

Inflow and Infiltration (I&I) Evaluation and Recommendations for the City of Waltham

I&I Advisory Committee

Prepared by:
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November 24, 2014

Inflow & Infiltration (I&I)

Inflow occurs when storm water enters the sewer system through connections that are in violation of current standards and Infiltration occurs when groundwater and storm water enter into sewer pipes as a result of physical defects such as cracked pipes, leaking manholes or deteriorated joints. Inflow and Infiltration increase the volume of water flowing through the sewer pipes resulting in an unnecessary strain on sewer treatment systems. The additional flows cause Sewer System Overflows (SSO's), which pollute public waters and pose a public health and safety concerns.

I&I is traditionally a result of antiquated or inadequately maintained infrastructure. SSO's and other problems typically peak after heavy rain events, snowmelt or when the groundwater table is at its highest.

History of Regulatory Action in Waltham

On April 30, 2001, the Massachusetts Department of Environmental Protection (MA DEP) issued the first Notice of Non-Compliance to the City for failure to report sewer overflows (SSO's).

On May 7, 2003, MA DEP entered into an Administrative Consent Order (ACO) with the City and the City agreed to take certain actions to reduce the frequency and duration of SSO's to waters of the Commonwealth and to plan and schedule for eliminating I&I to the sewer system. The 2003 Consent Order also required that the City:

- Maintain a "sewer bank" to manage any and all new sewer connections so as to not exacerbate the risk of SSO's

On January 2005, the City entered into an amended and more extensive ACO with MA DEP requiring the City to:

- Continue administration of the "sewer bank"
- Implement sewer system rehabilitation projects identified in the City's I&I investigations

As a result of this amended ACO, the City:

- Established and administered a "sewer bank" to manage new connections to the sewer system
- Completed the Beaver Brook sewer rehabilitation project
- Completed the Hobbs Brook sewer rehabilitation project
- Completed the Roberts Trunk Line sewer rehabilitation project

- Completed the Met State sewer rehabilitation project
- Initiated a private inflow identification and removal program (Sump Pump Program)
- Completed a Draft Sewer System Facilities Plan and Model in 2009

Despite the work by the City, between 2008 and 2010, there were thirteen (13) SSO's in Waltham, resulting in pollutants being released to waters of the Commonwealth.

On February 8, 2010, MA DEP issued another amended ACO to the City that was stricter than the previous ACO's and required:

- Maintaining the sewer bank
- Removing 4 gallons/day of I&I for every 1 gallon added to the system
- Redirecting residential sump pumps from the sewers to alternate sources
- Submission of semi-annual reports to DEP in January and July of each year

So far in the first six months of 2014, there have been ten (10) reported SSO's in Waltham according to the most recent semi-annual report.

I&I Impacts in Waltham

- I&I pose a threat to the public health of the city's 61,000 residents and the nearly 58,000 employees who work in Waltham.
- I&I pose a threat to the natural environment and the city's public waters.
- I&I pose a threat to the city's 60% commercial tax base, which represents more than \$80 million in annual tax revenues to the City. The City depends on these revenues to fund schools, public safety and all other public services. A reduction in the commercial tax base would increase the tax burden on residents.
- SSO's are a violation of both the State and the Federal Clean Water Act (CWA). The MA DEP is enforcing the environmental regulations that the City has been violating for more than a decade.
- The City of Waltham is responsible for correcting all I&I issues.
- The City of Waltham has placed the burden of correcting I&I issues largely on small and large business and developers in Waltham and this is not "fair and equitable". All businesses and residents in the City are burdened by the failing

and improperly managed sewerage system, not just small and large business and developers.

The City's sewer infrastructure is aged and requires ongoing repair, replacement and maintenance. The City's infrastructure investment has not kept up with the wear and tear on the system and as a consequence, wet and dry weather sewer system overflows across the system release into the City's natural habitat, public waters, and homes. There are over 100 locations across the City that have experienced sewer system overflows within the past ten years. These overflows range in severity from overflows in residential basements to streets flooding and becoming impassable.

The condition of the sewer system also has a detrimental impact on businesses in the City, which account for 60% of the city's tax base. There have been *numerous* complaints from the business community regarding I&I policies and implementation and questions surrounding the effectiveness of the current mitigation program. Businesses face costly I&I fees when they choose to locate or grow in Waltham, which creates a competitive disadvantage for Waltham in comparison to other nearby communities. The ongoing and unresolved I&I problems pose a threat to the local economy and the stability of the City's more than \$80 million annual commercial tax base. This, in turn, poses a potential tax burden for residents.

After eleven (11) years of state-mandated ACO's in place, Waltham still needs substantial work to eliminate SSO's from polluting local waters, residences and public spaces.

Inflow & Infiltration Advisory Committee Goals and Approach

The Community Development Committee of the Waltham City Council hosted an I&I hearing for businesses, developers, residents and subject matter experts to discuss their concerns about the City's I&I policies. The hearing was well attended and a consistent theme emerged: local businesses agreed that a significant I&I problem exists in Waltham and that it needs to be resolved. These businesses expressed disappointment with the City's existing policies that pass the cost burden of correcting the public infrastructure problem on to businesses and developers. Some small businesses testified that the City's I&I fees were a contributing factor to them closing down. Others discussed how the onerous I&I policies make it difficult to attract tenants to vacant commercial spaces in downtown. Some businesses looking to locate in Waltham have chosen to go elsewhere because of the City's costly, uncertain and onerous I&I policies.

