1/30/2021

Patricia Gardner, Assistant Commissioner Water Resource Management, NJ DEP
Janice Brogle, Director Division of Water Quality, NJ DEP
Susan Rosenwinkle, Bureau Chief, NJ DEP
Dwayne Kobesky NJDEP CSO Team Lead

Dear Assistant Commissioner Gardner, Director Brogle, Bureau Chief Rosenwinkle and CSO Team Lead Kobesky,

The Association of New Jersey Environmental Commissions (ANJEC) has been working with residents and officials of Paterson and Newark for the past five years in collaboratives focused on stormwater and CSO challenges -- Paterson SMART (Stormwater Management and Resource Training) and Newark DIG (Doing Infrastructure Green). These groups have been focused on implementing green infrastructure solutions to stormwater problems while the Passaic Valley Sewerage Commission (PVSC) has been putting together their Long Term Control Plan (LTCP). We have taken the opportunity to meet with residents, municipal and elected officials on multiple occasions to evaluate the "Selection and Implementation of Alternatives for Long Term Control Planning for Combined Sewer Systems – Regional Report" submitted by the Passaic Valley Sewerage Commission, as well as the "Selection and Implementation of Alternatives Report for City of Newark" (Appendix L of the PVSC Report) and "Selection and Implementation of Alternatives Report for City of Paterson" (Appendix N to the PVSC Report). We have worked closely with the Sewage Free Streets and Rivers collaborative (led by New Jersey Future) to go over these reports and gather feedback from residents, municipal, and elected officials. Our comments follow below.

CC.
Thomas Laustsen, Chief Operating Officer, Passaic Valley Sewerage Commission
Kareem Adeem, Director of Newark Water and Sewer Utilities
Ras Baraka, Mayor of Newark
Ruby Cotton, Councilwoman, City of Paterson
Mildred Crump, Council President, City of Newark
Olivia Glenn, Deputy Commissioner, NJDEP
Shawn LaTourette, Acting Commissioner, NJDEP
Kathleen Long, Business Administrator, City of Paterson
Della McCall-Fischer, Chief of Staff, Paterson City
Samuel McGhee, Executive Director, Joint Meeting of Essex and Union Counties
Dr. Lilisa Mimms, Council Vice President, City of Paterson
Michael Powell, Director of Economic Development, City of Paterson
Luis Quintana, Council Vice President, City of Newark
Flavio Rivera, Council President, City of Paterson
Andre Sayegh, Mayor, City of Paterson

1/30/2021

Association of New Jersey Environmental Commission (ANJEC) general comments on the combined sewer overflow Long Term Control Plans

Submitted on January 30, 2021

Water Quality

In community meetings that we held both originally in person and in the past year online, residents have expressed concern that their access to water is limited by abandoned and fenced-off sites.

- The LTCP should be such that it is moving residents toward having access to their waterways and should state how long it will take to achieve swimmable/fishable standards.
- Water quality should be tested close to the CSO outfalls, as well as from the middle of the water bodies, in order to get a reading of the direct impact the CSOs have on the waterways.
- The PVSC Regional Plan aims for 85% capture over the region, but some municipalities are left with less than 85% capture. The 85% figure should be a minimum goal for all regions. Bayonne and Jersey City should not get shortchanged of the benefits if they choose to participate in the regional plan.

Implementation Schedule

The implementation schedule for the PVSC SIAR leaves Paterson with few tangible benefits in the near term, and most not scheduled to begin until decades from now. In one high-density residential neighborhood, they will not see construction for the 19th Avenue Relief Sewer be completed until the 2040s. The proposed storage tunnel, one of the bigger ticket items that will provide Paterson with relief, will not begin construction until after 2055 and will not be completed until the 2060s. These areas flood so intensely from regular rain events that cars need to be evacuated from the area as soon as they see lightning or hear thunder. Two years ago, 26 cars were lost to a single rain event, in addition to costly basement flooding and sewage backup. How much damage will the homeowners and renters have to endure and pay for in the next forty years, until the inadequate water infrastructure is finally fixed?

The planned sewer separation for PT023 is the only project which will benefit Paterson in the near term (it is proposed for 2021-2025). All other benefits for Paterson would be on hold for two decades or more. This is essentially kicking the can down the road and leaving the problems for later generations to address. These are problems that need to be addressed in the near term.

