

**Hearing Report
April 11, 2012**

**Clean Water Fund
Financial Assistance Programs
Municipal Water Pollution Control
State Fiscal Years
2012 - 2013**

Hearing Officer:

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Bureau of Water Protection & Land Reuse
Municipal Facilities Section**

Hearing Date:

March 6, 2012

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I. Introduction

The award of financial assistance from the Clean Water Fund (CWF) to municipalities and state agencies for wastewater infrastructure is governed by state statutes (CGS 22a-475 through 22a-483, Sec. 22a-439 and Sec. 22a-439a) and the CWF regulations (Section 22a-482-1 through 4). In accordance with the CWF regulations, the Department of Energy and Environmental Protection shall prepare an ordered priority listing of projects for which funding assistance is available for the fiscal year. Since the State of Connecticut adopts a biennial budget, the Department is adopting a biennial priority list for fiscal year 2012 and fiscal year 2013 based upon previous fiscal year authorizations and the 2012 and 2013 budget authorizations.

II. Administrative Requirements

In conformance with federal regulations governing the capitalization grant that the Department receives from the federal Environmental Protection Agency and Sec. 22a-482-1(c)(4) of the Regulations of Connecticut State Agencies (CWF Regulations), the Department issued a notice of public hearing dated February 3, 2012 (Exhibit 3). All public notices ran on February 8, 2012. Such notice appeared in the following Connecticut regional newspapers (Exhibit 4):

- Connecticut Post
- Hartford Courant
- New Haven Register
- Waterbury Republican
- Norwich Bulletin

The Department emailed copies (or mailed copies if DEEP did not have a valid email address) of DEEP's memorandum (Exhibit 5) which provided notification of the time, date and location of the public hearing; the location on DEEP's web site where the draft priority list could be found; and the date that written comments were due at DEEP. This document was sent to the chief elected officials of all 169 municipalities, the water pollution control authority (WPCA) of every municipality in which a WPCA exists and to their superintendent, consultants that commonly work in the municipal wastewater field and the thirteen regional planning agencies. In addition, DEEP listed the Priority List public hearing in DEEP's Calendar of Events.

Deputy Commissioner Macky McCleary appointed George V. Hicks as the hearing examiner (Exhibit 2).

A public hearing was held on March 6, 2012 in the Phoenix Auditorium of DEEP's Headquarters at 79 Elm Street, Hartford, CT. The hearing was convened at 9:30 am and was concluded at 10:15 am. The public comment period closed on March 12, 2012. Approximately 30 people attended the hearing and eight individuals testified. Of the eight individuals who testified, six provided letters at the hearing and were entered into the record as Exhibits 10 – 15 and 17 - 23.

Following the public hearing, the hearing examiner considered all written comments received in response to the notice of public hearing as well as written and verbal comments during the hearing and has prepared this hearing report.

III. Specific Project Comments and Responses

Connecticut Construction Industries Association, Inc. (CCIA)

Comment: The CCIA expressed their support of the CWF (Exhibit 8), and its prioritization of wastewater projects related to Long Island Sound and combined sewer overflow (CSO) improvements. It praised the General Assembly and the Governor for increasing revenue bond authorizations and general obligation bond funds to the CWF in recent years. The CCIA notes that this will increase Connecticut's ability to meet state wastewater infrastructure needs and provide a stimulus to a sagging economy by creating jobs.

Response: We appreciate the continued support of the CCIA.

Recommendation: No action required.

The Nature Conservancy

Comment: The Nature Conservancy expressed its appreciation of how DEEP has implemented the CWF program, and for the support Governor Malloy and the General Assembly have provided to the program (Exhibit 9). It commended the inclusion of projects directed at climate change, but also recommended further effort to reduce nitrogen loading to Long Island Sound.

Response: We appreciate the support of the Nature Conservancy. The draft Priority List shows that the majority of funding is being allocated toward WPCF upgrades which includes nitrogen removal.

Recommendation: No action required.

City of Bridgeport

Comment: The City of Bridgeport requested full funding of the CSO projects that were submitted for this Priority List. The City also requested additional funding (Exhibit 10) for green infrastructure totaling \$5.5M. The City noted that green infrastructure not only reduces CSO overflow but also beautifies neighborhoods and result in positive air pollution and energy savings benefits.

Response: In the draft FY12/13 Priority List, \$11.1M was allocated to partially fund Bridgeport's CSO projects that could be ready to proceed during this funding period. Please see the Deviation in Appendix E for the department's justification of focusing more funding at treatment plant upgrades versus CSO projects. In order to qualify green infrastructure projects for CWF funding as a CSO project, the project must be part of the CSO Long Term Control Plan and be deemed cost effective.

