

Pat Gardener
Assistant Commissioner Water Resources Management
P.O. Box 420
401 E. State Street
Trenton, NJ 08625-0420



Janice Brogle
Director Division of Water Quality
P.O. Box 420
401 E. State Street Trenton
NJ 08625-0420

January 27, 2021

Dear Assistant Commissioner Gardner and Director Brogle,

On behalf of the South Ward Environmental Alliance we are submitting the following comments to the New Jersey Department of Environmental Protection (NJDEP) on the combined sewer overflow Long Term Control Plans for Newark New Jersey.

South Ward Environmental Alliance (SWEA), founded in 2015, by Kim Gaddy, a fourth generation Newarker, mother of three asthmatic children and 20 years fighting against air pollution in her frontline community. The South Ward Environmental Alliance (SWEA) is an alliance of residents and community based organizations whose mission is to create healthy and vibrant neighborhoods by ensuring residents voices are heard and are active participants in decision making regarding polices that impact their neighborhood. Even before we created SWEA, our leaders were part of a growing movement for health equity in front-line communities and understood the importance that everyone regardless of race, neighborhood or financial status deserves access to a healthy community to live in.

Our recommendations center on the following issues:

- 1.) Making environmental justice part of all aspects of these plans
- 2.) Ensuring equitable financing of these plans
- 3.) Improving water quality and access
- 4.) Implementing a green infrastructure first approach
- 5.) Informing, engaging and empowering communities

Environmental Justice calls for the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. This plan was not reviewed by residents before they were submitted to the NJDEP. These reports contain new information related to the selected CSO controls, cost and implementation schedule. Residents must speak for themselves so this document is our opportunity for our voices to be heard on important decisions that will impact residents finances and their quality of life.

We look forward to continuing to work with you to ensure that the CSO Long Term Control Plans are compliant and equitable for Newark residents.

Sincerely,
Kim Gaddy
Director, South Ward Environmental Alliance

Environmental Justice:

Unlike the Camden County Municipal Utilities Authority, the Newark Long-term Control Plan did not consider an approach that focused on equity or environmental justice in the host community, that bears the impacts of air pollution from trucks, odors and future cumulative impacts on the local environment as a result of the selected controls. The plans did not include impact study maps of the proposed projects and the effects of CSOs on environmental justice communities.

The New Jersey Department of Environmental Protection (NJDEP) must:

- 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 Selection and Implementation of Alternatives Reports and future reports.
- Require CSO permit holders to engage community members, specifically environmental justice organizations, representatives, and 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.

Equitable financing:

The Newark Long Term Control Plan did not include alternative funding mechanisms to offset the cost. For example Table J-12: (pages 129-130) provides the Implementation Schedule of Regional Alternatives, summarizing the breakdown of costs within Newark and the regional system costs. Newark, Bayonne, East Newark, Harrison, Jersey City, Kearny, North Bergen, and Paterson are the only municipalities bearing the cost for the total 48 municipalities. In addition, Table I-11 (page 121) provides estimates of annual costs to Newark residents under the current LTCP, which projects annual residential costs to increase from \$340 to \$515-\$723 in 10 years, depending upon inflations assumptions. This is an unfair financial cost for residents in EJ communities already burdened with health stressors Note that the costs are considered a “Medium Burden” to Newark residents based on EPA criteria. Table I-13 (page 123) provides a summary of the financial capability assessment calculated using EPA’s guidance.

The financial capabilities assessment that was used in the reports was based on rate increases and the municipalities’ ability to finance the plans. These narrow assessments influence the proposed implementation schedule and unfairly burden residential ratepayers without addressing the impact of impervious cover. The majority of LTCPs did not include considerations of alternative funding mechanisms which could offset the costs of these plans. Rather than considering alternative financing mechanisms, permit holders have requested

longer implementation schedules to complete the plans. We are concerned that these assessments and plans could perpetuate health, environmental, and economic burdens that fall disproportionately on communities of color and communities of lower incomes.

