewer Overflow Program.

(a) CSO Annual Progress Report. ([click here to view report](#))

In accordance with Schedule Seven, the Authority submits as Exhibit "B" its CSO Annual Progress Report (the "annual report"). The annual report summarizes progress made in design and construction of the CSO projects during the past year and identifies issues that affect or may affect compliance with Schedule Seven.

In 2008, the Authority continued to make significant progress on the implementation of its long-term CSO control plan. The Authority and the

communities commenced construction contracts on four projects, commenced design on four projects and completed one project, bringing the total number of completed projects to 22 out of the 35 projects set forth in Schedule Seven.

The Authority also completed the mining of the 10,832-foot, 17-foot diameter, soft-ground tunnel ahead of schedule, which is the most significant portion of the \$283 million North Dorchester Bay Storage Tunnel and Related facilities project. Of the 13 remaining projects, seven are in construction and five are in design, leaving only one of the 35 projects in the CSO plan with a future design start.

In addition, the Authority was also able to reduce further average annual CSO discharge volume by 25 million gallons, a four-percent reduction. Since 1988, the Authority has reduced the average annual CSO discharge volume from 3.3 billion gallons to 605 million gallons, an 82-percent reduction, with 73 percent of the current discharge receiving treatment at the Authority's four CSO treatment facilities. The Authority spent \$128.1 million on design and construction in calendar year 2008, a \$55 million increase from 2007, which had previously been the highest spending year for the Authority's CSO program. The Authority has now spent \$575.2 million of the total \$927.3 million in its proposed CSO capital improvement program budget for fiscal year 2010.

During the next year, the Authority anticipates that it will complete construction of the Brookline connection, Cottage Farm overflow chamber interconnection and Cottage Farm gate control project and that Boston Water

and Sewer Commission ("BWSC") will complete construction of the Morrissey Boulevard storm drain project and commence construction of the Reserved Channel sewer separation project, in compliance with Schedule Seven. The Authority also expects that the City of Cambridge will commence construction of the CAM400 manhole separation project and the CAM004 stormwater outfall and wetland basin project in late 2009.

(b) Commence Construction of Interceptor Relief for BOS003-014.

As previously reported, the Authority commenced construction of the micro-tunneling (Contract 6257) portion of the Interceptor Relief for BOS003-014 project in East Boston in July 2008, one month later than the corresponding milestone in Schedule Seven.³ The Authority has since made substantial changes to the planned construction activities in an effort to complete construction of Contract 6257 by the June 2010 milestone but no longer believes that it can shorten the 24-month contract duration due to utility conflicts and conflicts with other construction activities in the area. Proposed construction changes include revised shaft locations, additional utility relocations, and recommendations from the ongoing coordination with active or proposed construction projects by others, especially NationalGrid's continuing construction of a 24-inch diameter gas main in Chelsea Street that is scheduled to be completed in June 2009 and the Massachusetts Highway

³ See Compliance and Progress Reports dated December 15, 2008, pp. 7-8; September 15, 2008, pp. 3-5; and June 13, 2008, pp. 3-5.

Department's recently commenced reconstruction of Chelsea Street Bridge. Any extension of the contract duration due to utility conflicts or other construction difficulties will extend the completion date beyond July 2010, day for day.

Since the Authority last reported, the contractor for Contract 6257 continues to make progress with early construction activities. The contractor is currently installing piles at shaft locations to support the excavation of the shafts and utilities and continues to map utilities with Dig Safe at various shaft locations along Chelsea Street, East Eagle Street, Condor Street and Border Street. The contractor also continues to hold biweekly utility coordination meetings with NSTAR, NationalGrid, Comcast, Verizon, Massachusetts Bay Transit Authority, and BWSC to address utility conflicts at the mining shaft locations. In addition, the Authority and the contractor are coordinating construction activities for this contract with the Massachusetts Highway Department, NationalGrid, and ConocoPhillips, which also have ongoing construction activities in this area. During the next quarter, the Authority will continue to address any other potential work and schedule changes the contractor may propose, including changes that may arise from impacts relating to utility relocation and other construction projects in the area.

In the meantime, the Authority is moving forward with the design of Contract 6841, the third and final interceptor relief project for East Boston. This contract involves the replacement of one mile of interceptor pipe using "pipe bursting" methods. Excavation is limited to setup locations from where

the new pipe will be driven and locations where connections must be made and where the utilities (e.g., electric, gas) are slated to be relocated by each utility owner. The Authority expects to award Contract 6841 and issue the notice to proceed with construction by April 2009 and to complete construction in July 2010.

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

During the past quarter, the contractor for the North Dorchester Bay storage tunnel completed work in the tunnel and the installation of the concrete lining in the shaft at the upstream end of the tunnel where the remote odor control facility will be located, and is now constructing the roof structure in the shaft. The contractor also demobilized its tunneling operations from the mining shaft work site at Conley Terminal and will soon begin the process of placing a concrete lining and roof structure in the shaft. In addition, the contractor continues to make progress with the construction of CSO and stormwater diversion structures and related piping at outfalls BOS081, BOS082, and BOS084 and the utilities and controls necessary to operate the gates at each outfall.

Meanwhile, the Authority completed design of the 15-mgd dewatering pump station at Conley Terminal and 24-inch force main and expects to award the contract for the dewatering pump station and force main at its April 15, 2009 Board of Directors meeting. As previously reported, the Authority has been attempting to address concerns raised by an abutter about the potential

impact of its remote odor control facility located at the upstream end of the tunnel near the State Police Building on Day Boulevard upon the abutter's development plans in the immediate vicinity of the Authority's facility.⁴ The Authority's Board of Directors voted at its March 11, 2009 meeting to authorize staff to revise the design of the project to incorporate a below-ground odor control facility and to move forward with the project on that basis. By having the design team work extended hours and weekends and using portions of the existing design of the above-ground odor control facility in the design of the below-ground facility, the Authority hopes that it will be able to complete design and construction of the below-ground facility by May 2011, in compliance with Schedule Seven.

By its attorneys,

/s/ John M. Stevens

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⁴ See Compliance and Progress Reports dated December 15, 2008, pp. 4-6; and September 15, 2008, pp. 6-8.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this document, which was filed via the Court's ECF system, will be sent electronically by the ECF system to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on March 16, 2009:

/s/ John M. Stevens

John M. Stevens (BBO No. 480140)
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Dated: March 16, 2009

EXHIBIT A

SCHEDULE SEVEN

MWRA MONTHLY COMPLIANCE REPORT

December 2008 and January 2009

EXHIBIT "A"

LONG-TERM
SLUDGE
MANAGEMENT

NEW BOSTON HARBOR
SECONDARY
TREATMENT PLANT

| MONTH/YEAR | CSO CONTROL |
|---------------|---|
| December 2008 | <p>MWRA, in cooperation with Cambridge, to ensure completion of construction for interceptor connection relief and floatables control at CAM002, CAM401B, and SOM01A, and floatables control at CAM001.²⁰</p> <p>(Not completed - See March 16, 2009 Compliance and Progress Report)</p> |
| January 2009 | <p>MWRA to complete evaluation of additional Charles River interceptor interconnection alternatives and submit related report to EPA and DEP. Such report shall include reasonably expeditious schedules for completing projects that can be completed for low cost, that do not have unexpected construction impacts, and that result in a meaningful reduction in overflow volume or frequency.</p> <p>(Completed January 31, 2009)</p> |

Certification of Completed Activities

By:



Frederick A. Laskey
Executive Director, MWRA

Date:

March 16, 2009