Shortly after the I&I hearing, the City Council passed a Resolution on May 19, 2014 to establish the I&I Advisory Committee. The goals of the I&I Advisory Committee were to:

- To seek solutions that will enable the City to correct the I&I problems with the least economic impact on residents and business,
- To help protect public health, the environment and the local economy, and
- To seek “fair and equitable” means of implementing the I&I Program.

To accomplish these goals, the committee cataloged relevant reports, data and documentation; reviewed the City’s existing I&I policies, interviewed citizens, employees, City staff and subject matter experts; and researched potential improvements to the City’s existing mitigation plan. The committee also reviewed publicly available data and reports from other Massachusetts municipalities with I&I issues and the Massachusetts Water Resources Authority (MWRA).

Through this process, the Committee conducted interviews with the following individuals:

- Bill Doyle, P.E. Doyle Engineering; Waltham Resident
- Charlie Lombardi, I&I Expert; Waltham Resident
- Joe Connors, Attorney
- Glenn Haas, Former Assistant Director MA DEP
- Patrick Powell, Waltham Building Department - Zoning Officer
- Many local business owners throughout the City
- Small and large residential and commercial builders
- Concerned residents
- **NOTE:** Stephen Casazza PE, City Engineer - Waltham Engineering Department was confirmed to attend the October 28, 2014 I&I Advisory Committee meeting but did not show up. The Committee did not interview Mr. Casazza and the Committee only received limited responses to written questions sent in advance of the October 28, 2014.
- The I&I Committee met ten (10) times on alternate Tuesday evenings beginning on July, 8, 2014 through November 11, 2014 to conduct interviews and to review, analyze and discuss documentation collected.

Findings

With ten (10) SSO’s already reported in 2014, the City still has a significant amount of work to do. The problems that exist in Waltham are largely due to the infrastructure problems throughout the City; inadequate policies and management of the current

program; and the unfair and inequitable method of requiring all of the costs of fixing the problem to be borne by local businesses and developers.

Like many communities throughout the Commonwealth, the City's sewer infrastructure is aging and in need of significant investment. Approximately \$10 billion worth of residential, commercial and industrial real estate is served by Waltham's sewer system. More importantly, approximately 60,000 residents and 58,000 employees rely on the service and safety of the City's sewer system. Ensuring that the system functions properly must be a top priority for the City.

I&I Problems - Infrastructure

The following are the major infrastructure issues that the Committee found:

- Tree roots and grease cause the most significant problems in sewer systems. Waltham has significant problems with both tree roots and grease damaging pipes and contributing to the I&I issues.
- There is no comprehensive Fats, Oils, Grease (FOG) Policy currently in place in the City. A draft policy is with the City Council Rules and Ordinances Committee.
- The current Sump Pump Amnesty Program has not been effective in removing those sources of inflow.

I&I Problems - Policies/Management

The following are the major policy and management issues found:

- There is an inconsistency in the administration of the Plan by the Engineering Department. There is no complete "fair and equitable" treatment of all applicants.
- The I&I policies are unclear to most applicants as are the process required, the amount of time involved and the amount of resources and costs to the property owners.
- Waltham residents are largely unaware that I&I issues in the City exist. Businesses and developers in the City bear the burden of the majority of the I&I issues.
- There are several issues with the City I&I Ordinance #30078. There is no authorization under this Ordinance for the City Engineer to promulgate "Rules

and Regulations” or “Policies” to interpret and administer the Ordinance. Yet, the City Engineer has made such “rules.” For example, there is no language in Ordinance #30078 documenting the “one year vacancy rule” which triggers I&I for commercial property that has been vacant for greater than one year.

I&I Problems - Engineering Department

The Committee has found that several significant concerns stem directly from the Engineering Department:

- It does not appear that the Engineering Department has the necessary resources to manage and implement a successful I&I Program. The department appears to be short-staffed which causes lengthy delays for applicants during the permitting process.
- The current review process for I&I applications is not timely by the Engineering Department and significantly impacts all applicants.
- Communications between the Building and Engineering Departments could be better managed and defined to assist applicants.

I&I Problems - Business

Currently in Waltham, the commercial properties bear the brunt of identifying, engineering, financing and completing I&I projects. The Committee found no other instances of municipalities utilizing this approach to mitigate I&I. The following are the issues for the business community:

- The City of Waltham currently requires applicants to find projects to complete and to make those repairs, with unknown costs and time frames for completion.
- A Covenant is placed on the property for I&I issues that is restrictive and presents significant title issues with lenders financing projects.
- The One Year Vacancy Rule is an unwritten rule that has no appeals process and puts a burden on businesses that are already having difficulties in leasing or selling property.
- There is no appeal process for decisions made by the Engineering Department.

- The current policies are not fair and equitable for small business. I&I fees are often cost prohibitive for new businesses entering into Waltham and are onerous for businesses currently operating in the City. There have been numerous examples of businesses that have chosen not to open in Waltham and those who have left Waltham due to I&I fees.

