

UNITED STATES DISTRICT COURT
for the
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA,?? ??????????? ??????????? .
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CIVIL ACTION

???????????????????? v.?? .?????????????
No. 85-0489-MA
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METROPOLITAN DISTRICT COMMISSION,?? ???? ??????????? .

? et al.,?? .
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CONSERVATION LAW FOUNDATION OF???????????????????????????????????? .

? NEW ENGLAND, INC.,?? .
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CIVIL ACTION

???????????????????? v.?? .?????????????
No. 83-1614-MA
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METROPOLITAN DISTRICT COMMISSION,?? ???? ??????????? .

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MWRA QUARTERLY COMPLIANCE AND
PROGRESS REPORT AS OF JUNE 15, 2005

???????????? The Massachusetts Water Resources Authority (the “Authority”) submits the following
quarterly compliance report for the period from March 16, 2005 to June 15, 2005 and
supplementary compliance information in accordance with the Court's order of December 23,
1985 and subsequent orders of the Court.

I.???????????? Schedule Six

????????? A status report for the scheduled activities for the months of March and April 2005 on the Court's Schedule Six, certified by Frederick A. Laskey, Executive Director of the Authority, is attached hereto as Exhibit "A."

????????? A.????????? Activities Completed.

????????? ?????????? 1.????????? Report on Backup Residuals Plan.

????????? On April 15, 2005, the Authority submitted its report on actions taken pursuant to its backup residuals disposal plan over the past six months in compliance with Schedule Six. In addition, the Authority and the Commonwealth filed their Joint Report on the implementation of the Memorandum of Understanding regarding the beneficial use of biosolids.

2.????????? Storage Conduit for BOS019.

????????? The Authority issued the notice to proceed for the construction of the storage conduit for CSO outfall BOS019 on March 31, 2005 in compliance with Schedule Six. The project, which is located adjacent to the Tobin Bridge along Chelsea Street in Charlestown, includes two underground concrete storage conduits that will provide 670,000 gallons of overflow storage capacity. A small building will be constructed at one end of the buried conduits to house dewatering pumps, odor control equipment and monitoring and control systems. Filling and dewatering of the conduit will be automated. The project will capture and store combined sewer overflows that now discharge to the Little Mystic Channel from outfall BOS019. The project is expected to reduce average annual CSO discharges and overflow volume to the Little Mystic Channel at outfall BOS019 from 13 activations and 4.4 million gallons to 2 activations and 0.4 million gallons in a typical year, a greater than 90 percent reduction. This level of control will bring CSO discharges at outfall BOS019 into compliance with water quality standards for the Little Mystic Channel and the Upper Inner Harbor. As previously reported, the Authority anticipates that it will complete the project in March 2007, six months later than the Schedule Six milestone.¹ This delay results from an extension of the construction duration from 18 to 24 months due to the increased size and complexity of the storage facility.

????????? ?????????? 3.????????? Hydraulic Relief for BOS017.

????????? The Authority completed construction of the hydraulic relief for BOS017 in August 2000, six years ahead of the corresponding milestone in Schedule Six.? This project was carried out in conjunction with the hydraulic relief project for CAM005 under one construction contract.? The BOS017 project included the installation of 190 feet of 36-inch pipe in Sullivan Square to divert two Boston Water and Sewer Commission (“BWSC”) combined sewers to a more direct connection to the Authority’s Cambridge Branch Sewer, providing relief to the dry weather connection from the BOS017 CSO regulator and greater capacity for wet weather flows.? In addition, as part of the project, the Authority removed a 10-foot long restriction between the Charlestown and Cambridge Branch Sewers, adjacent to Sullivan Square, to lower the hydraulic grade lines in the Charlestown Branch Sewer during wet weather to provide some relief to the upstream CSO overflow conditions at outfall BOS019.

4.????????? Sewer Separation for BOS072 and BOS073.

????????? On March 1, 2005, BWSC commenced construction of a portion of the BOS072 and BOS073 sewer separation project in compliance with Schedule Six.? The remainder of the sewer separation project is in final design, and the Authority expects that BWSC will commence this work in September 2005 and complete construction in March 2007.

????????? This project includes sewer separation and system optimization measures in the areas tributary to CSO outfalls BOS072 and BOS073, which discharge into Fort Point Channel.? The project will reduce CSO discharges from BOS072 and BOS073 to zero in a typical year.

????????? B.????????? Progress Report.

????????? ?????????? 1.????????? Combined Sewer Overflow Program.

