



**Comments on
Draft NJPDES CSO Permits—City of Elizabeth and Joint
Meeting of Essex and Union Counties**

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**Patricia Gardner, Assistant Commissioner, Water Resource Management, NJDEP
Susan Rosenwinkle, Bureau Chief, NJDEP
Nancy Kempel, Dwayne Kobesky, Joe Mannick, Marcus Roorda**

Dear Assistant Commissioner Gardner and Bureau Chief Rosenwinkle,

Thank you to the New Jersey Department of Environmental Protection (NJDEP, or the Department) for the opportunity to provide comments on the draft New Jersey Pollutant Discharge Elimination System (NJPDES) combined sewer overflow (CSO) permits issued to the City of Elizabeth (NJPDES Permit No. NJ0108782) and the Joint Meeting of Essex and Union Counties (NJPDES Permit No. NJ0024741). We appreciate the opportunity to provide comments we hope will allow for increased public engagement around CSOs, and can be a step towards improving New Jersey's water quality.

New Jersey Future (NJF) appreciates NJDEP's hard work on drafting these permits and supports requirements to reduce combined sewer discharge to improve water quality in New Jersey. Addressing water quality issues by **1) reducing flooding and CSO discharges, and 2) ensuring the proper maintenance of infrastructure** are important tools to protect public health, the environment, and economic redevelopment. We ask that this final permit, and all future CSO permits, have clear conditions and requirements reflecting the highest standards for design of control measures, implementation, and public engagement.

Here are some areas we think need clarification, and our recommendations.

Green Infrastructure/Control Measures:

NJF regards green infrastructure as an integral stormwater management practice and an essential climate-resilient solution that has benefits for CSO volume reduction and water quality improvement. CSO control alternatives, including green infrastructure, are important components in achieving 85% capture of combined sewage collected during wet weather. Our recommendations include:

- NJDEP should prioritize controls and projects based on the impact of CSO volume reduction and water quality improvements, including well-designed green infrastructure.

- The Department should provide additional guidance for permittees to ensure that high-impact green infrastructure is considered as part of gray infrastructure projects to address both solutions simultaneously and achieve economies of scale while ensuring affordability to ratepayers.
- NJDEP should provide assistance for the permittee to explore conducting a green infrastructure feasibility study to determine locations with a large amount of impervious cover that will benefit from implementation of green infrastructure projects to address flooding.
- NJDEP must ensure that the benefit from the green infrastructure pilot program included in this permit be maximized by accelerating timelines and creating maintenance plans. The permittee should work collaboratively with the community and with community-based organizations, such as GroundWork Elizabeth, to identify locations for green infrastructure projects to maximize community benefit.
- 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.
- NJDEP must include interim project deliverables in this permit and subsequent permits.
- To improve water quality, NJDEP should encourage the permittee to shorten project timelines to achieve 85% capture in the City of Elizabeth, as prolonged timelines will further impair the Elizabeth River, Arthur Kill, and Newark Bay. 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.

Climate Change/Resilience:

As New Jersey experiences the impacts of climate change, it is imperative to plan ahead in order to reduce flooding issues and create climate resilient communities. It is essential to use updated and accurate data to protect the environment, infrastructure, public health, and community members. As such:

- NJDEP should provide clear guidance on how the New Jersey Protection Against Climate Threats (NJ PACT) rules will be incorporated into this permit and future permits.
- Future hydrologic and hydraulic modeling should be updated, [based on precipitation data and modeling](#) from the Northeast Regional Climate Center released in November 2021.
- NJDEP should provide guidance to permittees on how to use the newly released [Extreme Precipitation Projection Tool](#), which projects increased precipitation intensity due to climate change.
- The Department should require the permittee to document and report climate change impacts on CSO removals.

Funding/Affordability:

This permit should not extend the timeline for requirements to reduce rate increases, as this will extend the time by which the community faces environmental and public health issues. We ask

for the permittee to shorten the 2045 project completion timeline so that the project benefits are demonstrated within ten years. Given that the LTCP was crafted prior to the availability of federal water infrastructure funding through the Bipartisan Infrastructure Law and American Rescue Plan Act, we suggest that NJDEP, the City of Elizabeth, and the Joint Meeting of Essex and Union Counties revisit financing of these critical projects and find ways to shorten the timeline while maintaining affordability. This once-in-a-generation funding opportunity can reduce the debt the permittee would need to take on to reduce the timeline, and would not place the cost onto ratepayers. Recommendations include:

- NJDEP provides specificity in its guidance to permit holders around other cost-effective, innovative financing opportunities to help fund this work equitably, such as Water Bank low-interest loan programs, utilizing more green infrastructure, grants, and more.
- NJDEP should incorporate a review of the permittee's financial capability analysis, and the permittee should clarify how affordability for lower income households is reflected in the analysis.
- We recommend NJDEP encourage 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, rather than just customers of Elizabeth. The same total costs would be spread out over more users, and those users would have a higher median household income. This will improve the affordability calculation considerably.