Solutions

Mitigating the City's I&I problem is neither a simple nor inexpensive problem. Resolution of the problems will take a comprehensive and multi-faceted approach. A clear and actionable strategy with immediate, short-term and long-term solutions can help to improve the system functionality to a point where sewer system overflows are infrequent. This requires a long-term commitment and participation and contribution of all parties.

Immediate Solutions

There are immediate solutions that the City must consider taking which could be accomplished in a time frame of a matter of weeks. Such immediate solutions would be a key start in the process to make the I&I Program in Waltham more successful:

- ***Establish a Fats, Oils, Grease (FOG) Program.*** A FOG Program is a requirement of the newly promulgated DEP regulations. As a draft of such policy is currently with the City Council Rules and Ordinances Committee, it is imperative to consult with professionals and implement a comprehensive FOG Policy.
- ***Remove the One-Year Vacancy Rule.*** A Resolution Concerning Inflow & Infiltration Fees Dated June 9, 2014 is presently pending action by the City Council. This resolution should be put to vote with the City Council and should be implemented to avoid further alienation of the business community.
- ***Remove or rewrite the Covenant placed on properties.*** Current unapproved policies require a Covenant to be recorded at the Registry of Deeds that impacts the title to a property to ensure that a specific I&I project has been completed. The use of this Covenant is onerous and not fair or equitable to individual property owners because of the burden that it places on their

properties and which may impact their ability to finance or refinance the property.

Short-term Solutions

There are short-term solutions that the City must consider which could be implemented in a time frame of several months to one year. Such short-term solutions include:

- ***Reevaluate I&I Ordinance #30078.*** A common complaint across all business types and sizes is the inconsistent and unclear policy standards for their projects. There is little information available online explaining the I&I process and the information that is available does not clearly indicate the impacts that a project proponent will face when doing business in Waltham. This inconsistency and unpredictability needs to be improved and the City's policies need to be updated.
- ***Waltham should be responsible for all sewer maintenance and repair work, not businesses.*** The requirement for businesses to find and undertake an I&I mitigation project should be removed.
- ***Initiate the use of an impact fee in lieu of public improvements with a sliding scale for user size.*** It is challenging and time consuming for businesses to identify I&I improvement projects on their own. It is recommended that the City eliminate this policy and in its place adopt an impact fee based on flows. There are many communities in Massachusetts operating in this same way.
- ***Implement an appeals process.*** There is currently no mechanism to appeal the decision by the Engineering Department. Often, the decisions made are by "judgment call" of the department, as policies do not exist for all situations. It is strongly recommended that the City establish an appeal mechanism - perhaps through a subcommittee of Councilors, Engineers, and other professionals that enables an aggrieved party to appeal a fee or decision regarding I&I mitigation requirements.
- ***Provide education regarding I&I to all City constituents.*** In order to improve communications with businesses and residents on the issue of I&I, the City should make all of the current and historic I&I documents publicly available and easy to find online. The City should develop literature to educate residents about the City's I&I policies and distribute the literature with the City's tax bill, sewer bill and online.

- ***The City should be proactive in educating businesses and developers about the City's I&I policies, regulations and requirements.*** The cost and time to comply with the City's I&I requirements should be clearly communicated to prospective businesses and developers, so that no surprises arise in late stages of project review and approval. The City should put these requirements in writing and make them available online, in permitting packages, and through a flier that is readily available at the Building and Engineering Departments.
- ***Provide additional assistance to the Engineering Department.*** The Engineering Department appears to be short-staffed and to not have adequate resources to manage the I&I Program. It is recommended that the City establish a dedicated position within the Engineering Department to oversee I&I issues.
- ***Better leverage the Sump Pump Amnesty Program.*** The Sump Pump Amnesty Program is an important tool for the city that could be better utilized. Private contractors and businesses should not be seeking out homes with sump pumps, and the City should not be encouraging them to do so. It is recommended that the City engage an experienced and qualified contractor to implement the program and to establish an incentive-based contract that compensates the contractor based on the volume of conversions over a specified period. This program should be supplemented by inspections at the time of a property sale when a final meter reading occurs or when the smoke detector inspection takes place.
- ***I&I Committee Review of the 5 year mitigation plan.***
 - If it is not already contemplated as part of the scope for the existing I&I consultant, the city should further engage the city's I&I consultant to develop a Sewer Capital Plan that identifies short-term, mid-range and long-term infrastructure improvement projects that intend to eliminate SSOs. The plan should include cost estimates for each of the recommended improvements and a proposed construction schedule for how to prioritize these improvements to reduce I&I in the shortest period of time.
 - Since the City has yet to issue the 5-year mitigation plan report that is due to MA DEP in December 2014, the City Council may want to extend the Committee to conduct a review of the report and to act as a resource to the Council. Some Committee members may be willing to continue their service on this Committee for a limited time or a new Committee can be formed.

