



April 14, 2014

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**Re: Draft Proposed Long Term Control Plan Modification for Green Infrastructure
(Jan. 2014)**

These comments are submitted on behalf of Public Employees for Environmental Responsibility (PEER). PEER is committed to enforcing clean water protections for the Anacostia River, Potomac River, and Rock Creek.

As detailed below, PEER has substantial concerns with the way DC Water's draft proposal addresses its obligations in the Long Term Control Plan (LTCP). Further, PEER supports the concept of using green infrastructure (GI) in the LTCP. However as currently structured, we have severe doubts about the ability of your draft proposed modification to the LTCP for substantially reducing combined sewer overflows (CSOs) in the District of Columbia.

Introduction: In 2001 a broad coalition of clean water advocacy groups urged D.C. Water and the U.S. Environmental Protection Agency (EPA) to include a robust green component in the LTCP, including extensive green infrastructure, increased tree canopy, aggressive water conservation and reuse, and other cost-effective inflow controls that would reduce the burden on the entire system. The coalition also strongly recommended that D.C. Water develop a progressively-priced rate structure that would include incentives for conservation and mitigation, and place a proportionate share of the costs of cleanup on those sectors that contribute the most to the problem. Our comments build on the work of these clean water advocacy groups.

I. D.C. Plan Perpetuates Illegal and Dangerous Levels of Pollution

Even after its completion, the existing LTCP predicts that millions of gallons of CSOs will be discharged into the Anacostia River and the Potomac River, with D.C. Water's proposal *at best* merely matching the performance of this currently inadequate LTCP.

In order to justify changing the tunnel capacity requirements in the consent decree, D.C. Water must demonstrate that the modified plan will achieve equivalent or better performance at

reducing the incidence and volume of CSOs as compared to the required minimum tunnel capacity.

These delayed reductions affect some of the most heavily used aquatic recreation areas in the District. With each overflow from the District's combined sewer system, harmful microbial pathogens, including various types of bacteria, viruses, and parasites like fecal coliform, E. coli, enterococci, giardia, cryptosporidium, and shigella, are released directly into the Potomac River.

At the same time, the proposal greatly overstates the need for a drawn-out schedule to implement a well-conceived GI retrofit plan. The proposal also inappropriately downplays health and environmental impacts of deferring the schedule.

While D.C. Water's public presentations have highlighted the potential early reductions that can be achieved with GI, D.C. Water provides virtually no information about the much larger proportion of CSOs for which cleanup will be delayed. Further, there is no indication that D.C. Water has studied the public health risks associated with this delay. Given the widespread and frequent uses of the River by local residents and visitors, such an analysis should be provided to allow EPA and the public to make a fully informed assessment of the proposal.

Before advancing this proposal, D.C. Water must pause to assess and quantify all potential human health risks associated with the proposed seven-year delay for implementing the full LTCP for the Potomac River.

II. Green Infrastructure May Be a Red Herring

While we support the concept of using green infrastructure (GI) in the LTCP that support is conditioned on showing that GI would have *at least* a one-for-one exchange of GI for tunnel capacity in that:

- Any modification of the LTCP require performance criteria that ensure the GI plan will achieve equal or greater reductions in the volume and incidence of CSOs;
- D.C. Water remains responsible on a continuous basis for proper operation and maintenance of all GI installed under the LTCP; and
- The current schedule for achieving predicted CSO reductions by 2025 deadline is maintained.

As currently drafted the proposal does not meet these conditions.

III. Delayed Schedule Is Unjustified and Detrimental

D.C. Water's new request for delay makes no sense at all from a technical perspective, and can only serve to sacrifice water quality and perpetuate public health risks for an additional seven years.

The request to extend the schedule for all Potomac River and Piney Branch projects appears to be driven solely by financial concerns, and not by any reason resulting from substituting GI for tunnel capacity. While PEER is certainly mindful of the impact of potential rate increases on the

District's most financially vulnerable households, we urge D.C. Water to redouble its effort to find ways of funding the LTCP that are equitable and affordable, and at the same time, does not sacrifice water quality and public health risks.