????????????????????? ?????????? (a)????????? North Dorchester Bay and Reserved Channel
????????????????????? ?????????? Consolidation Conduits and CSO Facility.????????? ??????
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????????? In compliance with the Court's Order, the Authority is proposing milestones for the North Dorchester Bay storage tunnel and related facilities, Reserved Channel sewer separation, Pleasure Bay storm drain and Morrissey Boulevard storm drain in a motion to amend Schedule Six.? Because of the Court’s direction, the Authority is filing the motion at this time even though it has not reached agreement with the parties on the remaining outstanding issues related to the

Authority's CSO long-term control plan.? The Authority's hope and intention had been to reach agreement with the parties on the appropriate level of CSO control and recommended control plans for the Alewife Brook, East Boston, and the Charles River as well as North Dorchester Bay and the Reserved Channel, in what has been referred to as a "holistic" or comprehensive agreement.? This comprehensive agreement will allow the Authority to continue to implement a CSO control plan that will remain at the forefront of CSO control nationally and one that could become the standard for other CSO communities in the United States to follow.? The comprehensive agreement will also provide certainty and essential stability and predictability for Authority ratepayers over an extended period of time.

????????? The North Dorchester Bay and Reserved Channel project, with an estimated cost of \$372 million (including contingency and escalation to mid-point of construction), is the single most expensive component of the Authority's CSO control plan, accounting for almost half of the entire CSO program budget.? The Authority expects that the parties will recognize the immense impact of this project on the Authority's already heavily burdened ratepayers and on the total cost of its long term CSO control plan (the Authority's current CSO control plan estimated cost to complete is \$832 million including contingency and escalation of unawarded contracts) when they consider schedules and cost appropriate for Alewife Brook, East Boston and Charles River CSO control projects. ?This cost burden compromises the Authority's ability to maintain its existing water and wastewater systems.? The high cost to which the Authority is committed for a portion of its CSO program necessitates that the cost of additional CSO control work be balanced against the water quality benefit to each receiving water.? There has been some progress made in discussions with the United States Environmental Protection Agency ("EPA") and the Massachusetts Department of Environmental Protection ("DEP") concerning these remaining outstanding items, and although the Authority and the parties have not yet reached a complete agreement, EPA has given assurances that it is "very close" to reaching resolution with the Authority on the three remaining projects that are part of the comprehensive discussion, and that a decision could be reached in just two to three weeks. The Authority is hopeful that it will reach agreement with EPA by June 28, which would provide material for discussion at its next Board of Directors meeting on June 29.

????????? The revised plan for North Dorchester Bay calls for constructing a 17-foot diameter,

11,000-foot long tunnel along Day Boulevard and Marine Park to collect and store all CSO flows and most stormwater flows that discharge to North Dorchester Bay from seven existing outfalls (BOS081-087) in the area of the South Boston beaches. The Authority plans to construct the tunnel with a tunnel boring machine (“TBM”) from its deepest end at a construction shaft on Massport’s Conley Terminal to its highest end at a construction shaft adjacent to the State Police Building, where the Authority will remove the TBM.

???????? The Authority also plans to construct a 10 to 15 mgd pumping station at Conley Terminal, adjacent to the mining shaft, and a 20 to 24-inch force main from the pumping station to a local BWSC sewer on N Street. The pumping station and force main will allow the Authority to dewater the tunnel into the sewer system for treatment at Deer Island following each storm.

???????? The North Dorchester Bay storage tunnel and related facilities project involves shallow, large-diameter, soft-ground tunnel construction in an urban environment and requires close coordination between the contractors for the tunnel and the dewatering pump station. The unique and specialized nature of the work and the Authority’s experience with tunneling contracts require careful design, ample time for the preparation of bids, and realistic time tables for activities on the critical path to completion. Because of several important design issues that remain open as the Authority’s consultants progress toward 90 percent design completion and the need for a longer than usual period for bid and award of the tunneling contract, the Authority believes it imprudent to plan to issue a notice to proceed to the tunneling contractor before mid-2006. Thereafter, the critical path items of manufacturing and assembling the tunnel boring machine, mining and lining the tunnel, turning a portion of the Conley Terminal site over to the pump station contractor, constructing the pump station and testing of the entire set of new facilities have an aggregate duration of 57 months. Accordingly, the Authority proposes August 2006 and May 2011, respectively, as milestones for commencement and completion of construction.