Long-term Solutions

There is one important long-term solution that the City should consider to help get on track with the I&I issue:

- ***Establish and implement a CMOM Program.*** A Capacity Management Operations and Maintenance (CMOM) program should be implemented. A CMOM program is a comprehensive evaluation of all issues with respect to the sewerage collection system. The process involves evaluation of every aspect from staffing to policies to operation and maintenance. Implementing a CMOM program is recognized a national best practice and is recommended by the United States Environmental Protection Agency (US EPA).

CMOM

C – Capacity – Addresses blockages, structural issues, I&I issues

M – Management – Identifies performance measures, standard operating procedures, training

O – Operation – Operation of pump stations, programs

M – Maintenance – Preventative, predictive and corrective maintenance

A CMOM program should identify short-term, mid-range and long-term infrastructure improvement projects that intend to eliminate SSO's. The plan should include cost estimates for each of the recommended improvements and a proposed construction schedule for how to prioritize these improvements to reduce I&I in the shortest period of time. A financing plan will be necessary to enable the plan's implementation. Depending on the size and scale of the necessary improvements, this plan will need to consider all potential funding scenarios including MWRA I&I Funding, State Revolving Fund Program loans, bonding, other grants and loans, fees, and public-private partnerships, and if necessary, increases in sewer rates.

Conclusion

A thoughtful strategy of infrastructure investment, coupled with the policy adjustments and other strategies outlined in this report, would enable the City to engage in a targeted and actionable mitigation plan yielding higher and better results. The current method of requiring private individuals and developers to identify problems, design solutions, retain qualified contractors, undertake construction and evaluate and test the system when the work is complete has proven to be ineffective in mitigating I&I in the City of Waltham.

Resolving this issue in a comprehensive and expeditious fashion needs to be the utmost priority for the city administration moving forward. In order to achieve this objective, there must be greater communication, cooperation and dedication by the City administration and City departments that are involved. The Committee offers the above set of strategies which, if implemented, will provide the City with a tremendous step forward in resolving this critical infrastructure challenge, while also preserving the city's robust commercial tax base to support public services and maintain a low tax burden on residents.

This report was submitted to the Waltham City Council at its meeting on November 24th, 2014. The following I&I Advisory Committee Members participated in this process and the formulation of this report:

- Robin Brodsky, Co-Chair - Waltham Resident
- Randy LeBlanc, Co-Chair - Waltham Resident - HVAC Contractor
- Kathy Luvisi, Secretary - Waltham Resident - Engineer (P.E.)
- Bob Coleman - Waltham Resident - R. E. Appraiser - Property Manager - Broker
- Tom Dusel - Non-Resident - President/CEO - Property Manager
- Paul Finger - Non Resident - Principal - Landscape Architect
- Joey LaCava - Waltham Resident - Business Owner

Addenda

City Council Resolution Establishing the I / I Committee

Administrative Consent Order - May 7, 2003

Amended Consent Order - January 31, 2005

Administrative Consent Order and Notice of Noncompliance - February 22, 2010

Massachusetts General Laws Chapter 83

I&I Ordinance

I&I Policies and Covenant to Provide I & I Sewer Mitigation

I & I Committee Minutes

CMOM Request

Excerpts From CMOM Self-Assessment Checklist Memorandum

Excerpts From Massachusetts Water Resource Authority Annual Infiltration And Inflow (I/I) Reduction Report For Fiscal Year 2014

Excerpts From Final Official Statement Dated June 10, 2014 City Of Waltham, Massachusetts \$3,500,000 General Obligation Taxable Bond Anticipation Notes

Best Practices, Goals, Solutions, Investment Benefits

City Council Resolution Establishing the I / I Committee

City Council Resolution

APPROVED AS AMENDED
COW - 5-19-2014

Whereas, The City of Waltham has been party to a consent agreement with the Massachusetts Department of Environment Protection for several years to resolve a critical environmental issue and infrastructure shortfall regarding inflow and infiltration (I&I).

Whereas, The City of Waltham is responsible for setting policy and mitigation strategies to meet the conditions of the consent agreement and ultimately resolve this existing environmental hazard.

Whereas, there have been numerous complaints from the business community with regards to transparency and implementation of the Inflow & Infiltration policy and the City Council has reason to believe these complaints are substantiated by inadequate policy making within the administration.

Whereas, the City Council needs to ensure that the City's administration of this consent agreement is not adversely and disproportionately impacting businesses and impeding the long term stability of the local economy.

Therefore be it Resolved that the City Council establish an Inflow & Infiltration Business Advisory Committee to consult and advise the administration on the impact of Inflow & Infiltration policies and the impact that such policies have on business, the local economy, local property valuations, and commercial/business tax revenue.

Therefore be it further Resolved that the City Council appoint no less than ^{FOUR} ~~ten~~ individuals representing the interests of businesses to serve on an Inflow & Infiltration Business Advisory Committee; Such individuals shall have expertise in land use and environmental law, commercial leasing, residential and commercial construction, engineering, the local business climate, and the Inflow & Infiltration practices of other Massachusetts communities.

Therefore be it further Resolved that the Inflow & Infiltration Business Advisory Committee will review the administration's most recent progress report to the Massachusetts Department of Environmental Protection and the administration's proposed 5-year mitigation plan that is due to Massachusetts Department of Environmental Protection in August 2014, and report to the City Council ~~on a monthly basis on its findings, concerns and interests as a committee.~~

THEIR RECOMMENDATION FOR THE 5-YEAR MITIGATION PLAN
BY THE AUGUST 2014 CITY COUNCIL
MEETING.

