



# **SEWAGE FREE STREETS AND RIVERS**

Your Waterways, Your Neighborhood, Your Money, Your Voice

**July 13, 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 SWIM; 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 Pedra Nobre of the New York-New Jersey Harbor & Estuary Program and Christopher C. 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 NJ0108782 (City of Elizabeth) and NJ0024741 (Joint Meeting of Essex and Union Counties).

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
- 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

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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.**

Supported elements

- We are pleased that NJDEP clarified, in the July 22, 2021 “Review of Selection and Implementation of Alternatives of the Long Term Control Plan (LTCP)” for the permittee that “The LTCP must address the elimination of street flooding where this should be the utmost priority in the selection of alternatives.” We applaud the City of Elizabeth for numerous flood abatement projects prior to and in concert with the LTCP.

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

- Require that the permittee **measures the amount of sewage** released in localized flooding
- **Require alerts and notification systems**, not just for Elizabeth River, Arthur Kill and Newark Bay 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.

- While the reports that track flooding and sewage back-ups into streets are technically available, they are not user-friendly and difficult to read. We recommended that the permittee improve public accessibility this information.

## 2.) Public Engagement

- Thank you for drafting a Public Engagement Guidance document on the various methods for successful public engagement for the permit holder to utilize for providing the public with the opportunity to review this draft guidance, and for developing the document with expediency. We look forward to reviewing it and providing recommendations to further improve public engagement throughout the CSO communities.
- **Thank you for clarifying in the Final CSO permit for Guttenberg/North Bergen MUA that meetings are to be considered CSO supplemental team meetings and open to the public. And for removing the sentence, “Meeting frequency may subsequently be adjusted based on documented attendance”, in order to minimize confusion. Moreover, we appreciate the clarification that NJDEP will have a presence at these meetings, and we are very encouraged by this fact. We request this change to be included in subsequent final permits as well as in Permits NJ0108782 (City of Elizabeth) and NJ0024741 ( Joint Meeting of Essex and Union Counties).**

However, we encourage NJDEP to include more prescriptive ways to make meetings accessible. You include suggestions such as having a call-in number along with in-person meetings for those that do not have access to a computer, and that updates during periods of inactivity can also be communicated through websites as required by the permit.

*Question:* Can you please make this more explicit and required?

- Furthermore regarding meetings, the permit provides permittees the option to hold meetings outside of the implementation schedule. As we may conclude from the permit holders' response to NJDEP, they may be less likely to hold meetings when no work is being implemented and limit the CSO Supplemental team's desire to meet. We recommend to include a minimum of one CSO Supplemental Team meeting per year, outside of implementation meetings, to ensure members stay active and engaged with the permit holder throughout the lifecycle of the LTCP. We recommend these meetings as the place where annual reports are reviewed and updates are shared by the permit holder.

- In addition, given that important decisions will be made in the CSO Supplemental teams, we are still concerned that the public may be underrepresented on those teams since there is no specific requirement for how many community members should participate, nor who they should represent. That may mean that during decision making, the will of those representing the permit holders or municipal government will outweigh the desires of the community. As such, we highly encourage NJDEP to require that a certain percentage of CSO Supplemental teams consist of community representatives, and that a certain percentage must be present at any given meeting. Moreover, since CSO Supplemental teams are regional versus city-specific, we highly encourage that members represent the specific municipalities included in that regional permit and that at least one of the community members representing a municipality be present at every meeting.
- In the final Guttenberg/NBMUA permit, NJDEP suggests that CSO Supplemental Team members may object to publication of their name and contact information on a website. We suggest that it be required that each CSO Supplemental team member be given the opportunity to be listed on the website and that all public officials have their names/contact information listed. Certainly the LTCP Coordinator’s contact information should be listed as a point of contact to manage the team and be a point for new prospective members to engage.
- We applaud the continuous efforts by Future City and Groundwork Elizabeth in their partnership and collaboration with the City of Elizabeth. We further support the City of Elizabeth to continue engaging and inviting these organizations to be a part of the CSO Supplemental Team as well as providing them with the support they need in outreach to residents on the City of Elizabeth projects.
- In addition to the above, please see the “Addendum” following this letter for detailed public engagement recommendations that SFSR will recommend for inclusion in the [“2023 Guide to CSO Public Engagement”](#) after public comments are submitted by July 28, 2023