???????? The tunnel is sized to accommodate all CSO flows up to a 25-year storm and all separate stormwater flows up to a one-year storm. The Authority plans to increase the level of stormwater control along the beaches to a five-year storm by funding BWSC’s construction of a 2,900 foot long, 12-foot by 12-foot conduit along Morrissey Boulevard that will divert stormwater now discharging to outfall BOS087 to Savin Hill Cove and South Dorchester Bay (and away from

the tunnel) in storms greater than a one-year storm and in excess of a first flush flow that the tunnel will collect.

???????? The Morrissey Boulevard Storm Drain is a complex project involving permitting, design and construction of a large storm drain along a major roadway. It will be funded by the Authority but managed by the BWSC. If there are no substantial delays in permitting by reason of public opposition or other causes, construction should be able to commence in 18 months. Given the complexity of the project and the other significant CSO responsibilities of BWSC, the Authority projects a 30-month duration for construction. Therefore, the Authority proposes June 2005, December 2006 and June 2009, respectively, as milestones for commencement of design, commencement of construction and completion of construction.

???????? Another component of the project is the reconstruction of a storm drain system that currently discharges to Pleasure Bay, a swimming area. The project will redirect all stormwater discharges away from Pleasure Bay. Once this project is complete, the Authority predicts that the water quality at Pleasure Bay will be consistently excellent.

???????? Of the proposed projects, the Pleasure Bay storm drain improvements are farthest along and present the fewest challenges. The project is currently at the 100-percent design stage, and the Authority is in the process of obtaining the necessary permits to commence construction. The Authority believes that construction can commence shortly after the end of the 2005 beach season and be completed before the beginning of the 2006 beach season. Accordingly, it proposes May 2006 as the milestone for completion of construction.

???????? For the Reserved Channel, the revised plan calls for separating the combined sewer systems tributary to the Reserved Channel CSO outfalls (BOS076, 078, 079 and 080). The project is intended to remove stormwater from the combined sewer systems to reduce the frequency of CSO events along the Reserved Channel from about 37 per year to three per year. The project will reduce annual CSO discharge volumes to the Reserved Channel by 96.4 percent. Design and construction of the Reserved Channel sewer separation plan will be managed by BWSC and funded by the Authority.

???????? Reserved Channel Sewer Separation involves separation of combined sewers in a densely populated 355-acre area in South Boston. Like the Morrissey Boulevard Storm Drain, this project will be funded by the Authority but managed by BWSC. BWSC will own and operate

the separate sewer and storm drain systems upon completion of construction.? An old, complex and congested utility infrastructure required lengthy pre-design studies, will extend design and, together with narrow streets and a dense housing stock, extend construction durations.?

Nevertheless, the Authority and BWSC have concluded that design can commence six months earlier and construction can be completed two years earlier than was projected in the April 2004 Supplemental Facilities Plan and Environmental Impact Report.? Therefore, the Authority and BWSC propose July 2006, May 2009 and December 2015, respectively, as milestones for commencement of design, commencement of construction and completion of construction.

?? (b)???????????????? Cambridge Sewer Separation.

???????????????? The City of Cambridge continues to finalize a Second Supplemental Preliminary Design Report for the final recommended plan as presented in the Final Variance Report for the Alewife Brook and Upper Mystic River.? Cambridge is also moving forward with design on Contract 12, involving the new storm drain outfall and stormwater wetland necessary to support future sewer separation in the CAM004 area and closing of the CAM004 regulator.? Contract 12 is critical because it must be constructed before the bulk of the remaining Alewife Brook plan can be implemented.? On March 31, 2005, DEP issued a Superseding Order of Conditions to Cambridge approving Contract 12 work in and near wetlands.? However, a group of citizens seeking further consideration of an alternative location for the wetland basin filed an appeal on April 13, 2005.? A hearing is scheduled for June 24, 2005 on the appeal.? Until this issue is resolved, Cambridge will be unable to move forward with the construction of the wetland basin.????

???????????????? In the meantime, the Authority continued to meet with Cambridge to discuss the basis for Cambridge's increase in its cost estimate for the recommended CSO control plan for Cambridge from \$74 million to an estimated cost-to-complete of \$102 million (unawarded contracts escalated to the mid-point of construction) in an effort to reach consensus on project cost and an agreement on a new cost sharing arrangement.2? The Authority and Cambridge have not yet reached agreement.? The Authority will continue discussions with Cambridge in an effort to reach an agreement on cost and cost sharing.

?? (c)???????????????? Union Park Detention and Treatment Facility.

