



# SEWAGE FREE STREETS AND RIVERS

Your Waterways, Your Neighborhood, Your Money, Your Voice

**May 15, 2023**

**Patricia Gardner, Assistant Commissioner, Water Resource Management, New Jersey Department of Environmental Protection (NJDEP)**

**Susan Rosenwinkle, Bureau Chief, Bureau of Surface Water and Pretreatment Permitting, NJDEP**

**Nancy Kempel, Dwayne Kobesky, Joe Mannick, Marcus Roorda**

**Dear Assistant Commissioner Gardner and Bureau Chief Rosenwinkle,**

The Sewage-Free Streets and Rivers (SFSR) campaign is a coalition of community and advocacy organizations that are based in and work with communities with combined sewer systems.

SFSR's Advisory Board Members include Jose Amarte of Perth Amboy Green Team; Suzanne Aptman, program manager at SFSR & New Jersey Future; Amy Goldsmith, state director of Clean Water Action; Michele Langa staff attorney with NY/NJ Baykeeper; and Nicole Miller, co-chair of Newark DIG (Doing Infrastructure Green). SFSR's Technical Advisors include Rosana Pedro Nobre of The New York-New Jersey Harbor Estuary Program and Chris Obropta of the Rutgers Cooperative Extension Water Resources Program.

We are submitting the following comments to the NJDEP regarding the 2023 draft Combined Sewer Overflow (CSO) Permits NJ0026085 and NJ0025321—North Hudson Sewerage Authority Adams Street Wastewater Treatment Plant and River Road Wastewater Treatment Plant.

Thank you to all of the staff at the NJDEP for getting us to this point, and valuing the public health and ecosystems of New Jersey's urban communities. Additionally, a sincere note of thanks to Susan Rosenwinkle and Joe Mannick for the years of hard work they have put into drafting these permits and the collaborative effort they have shown.

We would also like to acknowledge all of the work that was done by the CSO permit holders and their consultants to develop these plans, as well as members of the Supplemental CSO Teams, community members, and stakeholders who have worked together over the past several years, some since the issuance of the first CSO Permits in 2015.

**The purpose of our comments is to build upon this work and to strongly encourage adoption of the recommendations below to improve these plans before this CSO permit is finalized.**

**Our recommendations center on the following issues:**

- 1.) Public Health: Notification
- 2.) Public Engagement: Environmental Justice, Language Justice, and Accessibility
- 3.) Water Quality: Sampling and Data Usage
- 4.) Climate Change and Updating Models
- 5.) Construction, Operations, and Maintenance: Transparency and Enforcement
- 6.) Financing and Affordability
- 7.) Control Measures: Prioritizing High-Impact Gray Solutions and Well-Designed Green Solutions

We believe this permit and the prior North Bergen MUA/Town of Guttenberg permit will inform the subsequent permits that will be released by NJDEP this year. This makes your consideration, and ideally incorporation, of these comments extremely important for future plans across New Jersey, and sets the stage for a consistent message for all CSO permit holders moving forward.

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**Sewage-Free Streets and Rivers General Comments and Recommendations on the  
Combined Sewer Overflow Draft Permit for the North Hudson Sewerage Authority (NHSA)  
Submitted on May 15, 2023**

**Overall Comments**

***Supported Elements***

We support the added elements that direct public engagement, climate resiliency, and environmental justice concerns, particularly where the permit language is clear and direct. We also see these first draft permits (this permit and the North Bergen MUA/Town of Guttenberg permit) as an opportunity to better address the concurrent issues around local flooding concerns, municipal stormwater planning and maintenance, and community-led efforts to improve the overall safety and wellbeing of residents. These permits are a meaningful step toward reducing, and in some instances eliminating, CSOs and related impacts in New Jersey.

***Recommendations for Improvement***

We recommend that the NJDEP strengthens requirements in certain areas as described in the comments below. Where strengthening requirements is not possible by NJDEP, we recommend that the NJDEP provide **separate, concurrent guidance (in a document) for permittees**. And when providing guidance, we recommend NJDEP be as **specific and prescriptive** in their overall guidance as possible. If the guidance is vague, it leaves too many openings for interpretation and inconsistency. It would also be beneficial to incorporate language into the permit itself that references this guidance document and encourages permittees to incorporate the included guidance.

