

# Response to NJDEP Technical Comment Letters for the CSO Long Term Control Plans and Request for Public and Private Meetings

Submitted on behalf of the Jersey Water Works CSO Committee

August 12, 2021

The Jersey Water Works CSO Committee is a collaboration of permit holders, advocates, community groups, and environmental organizations that pursue the goal titled "*Smart Combined Sewer Overflow Control Plans*." The goal calls for municipalities and utilities to adopt innovative CSO Long Term Control Plans (LTCPs) with cost-effective solutions that meet or exceed permit requirements and provide multiple community benefits. In late 2020, the CSO Committee submitted comments on the LTCPs with this goal in mind.

This CSO permit process started with a dialogue that included the NJDEP, CSO permit holders, and the public. We published a <u>report with recommendations on the DEAR Reports</u> and shared it with the NJDEP in May 2020 and the proposed LTCPs in January 2021 and appreciate the NJDEP's acknowledgement of these comments. Now, we are also submitting additional comments on the NJDEP technical response letters to the LTCPs in this letter. Since we are nearing the final decision-making process, we want to ensure that the public is more involved moving forward. Throughout the past several months, members of the CSO LTCP Subcommittee—together with Sewage Free Streets and Rivers partners and members—have reviewed the NJDEP response letters to the LTCPs and formulated the following requests, comments, and recommendations.

#### **Meeting Requests**

We request a series of public meetings for each of the regional LTCPs, to be held well before the next five-year permits are finalized internally and within the next six months, that would be hosted by the NJDEP and include both the regional utility and municipal permit holders. The purpose of the public meetings would be for the NJDEP and the permit holders to respond to comments and questions from the public on the CSO LTCPs and for the public to provide input on the next CSO permit. This will be key to ensuring strong communication among state, utility, and municipal representatives and stakeholders.

We also request that the NJDEP Office of Environmental Justice and the Division of Water Quality coordinate their efforts and engage representatives of communities that are overburdened by industrial pollution and combined sewer overflows, as well as communities of color and/or low-income communities. To facilitate this coordination, we request an additional meeting of our stakeholder group, the CSO LTCP Subcommittee and SFSR partners and members, with the appropriate representatives within the Office of Environmental Justice and the Division of Water Quality at the NJDEP to discuss the coordination of CSO LTCPs with environmental justice goals and requirements.



#### **Our Comments and Recommendations on NJDEP Technical Comment Letters**

The Jersey Water Works CSO Committee recognizes the efforts of the NJDEP to review the plans and send technical comments to the permittees, as well as the permittees' efforts to respond to those comments in a timely manner. The collaborative understands that these plans will require significant investment to reduce the combined sewer overflows that plague our most vulnerable communities. The intent of the following comments and recommendations is to ultimately ensure that the plans are equitable for the communities that they are meant to benefit.

The Jersey Water Works CSO Committee respectfully submits the following comments and recommendations to the NJDEP and the CSO permit holders.

#### **Public Participation**

Future public participation must be required so that there is accountability, with benchmarks and funding allocated to ensure that the public is informed, engaged, and empowered throughout the implementation of CSO controls.

- Require continued public participation in the next round of CSO permits by all permit holders through both regional Supplemental CSO Teams and municipal Supplemental CSO Teams.
- Require municipal permit holders to designate a local group (e.g., a municipal action team or community-based organization) to collaborate on public outreach and provide financial support for the local group in the same way that consultants are hired to work with the permit holder. Both the Rebuild by Design and Resilient NJ programs have funded community groups to conduct community outreach, which has benefited the process.
- Require mandatory report-backs and community meetings. For example, the New York City Council introduced an ordinance that would require mandatory reporting of the presence of contaminants from combined sewage overflows in New York City's waterways and the NYC Department of Environmental Protection's progress toward milestones noted in the sewer overflow long term control plan. The Department is also required to study the effectiveness of its current regulations and chlorination treatments for raw sewage. The Department would then develop a watershed management plan, as well as a green infrastructure plan, with the assistance of an advisory group. Both the study and report are required on an annual basis, and the watershed management plan is required on an annual basis beginning in 2021. The commissioner is required to hold a public meeting to present the reports and allow a public comment period before finalizing any plans or recommendations.
- Require that permit holders hire or designate a dedicated appropriate personnel, such as an "outreach coordinator," to maintain regular communication and transparency with



stakeholders and provide timely responses to requests for information. This could be done in partnership with a local entity.