1/30/2021

Green Infrastructure

The PVSC implementation schedule leaves green infrastructure, which can offer immediate and multiple quality of life and community benefits, at the very end of the list for Paterson CSO relief efforts. Where practicable, green infrastructure should be implemented at the beginning of these plans in order to take advantage of their multiple benefits in the near future and not decades from now.

Only 2.5% of impervious cover (vs. the requested 10%) is considered for Green Infrastructure treatment in Paterson and it appears way at the end of the regional implementation schedule (2056-2060).

We agree with our Sewage Free Streets and Rivers partners in recommending:

- Implement green infrastructure first, within the first five to 10 years of the CSO LTCPs.
- Evaluate green infrastructure for stormwater reduction and CSO reduction so that communities get the multiple financial and environmental benefits of these projects.
- Prioritize environmental justice communities for green infrastructure implementation.
- Evaluate green infrastructure based on pollutant load. Given the nature of green infrastructure to both store and clean stormwater, pollutants would be a more accurate way to evaluate green infrastructure.
- Urge the municipal permit holders to update their municipal stormwater ordinances by January, 2022 and to increase the requirements at the municipal level to:
    - Lower the project area threshold at which stormwater management and GI is required from the state level of 1 acre, to a lower threshold (0.5 acres to 5000 square feet).
    - Eliminate allowing the exemption of a project from the existing imperviousness in the current and model NJDEP stormwater ordinance. When developing stormwater calculations, stormwater management should be based on total project imperviousness, regardless of conditions prior to development. This will result in redevelopment projects improving stormwater conditions instead of simply maintaining existing conditions.

Financing

As is clear from the financial capability section, financing of this project will be a challenge for Paterson, Newark, and the other communities. The Municipal Revitalization Index (MRI) shows that Paterson is the 8th most distressed municipality out of 565 in New Jersey and Newark is the 12th.

Paterson's Residential Indicator (RI) is 1.1%, but when you break it down by income levels, it is 9.2% for those on the lowest economic rung. A score over 2% is considered a high burden, so 9% is astronomical for those who can least afford it. (It is only 0.2% for those in the top rung.) Similarly with Newark at a 1% RI overall but at 8.7% for the least advantaged.

With 29% of Paterson residents and 28.3% of Newark residents living at or below the poverty level, this will result in an unsupportable burden for the least advantaged residents, between 1/3 and 1/4 of each community. There is no discussion in the plans of sliding scales for ratepayers or for programs that would provide support and relief for the more financially challenged residents.

No discussion is given to more creative financing options which would more evenly distribute the burden among those that contribute most to the stormwater issue – consideration should be given to establishing a regional stormwater utility to provide dedicated funding for stormwater management and for incentivizing green infrastructure. Ratepayers could reduce their rates by adopting green infrastructure installations on their properties. There is valuable stormwater utility information for municipalities at https://stormwaterutilities.njfuture.org/.

Along with our Sewage Free Streets and Rivers partners, we recommend:

- Utilize the I-Bank to the greatest extent possible to finance these plans.
- Restructure rates to ensure that households of lower-incomes will not be overburdened by the rate increases associated with the plans.
- Evaluate alternative financing options like stormwater utilities that distribute the costs associated with stormwater across the larger contributors who are not currently charged for stormwater runoff that contributes to combined sewer overflows.
- Evaluate green infrastructure based on a triple bottom line analysis which includes the social, economic and environmental benefits.
- Evaluate the financial capabilities assessment based on the permittee's considerations of alternative funding and financing mechanisms and the consideration of affordability of low-income customers along with a thorough examination of all the mitigation options to reduce costs.

Climate Change

Climate was only mentioned once in the regional SIAR, when discussing the typical hydrologic year analysis. Basing the analysis on the past 46 years, however, does not give us a picture of what is to come. 2004 saw 48.7" of rain annually in New Jersey, but looking at the trend since then, we can see that we should expect much more (the last three years have had between 50"

and 64" of rain). As stated in New Jersey's 2020 Climate Change Report, New Jersey's precipitation rate has increased by 8% over the last 10 years and sea level has risen by more than twice the global average over the last century. Climate-related impacts result not only in high costs for resilience and infrastructure, but also pose great risk to public health.