**Concurrent guidance to permittees is especially important for tracking and demonstrating their work on affordability.** As NJDEP drafts the permits for the subsequent NJ CSO regions and finalizes this permit and the North Bergen MUA/Guttenberg permit, we encourage NJDEP to similarly **ensure the shortest timeline possible while still ensuring affordability**. Permittees sometimes seek to use cost as a rationale for extending implementation timelines. However, this leaves communities bearing an extended burden to environmental and public health.

**It is very concerning that this NHTA permit has an extended timeline until 2045, especially regarding critical storage tank construction. We urge NJDEP to work with the permittee to shorten and speed up the timeline for construction of this key CSO control strategy in an affordable way.**

**We elaborate on this concern and share several recommendations in section #6 below: “Financing and Affordability.”**

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## **1) Public Health: Notification**

There has been a great deal of concern among impacted community members that they are being exposed to *Escherichia coli* (*E. coli*) and other harmful bacteria, viruses, and chemicals during sewage backups into homes and streets. The fear of not knowing causes panic and a sense of urgency to disinfect homes. Given that this and subsequent permits will not completely solve the localized flooding issue, **it is imperative that community members have time to prepare for impending heavy rainstorms and possible sewage back-ups.**

### ***Recommendations for Improvement***

- Require that the Permittee **measure the amount of raw sewage** released in localized flooding and report that back to the community.
- **Require alerts and notification systems**, not just for Hudson River discharges, but in advance of potential sewer backups and street/basement flooding. This notification should be published through all of the municipal communication channels, including those designed for emergency situations, as well as through the press, social media, and outreach to community-based organizations.

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## 2) Public Engagement: Environmental Justice, Language Justice, and Accessibility

This permit has incorporated and required some key elements that will enhance public engagement from the original permit such as requiring a Long Term Control Plan (LTCP) Coordinator, continuing a CSO Supplemental Team and related Team meetings, and a website with certain public notifications. Including elements like these better engage and serve the surrounding communities on the path toward reducing or eliminating CSOs.

However, the permit does not go far enough to ensure all affected community members (not only those with easy access) are informed and consulted. It is also important that environmental justice, accessibility (in all forms), and language justice are not merely acknowledged but addressed and required of permittees. There must also be a consistent, clearly-defined feedback loop with the public, so that the general public (and not only the CSO Supplemental Team) is able to provide input as projects are implemented and see how/if their input is incorporated into final decisions made by permittees. **These recommendations can be achieved either by enhancing current and future permit requirements, and/or by providing separate, clear, concurrent guidance to permittees.**

### ***Supported Elements***

- The shift in focus from public participation to public engagement in order to inform, educate, and engage specific to implementation of the CSO control projects. More specifically, NJDEP requires a public engagement process designed to educate the public about the status of the program, document progress in implementing the program, and inform neighborhood residents before, during, and after construction.
- Requiring an LTCP Coordinator be hired as a single point of contact between permittees and the community, and that a Supplemental Team be reconstituted. Also, including the requirement that the efforts to recruit members of this team be documented and shared publicly offers a positive step toward transparency.
- Supplemental Team meetings and project based meetings are required of permittees.
  - The Department's Office of Environmental Justice (see <https://dep.nj.gov/ej/>) shall be given 30 days advance notice of the meeting schedule so that it can be shared with environmental justice community leaders as a way to incorporate overburdened communities in the process.
  - Permittees are required to hold regular public meetings (live streamed, in-person, or a combination of both).
  - Public meetings are required to be livestreamed and made available to the affected community for viewing afterwards, including materials in the language(s) appropriate to the majority of community demographics.
  - Outreach materials, including physical handouts and websites, should be produced in all major languages spoken in a given community.

## ***Recommendations for Improvement***

### LTCP Coordinator

- The criteria for selecting the LTCP Coordinator is not defined. **We request that the final permit includes a baseline requirement for what the LTCP Coordinator role is and their responsibilities, including the minimum requirements for communication and outreach to the community.** Leaving the role open to interpretation in these and future permits would only serve to fail the intent of the position and allow permittees to “check the box” by doing the bare minimum. Setting clear minimum requirements here eliminates the issue and standardizes the role across all permits, making the role more efficient and effective.