- Require that invitations for public meetings are posted at least two weeks before the meeting date and that the permit holders use multiple outlets to post information on the meetings, included but not limited to email, social media, websites, and newspapers. Meetings should be held at times that allow for maximum public participation.
- Require permit holders to post all CSO reports publicly on their website or sharing platform that is readily accessible to the public, as well as notes from public meetings.
- Require permit holders to describe the extent to which disproportionately impacted populations have participated in the permit holders' public engagement efforts, such as meetings and surveys.
- Require permit holders to engage municipal planners, planning boards, sustainability
  officers, public works officials, redevelopment agencies, and community members in the
  solutions they can implement to reduce CSO, such as redevelopment agreements,
  community master plans, municipal master plans, Main Street programs, shade tree
  programs, parks management, adopt-a-catch basin programs, rain barrels, water
  conservation, the removal of impervious surfaces, and the installation of GI projects.
  This could also be completed in conjunction with their MS4 requirements.
- Require permit holders in the next CSO permit to engage the public in the design and construction of CSO projects using multiple methods (with increased engagement based on the type and scope of the project) and particular focus on neighborhoods where anticipated implementation (gray or green) will occur. This requirement should come with benchmarks for reaching a measurable segment of the population with meaningful interaction and evidence of feedback taken into consideration. Such benchmarks could include: 1) the total number and demographics of meeting attendees from the public and 2) notes from the meetings articulating how community voices are being heard and taken into consideration and follow-up communication to address community feedback.
- Require permit holders to identify neighborhoods directly affected by CSS backups and CSOs and substantially engage those communities in the design and implementation of sewer backup and CSO controls to the extent feasible. This engagement requirement should have measurable benchmarks.
- Require the permit holders to include representation from environmental justice communities/neighborhoods in the public participation process and use the Jersey Water Works equity mapping tool and/or the EPA's Environmental Justice screen.
- Require permit holders to engage in equitable communication—based on the primary languages spoken in an area—for all public participation opportunities. This includes written translation of all materials, as well as live translation of all community meetings, supplemental team meetings, report-backs, and other meetings. Translation must be provided in Spanish and American Sign Language, as well as any other language commonly spoken in the jurisdiction, as determined by the community engagement team.



### **Green Infrastructure**

The Committee agrees that green infrastructure (GI) should be implemented to address highpriority localized flooding and recommends that GI projects should be implemented equitably, with priority to the most severely affected neighborhoods, the catchment areas where GI can significantly reduce the number of CSO events, and wherever feasible within the first five years of the CSO LTCPs. Given that GI can be implemented more rapidly than many other measures, reduction of CSO impacts using GI should be a high priority throughout the initial years of the LTCP to maximize both CSO reductions and co-benefits. It should not be left to later years, when the benefits will not be as impactful.

- Ensure that permit holders continue to assess opportunities for GI in the next 5-year permit and that the NJDEP provides specific requirements on how to assess opportunities for GI. The public must be able to provide input on how opportunities for GI are assessed and the metrics used to evaluate potential implementation.
- Provide requirements on GI standards for the next CSO permit and require the use of public input in the development of these requirements.
- Advise on how the new stormwater rule and how the mandated municipal ordinance can be amended to assist with GI and CSO goals.
- Advise permit holders on how the next MS4 permit can assist with GI goals in both MS4 and CSO areas of the municipality.
- Require that LTCPs and regular monitoring reports report on the amount and percentage of CSO reductions due to GI.
- Require a minimum percentage of combined sewer overflows to be managed using GI. This could be accomplished by incentivizing private property owners to install GI.
- Require an additional 5% of impervious surface managed by GI on top of what they are already doing to account for increased precipitation or provide evidence why 5% GI is not feasible.
- Require that permit holders use a triple bottom line analysis to evaluate GI and provide CSO permit holders with guidance on how to engage residents in the evaluation.
- Require annual reporting on the construction of green and gray infrastructure projects and their delivery of CSO reductions and direct community benefits.
- Require that permit holders interact with municipal planning, sustainability, and redevelopment officials to identify methods, locations, and funding sources for priority GI projects to achieve co-benefits for the communities.
- Require communication and collaboration with the Planning Department, Office of Sustainability, and other agencies that are working on GI.
- Require a professional who is certified through the National Green Infrastructure Certification Program (NGICP) to be consulted or hired to work on projects.