In February 2023, the Environmental Protection Agency (EPA) released the final 2023 [Clean Water Act Financial Capability Assessment Guide](#), which was created to help communities “seek ways to minimize financial impacts while ensuring residents also enjoy the benefits of infrastructure investments and improved water quality.” This EPA guidance encourages municipalities to integrate stormwater management practices, such as green infrastructure, to reach compliance set forth in the Clean Water Act. To ensure that rate-payers are not affected by the impacts of longer schedules while minimizing financial impacts on lower income households, NJF asks that NJDEP and permittees for this permit and subsequent CSO permits, follow the EPA's 2023 Clean Water Act Financial Capability Assessment Guidance.

- NJF recognizes that it is vital to consider the financial impact on lower income rate-payers and overburdened households. NJF recommends that a review of the permit holder's financial capability analysis, including interest and inflation rates and related calculations be incorporated into the permit and clarify how affordability for lower income households is reflected.

Public Engagement, Environmental Justice, and Public Notification

NJF appreciates the aspects of the permit that require public engagement, such as the requirement of hiring a Long Term Control Plan (LTCP) Coordinator, continuing a CSO Supplemental Team and subsequent team meetings, and the creation of a website with public notifications. Thank you to NJDEP for drafting a supplemental guidance regarding public engagement. We encourage that a diverse group of stakeholders are involved in the creation and review process of this resource, including the Supplemental Teams and community organizations. Engaging and informing the community are important tools towards reducing or

eliminating CSOs, which is why we ask NJDEP to strengthen requirements related to environmental justice, accessibility, and inclusive multilingual meetings and resources.

Some suggestions that we would like clarified in the public engagement guidance document include:

- The Long Term Control Plan Coordinator requirement is a positive shift toward transparency. NJDEP should provide clear guidance on training and onboarding so that this position is consistent and transparent across all permit holders.
- We support the requirement of permittees to hold Supplemental Team meetings that require permittees to notify the Department of Environmental Justice 30 days in advance of a meeting, in order to include overburdened communities. Holding a combination of virtual and in-person meetings that are accessible must be a requirement and should include all community members. Hosting these meetings in different and diverse neighborhoods will allow for easier access. Regular meetings that provide a consistent and clearly defined feedback loop with the public where they are able to provide input as projects are implemented, and see how or if input is incorporated into final decisions will make the implementation process more successful. Recommendations include:
 - Ensuring that overburdened communities are fairly represented on Supplemental Teams.
 - Requiring a minimum number of meetings yearly or quarterly to provide updates to the CSO Supplemental Team and the public to maintain transparency, consistency, and engagement.
 - Include a minimum of one CSO Supplemental Team meeting per year, outside of implementation meetings to ensure that members stay active and engaged with the permittee throughout the lifecycle of the LTCP.
 - Clearly define accessibility of meetings in this permit, including how documents will be translated, into what languages, and where they will be posted.
 - 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 and not 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.
- Sewage back-ups may expose community members to *Escherichia coli* (*E. coli*) and other harmful bacteria and chemicals. Since this permit will not completely eliminate all flooding and water quality issues, it is important that community members are notified in advance of possible flooding events. We recommend that NJDEP require permittees to create alerts through a municipal notification system, similar to those used for emergency situations, in advance of potential sewer back-ups.

Overall, New Jersey Future supports this draft permit as it will improve water quality and reduce combined sewer overflows. However, we ask NJDEP to please ensure the shortest timeline practicable for implementation and to strengthen requirements as recommended above, and

where that is not possible, to provide permittees separate guidance documents for the highest design standards, implementation, and public engagement. We appreciate this opportunity to provide comments on the draft NJPDES CSO permits issued to the City of Elizabeth and the Joint Meeting of Essex and Union Counties.