*Question:* Does NJDEP have a standard expectation in mind for the LTCP Coordinator role and its responsibilities so the position is not open to interpretation? If so, can that be added to the permit as minimum requirements to meet for permittees?

- There is no clear guidance on how the permittee shall select an LTCP Coordinator and what training the LTCP Coordinator should receive to perform the role effectively. Along with the Permit, **we request concurrently releasing a training manual for selecting and onboarding a new LTCP Coordinator including what skills, experience, and certifications are required.** We urge NJDEP to consider requiring that the LTCP Coordinator be a member of that local community and someone who represents those living in overburdened neighborhoods. Important skills and experience should include an understanding of community engagement best practices and past success with that work. As with the previous note, clear guidance and requirements here create a consistent application across permits.

*Question:* Does the NJDEP have a set of criteria for selecting and onboarding a new LTCP Coordinator and how will this be shared with the permit holder? If so, can that be added to the permit or released concurrently in guidance as minimum requirements for permittees?

### Supplemental Team Recruiting, Replacement, and Transparency

- The permit language is vague as to ensure that members of the community, especially those from overburdened communities, are meaningfully included in public engagement. Instead, the permit uses the phrase “with a goal of including members of the following groups, at a minimum, where possible.” **We request that NJDEP develop minimum requirements on methods used to recruit and replace CSO Supplemental team members that ensures a cross-sector representation from the community, based specifically on the makeup of the particular community, and requires that a majority of community members are aware of the opportunity to participate on the team.**

*Question:* How will the permittee ensure that a cross-sector representation of the community is part of the team and that the majority of community members are aware of the opportunity?

- Similarly, **we request that NJDEP develop minimum requirements on methods that should be used to recruit members of overburdened communities to ensure their representation and engagement.** For example, obtain input from a minimum of three relevant community-based organizations with input from the NJDEP’s Environmental Justice Department to make those connections.

*Question:* How will NJDEP ensure that overburdened communities are fairly and meaningfully represented on the Supplemental Team?

- **We request that once team members are identified, they are listed on the website with clear methods to get in contact with them.**

*Question:* How will the Permittee ensure the community is aware of the Supplemental Team members and how to contact them?

- There is no process established for developing a feedback loop where Supplemental Team input is captured, incorporated, and made public. Similarly, there is no process defined to ensure the general public can give input to the Supplemental Team and track how that input is applied or considered. **We request that a clear and effective feedback loop process and a process for responding to public questions including a Frequently Asked Questions page on the website be required.**

*Question:* How will NJDEP provide guidance and/or permit language with clear instructions around implementing a feedback loop to ensure transparency and consistency across permits?

#### Meeting Frequency

- The frequency of meetings being determined by the milestones in the LTCP implementation is understandable. However, not requiring any minimum number of meetings leaves too wide an opening for permittees to avoid responsibility around communicating progress and status. **We request there be a minimum number of Supplemental Team meetings required annually or quarterly to provide updates to the CSO Supplemental Team and the public to maintain transparency, consistency, and engagement.** The longer the period of time between meetings and outreach, the less likely it is to maintain the same level of engagement from the community. For example, we recommend requiring a minimum of two meetings annually, outside of any project-specific meetings and require that these meetings also be an opportunity to share funding, employment, and training opportunities. Moreover, we suggest all meetings be

held in a hybrid format to ensure as many community members as are interested are able to attend.

#### Meeting Attendance and Public Input

- **Certain public engagement methods should be required, at a minimum, reflecting the methods that have the highest engagement numbers and broadest reach.** These methods should also ensure that overburdened communities are aware of Supplemental Team meetings, including requiring outreach via social media, through municipal outreach channels, and through traditional print methods to reach the broadest audience within each community.
- The exception for not adding meetings due to lack of attendance should trigger some requirements to prove that properly-executed efforts to engage were unsuccessful. If the community is not attending meetings, it should be the responsibility of the permit holder to ensure that meeting attendance is accessible and representative of the community. **The permit holder should rethink their outreach and engagement activities to ensure a minimum number of community members are present at meetings and that those members represent a cross-section of the community, including those from overburdened communities.** The community should feel that they are being meaningfully engaged in the process and that their concerns are being heard and acknowledged by permittees. Transparency in the process is important to meet this goal. Another means of ensuring this is to hold these meetings in the various diverse neighborhoods rather than expecting community members to travel to a location that is inconvenient. That way, the permit holder is more likely to ensure a broader number of community members are present.

