

## WESTCHESTER CREEK PUBLIC COMMENT RESPONSE SUMMARY

### Public Letters Received:

1. S.W.I.M. Coalition, October 30, 2015. Westchester Creek CSO Long Term Control Plan; SWIM Coalition Comments.

### 1. The LTCP focuses on seasonal water quality attainment over year round attainment.

#### Response:

- *In accordance with direction from DEC, the LTCPs assess the recommended plan against attainment of primary contact WQ criteria during the recreational season (May 1 to October 31), the time period in which most water recreational uses occur. In addition, the LTCP assesses attainment of primary contact WQ criteria during the annual period. Furthermore, the LTCPs analyze the “Time to Recover” to determine how long after the end of a rainfall a waterbody will recover and return to concentrations less than 1000 cfu/100 ml for fecal coliform. These assessments are presented in Section 8 of the April 2015 CSO LTCP for Westchester Creek Supplemental Documentation.*

### 2. Update pathogen water quality criteria to meet EPA’s 2012 recommended recreational water quality criteria (RWQC).

#### Response:

- *Under the NYS Environmental Conservation Law, DEC is the entity with the statutory authority to promulgate water quality standards, such as the RWQC. To date, DEC has not adopted that standard.*
- *DEP evaluated compliance with EPA’s 2012 recommended recreational water quality criteria (RWQC) for Westchester Creek in the LTCP. These evaluations are presented in Sections 6 and 8 of the April 2015 CSO LTCP for Westchester Creek Supplemental Documentation.*

### 3. Evaluate LTCPs based on the recently updated by NYSDEC Class I water quality standard (Class I and Class SD must attain water quality suitable for primary contact recreation and protection of aquatic life).

#### Response:

- *All LTCPs, including the Westchester Creek LTCP, evaluated attainment of the fecal coliform criterion of a monthly geometric mean of 200 cfu/100mL and applicable DO WQS, which reflects DEC’s current WQS for these waterbodies. These evaluations are presented in Sections 6 and 8 of the April 2015 CSO LTCP for Westchester Creek Supplemental Documentation.*

### 4. Recovery time and wet-weather advisories should be more fully vetted with recreational users of the City’s water, to ensure the analysis reflects the realities of how people actually use the waterways and use the best communication strategies to inform people of advisories.

Response:

- *The target for time to recover was developed in coordination with DEC. DEP's wet weather advisories comply with DEC regulations.*

**5. The LTCP asserts that there are no “sensitive areas” because there are no “primary contact” uses of the waterbody. Recreation such as kayaking and canoeing involves a substantial likelihood of significant contact with the water.**

Response:

- *Under 21 NYCRR 550.2(d), Primary Contact Recreation is defined as “activity that involves significant ingestion risk, including but not limited to wading, swimming, diving, surfing and water skiing”. Secondary contact recreation is defined as “activity in which the probability of significant contact with the water or water ingestion is minimal, including but not limited to boating, fishing, and shoreline recreational activity involving limited contact with surface waters.”*

**6. Use Attainability Analysis (UAA) is insufficient.**

Response:

- *The UAA submitted with the Westchester Creek LTCP, for DEC's consideration, complies with applicable DEC regulations. The UAA is included as Attachment 4 (Revised Appendix D) of the April 2015 CSO LTCP for Westchester Creek Supplemental Documentation.*

**7. Coordination with MS4 and TMDL programs and reduction of other pollution sources.**

Response:

- *DEP's MS4 and CSO LTCP's programs are closely coordinated with EPA and DEC's TMDL programs.*

**8. The LTCP should maximize the use of cost-effective green infrastructure (GI) to reduce CSOs.**

Response:

- *DEP's strategy is to utilize feasible GI where it provides the highest benefits for water quality and other co-benefits for both public and private property retrofits in a cost effective manner.*

**9. LTCP proposes no new improvements; continuing water quality impairment.**

Response:

- *DEP is currently investing over \$80M to reduce CSOs into Westchester Creek through regulator improvements and an interceptor relief project. This investment will result in a reduction in CSO load and volume. Based on the April 2015 CSO LTCP for Westchester Creek Supplemental Documentation (Section 8), the plan is projected to meet the primary contact numerical criteria on a recreational season basis at the four sampling stations in the Creek.*
- *Post construction compliance monitoring will be performed to assess and verify any resulting water quality improvements.*
- *The summary of recommendations for the Westchester Creek LTCP identified that outfall HP-011 would be evaluated under the Bronx River LTCP. The Bronx River LTCP was submitted to DEC June 30, 2015 and was approved by DEC on March 7, 2017. The summary of*

