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CERTIFICATE OF THE SECRETARY OF ENVIRONMENTAL AFFAIRS
ON THE
NOTICE OF PROJECT CHANGE
AND
PHASE I DRAFT RECORD OF DECISION

PROJECT NAME : Long-Term CSO Control Plan
PROJECT MUNICIPALITY : Lowell
PROJECT WATERSHED : Merrimack River
EOEA NUMBER : 12059
PROJECT PROPONENT : Lowell Regional Wastewater Utility
DATE NOTICED IN MONITOR : July 9, 2005

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62H) and Section 11.10 of the MEPA regulations (301 CMR 11.00), I have reviewed the Notice of Project Change (NPC) and request for a Phase I waiver submitted on this project. I propose to grant a Phase I Waiver (as defined below), allowing this phase of the project to proceed to the state permitting agencies prior to completion of the Final Environmental Impact Report (FEIR) for the entire project.

Project Description

This project involves the development of a Long-Term Combined Sewer Overflow (CSO) Control Plan for the City of Lowell's sewer system. On May 24, 2002, a Draft EIR was determined to be adequate. Two prior waiver requests were submitted for this project in order to allow specific CSO abatement projects to proceed prior to the completion of the FEIR. The U.S. Environmental Protection Agency (USEPA) issued an Administrative Order (AO) on June 13, 2003. This AO required the City of Lowell to proceed immediately with the design and construction of components of the Phase I Long-Term Control Plan prior to the completion of the FEIR and the MEPA process.

As described in the NPC, the project change consists of the following revisions to the Long-Term Control Plan (LTCP)/EIR to meet the requirements of the AO. The NPC project components include:

- Sewer separation (by the installation of new storm drains) in the Gorham Street South, Newhall Street South and Weed Street drainage areas. These three areas comprise a portion of the Warren Street CSO Basin and were included in the LTCP/EIR.
- Sewer separation in the Sixth and Emery Avenues local drainage area. This area comprises a portion of the drainage area that is a tributary to the Beaver Brook CSO Diversion Structure. This sewer separation was not included in the LTCP/EIR and is being added by this NPC.

In addition to incorporating the Sixth/Emery Avenue sewer separation into the LTCP/EIR, the proponent is requesting a waiver for the above sewer separation in all four drainage areas, so that construction of these components can begin. The only change to the previous LTCP/EIR is adding 13,000 linear feet of new storm drains in the Sixth/Emery Avenue area (approximately 164 acres of combined sewer area separated). Approximately 50 linear feet of cross-country pipe are proposed, which includes about 500 square feet (sf) of land that is altered temporarily. The sewer separation, which is being proposed, is the most appropriate solution to sewer backups and street flooding problems in this area. Sewer and storm drain separation will also help to reduce CSO discharges at the Beaver Brook CSO Diversion Structure.

Sewer separation from stormwater in these four areas will encompass an area of approximately 265 acres with 30,400 linear feet of new storm drains with about 2,000 linear feet of cross-country drains. The project will include a new 30-inch and 48-inch in diameter outfalls to River Meadow Brook, a 60-inch outfall to the Concord River, and a 60-inch outfall to Beaver Brook. The proponent has estimated that the project will reduce CSO activations to the receiving waters by approximately 157 million gallons per day (mgd) of CSO in a typical year from these combined sewer areas.

This portion of the overall project would proceed prior to the submission of the FEIR on the LTCP. The proponent is seeking funding under the Commonwealth of Massachusetts's State Revolving Fund (SRF) Program (2005). Delaying the project until the FEIR has been completed may increase the risk to public health from the continued release of CSO discharges.

Jurisdiction

The project may require a Section 401 Water Quality Certification from DEP. The proponent is seeking SRF financial assistance from DEP. It may have to comply with the U.S. Environmental Protection Agency's National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges. A U.S. Army Corps of Engineers General Permit and a Chapter 91 Waterways License from DEP for the outfalls may be required for the project. Orders of Conditions will be required from the Lowell Conservation Commission (LCC) for work within resource areas and buffer zones. The proponent may seek project approval from the LCC as a limited project. Because the proponent is seeking funding from the Commonwealth, MEPA jurisdiction extends to all aspects of the project that may have significant environmental impacts.

Waiver Request

On June 27, 2005, the proponent requested that I grant a waiver to allow this Phase I portion of the project to proceed in advance of completion of the FEIR. The waiver request was submitted with the NPC. As proposed, the project would include the design and construction of new storm drains in the Gorham Street South, Newhall Street South, Weed Street, and Sixth/Emery Avenue areas and the separation of storm and sanitary flows with four new outfalls for stormwater.

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 avoid or minimize damage to the environment.

In the case of a partial waiver of a mandatory EIR review threshold that would allow the proponent to proceed to Phase I of the project prior to preparing an EIR, this finding shall be based on one or more of the following circumstances: 1) the potential environmental impacts of Phase I sewer separation are insignificant; 2) ample and unconstrained infrastructure and services exist to support Phase I; 3) the project is severable, such that Phase I does not require the implementation of any

other future phases; and 4) the agency action on Phase I 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. Short-term construction noise and dust are expected in the areas where the project is proposed. Traffic disruptions are anticipated during construction, primarily for the construction of storm drains within streets. These impacts will be adequately mitigated and thus can be deemed insignificant.
2. Ample and unconstrained infrastructure exists. The proponent proposes to locate the storm drains within existing and proposed streets and can obtain easements or purchase any private property needed for the construction. There are approximately 2,000 linear feet of cross-country drains with no impact to wetland resource areas, except for the outfall locations. At the four new outfall locations, the proponent anticipates only minor wetland impacts. The proponent has committed to use best management practices during construction to minimize erosion and sedimentation impacts.
3. The project is severable. The sewer separation projects could proceed on their own even if the remainder of the LTCP project is not constructed. CSO abatement in other areas of the city is not affected by the implementation of these proposed projects moving forward independently.
4. The proponent must participate in the Clean Air Construction Initiative by retrofitting diesel equipment with particulate filters and oxidation catalysts and using low sulfur diesel fuel to minimize air quality impacts during construction on nearby residents.
5. DEP will condition its approvals to comply with the MEPA Certificate, its funding requirements, and the AO. The proponent must comply with the above findings. The project will contribute to the long-term CSO abatement program. It will reduce CSO discharges from the combined sewer system during major storm events to the River Meadow Brook, Concord River, Beaver Brook, and the Merrimack River that would occur until completion of the full-build LTCP project. The project will improve water quality in the receiving waters by reducing

the frequency and magnitude of untreated CSO discharges.

Based on these findings, it is my judgment that the waiver request has merit and meets the tests established in Section 11.11. Therefore, I propose to grant the Phase I waiver requested for this sewer separation, 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.

Date

Stephen R. Pritchard

cc: Nancy Baker, DEP/NERO

Comments received:

DEP/NERO, 7/29/05

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SRP/WTG