*Question:* Does NJDEP have a method for ensuring permittees prove a baseline effort for making meetings accessible, promoted specifically to affected community members and stakeholders, and that said stakeholders are notified in a timely manner?

- Meeting accessibility is described as something to be “*kept in mind*” with a few suggestions. Instead, **meeting accessibility should be a minimum requirement with clearly defined terms for accessibility for language, visual, audio, and physical access.** As with previous and later recommendations, minimum requirements in the permit and/or concurrent guidance ensures consistency across permits.

*Question:* Will NJDEP clearly define accessibility as described above and require this accessibility as part of all meetings?

#### Specific Projects and Project-Based Recommendations

- **Apply the same requirements and framework noted above**, regarding public notice and follow-up, to project-based meetings and how public input is incorporated into projects, especially as it relates to the performance of projects and project deficiencies.
- **Require that the siting of gray infrastructure will not have negative cumulative impacts on overburdened communities.**
- Understandably, not every LTCP project will trigger legal review under NJ's Environmental Justice (EJ) Law. That said, **the principles of serving EJ communities as outlined in NJDEP's "Furthering the Promise Guidance Document" must be considered** before implementing projects in overburdened communities.

*Question:* Will NJDEP specifically reference this NJDEP "Furthering the Promise Guidance Document" in the permits and/or the guidance materials?

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### 3) Water Quality: Sampling and Data Usage

**There are nine CSO outfalls into the Hudson River associated with this permit. That means the Hudson River is being impacted by pollution in this region more than in other areas. Therefore, water quality enhancements and enforcement should be accelerated.**

The importance of properly-monitored water quality around CSO outfalls is key to the protection of public health and the environment and cannot be understated. This further underscores the need to accelerate the CSO reduction projects (namely the storage tanks) that are currently slated to be constructed in 2045.

Common uses of the NJ waterways impacted by CSOs include secondary contact recreation such as paddling, fishing, and boating, as well as primary contact recreation like swimming and wading.

According to information published by swim event organizers and compiled by Hudson Riverkeeper, as many as 7,700 people have taken part annually in open water swim events in the Hudson River, New York Harbor, and other waters affected by combined sewer overflows from both New York City and New Jersey communities. On average over the last 10 years, 4,500 people have participated annually in such events.

Of particular relevance to Hoboken, West New York and Weehawken are the New York City Triathlon, the 8 Bridges Hudson River Swim, and the 20- and 40-Bridges Swims take place in the Hudson River in the stretch of river affected by overflows from these communities. These are among the highest profile swim events in the region, drawing both residents from New York and New Jersey, as well as athletes from around the world. Each of the 20- and 40-Bridges Swim



events invite swimmers to circle Manhattan, and are part of the Triple Crown of Open Water Swimming (along with the English Channel and Catalina Channel). The NYC Triathlon is also the event that draws the most participants annually.

The bi-state nature of the Hudson River highlights the importance of coordination of CSO control efforts between NJDEP, NYSDEC, and NYCDEP, and also shows the wide-ranging—and previously unforeseen—uses of the Hudson River, a formidable international icon and symbol of hope and renewal. While the current water quality criteria and designated uses may not currently support every use, these are the ways our communities regularly use their waters. The process of regular testing of outfalls, particularly when active, and easily accessible public notifications is a crucial resource to protect our communities and guests who use our waterways.

***Recommendations for Improvement:***

- In terms of water quality monitoring near CSO outfalls, collecting samples during implementation for fecal indicator bacteria, particularly during wet weather events, would provide beneficial protection to the public. **Maintaining transparency and outreach around water quality and sampling is a critical step to further protect the public from the effects of CSO events**, particularly for recreational users of these impacted waterways, and the increased risks in the 24–72 hours after an event.

*Questions: Will the permittee be required to conduct water quality sampling near CSO outfalls during implementation of LTCP projects and during wet weather events that generate overflows?* How will the NJDEP utilize information from these permits, including water quality and precipitation data? Will it be used to look at opportunities to improve protections on the waterbody such as a reviewing/updating Surface Water Quality Standards (SWQS), or completion of a Use Attainability Analysis for affected water bodies? Beyond testing for *E. coli* and fecal coliform, will NJDEP require or suggest permittees analyze water quality samples for *Enterococcus* and other contaminants of emerging concern that may impact communities?

