



The Commonwealth of Massachusetts

Executive Office of Environmental Affairs

100 Cambridge Street, Suite 900

Boston, MA 02114

Deval Patrick
GOVERNOR

Timothy Murray
LIEUTENANT GOVERNOR

Ian Bowles
SECRETARY

Tel: (617) 626-1000
Fax: (617) 626-1181
<http://www.mass.gov/envir>

January 22, 2007

DRAFT RECORD OF DECISION

PROJECT NAME : Long-Term Control Plan
PROJECT MUNICIPALITY : Lowell
PROJECT WATERSHED : Merrimack
EOEA NUMBER : 12059
PROJECT PROPONENT : City of Lowell
DATE NOTICED IN MONITOR : December 23, 2006

Pursuant to the Massachusetts Environmental Policy Act (G. L. c. 30, ss. 61-62H) and Section 11.10 of the MEPA regulations (301 CMR 11.00), I hereby propose to **grant** a Phase I Waiver to allow an initial phase of the project to proceed, pending the preparation of a Draft Environmental Impact Report (DEIR) for the project.

PROJECT DESCRIPTION

The City of Lowell's existing sewer system provides wastewater collection and treatment to sanitary and stormwater flows from the City of Lowell. The system is comprised of approximately 220 miles of sanitary and combined sewers, pumping stations, and flood control pumping stations, 9 Combined Sewer Overflow structures (CSOs), 4 main interceptors, and a Waste Water Treatment Facility (WWTF) with a designed secondary treatment capacity of 52 million gallons per day (mgd). Seven CSOs discharge to the Merrimack River, 1 CSO discharges to the Concord River, and 1 CSO discharges to Beaver Brook during storm events. CSO discharges from the City of Lowell continue to cause violations of water quality standards even in the absence of other pollutant sources and discharges. The City of Lowell currently discharges a total of 352 million gallons per year (mgpy) of untreated combined sewer overflow to the Merrimack River (94.5 mgpy), the Concord River (202 mgpy), and to Beaver Brook (55 mgpy).

The project involves the development of a Long-Term Control Plan (LTCP) Control plan

to address the impacts associated with the control and abatement of the City of Lowell's combined sewer overflows (CSO) within the City of Lowell's sewer system. The LTCP will focus on nine locations where CSOs discharge to the Concord and Merrimack Rivers and Beaver Brook. The City of Lowell entered into a 1988 Consent Decree with the United States Environmental Protection Agency (USEPA) and the Department of Environmental Protection (MassDEP) which requires Lowell to abate its CSO discharges and to bring the City's combined sewer system into compliance with the City of Lowell's National Pollutant Discharge Elimination System Permit. The USEPA issued an Administrative Order (AO) to the City of Lowell in June 2003 to proceed immediately with the design and construction of the components of the LTCP including the sewer separation of portions of the combined sewer system in the Warren Street CSO drainage basin. This NPC project would enable the proponent to comply with USEPA's AO requirements.

6th Notice of Project Change (NPC)

As described in this NPC submittal, the proposed sewer separation project involves the construction of new stormwater drains and sewer pipe (Sewer Separation) in the Wellman Street and Industrial Avenue drainage area which is located within the 175-acre Warren Street CSO Basin. This Warren Street CSO Basin Sewer Separation work was presented as a component of the City of Lowell's overall Long Term Control Plan/EIR submittal to the MEPA Office in October 1999. This City of Lowell proposes to separate approximately of the existing combined sewer/stormwater system by installing approximately 19,000 linear feet (LF) of new drain pipe and sewer pipe mostly within the City's existing roadway right-of-ways. A portion of the proposed new drainage system will involve the cross-country construction of approximately 1,650 lf of drain pipe (60"- 66" diameter pipe) to convey stormwater flows from the drainage basin in a southeasterly direction to a new headwall outfall structure that will discharge directly to the River Meadow Brook. The new sewer system will also involve the cross-country construction of approximately 1,600 lf of new sewer pipe from Wellman Street north to Newell Street.

According to the information provided in the NPC submittal, a small segment of the City's proposed sewer separation project (approximately 1,600 lf of new 12" sewer pipe) will be privately constructed as part of a redevelopment proposal (EOEA #13943) for a 26.83-acre parcel of property located at 790 Chelmsford Street in Lowell.