In order to take climate change and the associated public health threat more seriously into account, the forecasts should be updated for each five year permit cycle.

We agree with our Sewage Free Streets and Rivers partners in recommending that:

- Update the rainfall model with the latest data every five years within six months of the last CSO permit cycle.
- Implement GI within the first five to 10 years of these plans in order to address the impacts of climate change and CSO reductions.
- Develop sea-level rise and precipitation projections should be developed for CSO communities, specifically to be used by the CSO permit holders;
- Require projects be designed for climate change capacity for the projections for 10-20 years from now. For example, NYC is designing in preparation for climate change - increased capacity that uses this approach; and
- Require CSO permit holders to use NJDEP's new data 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.

Environmental Justice

Environmental justice was not taken into consideration when developing these plans. The plans did not include impact study maps of the proposed projects and the effects of CSOs on environmental justice communities.

There are 48 municipalities in Passaic, Union, Essex, Bergen, and Hudson counties that are a part of the Passaic Valley Sewerage Commission, and they all contribute to the burden on the PVSC facility. All 48 municipalities will benefit from the upgraded infrastructure which result from the LTCP, so all 48 should contribute equitably towards the upgrades.

We agree with our Sewage Free Streets and Rivers partners in recommending the following:

- Require permit holders to use the Environmental Protection Agency's Environmental Justice Screening Mapping Tool to map overburdened neighborhoods and use this to assess environmental considerations in the SIAR and future reports.

- Require CSO permit holders to engage community members and specifically, environmental justice organizations, representatives, groups, in the design and implementation of the LTCP to develop a community feedback loop (e.g. citing initial sites, 30% design sketch with community, implementing feedback to final design).
- Prioritize environmental justice communities for CSO mitigations and ensure that the siting of gray infrastructure will not have negative cumulative impacts on these communities.
- Prioritize environmental justice communities for workforce development programs related to the projects that will be implemented as part of the CSO LTCP and ensure that funding considerations are addressed up front.
- Prioritize environmental justice communities for green infrastructure implementation and other CSO controls that address localized flooding.

Public Participation

The efforts at public participation are lacking. The general consensus from residents involved in this process was that the meetings were too far-flung, not heavily promoted, and not geared toward a give-and-take dialogue to get feedback from those impacted by the decisions in the LTCP.

For Paterson's representation on the Supplemental CSO Team, Ruben Gomenz [sic] is listed, but has not been with the City of Paterson's Department of Economic Development since 2018. There was no representation from the Paterson Environmental Commission or the Paterson Green Team on the Supplemental CSO Team. Efforts should be made to have the public representation reflect the demographics of the most impacted neighborhood and should not be limited to local officials.

There was one presentation to the Paterson Town Council on April 14, 2020 (you can see it here – https://www.youtube.com/watch?v=NnKH5HACoIg&t=1s) where a consultant was trying to present to the council about CSO's, the challenge of their aging infrastructure, and the upcoming Long Term Control Plan. A number of concerns were raised by council members. Councilman William McKoy underlined the challenges for 19th Avenue in the third ward (this is the area which is not scheduled for relief until 2040). Councilman Mike Jackson mentioned the situation with 11th Avenue, which was historically not flood-prone, but has become so in recent times. This underlines the need to require CSO permit holders to use NJDEP's new data 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.

1/30/2021

We agree with our Sewage Free Streets and Rivers partners that you should:

- Require public engagement in the next permit and for the CSO permit holders to submit an annual report detailing public engagement efforts and feedback mechanisms.
- Require CSO permit holders to make meetings fully accessible to a wide range of the public. Priority actions should include: holding meetings at accessible locations (meaning having both accessible ramps and elevators and also being close to public transportation), giving at least two weeks' notice before meeting dates, distributing materials in multiple languages, holding meetings on evenings and weekends, providing live translation for both in-person and virtual meetings, adding closed captioning for virtual meetings, and having project materials and reports posted and easily accessible on the permittee's website.
- Require the public affected by CSOs be substantially engaged to be involved in the design and implementation of the CSO controls where appropriate.
- Require the permit holders to include representation from environmental justice communities in the public participation process.
- Require regular reporting on evidence of public participation (i.e. demographics and number of people who participated, outreach materials distributed, website clicks, number of meetings held and meeting notes) to be included with ongoing reporting.