- We encourage the NJDEP to work with the New York-New Jersey Harbor & Estuary Program (HEP) and other partners to expand on a public access tool for collecting recreational uses (both primary and secondary recreational uses) through this digital tool: <https://wikimapping.com/water-recreation.html>. Initiated by the Hudson Riverkeeper, Pratt Institute, Save the Sound, and assisted by HEP, the tool enables the public to document the various locations and defining routes that recreators use in New York State waters, including the shared waters of the Hudson River, Arthur Kill, Kill van Kull, Raritan Bay, and the Lower New York Bay. We believe expanding the scope of this tool would similarly be a very useful tool for New Jersey and recommend that NJDEP work with HEP and partners to expand this tool for recreational uses in New Jersey

waters, specifically in the state's CSO-impacted bodies of water. This information should inform reclassification of waters, particularly where swimming or other primary contact recreation is taking place in waters not currently managed for that use, and water quality standards should be updated to ensure that primary contact users are protected. LTCPs and permits should ultimately be updated accordingly to ensure that water quality standards are met.

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#### 4) Climate Change and Updating Models

##### ***Supported Elements:***

Over the last several years, it has become widely accepted that climate change and the effects of sea level rise are a threat to our wellbeing, especially here in New Jersey. Our state is full of beautiful wetlands, rivers, and coastal beaches under direct threat from rising seas, storm surge flooding, and destruction or degradation of wildlife habitat and estuary systems. This is why it is so important and heartening to see climate change and adaptive management included in these CSO permits.

We appreciate that models will be required to be updated at the end of the effective NJPDES permit. Similarly, we appreciate that updated Hydrologic and Hydraulic (H&H) models will be required to include all completed CSO control measures and any modifications to the Combined Sewer System since the previous H&H model was calibrated for the LTCP.

We also appreciate the inclusion of an interim and not just a final adaptive management report. This will also give the permittee the opportunity to assess whether climate change projections will affect the implementation plan.

##### ***Recommendations for Improvement:***

There is still a lingering vagueness in the language in these permits around how CSO controls address climate change and sea level rise. **At a minimum, the permittee should review the projected CSO removals and whether current projections of precipitation and sea level rise due to climate change affects the implementation plan.**

Question: How will the permit holder consider climate change and sea level rise and how will this be documented and reported on? Can they review the projected CSO removals and whether current projections of precipitation and sea level rise due to climate change affects the implementation plan?

The permittee should review its implementation plan with regard to pending or new NJPACT rules and provide a report explaining any impacts.

*Question:* How will NJDEP incorporate NJPACT rules, including the inland flood rules and resilient environments and landscapes, into this permit and future permits? Will the permittee review its implementation plan with regard to pending or new NJPACT rules and provide a report explaining any impacts?

Regarding the H&H model, at the end of the effective NJPDES permit, the NJDEP should **require permittees to recalibrate the H&H model with updated water quality data, precipitation rates, and other climate-related data.**

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## 5) Construction, Operations, and Maintenance: Transparency and Enforcement

The planning, designing, and construction of CSO controls has been (and will be) a long, arduous process for permittees and likely, the most costly component of the process overall. It is therefore critical to ensure the work is well-planned, properly funded, and maintained accordingly.

As potentially one of the largest public investments a municipality or utility will make, it is critical to allow for transparency with the public on progress, sources of funding, avenues for monitoring compliance, and ways to ensure construction and maintenance occurs as planned to eliminate future system failures.

### ***Supported Elements:***

The permit contains the nine minimum CSO controls that were also contained in the 2015 permit. The first control requires “Proper Operation and Maintenance Programs for the Sewer System and CSOs.” A system cleaning program must be implemented, requiring the system components be inspected and cleaned. The permittee is required to submit annual progress reports on this system cleaning with the intention that 20% of the system be inspected and cleaned annually.

Operational Plan includes O&M of all LTCP CSO elements including Green Infrastructure.