### 3. Water Quality

- There are 29 CSO outfalls that are discharging into the water bodies surrounding Elizabeth and associated with this permit. While we are pleased to see the City of Elizabeth is investing in a significant amount of construction and design activities during this first five years of the LTCP, it is disappointing to read that the annual average combined sewage collected in the system during wet weather by the end of the first 5 years will be only 69% and that the community will have to wait until 2045 to reach the minimum 85% capture requirement. This delay will negatively impact the water quality to local water bodies, those using these waters for recreation, the residents who live in the CSO-sheds, and the potential for continued combined sewer flooding into streets and homes for another 20 years.
- As it relates to water quality, we are concerned that the prolonged timeline for achieving 85% capture in the City of Elizabeth will continue to further impair the Elizabeth River, Arthur Kill, and Newark Bay, and delay the community’s ability to enjoy safe recreational activities along their waterfront. This further underscores the need to accelerate the CSO reduction projects that are

currently slated in this permit to be constructed by 2045, and to shorten the timeline substantially. Specifically, the planned projects that should be implemented as soon as possible include the Upper Westerly Interceptor Upgrade, the Morris Avenue Siphon Upgrade, and the new wet weather pump stations expected to be completed in the year 2039-2043.

- We were glad to read in the Guttenberg/NBMUA permit that NJDEP agrees with the EPA that language can be clarified for pretreatment requirements and modified the language in that final permit. We encourage NJDEP to similarly ensure that appropriate pretreatment requirements and language are included in this Elizabeth/JMEUC permit and subsequent CSO permits.
- While there is mapping of systems and inspections related to broken pipes, leaks, etc., as well as programs such as HEP's Environmental Monitoring Plan, it is not clear how the findings are enforced. We encourage NJDEP to establish guidelines and procedures to enforce the findings.

#### 4.) Climate Change and Updating Models

- There is still less clarity 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: It is not clear how this recent tool released by NJDEP will be used: <https://njprojectedprecipitationchanges.com/>. This was part of the two Extreme Precipitation Studies that NJDEP released confirming increases in precipitation across New Jersey over the last twenty years, and projecting further increases in precipitation intensity through the end of this century due to climate change. Can you clarify how this tool will be used by NJDEP and permit holders?
- Governor Phil Murphy announced the adoption of the landmark Inland Flood Protection Rule to better protect New Jersey communities on the frontlines of severe flooding and increased storm events. The Inland Flood Protection Rule corrects outdated portions of the Flood Hazard Area and Stormwater Management Rules to better protect people and property from devastating flooding that science shows is occurring with increasing frequency due to climate change. Currently, the state underestimates these floodplains because it uses outdated 20-100 year old data that does not account for recent development and increased rains due to climate change.
  - *Questions:* How will the Permit Holder be required to adjust their current 5-year plan to include these new precipitation models and projections? How will this be documented and reported on? Will NJDEP require permit holders to review the projected CSO removals and whether current projections of precipitation and sea level rise due to climate change require alterations to the implementation plan?

- We also acknowledge the NJDEP is working towards the development of rules entitled NJ PACT to begin a regulatory reform effort to help reduce greenhouse gas and other climate pollutant emissions while making our natural and built environments more resilient to the impacts of climate change that are now unavoidable. We look forward to the development and implementation of NJ PACT by permittees through the CSO permit and other applicable regulations.

## 5.) Construction, Operations and Maintenance

- 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?