Sincerely,



Thomas M. Stanley
Councillor-at-Large
Chair, Economic & Community Development Committee

5/12/14



AND THREE
WALTHAM
RESIDENTIAL
RATEPAYERS
WHO DO NOT
OWN A
WALTHAM
BUSINESS.

Administrative Consent Order - February 22, 2010

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

RECEIVED
MAR 01 2010
ENGINEERING DEPT.

In the Matter of)
City of Waltham)
_____)

File No. ACO-NE-10-1N001

ADMINISTRATIVE CONSENT ORDER
AND
NOTICE OF NONCOMPLIANCE

I. The Parties

1. The Department of Environmental Protection (the "Department") is a duly constituted agency of the Commonwealth of Massachusetts, established pursuant to M.G.L.c. 21A, sec. 7. MassDEP maintains its principal office at One Winter Street, Boston, Massachusetts 02108, and its Northeast Regional Office at 205B Lowell Street in Wilmington, MA 01887.

2. The City of Waltham (the "City") is a municipal corporation in the Commonwealth of Massachusetts. The Engineering Department for the City has a principal place of business and mailing address at the Engineering Department, Arthur J. Clark Government Center, 119 School Street, Waltham, MA 02451. The City owns, operates and maintains a municipal sewer system that collects and transports sewage and other wastes from properties connected thereto to the MWRA sewer system for treatment and disposal at the Deer Island WWTP.

II. Statement of Facts and Law

3. MassDEP is responsible for the implementation and enforcement of: M.G.L. c. 21, §§ 26-53 (Clean Waters Act), the Surface Water Discharge Permit Program regulations at 314 CMR 3.00 and the Wastewater Operation, Maintenance and Pretreatment Regulations at 314 CMR 12.00. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.

4. The following facts and allegations have led the Department to issue this Consent Order:

A. 314 CMR 3.03(1) states in part:

"No person shall discharge pollutants to surface waters of the Commonwealth without a currently valid permit from the Department pursuant to M.G.L.c. 21, sec. 43 and 314 CMR 3.00 unless exempted in 314 CMR 3.05. No person shall construct, install, modify, operate or maintain an outlet for such a discharge or any treatment works required to treat such discharge without having first obtained a discharge permit in accordance with 314 CMR 3.03(1) and written approval from the Department for such activity, unless exempted pursuant to 314 CMR 3.05. ..."

B. 314 CMR 3.02 defines "discharge" in part to be "any addition of any pollutant or combination of pollutants to waters of the Commonwealth from any source, including but not limited to, ... discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person, which do not lead to a POTW and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works...."

C. 314 CMR 3.02 defines "pollutant" to be "any element or property of sewage, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter, in whatever form, and whether originating at a point or major non-point source, which is or may be discharged, drained, or otherwise introduced into any sewerage system, treatment works, or waters of the Commonwealth."

D. 314 CMR 12.03(8) states in part:

"No person responsible for the operation of treatment works shall permit wastes to bypass the facility or any portion, unit or part thereof except as may be necessary under existing design limitations as approved by the Department, unless in accordance with the provisions of a discharge permit. If bypass due to an emergency condition occurs, the Department shall be notified immediately."

E. 314 CMR 12.04(8) states:

"Any person operating treatment works shall maintain the facilities in a manner that will ensure proper operation of the facilities or any part thereof."

F. 314 CMR 3.02 defines "Waters of the Commonwealth" to be "all waters within the jurisdiction of the Commonwealth, including, without limitation rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and ground waters."

- G. On April 30, 2001, the Department issued a Notice of Noncompliance Number NON-NE-01-1066 (the "NON") to the City for the non-reporting of sewer overflows. The NON required the City to address SSO's near the former Metropolitan State Hospital, 475 Trapelo Road, Waltham and to notify the Department of all sewer overflows or bypasses in accordance with 314 CMR 12.03(8) on the Department approved form.
- H. On May 7, 2003, in response to subsequent SSO's, the City entered into an Administrative Consent Order, ACOP-NE-02-1003 (the "2003 Consent Order") with the Department in which the City agreed to take certain actions to reduce the frequency and duration of SSO's to waters of the Commonwealth, including a plan and schedule for eliminating infiltration and inflow to the City's sewer system. The 2003 Consent Order also required that the City establish and maintain a "sewer bank" to manage any and all new connections to the City's sewer system, so that further connections would not exacerbate the risk of sanitary sewer overflows.
- I. On January 31, 2005, the City entered into an amended Administrative Consent Order with MassDEP, ACOP-NE-04-1N004 (the "Amended Consent Order"). The Amended Consent Order required the City to continue administration of the sewer bank; to implement sewer system rehabilitation projects identified in their infiltration/inflow investigation; and to establish a private inflow removal program.
- J. Pursuant to the requirements of the enforcement actions noted above, the City has made significant progress in addressing infiltration and inflow to the sewer system and in characterizing the risk of sewer system overflows. These activities included:
 - i. Establishing and administering a Sewer Bank to manage new connections to the sewer system;
 - ii. Completion of the Beaver Brook sewer system rehabilitation project;
 - iii. Completion of the Hobbs Brook sewer system rehabilitation project;
 - iv. Completion of the Roberts Trunk Line sewer system rehabilitation project;
 - v. Completion of the Met State sewer system rehabilitation project;
 - vi. Initiation of a private inflow identification and removal program; and
 - vii. Completion of a Draft Sewer System Facilities Plan and Hydraulic Model dated July 2009, which includes recommendations for sewer system improvements to mitigate the risk of further sewer system overflows.