### ***Recommendations for Improvement:***

- We request that NJDEP **develop clear and specific inspecting, monitoring, and enforcement procedures to ensure the permittee complies with the system cleaning program for both gray and green infrastructure projects.**

*Questions:* What will be the enforcement mechanism to ensure that the permittee implements the system cleaning program? What will the NJDEP do if the permittee does not comply with the annual system cleaning program, and/or if they do not meet the 100% inspection and cleaning of the system at the end of the respective five-year permit? Will performance factors and deficiencies be communicated to the public? If so, how will that be communicated to the public?

- We request that the **role NJDEP staff will play in inspecting and enforcing all projects, including gray and green infrastructure and maintenance, be clarified.**

*Question:* How will the NJDEP inspect and enforce all projects, including green infrastructure? How is the NJDEP going to ensure the permittee is complying with their maintenance plan for all projects?

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## 6) Financing and Affordability

We appreciate NJDEP's requirement that a financial capability analysis be conducted, however we are concerned that innovative funding mechanisms are not being fully considered and taken advantage of at present. The impacts of this include delayed timelines, increases in rates to ratepayers, and a risk to project completion in the long term.

In addition, permittees sometimes seek to use cost as a rationale for extending implementation timelines. However, this leaves communities bearing an extended burden to environmental and public health. Again, permittees should conduct a more thorough review of funding alternatives to see if they can reduce the costs and shorten timelines. In the case of NHTA, when both long term control plans are implemented, it is anticipated that they would exceed the required 85% capture rate. However, this result is not expected until 2045. This is too long of a time-frame for the Hudson River and communities to experience poor water quality.

**In fact, in Comment 18 in the August 3, 2021, "NHTA Response to Comments on Selection and Implementation of Alternatives Long Term Control Plan, River Road WWT," the NJDEP itself questions this lengthened timeline and describes the storage tank construction, which is slated to begin construction in 2043 as a "key CSO control strategy" and to reconsider the timeline for construction of storage tanks.**

The permittee, when responding to Comment 18 referenced above, explains that the Clean Stormwater and Flood Reduction Act (P.L 2019 C 42), Section C.40:14A-4.2 (1) (a) restricts them from increasing their rate more than 2% year-over-year. This must be addressed as it is limiting the ability to fund projects in a timely way.

It is also contradictory to regulations stating "[c]ompliance schedules included in NPDES permits must "require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA."<sup>1</sup> The CSO Control Policy requires that "each long-term CSO control plan . . . should include both fixed-date project implementation schedules (which may be phased)

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<sup>1</sup> 40 C.F.R. § 122.47(a)(1).

and a financing plan to design and construct the project as soon as practicable.”<sup>2</sup> Ultimately, there is a fine line to walk between practicability and affordability, with an emphasis on reducing CSOs as quickly as possible to protect human health and the environment.

Moreover, with such a long time-frame, the risks of higher construction costs or future political administrations renegotiating requirements increase. During that time, communities might miss out on the current once-in-a-generation federal funding opportunity through the Infrastructure Investment and Jobs Act. Accessing federal water infrastructure funding now means that projects can become more affordable and therefore, more can be achieved. It also means permit holders will not be burdened by increasing interest rates.

### ***Recommendations for Improvement***

We urge NJDEP to consider including the following to shorten timelines in an affordable way.

- 1) **Work with the permit holders to follow the approach of Environmental Protection Agency’s (EPA) just released final 2023 Clean Water Act Financial Capability Assessment Guidance**, the goal of which is to help communities “seek ways to minimize financial impacts, while ensuring residents also enjoy the benefits of infrastructure investments and improved water quality.” It places the onus on permittees to develop a financial alternatives analysis, documenting that all feasible steps and a range of options have been taken to mitigate financial impacts of potential rate increases on low-income households. EPA provides a list of options it expects the utility to consider and then to either implement them or explain why they cannot. The options include adopting low-income affordability programs and equitable rate designs to reduce the costs borne by low-income households; accessing all available grant funding and subsidized loans to reduce the total cost borne by all residents and other ratepayers. As EPA notes in the proposed guidance:

“Where CWA compliance costs may impact on residents with incomes in the lowest quintile, a longer schedule may not always be the best solution to address impacts to those residents. In particular, if a community shows strong economic indicators in other categories, there may be better options for the community to address the potential financial burden faced by its lowest quintile residents. If the intended goal is to help a community’s lowest income residents, an extended CWA schedule may, in fact, have the *opposite* effect if it delays addressing pollution in the neighborhoods where they live.” **And in deciding innovative funding strategies, we recommend engaging community members in these discussions.**

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<sup>2</sup> 59 Fed. Reg. 18688, 18691 (April 19, 1994).