PEER points out that in order to mitigate and spread out potential rate impacts, the original LTCP schedule allowed far more time to complete the tunnels than was strictly necessary from a purely engineering perspective. We therefore urge D.C. Water to look at a broader range of options for attaining affordability for lower-income households, including (a) securing additional funding from the Virginia and Maryland suburbs that send sewage to Blue Plains, (b) securing more federal funding, (c) expanding the Customer Assistance Program to identify tenants of multi-family buildings that do not receive bills from D.C. Water but may be directly impacted by rising bills, and (d) adopting revised rate structures that allocate costs more efficiently and equitably among various customer sectors.

IV. Green Infrastructure Spending Cap Undermines Its Efficacy

The GI spending cap proposal is unacceptable, as is the related proposal to avoid water quality-based performance criteria. This approach does not meet the terms for modification of the consent decree, and flouts EPA guidance.

The 2010 renewed NPDES permit that governs the Blue Plains wastewater treatment plant and combined sewer system incorporates the selected controls in the LTCP by reference, requiring D.C. Water to effectively operate and maintain the CSO controls identified in the LTCP and any supplements thereto.

Replacing the current performance-based controls with a GI spending cap would substantially weaken this requirement, and would be a clear violation of the Clean Water Act. Any consent decree modifications that substitute current tunnel-capacity performance requirements that include a spending cap for GI would be contrary to the Clean Water Act, arbitrary, and inequitable.

V. Green Infrastructure Plan Is Disturbingly Vague

Any modified consent decree must include a detailed plan for providing operation and maintenance on a continuous basis for all GI installations. The proposal proffers the unacceptable recommendation that D.C. Water not develop "maintenance standards and responsibilities" for GI until after a modification of the LTCP and consent decree schedule. This would leave no one in particular expressly accountable for the maintenance and operational needs of GI projects and facilities.

As the consent decree includes some requirements for operation and the LTCP analysis included cost projections for operations and maintenance going out to at least 2038, there is no serious question that D.C. Water is obligated to properly operate and maintain the tunnel system under the current consent decree, and there should be no less assurance for any GI plan that offsets tunnel capacity.

D.C. Water's "desktop" GI screening analysis merely claims that *some* type of GI plan could be deployed *somewhere* in the relevant sewersheds to reduce stormwater burdens. This GI screening analysis lacks sufficient detail needed to justify a modification of the consent decree.

In order to comply with the Clean Water Act and to obtain approval for a modification of the specified control measures in the 2005 consent decree, D.C. Water must provide a detailed GI plan that is supported by a basin-specific analysis of specific control measures, appropriate locations, and needs for continuous operation and maintenance that will achieve the same or greater reductions as the current LTCP.

Indeed, D.C. Water has simply presented the same screening analysis that it presented to EPA in July 2012 for purposes of gaining EPA's support for *demonstration* projects. EPA has published guidance setting forth the detailed demonstrations that would need to be included when proposing to substitute GI controls for grey infrastructure controls in existing consent decrees. See EPA, *Green Infrastructure Permitting and Enforcement Series: Supplement 2; Consent Decree Language Addressing Green for Grey Substitutions*.¹

In summary, for the above reasons, PEER cannot support D.C. Water's proposal as currently conceived. PEER remains open to discussing ways in which the proposal can be modified in a manner that we could support.

Sincerely,

Jeff Ruch
Executive Director

¹ Available at <http://water.epa.gov/infrastructure/greeninfrastructure/upload/EPA-Green-Infrastructure-Supplement-2-061512-PJ.pdf> (site last visited 4/4/14). Appendix 4 to the NEORS consent decree can also be found online at http://www.neorsd.org/1_Library.php?SOURCE=library/08-Appendix-4-as-filed.pdf&a=download_file&LIBRARY_RECORD_ID=4999 (site last visited 4/4/14).