Recommendation: Change the CSO funding from \$11.1M to \$15.6M.

Town of Cheshire

Comment: The Town of Cheshire was pleased to see that their WPCF project was listed in a favorable position on the fundable list for FY13 (Exhibit 11). The Town also expressed its belief that this project was underscored, and that additional priority points should have been assigned in several categories (population, health-related issues, miscellaneous), thereby increasing its total points from 33 to 48 points.

During the public hearing, the Town also posed the following questions: 1) What is the interim phosphorus strategy for DEEP, and will a phosphorus limit be included in upcoming permits? 2) What will the final phosphorus limit be for the Cheshire WPCF? 3) Is it true that the grant percentage for phosphorus removal work will be increasing from 20% to 30%?

Response: The department agrees with changing the point score derivation in the population category and assigning an additional 4 points. The comments regarding the phosphorus strategy will be addressed outside of the Priority List process. The proposed legislation regarding additional grant for phosphorus projects has not passed as of the date of this report; therefore, no change in grant percentage has been anticipated. If the legislation passes, the department will abide by the change in law.

Recommendation: The department will change the point score derivation in the population category and assigning an additional 4 points to this project.

Greater New Haven Water Pollution Control Authority (GNHWPCA)

Comment: The GNHWPCA (Exhibit 12) requested full funding of its CSO construction project (\$10.6M), which was provided partial funding (\$3.3M) on the draft Priority List and to place its WPCF Denitrification & Wet Weather Upgrade construction project (\$45M) on this Priority List. Included in the submission was an updated project schedule for the WPCF project which demonstrates that design is ahead of schedule and that it will be ready for construction prior to June 30, 2013.

Response: The WPCF Denitrification/Wet Weather Upgrade project appears to be on schedule to begin construction before the end of FY13. The WPCF Upgrade project scores a total of 44 points, placing it at the top of the fundable construction project list for FY13.

Limited funding was proposed for CSO projects this Priority List. Please see the Deviation in Appendix E for the department's justification of focusing more funding at treatment plant upgrades versus CSO projects.

Recommendation: The WPCF Denitrification & Wet Weather Upgrade project for \$45M will be added to the final Priority List. Change the CSO funding from \$3.3M to \$4.6M.

Metropolitan District Commission (MDC)

Comment: The MDC expressed their support (Exhibit 13) for maintaining the funding identified for MDC on the draft Priority List, citing the fiscal commitments required by its DEEP Consent Order and EPA Consent Decree. Since authorizing \$800M in 2006, the MDC has moved its wastewater improvement projects at an aggressive pace. The MDC

highlighted several of its completed CSO projects which have removed up to 200 million gallons per year of stormwater from the sanitary sewer system.

Recognizing that their WPCF Denitrification Upgrade (\$35.3M and \$259.9M) and CSO (\$31.5M) projects will not be fully funded, the MDC indicated its intention to proceed with the unfunded portions of those projects (approximately \$50M) once a deviation has been issued by DEEP to secure future eligibility.

Response: Respectively, the treatment plant upgrades and CSO improvements will significantly reduce nitrogen and combined sewage from the MDC sanitary sewer system. The completion of these projects will result in a substantial positive impact to the receiving water quality.

Recommendation: Due to the addition of the GNHWPCA \$45M WPCF project, the funding plan for MDC will be revised. The funding for the WPCF will be reduced from \$259.9M to \$192.9M, however, the funding for their CSO projects will be increased from \$31.5M to \$44.3M. This decision was based in part on the cash flow needs of the WPCF upgrade project and the potential for MDC to recover some of the lost funding from FY13 fundable construction projects that may not be ready to proceed during the funding year. In addition, any of the projects that are not fully funded in FY13 will then be shown under the *Reserve for Prior Commitments* in the next Priority List.

Save the Sound

Comment: Save the Sound offered its general support of the CWF (Exhibit 14), but concern was expressed over the following issues:

1. Green Infrastructure (GI): GI should be more actively promoted to satisfy the green requirement for the federal Clean Water State Revolving Fund (CWSRF) Capitalization Grants, which has decreased from 20% to 10%. In addition, GI should be provided with a grant of 50% to 60% of the GI cost.
2. CSO Funding: Only 18% of the CWF funding budget was proposed for CSO design and construction projects. The GNHWPCA and Bridgeport are both receiving a relatively small amount of CSO funding in comparison to the MDC, and both should receive full funding of their proposed CSO projects.