- *Question:* Will NJDEP and permit holders, for this permit and subsequent regional CSO permits, follow the EPA's 2023 Clean Water Act Financial Capability Assessment Guidance to limit residents' impacts of longer implementation schedules while minimizing financial impacts on lower income households?
  - Question: Is NJDEP informing the permit holders about the EPA's funding opportunities to support technical assistance for their financial capability analysis before permits are finalized?
  - *Question:* Will NJDEP include guidance on innovative funding strategies to be given concurrently with the release of the final permit? Will NJDEP provide guidance and technical assistance for municipal CSO permittees to conduct stormwater utility fee feasibility studies to determine if this assessment opportunity would be beneficial for their communities?
- 2) In the required affordability calculation, the NJDEP should consider requiring the permittees to not only do the standard calculations that they have done, but also alternative calculations that would reduce ratepayer burden and accelerate environmental and community benefits.

They should also do calculations that factor in receiving funding from the Water Bank, which would lower annual debt service and thereby make it possible to accelerate implementation while still staying within the affordability thresholds. This would also factor in implementing a stormwater fee which would offset costs, and as with the Water Bank funding, would allow for accelerated implementation while staying within the affordability threshold.

**By requiring them to calculate with and without Water Bank funding, the difference would be more transparent.**

Questions:

- Will NJDEP require that permittees not only do the standard calculations but also an alternative calculation that would reduce ratepayer burden and accelerate environmental and community benefits?
- Could the long term control plans be implemented more rapidly and with less impact on ratepayers if North Hudson obtained funding, especially principal forgiveness, via the Water Bank/State Revolving Fund? Can NJDEP work more closely with the permit holder to ensure this takes place?

- Similarly, if North Hudson were to implement a stormwater fee, could this generate revenue that would enable expedited implementation of the long term control plans and lower ratepayer burden? Can NJDEP work more closely with the permit holder to ensure that a stormwater utility and feasible methods have been seriously considered before finalizing timelines?
- In order to provide for more clarity and prescriptive measures to ensure equity and consistency across permits, we recommend that NJDEP **issue concurrent guidance to permittees to assist them with tracking and demonstrating their work on affordability.**
- It is encouraging that an Asset Management Plan (AMP) is included in this permit. However, it is not clear if affordability is assessed in this plan.
 

*Question: Is affordability considered in the AMP and where is that described? How will the NJDEP ensure the CSO Supplemental team can provide meaningful input on the AMP and how it is establishing rates?*
- These permits do not mention distribution of costs between the municipal and utility permit holders.
 

*Question: Is there a consideration of fair distribution of costs between municipal and utility permit holders applied across all permittees?*

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## 7) Control Measures: Prioritizing High-Impact Gray Solutions and Well-Designed Green Solutions

### ***Recommendations for Improvement***

All controls should be prioritized to have the greatest impact on CSOs and local flooding in the shortest time frame, while maintaining affordability for lower income households.

We are concerned that the timelines for this LTCP are too long, leading to unnecessary prolonged sewage discharges and the associated pollution and public health issues. There is mention that some construction may get in the way of public activities, however, the water quality and health issues should take priority. For example, Adams Street Implementation Plan calls for increasing Adams Street WasteWater Treatment Plant (WWTP) capacity by 2029. This project is valuable for

improving water quality and should be considered for moving to an earlier time frame. Expediting treatment plant expansion provides the ability to capture more CSO earlier in the Implementation Plan. Moreover, the time between the 2021 land purchase to the 2045 storage tank installation is too long. In the prior Financing and Affordability section, we make recommendations for ways to finance projects to enable shorter timelines.

- Questions: Can NJDEP work with the permit holder to shorten these timeframes for the Adams St. WWTP capacity expansion and the storage tank installations? Can NJDEP encourage the permit holder to take advantage of the once-in-a-lifetime federal funding from Water Bank, etc. to get these and the other projects underway much sooner as described in Section 6?

