

## CSO Affordability

### QUESTION

The following question was sent to members of the NACWA Legal Affairs Committee on July 13, 2009:

“We are writing to you as a member of NACWA’s Legal Affairs Committee with a request for information from a NACWA public agency member. This request is specifically directed at Combined Sewer Overflow (CSO) communities with Long Term Control Plans (LTCPs):

What percentage of median household income were you required to spend for your CSO Long Term Control Plan? What financial arguments did you make to EPA and how successful were they?”

### RESPONSES

The following responses were received from members of the committee:

*Response 1 – Atlanta, Georgia* -- Our CSO Consent Decree had no provisions for spending based on household income. The CD specifically stated that financial capability was not to be a factor in complying with the CD. We made numerous submittals to EPA claiming financial burden, but we were never successful in getting relief. We have actually completed all projects required under the CSO Consent Decree.

*Response 2 – Toledo, Ohio* -- The City of Toledo was not required to spend a specific percentage of the MHI, but we argued that we should be entitled to relief based on our belief that the EPA-endorsed LTCP put us near the 2% MHI sewer rate threshold. U.S. EPA disagreed with portions of our affordability analysis showing we were at the 2% threshold and said their analysis had us below 2%. The main area of dispute was that we included storm water costs as part of the sewer charges since a large amount of storm water work impacts the combined sewer collection system. U.S. EPA told us that storm water charges should not be included. As a result, there was no give from the agency on our request to have the 15-year time for the LTCP extended. We have been able to subsequently negotiate an extension (not yet finally approved) of the LTCP by four years, but only after agreeing to perform additional work to further reduce the number of CSO overflows. An affordability worksheet that we used when making our case is available [here](#).

*Response 3 – Cincinnati, Ohio* -- We had an Affordability argument in our Wet Weather negotiations. We made a number of financial arguments, and these are difficult to encompass in a short e-mail. Affordability relates directly with Program scope and schedule. The Government used the term “expeditious as practicable” when defining schedules. In the end, the Government acknowledged we had affordability issues, and this led to the schedule determinations. One of the items of controversy was does the % MHI relate to the entire system or the city of Cincinnati? Or some other significant demographic group in the service area? The Government had the position it applied to service area.

*Response 4 – Omaha, Nebraska* -- Our initial affordability assessment in 2006 suggested that we could generate about \$100M of revenue per year and only reach 1% of the median household income. 2% of the MHI would yield \$225M/year. At the time, these costs were much higher than our projections, and this compelled us to negotiate an administrative consent order with the State of Nebraska (outlining the preliminary LTCP performance dates). There is no specific MHI limit in the order.

In finalizing the Long Term Control Plan, we are now projecting that annual costs in the latter portions of the 15-year implementation schedule may approach 2% of today's MHI. What we are saying in the LTCP is that Omaha has recently approved rate increases through 2014 that will allow us to implement the program as scheduled. However, given the uncertainties of the economy, we will have to continue to reevaluate whether the program will remain affordable under a 15-year timeline.

The draft LTCP, including the financial section is out for public comment and can be downloaded at: <http://www.omahacso.com/>

*Response 5 – Narragansett Bay Commission, Rhode Island* -- We are a delegated state so we didn't deal with EPA directly. However, our delegated authority was steadfast in its adherence to the EPA guidance that requires the cost per household as % of median Household Income to be greater than 2%, before cost can really be considered as a reason to delay or relax implementation of your LTCP. While three of the major cities in the district are disproportionally economically disadvantaged, the highest residential indicator, i.e. sewer rates as a % of median household income was still only .91% -so we never met the 2% threshold. Thus, in short, it was non-negotiable.

*Response 6 – Columbus, Ohio* -- Columbus is in a somewhat unique position in Ohio with regard to resolution of CSO/SSO issues. On August 1, 2002 (SSO order) and September 17, 2004 (CSO order) Consent Orders were entered in state court enforcement actions directing Columbus to eliminate and/or substantially reduce SSO's and CSO's from its sewage collection system. On January 26, 2009, Ohio EPA approved, with modifications, the Long Term Control Plan portion of the Wet Weather Management Plan that Columbus prepared per the consent orders. To date, Columbus is the only wastewater utility in Ohio that resolved its CSO/SSO issues in a state court enforcement action. The other major wastewater utilities in Ohio have been involved in protracted federal enforcement actions to resolve their CSO/SSO issues.