## **Climate Emergency**

We agree that CSO controls need to address immediate and long-term climate change impacts and that the NJDEP should provide permit holders with requirements and guidance on the climate change impact projections that should be used to evaluate the CSO controls.

- Size projects for different weather events, precipitation, and extreme rain events.
- Require projects to be designed for climate change capacity for the projections for 10-40 years from now, as provided by the NJDEP. Components with longer lifespans should use projections for the year 2100, focused on median climate change projections but with consideration of more severe scenarios.
- Incorporate renewable energy resiliency into treatment plants via onsite power options, such as biogas facilities, solar panels, or wind turbines.
- Require permit holders to update the rainfall model with the latest data every five years within six months of the last CSO permit end date.
- Use the USACE model for projections of potential storm surge and river flood levels affecting Paterson, Newark, City of Camden, and Gloucester City.
- Require CSO permit holders to use the NJDEP's new projections on sea level rise and increased precipitation from the NJ 2020 Scientific Report on Climate Change to design, implement, and evaluate the selected alternatives to CSOs in the next permit. Later permits should use updates to the 2020 report.

#### **Environmental Justice**

We agree that the Environmental Justice Law is relevant to CSO controls and recommend that CSO plans be coordinated with the rulemaking for this law.

 The NJDEP Environmental Justice Division and Division of Water Quality should coordinate efforts and engage representatives of communities that are overburdened by industrial pollution and/or combined sewer overflows, as well as communities of color and/or low-income communities, in the CSO LTCP project implementation process. We request a meeting of our stakeholder group (CSO LTCP Subcommittee and SFSR partners and members) with the NJDEP Environmental Justice Division and Division of Water Quality to discuss the coordination of the CSO LTCP and the new EJ law.

#### Flooding

We agree that CSO plans must address flooding due to combined sewer backups and the NJDEP should require and recommend more specifics on how each municipal and utility permit holder can address flooding and provide guidance on mapping flooding and environmental justice districts.



- Require permit holders to use the Jersey Water Works Equity Mapping Tool developed by Rutgers or the EPA's Environmental Justice Screening Mapping Tool to map overburdened neighborhoods and use this to prioritize green infrastructure implementation and other CSO controls that address localized flooding and protect public health.
- Work with FEMA and researchers to model potential increases in flood severity due to climate change and require permit holders to incorporate consideration of relevant impacts in updates to the LTCPs or project designs.
- Develop a Nine Minimum Controls checklist for enforcement.
- In the next permit cycle, prioritize heavily flooded residential areas.
- Create a joint effort between the Division of Water Quality and Division of Enforcement to ensure that priority is given to reduce flooding in residential areas and that sewers are kept clean and maintained properly.

#### Water Quality and Access

NJDEP notes that the Pathogen Water Quality Modeling is still under review. We recommend that:

- To increase public access and safe recreational activities, the LTCP activities should move toward fully achieving the Clean Water Act goals by considering future standards and designated uses.
- The plans should consider the water quality improvements needed to improve public access to waterfronts and recreational activities that the local community desires.
- Water quality monitoring points should be required near CSO outfalls, existing public access sites (official and unofficial, where known recreation occurs), and more central locations within larger water bodies. Additionally, the NJDEP should analyze this data and make the information widely available so that the general public can understand the health risk.
- A majority of the water bodies are only suitable for secondary contact recreational uses, and the majority of permittees are currently meeting minimum standards. There is also evidence that the public engages in primary contact recreational activities in these water bodies, such as unsanctioned swimming/wading, fishing, and small boat sailing. The LTCP activities should prioritize efforts toward attaining water quality criteria supportive of primary contact uses. The plans should state/model how long it will take to achieve fishable/swimmable standards (e.g., return of investment).
- The Passaic Valley Sewerage Commission regional plan will achieve 85% capture over the region rather than on a municipal level, although hydrologically connected. The reports should state how the regional plans will improve water quality and increase access to these water bodies locally.
- 85% capture will be reached without Kearny. How will the lack of participation impact the regional plan's overall capture rate?