We know that well-designed, meaningfully incorporated, and properly maintained green infrastructure (GI) projects can have expanded community impact over gray-only infrastructure projects, due to benefits such as enhancing the quality of the built environment throughout the community, improving air quality, reducing the heat island effect, and sequestering carbon on top of their core responsibility of managing stormwater. For example, Hoboken's resilient urban parks and green infrastructure are great ways to capture stormwater runoff that will reduce CSO discharges and localized flooding.

The green infrastructure projects as it relates to this region, will be installed by the municipalities and not the permit holders. **However, there is opportunity for the permit holder to install new green infrastructure and leverage planned green infrastructure by:**

- Considering meaningful green infrastructure project installations as the gray infrastructure projects are designed and installed, as a way to slow and reduce volumes even further, and to enjoy added public and environmental health benefits.
- Consider including green infrastructure projects in Weehawken and West New York as there does not seem to be many GI projects there.
- Requiring that the permit holder track and report on the impact of municipal green infrastructure projects, especially those in Hoboken, on reducing CSO volume.
  - *Questions:* How can NJDEP ensure that new green infrastructure projects are meaningfully explored as part of planned gray infrastructure projects as this is a good opportunity to address both simultaneously, and achieve economies of scale while still ensuring affordability for ratepayers? Can surface-level green infrastructure improvements be implemented in this current draft permit along with gray infrastructure installations? Can NJDEP require that all municipal and utility green infrastructure assess the impacts on CSO capture and include that in the reporting?
- Well-designed and constructed green infrastructure projects, like all stormwater management solutions, require regular maintenance to retain effectiveness. Hoboken is planning for and



constructed green infrastructure projects including permeable pavement and rain garden implementation at the Southwest Resiliency Park, Northwest Resiliency Park, Jackson Street Resiliency Park, and the Washington Street Rehabilitation and Redesign projects. NJDEP should **require documentation that all green infrastructure projects and installations are being inspected and maintained** in accordance with the NJDEP's requirements for the permittees' Operations & Maintenance program and manual.

*Question:* What will be the enforcement mechanism for NJDEP to ensure that these green infrastructure practices are being maintained with adequate staffing, training, regularly-scheduled inspection and maintenance, etc.?

- Overall, NJDEP should ensure that the NJDEP Division of Water Quality's 2018 "Evaluating Green Infrastructure: A Combined Sewer Overflow Control Alternative for Long Term Control Plans" supplemental resource be incorporated in the LTCP and permit and NJDEP should update the resource to include accurate data to control stormwater.
- The permit calls for reporting changes in precipitation trends, but does not call for permittee to develop a plan to address or evaluate them. **We request that the impacts of these trends be assessed and any projected impact on the Implementation Plan be quantified.** If any of the projects in the Implementation Plan are negatively affected and reduce the capture below 85%, then revisions to the plan should be required.
  - Question: Can NJDEP ensure that the permit holder develops a plan to address or evaluate changes in precipitation trends and that quantifies the impact on the implementation plan?
- Water conservation by community members and businesses is a named tool for reducing CSO impacts in many, if not all, of the CSO LTCPs. We recommend **NJDEP provide concurrent guidance to permittees outlining best practices on engaging communities on water conservation methods to ensure this control alternative is properly utilized.**

## Conclusion

Thank you in advance for considering our recommendations. We appreciate the opportunity to take part in this important process and look forward to continuing to work with NJDEP to ensure that the CSO permits are compliant, effective, and equitable for all CSO communities. We hope that these recommendations can be incorporated into the forthcoming final permits.

**Signed by the following partner organizations and local community organizations:**

Association of New Jersey Environmental Commissions (Statewide)

Clean Water Action (Statewide)

Embankment Preservation Coalition (Jersey City, NJ)

Hackensack Riverkeeper (Hudson County, NJ)

Hudson River Waterfront Conservancy (Hudson County, NJ)

NewarkDIG (Newark, NJ)

New Jersey Future (Statewide)

NY/NJ Baykeeper

Passaic River Coalition (Northern NJ)

Pershing Field Park Neighborhood Association (Jersey City, NJ)

Raritan Riverkeeper (Middlesex, Monmouth and Somerset Counties, NJ)

Waterspirit (Statewide)