



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
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NOV 23 2011

Mr. Gary Kline, P.E.
Chief, New York City Municipal Compliance Section
Bureau of Water Compliance
New York State Department
Of Environmental Conservation
625 Broadway, 4th Floor
Albany, NY 12233-3506

Dear Mr. Kline:

The Environmental Protection Agency, Region 2, offers the following comments on the proposed 2011 Modification to Order on Consent between the City of New York and the New York City Department of Environmental Protection and the New York State Department of Environmental Conservation (NYSDEC) to reduce Combined Sewer Overflows (CSOs) in New York City.

Overall, EPA is pleased to see that the revised order and its requirements for development of CSO Long Term Control Plans (LTCs) now includes a key goal of the Clean Water Act, namely, to achieve fishable and swimmable waters, wherever attainable. We also applaud New York State and New York City on their shared leadership and commitment to incorporating significant green infrastructure projects (GI) into their strategy for addressing New York City's CSOs issues. The order, and the Green Infrastructure Plan that supports it, provides an aggressive phased approach to using GI that includes, if needed, flexibility to adapt the plan by substituting other green or grey solutions based on real, monitored results. EPA supports incorporating these types of innovative and cost effective green infrastructure solutions that are specific and measurable and that will improve water quality and meet the goals of the Clean Water Act. EPA Region 2 believes these revisions, in total, will lead to improved water quality in and around New York City and are a significant step forward in meeting the goals of the Clean Water Act.

There are, however, a few key areas of concern that need to be addressed:

- The plan projects large reductions in CSO volumes due to the implementation of GI. It will therefore be necessary to focus GI activities in areas with combined sewers. Importantly, an ongoing careful analysis of specific GI demonstration project costs, performance, and documented reductions in CSO overflows, as well as an analysis of GI related rules and regulations and the effectiveness of their implementation must be a key component to this program. Please provide clarification that these mechanisms are firmly in place. Adaptive management techniques, and the need to update LTCs with more accurate information, will be required.

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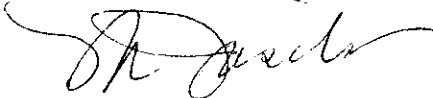
- Several of the sewersheds show an increase in CSO volume when comparing gray controls in the 2011 revised order against the previous 2005 order (eg. Newtown Creek, Hutchinson River). Please provide assurances that CSO reduction goals are not being lowered in these areas. Specifically, please describe how equivalent water quality benefits (e.g. reductions in pathogens) will be attained in these areas under the new order as compared to the previous order and how water quality standards objectives will be achieved.
- The CSO LTCPs should give the highest priority to controlling overflows to sensitive areas and eliminating or relocating these overflows wherever possible.
- The CSO LTCPs will need to be reassessed every 5 years during the NPDES permit renewal cycle to ensure the appropriate water quality standards and goals of the Clean Water Act are being met. An adaptive management approach and a comprehensive post construction compliance monitoring program are needed.
- Additional information should be provided as to why 2010 was chosen as the new baseline condition for LTCP development.
- Several of the Waterbody / Watershed Facility Plans have not yet been finalized and public hearings have not been held. Provide an explanation as to how potential changes to these plans will be incorporated into the revised order.
- Changing hydrologic conditions (e.g., the likelihood of increased rainfall and rising sea levels) due to the impacts of climate change should be incorporated into CSO LTCPs.


EPA recommends that the CSO obligations with compliance dates in this draft order be incorporated into the City of New York SPDES permits. While there have been significant water quality improvements over the last two decades, the City of New York has a long way to go to achieve the water quality goals of the Clean Water Act. Incorporating the substantive commitments in this order, with deadlines, in SPDES permits is essential to improving water quality in the City of New York -- home to over 8 million people.

Subsequent to the finalization of this Modification to the Order on Consent, EPA will meet with NYSDEC to discuss the relationship between this Order and the NPDES permits governing discharges from New York City's fourteen wastewater treatment plants.

If you have any questions regarding this matter please contact Stan Stephansen at 212-637-3776.

Sincerely yours,



 Douglas Pabst, Acting Chief
Clean Water Regulatory Branch