- K. Despite the significant efforts of the City, sanitary sewer overflows continue to occur in Waltham. Since 2008, the City has had 13 reportable sanitary sewer overflow events. These overflows resulted in the unpermitted discharge of pollutants to waters of the Commonwealth in violation of 314 CMR 3.03(1), 314 CMR 12.03(8), and 314 CMR 12.04(8).

III. Disposition and Order

For the reasons set forth above, MassDEP hereby issues, and Respondent hereby consents to, this Order:

5. The parties have agreed to enter into this Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to contest such facts and allegations for purposes of the issuance or enforcement of this Consent Order. This Consent Order supersedes ACOP-NE-04-1N004.
6. MassDEP's authority to issue this Consent Order is conferred by the Statutes and Regulations cited in Part II of this Consent Order.
7. From the effective date of this Consent Order and thereafter, the City shall notify the Department of all sewer overflows or bypasses on the Department approved form in accordance with 314 CMR 12.03(8).
8. From the effective date of this Consent Order and thereafter, the City shall not issue a sewer connection/ extension permit or an occupancy permit for any project that adds flow to the sewer system unless the permits are issued in compliance with the Sewer Connection Permitting Program and Sewer Bank described herein. From the effective date of this Consent Order and thereafter, the City shall implement the Sewer Bank as follows. The City may add one gallon of flow to the Sewer Bank for every four gallons of infiltration and inflow removed from the system. The Department reserves the right to disapprove any addition of flow credit to the Sewer Bank. Notwithstanding the foregoing, the City may add 1,200 gallons to the Sewer Bank, when a sump pump has been redirected from the sewer system. From the effective date of this Consent Order and thereafter, whenever the City issues a sewer connection /extension permit, allows an increase in flow or issues an occupancy permit, the City shall reduce the Sewer Bank balance by the approved design flow. From the effective date of this Consent Order and thereafter, the City shall not issue a sewer connection permit, allow an extension of the sewer system or an increase in flow or issue an occupancy permit, unless there is a sufficient balance in the Sewer Bank to accommodate the new use. Notwithstanding anything to the contrary in this Amended Consent Order, the City shall not require a deduction for the Sewer Bank when it issues an occupancy permit for a particular project, if the deduction was already taken when the City issued the sewer connection or extension permit for that project. From the effective date of this Consent Order and thereafter, the City shall not issue a sewer connection permit, allow an extension of or allow an increase in flow to any sewer or issue an occupancy permit if the resulting

discharge would result in the sanitary waste design flow component for the sewer or any downstream sewer owned and/or operated by the City of Waltham to be exceeded. The Sewer Connection Program shall include at a minimum standards for acceptable infiltration for construction of new street sewers, manholes, service connections and building sewers, a prohibition on stormwater or groundwater connections and a post construction testing and inspection program to ensure that new construction prior to acceptance by the City meets standards and does not include any illegal stormwater, groundwater or other unpermitted connections.

9. From the effective date of this Consent Order and thereafter, the City shall maintain the following records for review by the Department: (a) sewer connection and extension permits issued including the permitted flow rates; (b) occupancy permits issued; (c) work performed to reduce infiltration and inflow including any private sources of inflow; (d) field measurements taken, field observations made, and engineering calculations used to estimate infiltration and inflow reduction before and after infiltration and inflow removal work was done, (e) results of any acceptance inspections and testing performed for any sewer connections, sewer extensions, rehabilitation work, sewer improvement projects and inflow removal work; and (f) copies of all overflow/bypass notifications.

10. The City shall proceed with "Proposed Implementation Schedule for the First Five Year Plan, January 2010", which was provided to MassDEP on January 26, 2010 and which is incorporated and made an enforceable part of this Consent Order as Attachments A and B. These collective projects represent Phase I of work recommended in the Draft Sewer System Facilities Plan and Hydraulic Model. The start and completion dates for the projects included in the First Five Year Plan shall be enforceable elements of this Consent Order.

11. On or before March 1, 2010, the City shall complete the Final Sewer System Facilities Plan and Hydraulic Model, which shall address comments issued to the City on the Draft Report by MassDEP dated July 30, 2009. The recommended plan shall include specific provisions for:

- A. Performing proper operation and maintenance on areas with frequent sewer system overflows;
- B. Continuation of the private inflow removal program; and,
- C. Proper management and control of fats, oil, and grease (FOG) throughout the City's sewer system.

Upon approval by MassDEP of the recommended plan, the City shall implement the plan, which shall be an enforceable element of this Consent Order.

