



June 3, 2011

Michael Bobinsky
City of Portland, Public Services Department
55 Portland Street
Portland, Maine 04101

Re: City of Portland CSO Abatement Implementation Schedule

Dear Mike,

We write to you in reference to the City Council's consideration of various alternatives for its Tier III combined sewer overflow (CSO) abatement implementation plan (CSO abatement). We understand that the City is currently evaluating three alternatives—a 15-year schedule, a 20-year schedule, and a 25-year schedule. (We appreciate that a fourth alternative with a 30-year schedule is no longer under consideration.) We also understand that the City favors a 25-year implementation schedule because it will defray the financial costs of Tier III to the City and associated burdens on sewer ratepayers over a longer period of time. While we appreciate that the project is expensive and will have more than a nominal effect on ratepayer bills, and that you and your staff have made considerable and necessary progress over the last 4 years on the Tier II work, given the protracted history of this project and its long-term financial projections, we cannot support a Tier III implementation schedule exceeding 15 years.

CSOs violate both federal law (the Clean Water Act) and state law. 38 M.R.S.A. § 413 (prohibiting the discharge of pollutants without a license). Prior to 1991, the City was operating its CSO system in violation of state and federal law. To resolve its ongoing violations, the City entered into a Consent Agreement with the Maine Board of Environmental Protection in 1991 (Consent Agreement). Pursuant to the Agreement, the City committed to, among other things, developing a Sewer System Master Plan (known as the Long Term Control Plan) that details the steps the City would take to reduce and abate CSO discharges and set forth an implementation schedule for the proposed projects. The City submitted an initial CSO Abatement Master Plan to the Maine Department of Environmental Protection (Department) in December 1993. In response to the Department's request for more detailed information, the City submitted a Five Year CSO Abatement Plan and Schedule in 1997 for the years 1997 through 2001. The Department and U.S. Environmental Protection Agency approved both the 1993 CSO Master Plan and the Five Year CSO Abatement Plan and Schedule.

The initial implementation schedule for CSO abatement set forth in the initial Master Plan was a 15-year schedule. The Master Plan called for abating CSO activity in connection with 39 CSOs and eliminating 33 of those CSOs by the end of the 15-year period, or by the end of 2008. In 2003, the Department approved an 8-year plan for completing portions of that Master Plan, known as the Tier II Projects. However, the Tier II Plan is now scheduled for completion in

2013, five years later than the initial completion date for the entire CSO abatement project, as set forth in the 1993 Master Plan. The City is now proposing to extend the completion date of the CSO abatement project even further into the future. While we understand and appreciate the challenges of this work and the recent efforts of the City to make progress, and while we agree that further time will be required, we cannot support a decision to extend that time any further than 15 years.

The three potential Tier III implementation schedules being considered by the City - 15 years, 20 years, and 25 years - would respectively extend completion of this project to 2028, 2033, and 2038. Thus, selecting a 15-year implementation plan would result in the project potentially wrapping up, at best, 20 years later than the original 2008 date. We are sensitive to the financial costs of this project to the City and the increased financial burden it places on users through sewer rates. However, financial burdens borne by the City were never intended to be and should not be the only consideration in the analysis. Rather, the Consent Agreement orders the City to give due consideration to water quality impacts when developing an implementation schedule. Consent Agreement, ¶ 5. The ongoing discharge of sewage and chemicals and other pollutants from stormwater runoff that occurs during storm events continues to impair the water quality of the CSO receiving waters (i.e., Casco Bay, Back Cove, Portland Harbor, Fore River, and Capisic Brook). Further extending completion of the CSO abatement project does not give due consideration to water quality. Nor, given certain uses (e.g., shellfishing in Portland Harbor and contact recreation at East End Beach), can extension of this project be supported from a public health standpoint.

While the Conservation Law Foundation and Friends of Casco Bay understand the financial difficulties faced by the City with respect to the CSO abatement project, analysis of the projected cost figures for the potential life of each alternative support choosing the 15-year alternative. Although projected total wastewater expenses and sewer rates increase more quickly under the 15-year schedule than under the 20-year or 25-year schedules, at all times rates under the 15-year schedule are projected to remain under the 2.0% benchmark for household affordability consequences.

Perhaps more significantly, as demonstrated by the March 2011 presentation, once rates under the 15-year plan reach their maximum level around 2030, those rates will then begin decreasing whereas rates under the 20 and 25-year plans will continue increasing past 2030. It is unclear why the May 2011 power point, which evaluates the 15, 20, and 25-year implementation schedule alternatives, truncates the cost lines for each alternative once they reach a maximum rate. (To that end, the continued lack of any total project costs over the 3 scenarios is problematic and those figures should be provided.) By truncating those lines, the May 2011 power point fails to depict the decreasing costs realized under the 15-year plan after 2030. The absence of that information precludes a meaningful comparison of projected rates under each proposed schedule for the period from 2030 to 2040, which is vital to informed decision-making.



Given the protracted life of this project, which was supposed to be completed three years ago, and considerations of water quality and the associated public interest, CLF and FOCB strongly urge the City to adopt, at a maximum, the 15-year alternative for the Tier III implementation schedule.

Thank you for consideration of these comments.

Very truly yours,

Sean Mahoney
Vice President and Director
CLF Maine

Joe Payne
Casco Baykeeper
Friends of Casco Bay