## 6.) Financing

- If financing is a hindrance to shortening timelines while ensuring affordability, there are new federal funding opportunities, released since the LTCPs were drafted, that permit holders can take advantage of through the Water Bank. In addition, there is technical support from the EPA that permit holders can take advantage of to help them develop a stronger financial capability analysis. This is described and recommended in the EPA's recently 2023 Clean Water Act Financial Capability Assessment Guidance.
  - *Question:* Knowing that connecting this funding to the ability to shorten timelines is so critical, how can the NJDEP actively encourage and help permit holders to take advantage of this and other innovative financing?
- In addition to including Water Bank funding in the affordability calculation, the permit holder should include the impact on affordability and corresponding time frame that implementation of an equitable stormwater fee would have. Can the permit holder be required to take these steps?
- In the case of this permit, would it be possible to ask the Joint Meeting of Essex and Union Counties to undertake this project for the City of Elizabeth so that the costs would be spread out

over all of Joint Meeting's customers, and not just on Elizabeth? In this way, you would have the same total costs spread out over more users, and those users would also have a higher median household income, which would improve the affordability calculation considerably.

- 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?
- **In deciding innovative funding strategies, we recommend engaging community members and the CSO Supplemental Team in these discussions.**
  - *Question:* How is the permit holder held accountable to engage community members in these discussions?

## 7.) Control Strategies

- The EPA submitted suggestions for improving the draft Guttenberg/NBMUA permit as it relates to the schedule. More specifically the EPA suggested that “Part IV.G.8 includes requirements to implement the permittee-selected CSO Controls identified in the LTCP”. This section could be improved by:
  - Including a paragraph that identifies the required numeric performance standard (minimum percentage capture – i.e., 92%) for the selected CSO controls, and
  - Including interim project deliverables for larger projects to help stay on schedule.
- NJDEP did incorporate the EPA’s advice and updated that final permit to include interim deliverables. We request that NJDEP similarly includes interim project deliverables in the drafted North Hudson Sewerage Authority permit and the subsequent permits.
- We know that the organizations such as Future City and GroundWork Elizabeth and community members in Elizabeth are very active, especially in proposing and planning green infrastructure projects. We urge you to work with the permit holder to leverage their expertise and support to accelerate implementation of green infrastructure. This is another avenue for shortening timelines toward achieving the minimum 85% capture goal. In terms of green infrastructure:
  - We appreciate that the permit holder is committed to a green infrastructure pilot program. NJDEP must ensure that the benefits from the program are maximized by accelerating timelines and by creating and implementing

maintenance plans. The permittee should work collaboratively with the community to identify locations for green infrastructure projects to maximize community benefits.

- Question: When will the identification of the green infrastructure sites be determined, if they have not been already? How long will it take for the program to make a determination around full roll-out?
- Moreover, with so many gray infrastructure projects being implemented, has the permit holder evaluated the opportunities to install green infrastructure, simultaneously, and achieve economies of scale?
- NJDEP should provide assistance to the permittee to explore conducting a green infrastructure feasibility study to determine locations with a large amount of impervious cover that might benefit from implementation of green infrastructure projects to address flooding.
  - Question: Has a professional consultant been considered for such a feasibility study?
- NJDEP should require that the permittee monitor and track the impact of green infrastructure projects implemented by the permittees on CSOs, such as the Trumbull Street Stormwater Control Project, to ensure that they are being properly installed and maintained.

## **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)

Future City Inc (Elizabeth, NJ)

Hackensack Riverkeeper (Hudson County, NJ)

NewarkDIG (Newark, NJ)

New Jersey Future (Statewide)



NY/NJ Baykeeper (Northern NJ)

Passaic River Coalition (Northern NJ)

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

Waterspirit (Statewide)

**Addendum:**

Below are SFSR detailed comments regarding public engagement that we hope will be included in the [Public Engagement Guidance Document](#) as it is finalized.

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.
- 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.

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.

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

### 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.

- 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.

#### 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.