12. On or before August 1, 2014, the City shall provide a Phase I Assessment Report, which shall present detailed technical information on the performance of the Phase I sewer system overflow abatement work. The Report shall include, at a minimum:

- i. Results of a continuous flow metering program, inclusive of 2010 Spring flow monitoring;

- ii. A summary of any and all SSO events, including the causes, and response actions;
- iii. A review of wet weather-related SSO events, and determinations on level of service (in terms of design storm capacity) provided by the sewer system;
- iv. A review of the Phase II recommended plan included in the Final Sewer System Facilities Plan and Hydraulic Model, and recommendations, including a plan and schedule for implementing the Phase II plan.

13. On or before January 2 and July 1 of each year, the City shall submit a semi-annual report to the Department. At a minimum, the semi-annual report shall provide details on the City's compliance with the terms and conditions of this Consent Order and all actions the City has taken within the last six months to comply with the Consent Order and all actions the City intends to take within the next six months to comply with the Consent Order. The semi-annual report shall describe all infiltration and inflow removal work including actions to remove private inflow sources along with estimates of the volume of infiltration and inflow removed; operation and maintenance efforts including pump station inspections, repairs to address deficiencies identified as a result of the pump station inspections or otherwise, actions taken to prevent excessive amounts of oil and grease from entering the sewer system including enforcement actions; sewer rehabilitation and replacement work; the results of all infiltration and inflow investigations and post rehabilitation flow monitoring. The semi-annual report shall include the most recent records documenting the amount of flow in the sewer bank including all sewer connection permits, extension permits, occupancy permits or increases in flow issued since the effective date of this Consent Order with the date the permit was issued, the location and design flow, the infiltration and inflow removal work completed since the effective date of this Consent Order, along with the date that the work was completed, location and estimated reduction in flow to the sewer system and a running total of the flow remaining in the sewer bank after applying the appropriate ratio for infiltration and inflow removal credits.

14. In addition to being a Consent Order, this document is also a Notice of Noncompliance issued pursuant to M.G.L.c. 21A, sec. 16 for the City's noncompliance with M.G.L.c. 21, sec. 43 and 314 CMR 3.00 and 314 CMR 12.00. Future violations of these requirements or the requirements of this Consent Order may result without limitation in the assessment of civil administrative penalties for each day or portion thereof each such violation occurs or continues.

15. Submittals required by this Consent Order shall be considered delivered upon receipt by the Department. All submissions required by this Consent Order shall be submitted to:

Kevin Brander, P.E., Section Chief
Division of Wastewater Management
Department of Environmental Protection

Northeast Regional Office
205B Lowell Street
Wilmington, MA 01887

16. Actions required by this Consent Order shall be taken in accordance with all applicable federal, state, and local laws, regulations and approvals. This Consent Order shall not be construed as, nor operate as, relieving Respondent or any other person of the necessity of complying with all applicable federal, state, and local laws, regulations and approvals.

17. For purposes of M.G.L. c. 21A, § 16 and 310 CMR 5.00, this Consent Order shall also serve as a Notice of Noncompliance for Respondent's noncompliance with the requirements cited in Part II above. MassDEP hereby determines, and Respondent hereby agrees, that the deadlines set forth above constitute reasonable periods of time for Respondent to take the actions described.

18. Respondent understands, and hereby waives, its right to an adjudicatory hearing before MassDEP on, and judicial review of, the issuance and terms of this Consent Order and to notice of any such rights of review. This waiver does not extend to any other order issued by the MassDEP.

19. This Consent Order may be modified only by written agreement of the parties hereto.

20. The provisions of this Consent Order are severable, and if any provision of this Consent Order or the application thereof is held invalid, such invalidity shall not affect the validity of other provisions of this Consent Order, or the application of such other provisions, which can be given effect without the invalid provision or application, provided however, that MassDEP shall have the discretion to void this Consent Order in the event of any such invalidity.

21. Nothing in this Consent Order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting (i) any legal or equitable right of MassDEP to issue any additional order or to seek any other relief with respect to the subject matter covered by this Consent Order, or (ii) any legal or equitable right of MassDEP to pursue any other claim, action, suit, cause of action, or demand which MassDEP may have with respect to the subject matter covered by this Consent Order, including, without limitation, any action to enforce this Consent Order in an administrative or judicial proceeding.

22. This Consent Order shall not be construed or operate as barring, diminishing, adjudicating, or in any way affecting, any legal or equitable right of MassDEP or Respondent with respect to any subject matter not covered by this Consent Order.

23. This Consent Order shall be binding upon Respondent and upon Respondent's successors and assigns. Respondent shall not violate this Consent Order and shall not allow or suffer Respondent's members, managers, employees, agents, contractors or consultants to violate this Consent Order. Until Respondent has fully complied with this Consent Order, Respondent shall provide a copy of this Consent Order to each successor or assignee at such time that any succession or assignment occurs.

24. If Respondent violates any provision of the Consent Order, Respondent shall pay stipulated civil administrative penalties to the Commonwealth in the amount of \$1,000 dollars per day for each day, or portion thereof, each such violation continues.