As to financial capability issues, during negotiations in the state court enforcement actions, Columbus prepared a financial capability analysis in accordance with US EPA's 1997 guidance. Because Ohio EPA lacked the staff resources to adequately review the analysis, it was submitted to USEPA Region V for review. The analysis recommended a 40-year schedule, which had an impact of 2.14% of Median Household Income in Columbus' service area. Region V would not agree to this schedule. Nevertheless, the Ohio Attorney General and Ohio EPA entered into the consent orders which required Columbus to comply with implementation schedules contained in any LTCP that Ohio EPA would approve in the future. The CSO consent order also required that in any event all projects in the LTCP be completed and implemented by July 1, 2025, a 29 year schedule. Under the financial capability analysis, a 30 schedule has an impact of 2.38% of MHI.

Columbus submitted a WWMP/LTCP as required by the consent orders that again recommended a 40-year schedule at 2.14% of MHI. In its January 2009 approval of the LTCP, OEPA did not approve the 40 year implementation schedule outright. Instead, OEPA required Columbus to submit by January 9, 2015 an affordability analysis consistent with then current USEPA guidance and a revised implementation schedule that considers several alternatives. So Columbus and OEPA have not resolved the scheduling issue with finality.

The requirement in OEPA's LTCP approval that Columbus submit another affordability analysis in 2015 is what motivated Columbus and the Association of Ohio Metropolitan Wastewater Agencies to work with Senator Voinovich to introduce S. 854, the Clean Water Affordability Act of 2009, which requires USEPA to revise its 1997 Affordability Guidance. We believe passage of this Act may result in much more reasonable affordability criteria for CSO communities.

*Response 7 – Massachusetts Water Resources Authority --* MWRA's long-term plan was driven mainly by Use Attainability Analyses and cost/benefit, but clearly we also needed to satisfy EPA's affordability criteria, and we were successful in doing that. I would not characterize our plan as being driven by a percentage of household income, but the information we provided to EPA over several years demonstrated that spending more would cause hardship, or more hardship.

1. The first source of information is the preliminary affordability analyses we provided in 2004 to gain acceptance of the revised long-term plan for the Charles River (we later increased even this revised level of control, and related cost). This information is from the Cottage Farm CSO Facility Assessment Report, January 2004, and includes text in Chapter 8 along with financial backup information in Appendix H. I include this information because it is neatly packaged and is the type of affordability information we provided to EPA throughout review of our long-term plan, from 1997 to final approval in 2006. This information is in two pdf files: "[11 Section Eight](#)" and "[20 Appendix H](#)."
2. The second source is the supplemental information that was referenced in the Cottage Farm report. It brought into the analysis the secondary impacts related to "shelter cost" in the Boston area. The information was prepared by Stavens et al. I do not believe that this supplemental information carried significant weight in EPA's approval of MWRA's plan, as it was outside-the-box of typical EPA affordability review, but it still helped to make the case in a generally way. This information is attached in the Word document summary "[CSO economic impact report summary](#)" and the pdf file of the [Stavens report](#).
3. The third source of information is the various updated rates and MHI data we submitted to EPA in 2008 to support EPA's review and approval of the Alewife Brook/Upper Mystic River and Charles River CSO variances that had been issued by DEP. This information is briefly discussed in emails I've copied below and in related attachments. The emails are helpful in understanding the specific rate impact information EPA Region 1 needed/wanted. In response, MWRA submitted updated rates and rates impact information in the three attached pdfs, titled "[Copy of Phase I Test...](#)," "[MWRA Updated Affordability Summary....](#)," and "[Financial Impact CSOs....](#)" The last of these seemed to be what EPA found most helpful.