### **Financial Capabilities Assessment**

We recommend that the financial capability assessments be revised to consider the following:

- Modification of the financial capability assessments to reflect revised USEPA guidance
- Alternative rate structures and consideration of low-income affordability programs to ensure that lower-income households will not be overburdened by the rate increases associated with the plans
- Alternative funding options like regional stormwater utilities that distribute the costs associated with stormwater across the larger flow contributors that currently are not appropriately charged—or are not charged at all—for stormwater runoff that contributes to combined sewer systems
- How the costs and CSO controls are shared between regional authorities and all of the municipalities in the service that contribute to the transmission line and treatment plant flow to ensure equitable cost contributions and to alleviate the financial burden as much as possible on the economically distressed CSO communities
- Other options to reduce costs, including optimizing system operations (e.g., incorporating digital tools to increase workforce efficiency) and improving financial management (e.g., eliminating transfers of rate revenues to local governments for uses and expenses unrelated to services that a municipality renders to the wastewater system, use of NJ Water Bank financing, debt sequencing)
- Assess household affordability impacts using 20th percentile income as a metric, rather than relying exclusively on Median Household Income.

#### **State Financial Assistance**

We recommend the State of New Jersey provide low-interest loans with a generous principal forgiveness component through the NJ Water Bank for CSO projects in low-income communities, especially overburdened communities as defined by the new Environmental Justice rule.

#### Implementation Schedule

We support the NJDEP's request that projects which will have a significant impact on reducing flooding be expedited. For example, Paterson's proposed plan includes the 19th Avenue relief sewer, which was originally identified in 2010 to reduce flooding within the City of Paterson.



## **Cost Sharing**

CSO controls that benefit an entire region—like blending and expansion of sewer treatment plants—should be prioritized over gray municipal projects, which burden municipal governments with the costs and construction associated with reducing CSOs. For example, if BCUA shared the load across member municipalities, Hackensack, Ridgefield Park, and Fort Lee would bear less of the cost. All municipalities in a service area indirectly contribute to CSOs, as their flows restrict the ability of flows from CSO municipalities to enter the transmission mains.

### **Comments Related to Specific Plans**

PVSC region: We support PVSC paying for the regional interceptor, as opposed to apportioning its costs among the eight CSO communities, as their CSOs are caused in part due to the lack of interceptor capacity related to flows from other customers, including those with high I&I rates.

Paterson: We agree with prioritizing the 19th Avenue relief sewer in Paterson, which will have a significant reduction in sewage overflows and flooding in conjunction with green infrastructure solutions that will also reduce some of the localized flooding for smaller rainstorms and burdens on the sewer system. In addition, the NJDEP should assist Paterson with reducing flows from upstream municipalities that exacerbate Paterson CSO volumes.

Perth Amboy/MCUA: Perth Amboy/MCUA are submitting amendments to the LTCP in order to ensure that Perth Amboy is getting the most cost-effective and environmentally beneficial plan. We support changes to the LTCP that reduce the costs and retain the environmental benefits of the plan and appreciate that the NJDEP has given Perth Amboy more time for the amendments.

Camden: We strongly support and appreciate the NJDEP's request that the disconnection of Pennsauken's stormwater connections to Camden be more highly prioritized. We also support and appreciate the NJDEP's request that Camden's cleaning of its sewer system and outfalls and repair of its regulators be more highly prioritized as well. This should be accomplished as soon as possible and continued on an ongoing basis thereafter.

With respect to cleaning, some version of real-time monitoring or data acquisition should be a component of all plans. Data provides real-time feedback on areas of the system that require cleaning and information on how the system metabolizes flows. It would also help determine what types of infrastructure work, which will provide substantial returns on capital investment.