Phase I Waiver Request:

Pursuant to Section 11.11 of the MEPA Regulations, the proponent is requesting a Phase I Waiver to construct new stormwater drains and sewer pipe (Sewer Separation) in the Wellman Street and Industrial Avenue drainage area which is located within the 175-acre Warren Street CSO Basin. This Warren Street CSO Basin Sewer Separation work was presented as a component of the City of Lowell's overall Long Term Control Plan/EIR submittal to the MEPA Office in October 1999. This City of Lowell proposes to separate approximately of the existing combined sewer/stormwater system by installing approximately 19,000 linear feet (LF) of new drain pipe and sewer pipe mostly within the City's existing roadway right-of-ways. A portion of the proposed new drainage system will involve the cross-country construction of approximately 1,650 lf of drain pipe (60"-66" diameter pipe) to convey stormwater flows from the drainage basin in a southeasterly direction to a new headwall outfall structure that will discharge directly to the River Meadow Brook. The new sewer system will also involve the cross-country construction of approximately 1,600 lf of new sewer pipe from Wellman Street north to Newell Street. According to the information provided in the NPC submittal, a small segment of the City's proposed sewer separation project (approximately 1,600 lf of new 12" sewer pipe) will be privately constructed as part of a redevelopment proposal (EOEA #13943) for a 26.83-acre parcel of property located at 790 Chelmsford Street in Lowell.

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 an undue hardship for 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 will allow the proponent to proceed with phase one of the project prior to preparing an EIR, the Secretary, at a minimum, must base this finding on a determination that:

1. the potential impacts of phase one of the project, taken alone, are insignificant;
 2. ample and unconstrained infrastructure facilities and services exist to support phase one of the project;
 3. the project is severable, such that phase one does not require the implementation of any other future phase of the project or restrict the means by which potential environmental impacts from any other phase of the project may be avoided, minimized or mitigated; and
 4. the agency action on phase one will contain terms such as a condition or restriction in a permit, contract or other relevant document approving or allowing the agency action, or other evidence satisfactory to the Secretary, so as to ensure due compliance with MEPA and 301 CMR 11.00 prior to commencement of any other phase of the project.
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Findings

I have carefully reviewed the Phase I Waiver Request, supporting documentation, and written comments.

1. As described by the proponent, this phase of the City of Lowell's Long Term Control Plan project will involve the separation of the City's existing combined sewer/stormwater system by installing approximately 19,000 linear feet (LF) of new drain pipe and sewer pipe mostly within the City's existing roadway right-of-ways located in the Wellman Street and Industrial Avenue drainage area of the 175-acre Warren Street CSO Basin.. The project will involve construction of approximately 1,600 linear foot (lf) of cross-country extension of the City of Lowell's 12" sewer main and approximately 1,650 lf of new cross-country 60" stormwater drain pipe, and will result in minor impacts to environmental resource areas including; bordering vegetated wetlands (BVW), Inland Bank, Riverfront Area and Bordering Land Subject to Flooding. The City's construction of the cross-country portion of the proposed new 60" drain line and new 66" River Meadow Brook headwall outfall structure will result in impacts to approximately 20-40 lf of inland bank, 1,000 sf of Riverfront Area and Bordering Land Subject to flooding.

A segment of this cross-country sewer construction is located on a 26.83-acre privately owned parcel of property (790 Chelmsford Street) which contains BVW resource areas. The construction of this cross-country segment of sewer pipe may impact a small amount of wetland buffer area. I note that the proponent for the Lowell Connector Park Redevelopment project has committed to privately construct this cross-country segment of sewer pipe as part of the redevelopment project proposal (EOEA #13943).

2. According to the proponent, the project has been designed to meet DEP's Stormwater Management Policy standards and practices. The proponent will need to employ appropriate erosion and sedimentation control measures during project construction.
3. The project will require a Sewer Extension Permit from the Department of Environmental Protection (MassDEP). I anticipate that MassDEP's permit review process will contain terms such as a condition or restriction so as to ensure due compliance with MEPA and 301 CMR 11.00.

Based on these findings, it is my judgment that the phase one waiver request does have merit, does meet the tests established in 301 CMR 11.11, and will serve to advance the interests of the Massachusetts Environmental Policy Act. Therefore, I propose to grant the Phase I Waiver subject to the aforementioned findings and conditions. This Draft Record of Decision (DROD) 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.

January 22, 2007

DATE

Ian A. Bowles, Secretary

Comments received:

01/12/07 Northern Middlesex Council of Governments (NMCOG)
01/12/07 Massachusetts Department of Environmental Protection – NERO
01/16/07 Camp, Dresser & McKee, Inc.

6th NPC/DROD #12059
IAB/NCZ/ncz