Save the Sound submitted a report prepared by Hazen & Sawyer for New Haven and Bridgeport, which evaluated green technologies to manage wet weather flows in each city. It recommended that \$500,000 be allocated for planning and design to develop a GI project in the Fairhaven neighborhood of New Haven, and \$5.5M be allocated to several GI demonstration projects in Bridgeport.

3. Future Funding Priorities: The inclusion of climate change in this Priority List was praised, and funding a larger regional green project was suggested. It was also recommended that \$3M to \$5M be allocated from the Long Island Sound (LIS) clean-up account toward priorities other than CSO abatement and denitrification, such as

monitoring and dredging of the LIS and surrounding harbors, coves, embayments and wetlands.

Response: Please see the Deviation (order of funding of construction projects) in Appendix E for the department's justification of focusing more funding at treatment plant upgrades versus CSO projects for this Priority List.

The LIS Clean-up account funds are not used for funding any projects in the Priority List. The funding was established by PA 89-331 and PA 90-297 for a total of \$50M. The current remaining balance is approximately \$15M.

CSO construction funding has been distributed equitably between the three CSO communities requesting funding from the Priority List. The amount of CSO construction funding identified in the draft Priority List was a percentage of their funding request, and each community was provided with the same percentage.

The Priority List has a Design Reserve, and within the Design Reserve is a subcategory for CSO design work. All three CSO communities were listed for design funding for the full amount of their request.

The request for CWF funding for GI is for 50% to 60% grant. The state statute only allows for a maximum of a 50% grant for CSO projects. Grant levels above 50% would require a statutory change. In order for a project to qualify for a 50% CSO grant, the project must be consistent with their CSO Long Term Control Plan and the CWF regulations which requires that the project be cost effective.

Recommendation: Increase the amount of funding for CSO control as follows: GNHWPCA from \$3.3M to \$4.6M, Bridgeport from \$11.1M to \$15.6M and MDC from \$31.5M to \$44.3M.

Connecticut River Watershed Council

Comment: The Connecticut River Watershed Council (CWRC) extended compliments to the Malloy administration and legislature for supporting infrastructure funding, to Connecticut for maintaining a progressive CWF, and to the MDC for leading the state in green infrastructure (Exhibit 15). It also expressed its support of both biological criteria and nutrient thresholds (phosphorus control specifically) for wastewater treatment plants.

Response: We appreciate the support of the CWRC.

Recommendation: No action required.

The Town of Montville

Comment: Richard Kruczek of URS Corporation submitted an email request (Exhibit 16) to add the Montville WPCF Upgrade to the Priority List. It was indicated that design efforts started in November 2012 (likely meant November 2011) with a completion window of six months.

Response: All projects that were identified by Montville were added to the project list. Unfortunately, this project does not have sufficient priority points to make the fundable construction project list for this Priority List.

Recommendation: No action required.

Ms. Susan B. Wasch, Middletown resident

Comment: Ms. Wasch submitted a letter (Exhibit 17) asking the DEEP to continue the steady funding of CSO projects. The letter also requested the creation of a new reserve for GI in the Priority List.

Response: DEEP is currently engaged in discussions with Save the Sound, Bridgeport and GNHWPCA on funding opportunities for GI pilot projects.

Recommendation: No action required.

Ms. Susan C. Murray, East Hartland resident

Comment: Ms. Murray urged the continued reduction of CSOs and the creation of a reserve for Green Infrastructure (Exhibit 18).

Response: See response to Ms. Wasch above.

Recommendation: No action required.

Mr. Jerry Jarombek

Comment: Mr. Jarombek submitted a letter (Exhibit 19) which offered his strong support of green infrastructure and projects in Bridgeport in general. The letter also suggested better management of stormwater runoff from the I-95 overpasses into Long Island Sound by directing the runoff into rain gardens.

Response: See response to Ms. Wasch above.

Recommendation: No action required.

Ms. Mary Keane

Comment: Ms. Keane submitted a letter (Exhibit 20) commenting on how appalled she was by the water quality data collected at the mouth of the Bridgeport area, and she expressed her concern about the adverse effect on the health of children and the general population.

Response: Restoration of the LIS continues to be a top priority for the DEEP and the State of Connecticut.

Recommendation: No action required.

Ms. Roma Y. Stibravy, consultant

Comment: Ms. Stibravy showed support of New Haven and Bridgeport pollution control projects and climate change adaptation projects (Exhibit 21).

Response: Climate adaptation has been added as part of the criteria for evaluating planning applications in the general planning reserve (page 12).

Recommendation: No action required.