Since the Authority last reported, the contractor for the Union Park CSO detention and treatment facility completed excavation of the entire basin area, the lower, intermediate and finished concrete floor slabs of the new CSO treatment building, the installation of the structural steel building frame and the installation of portions of the roof trusses and roof decking. The contractor continues to work on the last two bays of the storage basins by forming and placing reinforcing steel and concrete for the base slabs, interior and exterior walls, and roof slabs. Work also continues in the new building areas including installation of sluice gates and weir gates, ductwork for odor control units, process and plumbing piping, and conduit and wiring. Work in the existing pump station building continues with the main focus on energizing the new electric service, switchgear and motor control centers. Process piping, plumbing, fire protection, HVAC and conduit and wiring are ongoing in the existing building. As of the end of May 2005, the contractor had completed 70 percent of the construction work for the Union Park detention and treatment facility.

Over the next several months, the contractor plans to perform the interim startup of new pumps 5 and 6, commence work on new pump 1 and turbine and interim startup of new bar screens 1 and 2, which will allow demolition of the existing screening area to commence. Once this work is completed, the contractor can construct the new chemical feed areas and hydraulics room. The contractor also plans to complete the installation of the mechanical equipment in the new building and the storage basins.

As previously reported, the Authority had extended the contract completion date from September 29, 2005 to January 16, 2006,³ and it recently granted a further extension of the contract completion date to March 9, 2006, due to differing site conditions in the detention basin. The Authority is currently evaluating the contractor's request for additional time extensions related to design changes associated with pump improvements to BWSC's electrical pumps 5 and 6 and delays associated with bringing the new electric service to the site.

???????????????????? (d)?????????? Deer Island Cross Harbor Power Cable.

The Office of the United States Attorney for the District of Massachusetts contacted the Authority in May 2005 to inform it that the Army Corps of Engineers (the "Army Corps") had referred to that office for resolution claims of an alleged failure of compliance with certain

conditions established in its permit issued in 1989 to Boston Edison Company, to Edison's wholly-owned subsidiary Harbor Electric Energy Company ("HEEC"), and the Authority, as co-permittees, to construct and install certain electric facilities, including a submarine electric cable beneath Boston Harbor. The cable was and is the principal source of the electrical power used to construct and operate the Authority's Deer Island Treatment Plant, and its installation was the means by which the Authority met the requirement in the Court's order that it have electrical power on Deer Island adequate for those purposes on or before October 1990. The Authority does not own or did not install the cable; it was included as a permittee solely in order to expedite work mandated by the Court's order. Although the Authority does not own the cable, Authority ratepayers are solely responsible for paying, on an annual basis, for the full cost of installation of the cable and associated substations, based upon an initial capital cost of \$41 million.

The Army Corps' claims focus upon the alleged failure to install the submarine electric cable, primarily within certain stretches of Boston's Reserved Channel, at depths called for by the permit. The installation was performed by contractors working for HEEC, which owns the cable. It appears that questions concerning the depth of the installation first arose a year or two ago in connection with a study by the Massachusetts Port Authority ("Massport") and the Army Corps to determine the feasibility, economic and otherwise, of the use of a deepened Reserved Channel to a level sufficient to accommodate larger, deep-draft container vessels in an effort to expand international cargo shipping operations through the Port of Boston. At that time, the Authority demanded that Boston Edison and HEEC take action and all actions necessary to conform the cable to the permit at no additional cost to Authority ratepayers, and in response, HEEC maintained that the cable was installed in accordance with the relevant terms of the permit.

Because the installation of the cable was the means by which the Authority met an important Court-ordered milestone and is the means by which it operates the principal facilities constructed pursuant to the Court's order, the Authority views any dispute related to the placement of the cable and a possible relocation of the cable as closely related to the matters at issue herein. It would expect any action presenting those issues to be filed as a related case. The Authority will keep the Court advised of developments with respect to the Army Corps' claims.

????????? (e) Quarterly CSO Progress Report.

In accordance with Schedule Six, the Authority submits as Exhibit “B” its Quarterly CSO Progress Report (the “Report”). The Report summarizes progress made in design and construction on the CSO projects during the past

quarter and identifies issues that affect or may affect compliance with Schedule Six.

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: June 15, 2005

Notes:

1. See Compliance and Progress Report for December 15, 2004, pp. 12-13
2. See Compliance and Progress Report for March 15, 2005, pp. 7-9.

3.????????? See Compliance and Progress Report for March 15, 2005, pp. 9-10 and Compliance and Progress Report for December 15, 2004, p. 9-10.