*recommendations for the Bronx River LTCP included floatables control and a bending weir at outfall HP-011.*

**10. LTCP should provide analysis on other pollutants that may contribute to dissolved oxygen impairment**

Response:

- *Part of the work of the LTCP is to identify sources of pollution causing non-attainment of water quality standards. In accordance with the CSO Order and EPA CSO policy, the CSO LTCP evaluates alternatives to address the impacts of CSOs. The LTCP quantifies the relative biochemical oxygen demand (BOD) loads from CSO and stormwater. However, determining the causes of dissolved oxygen impairment is often complicated by the unique hydrodynamic features of a waterbody. Factors such as the possible lack of adequate tidal flushing, historic deposition of solids from multiple sources including non-CSO sources, and eutrophication due to excess nutrients will affect dissolved oxygen levels.*

**11. LTCP should explain impact on waterbodies outside the Westchester Creek**

Response:

- *The collection system model that was used to establish the baseline CSO flows and volumes and to assess CSO control alternatives for the Westchester Creek LTCP covers the entire area tributary to the Hunts Point WWTP, and includes the CSOs in the Hutchinson River, Bronx River, and along the East River. Therefore, any impacts that projects in the Westchester Creek system would have on CSO discharges to those other waterbodies would be accounted for in the model. Similarly, the receiving water model for Westchester Creek includes the East River and other tributaries. Because of the sequential schedule for completion of the various LTCPs specified in the CSO Order, the cumulative projected impact of the individual LTCPs on water quality will be incorporated into the baseline for the collection system and receiving water models for the Citywide/Open Waters LTCP. At that point, recommended plans will have been established for all of the other waterbodies, and the projected cumulative effects on water quality can more appropriately be determined.*

**12. Comments on Affordability Analysis**

- a. **The LTCP takes the current rate structure as a given, rather than considering alternative rate structures that could generate more revenue without imposing unfair burdens on low-income ratepayers. As one example, a stormwater fee based on impervious area would tend to distribute burdens away from low-income residents, who typically live in multi-family buildings with a low per-household impervious footprint. Other means to limit the burden on low-income residents, while still generating additional revenue, include expanding low-income relief programs; instituting higher rates for larger, non-residential customers; or adopting more equitable and efficient rate designs (such as seasonal or tiered rates for water – which the majority of water suppliers in a nationwide survey now employ).**

Response:

- *The NYC Water Board is responsible for setting water and wastewater rates sufficient to cover the costs of operating NYC's water supply and wastewater systems. The NYC Municipal Water Finance Authority (MWFA) issues revenue bonds to finance NYC's water and wastewater capital programs. MWFA's revenue bond ratings are high due to prudent fiscal management*

*and the legal structure of the system. The strong bond ratings have allowed for lower borrowing costs, which have allowed financing of the system that is spread across several decades. DEP will be studying potential changes to the rate structure, including the feasibility of a separate stormwater fee. The impacts of potential rate structure changes on different customer classes will need to be assessed, as well as the legality and potential impact on bond ratings and borrowing costs. Any rate structure change will also have to be compatible with DEP's billing system, which is currently being overhauled.*

*DEP continues to maintain and expand programs for customer assistance. The Safety Net Referral Program uses an existing network of NYC agency and not-for-profit programs to help customers with financial counseling, low-cost loans, and legal services. The Water Debt Assistance Program (WDAP) provides temporary water debt relief for qualified property owners who are at risk of mortgage foreclosure. While water and wastewater charges are a lien on the property served, and NYC has the authority to sell these liens to a third party, or lienholder, in a process called a lien sale, DEP offers payment plans for customers who may have difficulty paying their entire bill at one time. The agency has undertaken an aggressive communications campaign to ensure customers know about these programs and any exemptions they may be qualified to receive, such as the Senior Citizens Homeowner's Exemption and the Disabled Homeowner's Exemption. DEP also created a Home Water Assistance Program (HWAP) to assist low-income homeowners.*

- b. The LTCPs assume that all increases in water bills are passed-through directly to most residents. In reality, since multi-family buildings are not submetered, and since much of the affordable housing stock in the city is rent-regulated, increased water and sewer rates often do not pass through fully to tenants.**

Response:

- *While renters and owners in multi-family buildings may not directly receive water and wastewater bills, these costs are often indirectly passed on to them in the form of rent or association fees. Increases in water and sewer costs that are born by landlords and property owners could also indirectly impact tenants as it may limit their ability to do other necessary maintenance. It is acknowledged that it is difficult to understand how much the water and sewer rates impact every household, particularly those in multi-family buildings and affordable housing units. However, the EPA guidance entitled, "Combined Sewer Overflows: Final Guidance for Financial Capability Assessment and Schedule Development," dated March 1997, requires that all households in the service area be identified and used to establish an average cost per household for use in financial capability and affordability analyses. The LTCP financial capability analysis does consider a lower average annual wastewater bill for households in multi-family buildings due to a lower annual consumption value as compared to single-family households, as well as looking at the average consumption across the board.*

