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October 24, 2003

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DRAFT RECORD OF DECISION

PROJECT NAME : Long Term CSO Control Plan
 PROJECT MUNICIPALITY : Lowell
 PROJECT WATERSHED : Merrimack River
 EOE NUMBER : 12059
 PROJECT PROPONENT : Lowell Regional Wastewater Utility
 DATE NOTICED IN MONITOR : September 24, 2003

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62H) and Section 11.11 of the MEPA regulations (301 CMR 11.00), I have reviewed this project and propose to grant a Phase 1 Waiver (as defined below), allowing the commencement of this portion of the project prior to completion of the Final Environmental Impact Report (FEIR) for the entire project.

Project Description

The project involves the development of a long-term plan for the control and abatement of combined sewer overflows (CSOs) within the City of Lowell's sewer system. The long-term plan will focus on nine locations where CSOs discharge to the Concord and Merrimack Rivers and Beaver Brook. The project would allow the proponent to comply with an Administrative Order requiring compliance with the U.S. Environmental Protection Agency's (USEPA) National CSO Policy and the requirements of the Department of Environmental Protection (DEP).

This project was originally reviewed in the Fall of 1999 and on November 29, 1999 a Certificate was issued requiring the preparation of an EIR. Accompanying that decision, a Final Record of Decision was issued allowing Phase 1 of the project, the sewer separation of the Humphrey's Brook/Billings Street area, to proceed prior to completion of the EIR for the entire project. The Draft EIR was determined to be adequate by a Certificate issued May 24, 2002.

Jurisdiction

Jurisdiction for this project derives from the requirement for several permits from the Department of Environmental Protection, including Sewer Extension/Connection Permit(s), Water Quality Certification, and Chapter 91 Licensing. Additionally, the City of Lowell is

seeking funding from the State Revolving Fund. The provision of funding conveys jurisdiction over all aspects of the project with the potential to cause significant damage to the environment.

Waiver Request

On September 15, 2003, the proponent requested that I grant a waiver to allow a portion of the project to proceed prior to completion of the FEIR and the Long-Term Control Plan for CSO discharges. The waiver requested approval to modify the Merrimack, Tilden Street, Read Street, and Beaver Brook CSO diversion structures to increase wet weather flow capacity, and to construct proposed improvements to the grit handling facilities at the Lowell Wastewater Treatment Facility (WWTF). The project also involves installation of a new sewer along Sparks Street that will impact the 100-foot buffer zone of inland bank and bordering vegetated wetlands.

Criteria for a Phase I Waiver

Section 11.11 of the MEPA Regulations provides that the Secretary may waive any provision or requirement of 301 CMR 11.00 not specifically required by MEPA, and may impose appropriate and relevant conditions or restrictions, provided that the Secretary finds that strict compliance with the provision or requirement would: a) result in undue hardship to the proponent, unless based on delay in compliance by the proponent; and b) not serve to minimize or avoid damage to the environment.

In the case of a partial waiver of a mandatory EIR review threshold that would allow the proponent to proceed prior to preparing an EIR, this finding shall be based on one or more of the following circumstances: 1) the potential environmental impacts of the project are insignificant; 2) ample and unconstrained infrastructure and services exist to support the project; 3) the project is severable, such that the work does not require the implementation of any other future phases; and 4) the agency action on the work will contain conditions that ensure due compliance with MEPA.

Findings:

Based upon the information submitted by the proponent and after consultation with the relevant state agencies, I find that:

1. A portion of the construction associated with work at the Tilden and Beaver Brook CSO diversion structures and the WWTF will occur within the existing buildings. The new sewer proposed for Sparks Street will lie along an existing street. According to the NPC, work at these structures will not occur within or adjacent to wetlands resources.
2. Those portions of the project that will be installed outside of the buildings and public ways, but which will impact river bank and bordering vegetated wetlands, will be reviewed by

the Lowell Conservation Commission, and the DEP under Chapter 91 and possibly under Section 401 Water Quality Certification. The proponent has committed to employing best management practices during construction, such as silt fencing, silt curtains and hay bales, to minimize erosion and sedimentation impacts to the Merrimack River.

3. The project is severable. Implementation of this portion of the project does not require the implementation of future phases, nor does it interfere with potential mitigation for future phases.

4. The proposed modifications are expected to significantly reduce CSO discharges from the combined sewer system during major storm events, resulting in environmental benefits to the Merrimack River, Concord River and Beaver Brook that otherwise would not occur until completion of the full-build project. It will also improve the wet weather treatment capacity of the WWTF.

5. Elimination of the discharge will also reduce the frequency and duration of CSOs during storm events.

6. The FEIR must provide information on the impacts of each specific action identified in the Long-Term Control Plan, and must provide mitigation for each recommended action.

7. Given the close proximity of dense residential communities, the proponent should contact DEP and must participate in the Clean Air Construction Initiative. The program involves retrofitting diesel equipment with particulate filters and oxidation catalysts, and using low sulfur diesel fuel to minimize the air quality impacts of the project during the one and one-half year construction period.

Based on these findings, it is my judgment that the waiver request has merit and meets the tests established in Section 11.11 of the MEPA Regulations, and will serve to advance the interests of the Massachusetts Environmental Policy Act. Therefore, I propose to grant the waiver for this project phase, subject to the above findings. This Draft Record of Decision shall be published in the next issue of the *Environmental Monitor* for a fourteen-day comment period, after which I shall reconsider, modify, or confirm the waiver.

October 24, 2003

DATE

Ellen Roy Herzfelder, Secretary

EOEA #12059

Draft Record of Decision

October 24, 2003

Comments Received:

10/14/03 Department of Environmental Protection

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