NJDEP should require permittees to do the following, and to re-assess their “financial capability” based on the results:

- Commit to utilizing the I-Bank to the greatest extent possible to finance these plans, except in any cases where lower-cost financing is available elsewhere.
- Evaluate alternative rate structures and consider low-income affordability programs to ensure that households of lower-incomes will not be overburdened by the rate increases associated with the plans.
- Evaluate alternative funding options like stormwater utilities that distribute the costs associated with stormwater across the larger contributors that currently are not appropriately charged—or are not charged at all—for stormwater runoff that contributes to combined sewer overflows. \$45 M = for construction of 2nd Bypass (plan upgrade) to handle wet flow during heavy rain/snow events (400 MGDà 720 MGD), cost to be shared by all 48 municipalities within PVSD Treatment District (accepted and agreeable to Newark)
- \$219 M = for construction of parallel interceptor to PVSC main interceptor to be paid for by all of the 48 municipalities in the PVSC treatment district and not only the 8 CSO communities (Paterson, Kearny, Borough of East Newark, Harrison, North Bergen, Jersey City, Bayonne, and City of Newark) which are all EJ communities. In addition, $\$219/8 = \27.3M that each of the 8 EJ CCO communities will have to pay for in addition to their individual municipal cost (Newark case \$92.1M) and their respective share for the 2nd Bypass (the \$45 M) is an unfair financial burden and not equitable.
- Evaluate green infrastructure as a CSO control alternative based on a triple bottom line analysis, which includes the social, economic, and environmental benefits.

Water quality:

The combined sewer overflow (CSO) Long Term Control Plans (LTCPs) are designed to meet existing water quality standards and do not consider future water quality standards or criteria.

- To increase public access and safe recreational activities, the LTCP activities should move toward achieving future standards and designated uses.
- The plans should consider the water quality the local community wants to attain as well as improving access to waterfronts.
- The majority of public access to local rivers and streams happens along the banks and shorelines. Water quality tests should be required to be taken from close to CSO outfalls as well as more central locations within larger water bodies.
- A majority of the waterbodies are only suitable for secondary uses and the majority of permittees are currently meeting minimum standards. The LTCP activities should work toward making these primary-use waterbodies. The plans should state how long it will take to achieve fishable/swimmable standards (e.g. return of investment).
- The Newark Long term control plan report must be required to state how the regional plans will improve water quality and increase access to these water bodies locally.

The Passaic Valley Sewerage Commission regional plan will achieve 85% capture over the region rather than on a municipal level, although hydrologically connected.

Green infrastructure:

Green infrastructure was mostly included as a supplemental CSO control in the plans attributed more to public pressure than effectiveness. There is little evidence that green infrastructure was evaluated with a “good faith” examination for CSO reduction or in conjunction with gray infrastructure for reduction of stormwater and to reduce localized flooding. If the reduction of CSOs from green infrastructure is not considered in conjunction with gray projects, we lose several benefits of a combined approach, not least of which is the cost savings of digging once to install a gray and green project at the same time.

The New Jersey Department of Environmental Protection must:

- Require CSO permit holders to implement green infrastructure first, within the first five to 10 years of the CSO LTCPs.
- Evaluate green infrastructure for stormwater capture 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 increase the requirements at the municipal level to:
 - Lower the project area threshold at which stormwater management and green infrastructure is required from the state level of one 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.

Public participation:

In general, local community advocates reported that the public participation process lacked the two-way dialog advised in the NJDEP guidance documents. After the 2018 Public Participation Process report there is no further mention of public input. Specifically, the Selection and Implementation of Alternatives Reports do not indicate how permit holders succeeded or failed to reach out to the general public to inform them of CSO reduction plans and to solicit feedback. Additionally, no mention is made of the will of the public beyond including some element of green infrastructure within the plans because of public pressure.

The New Jersey Department of Environmental Protection must:

- Require public engagement in the next permit, and require 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 permit holders in the next CSO permit to engage the public using multiple methods with increased engagement based on the type and scope of the project. This requirement should come with benchmarks for reaching a measurable segment of the population with meaningful interaction and evidence of feedback taken into consideration.
- Require permit holders to identify neighborhoods affected by CSOs and substantially engage those communities in the design and implementation of CSO controls where appropriate. This engagement requirement should have measurable benchmarks.
- 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.

cc. Hon. Ras Baraka, Mayor City of Newark
Hon. Mildred Crump, Municipal Council President
Hon. Luis Quintana, Councilman-at-large
Kareem Adeem, Director, Newark Water and Sewer
Commissioner Shawn LaTourette
Deputy Commissioner, Olivia Glenn
Newark DIG