- c. The LTCPs systematically make an erroneous comparison between the incomes of low income households in a community and the average water and sewer charges in that community – average charges driven by the consumption levels of all customers, not specifically low-income customers. Use of community-wide average bills may overstate the percentage of income that low income households' own water and sewer bills represent. The LTCP does not appear to present a single representation of what any cohort of low-income households actually pays in water and sewer charges.**

Response:

- *See response to Comment 12a. The financial capability analysis (FCA) looked at the Residential Indicator for multifamily buildings and single family homes based on the average consumption for those building categories. The FCA also looked at average bill across all income levels.*

- *Factors that affect a household's water usage in NYC include household size, age of building stock, and the availability of water efficient fixtures. Consumption does not necessarily correlate with income levels.*

**d. In light of the above points, it is improper for the LTCPs to simply assume that meeting increased revenue needs to pay for CSO improvements would result in proportionately increased water and sewer bills to low-income ratepayers.**

Response:

- *See response to Comment 12a.*

**e. Some of the projected costs for other DEP programs seem vastly inflated, which calls into question the validity of many of the numbers presented and warrants closer scrutiny by DEC. For example, the LTCP asserts that compliance with the City's new MS4 permit may cost \$2.5 billion, based on an average of a reported \$2.4 billion cost in Philadelphia and \$2.6 billion cost in Washington, DC for those cities' "stormwater" compliance. In reality, these cost figures represent those cities' CSO compliance costs, not MS4 costs, and appear wildly out of proportion with reasonably anticipated MS4 compliance costs under the City's current permit. Further, we note that not all MS4 compliance costs are borne by DEP and, therefore, not all would affect water rates. MS4 compliance responsibilities are spread across many city agencies; DEP will coordinate but will not bear all implementation costs.**

Response:

- *The MS4 permit compliance discussion has been updated in subsequent waterbody LTCP submittals and potential costs have been refined. Future Rate estimates were based on DEPs existing 10 year CIP and assumptions for similar levels of capital spending for the remainder of the 25 year analysis period.*
  - *As of October 2017, the full MS4 permit compliance costs are yet to be estimated. DEP's annual historic stormwater capital and O&M costs have averaged \$131.6M. However, given the more stringent requirements in the MS4 permit, future MS4 compliance costs are anticipated to be significantly higher than DEP's current stormwater program costs. The future compliance costs will also be shared by other NYC agencies that are responsible for managing stormwater. The projected cost for stormwater and CSO programs in other major urban areas such as Philadelphia and Washington, D.C. are \$2.4B and \$2.6B, respectively. According to preliminary estimates completed by Washington District Department of Environment, the MS4 cost could be \$7B (green build-out scenario) or as high as \$10B (traditional infrastructure) to meet the TMDLs. In FY2016, Philadelphia's FY16 Stormwater Management Program budget was \$99.5M (MS4 Permit Annual Report, 2016). Washington D.C. reported total MS4 expenditures of \$11.7M in 2016 and a budget of \$26.7M for FY17 (MS4 Permit Annual Report, 2017).*
  - *Existing data for estimating future NYC MS4 compliance costs is limited. Based on estimates from other cities, stormwater retrofit costs are estimated between \$25,000 and \$35,000 per impervious acre on the low end, to between \$100,000 and \$150,000 on the high end. Costs would vary based on the type and level of control selected. For the purposes of this analysis, a stormwater retrofit cost of \$35,000 per impervious acre was assumed, which results in estimated MS4 compliance costs of about \$2B for NYC.*
- f. In the tables presenting the increased cost per household of various levels of investment, it is not clear what assumption is made about the compliance schedule across which the costs will be spread. It seems these tables may assume that all capital investments are made simultaneously, such that the cost of debt service for all of the identified capital investments would run concurrently, imposing the maximum burden on ratepayers. Any assessment of**

**potential cost impacts should explicitly account for how affordability would vary depending on the implementation schedule.**

Response:

- *These costs estimates have been updated in subsequent LTCPs to reflect the cost associated with DEP's 10 year Capital Improvement Plan, as well as additional spending over 25 year horizon. Estimates for future rates assume costs would be spread out across the next 25 years, and is are based on the debt service that would be incurred.*