Dr. Shirley McCarthy, MD, PhD

Comment: Dr. McCarthy indicated in a letter (Exhibit 22) her concern about the health of LIS and creatures living in it, and urged DEEP to do all it can to remove sewage entering LIS and offer funding for green infrastructure.

Response: See responses to Ms. Wasch above.

Recommendation: No action required.

Mr. Kevin O'Shea

Comment: Mr. Shea stated in a letter (Exhibit 23) that we must reverse the tide of degradation and overdevelopment on LIS.

Response: See response to Ms. Keane above.

Recommendation: No action required.

The Town of Fairfield

Comment: The Town of Fairfield requested (Exhibit 24) that its Phase 3 Sanitary Sewer Evaluation Studies (SSES) be added to the Priority List to receive annual planning grants of \$250,000 in FY13, FY14 and FY15 to total \$750,000. It was indicated that a request to place these projects on the FY12/13 Priority List was submitted last August, but was not reflected on the draft Priority List.

Response: Requests for studies are not shown on the Priority List. The planning reserve (page 12) shows \$6M to be available for this Priority List on a first-come, first-serve basis.

Recommendation: No action required.

The City of Norwalk

Comment: The Norwalk WPCA requested (Exhibit 25) additional funds for its Phase I CSO/Wet Weather Upgrade. Since the Phase II Upgrade is on hold, additional work (\$500,000 to \$700,000) was indicated to be necessary to finish Phase I and decommission existing infrastructure.

Response: The Phase I project is currently being funded and cost increases (subject to eligibility review and approval) qualify for funding.

Recommendation: Add Norwalk to the *Reserve for cost increases* for \$750,000.

IV. Technical Corrections

A number of technical corrections are made to the draft priority list to ensure that the final list fairly and accurately reflects all of the funding requests from municipalities. These technical corrections have been initiated by DEEP staff and are fully discussed in Appendix C. It is important to recognize that none of the technical corrections listed in Appendix C have affected the fundable projects list for either FY12 or FY13.

V. Deviation on Order of Funding

Section 22a-482-1(c)(2) of the CWF Regulations provides that the relative position or rank of a project on the priority list is determined by the priority number and the readiness to proceed to construction during the fiscal year. However, the Department proposed to deviate from this requirement and fund projects within the categories of CSO correction and treatment plant upgrades that include denitrification. Prior to enacting this proposal, a formal deviation from the CWF Regulations must be signed by the Deputy Commissioner. Attached as Appendix E is the deviation titled "Order of Funding of Construction Projects".

VI. Summary of Major Recommendations

Changes to the Fundable Construction Projects are as follows:

<u>Town</u>	<u>Project</u>	<u>Draft Priority List</u>	<u>Final Priority List</u>
Bridgeport	CSO	\$ 11.1M	\$ 15.6M
GNHWPCA	CSO	\$ 3.3M	\$ 4.6M
GNHWPCA	WPCF	\$ 0.0M	\$ 45.0M
MDC	CSO	\$ 31.5M	\$ 44.3M
MDC	WPCF	\$259.9M	\$192.9M

Changes to the Reserves are as follows:

Reserve for cost increases - Add Norwalk for \$0.75M and change West Haven from \$4.25M to \$1.63M.

Reserve for design projects for non-CSO - Change the FY12 & FY13 amounts from \$8M for each year to \$6M for each year.

Reserve for construction of I/I rehabilitation projects - Change the FY12 & FY13 amounts from \$15M for each year to \$12M for FY12 and \$13M for FY13.

Reserve for pump station improvement projects - Change the FY12 & FY13 amounts from \$10M for each year to \$9M for each year.

Change the priority points for Cheshire from 33 to 37 points.

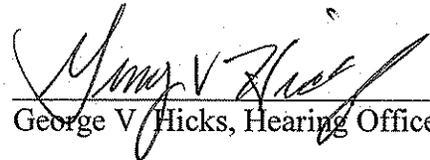
Under technical corrections, make the following changes to the Priority List:

- Change all references from Department of Environmental Protection to Department of Energy & Environmental Protection;
- State that the infiltration and inflow funding reserve will be administered on a first come, first served basis;
- Change the title in Table 2 to reflect the proper fiscal year;
- In footnote #3 under Fundable FY13 Projects, change the time to evaluate construction schedules from January to March and define "under construction" to open bids.

VII. Final Recommendation

I recommend that the Bureau Chief of Water Protection and Land Reuse adopt the final CWF FY12/13 Priority List as presented in Appendix D.

4/14/12
Date


George V. Hicks, Hearing Officer