Stipulated civil administrative penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day Respondent corrects the violation or completes performance, whichever is applicable. Stipulated civil administrative penalties shall accrue regardless of whether MassDEP has notified Respondent of a violation or act of noncompliance. All stipulated civil administrative penalties accruing under this Consent Order shall be paid within thirty (30) days of the date MassDEP issues Respondent a written demand for payment. If simultaneous violations occur, separate penalties shall accrue for separate violations of this Consent Order. The payment of stipulated civil administrative penalties shall not alter in any way Respondent's obligation to complete performance as required by this Consent Order. MassDEP reserves its right to elect to pursue alternative remedies and alternative civil and criminal penalties which may be available by reason of Respondent's failure to comply with the requirements of this Consent Order. In the event MassDEP collects alternative civil administrative penalties, Respondent shall not be required to pay stipulated civil administrative penalties pursuant to this Consent Order for the same violations.

Respondent reserves whatever rights it may have to contest MassDEP's determination that Respondent failed to comply with the Consent Order and/or to contest the accuracy of MassDEP's calculation of the amount of the stipulated civil administrative penalty. Upon exhaustion of such rights, if any, Respondent agrees to assent to the entry of a court judgment if such court judgment is necessary to execute a claim for stipulated penalties under this Consent Order.

25. Failure on the part of MassDEP to complain of any action or inaction on the part of Respondent shall not constitute a waiver by MassDEP of any of its rights under this Consent Order. Further, no waiver by MassDEP of any provision of this Consent Order shall be construed as a waiver of any other provision of this Consent Order.

26. To the extent authorized by the current owner, Respondent agrees to provide MassDEP, and MassDEP's employees, representatives and contractors, access at all reasonable times to the treatment works owned and operated by the Respondent for purposes of conducting any activity related to its oversight of this Consent Order. Notwithstanding any provision of this Consent Order, MassDEP retains all of its access authorities and rights under applicable state and federal law.

27. The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to legally bind the party on whose behalf they are signing this Consent Order.

36. This Consent Order shall become effective on the date that it is executed by MassDEP.

Consented To:
City of Waltham

By: Jeannette A. McCarthy
Mayor Jeannette A. McCarthy
City Hall, 2nd Floor
610 Main Street
Waltham, MA 02452

Date: 2/17/10

Issued By:
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: Richard J. Chalpin
Richard J. Chalpin
Regional Director
MassDEP
Northeast Regional Office
205B Lowell Street
Wilmington, Massachusetts 01887

Date: 2/22/10

Massachusetts General Laws Chapter 83

Massachusetts General Laws Chapter 83 is the section of the state laws which deals with sewers, drains and sidewalks. Section 16 of M.G.L Chapter 83 indicates the following:

The aldermen of any city or the sewer commissioners, selectmen or road commissioners of a town, may from time to time **establish just and equitable annual charges for the use of common sewers** and main drains and related storm water facilities, which shall be **paid by every person who enters his particular sewer therein.....**In establishing quarterly or annual charges for the use of main drains and related storm water facilities, the city, town, or district may either charge a uniform fee for residential properties and a separate uniform fee for commercial properties or establish an annual charge based upon a uniform unit method; **but, the charge shall be assessed in a fair and equitable manner.**

I&I Ordinance

IN THE CITY COUNCIL
OF THE CITY OF WALTHAM
IN THE YEAR TWO THOUSAND FOUR
Ordinance # 30078

ORDERED: That Chapter 16 of the General Ordinances of the City of Waltham entitled "Sewers, Drains and Sewage Disposal", Article II entitled "Building Sewers and Connections," as most recently amended, is hereby further amended by adding the following new Section 16-32:

Sec. 16-32. Infiltration and Inflow Mitigation Fee

Any person or entity changing, altering, repairing, adding to or improving their property in any way that may or should impact the city of Waltham sewer system, or any person or entity proposing to add additional wastewater to an existing sewer connection or any applicant for a new Class 1 or Class 2 building sewer permit shall be required to mitigate infiltration/inflow sources, which add extraneous water to the City's sewer system thereby reducing its capacity and capability, at a rate of 4 gallons of infiltration/inflow removal for each additional gallon of wastewater that will be discharged to the sewer system. In the event a connection is subject to a state sewer connection/extension permit under Code of Massachusetts Regulations, Chapter 314 and such permit is conditioned upon the completion of removal of infiltration/inflow prior to connection said removal of infiltration/inflow shall be credited toward complying with the requirements of this ordinance.

Applicants for Class 1 Permits (Residential) or any person or entity changing, altering, repairing, adding to or improving their property in any way that may or should impact the city of Waltham sewer system, or any person or entity seeking to add additional wastewater to an existing residential sewer connection shall remove 4 gallons of infiltration/inflow from the sewer system for each 1 gallon of wastewater flow requested in the permit or request (Title 5 (310 CMR 15) shall be used to determine flow rates) or in lieu of said removal shall be charged a one-time infiltration/inflow mitigation fee of \$1,000/unit equivalency except owner occupied single family houses which shall be charged a \$750 infiltration/inflow mitigation fee.

Applicants for Class 1 Permits (Commercial) and Class 2 Permits or any person or entity changing, altering, repairing, adding to or improving their property in any way that may or should impact the city of Waltham sewer system, or any person or entity seeking to add additional wastewater to an existing non-residential sewer connection shall remove 4 gallons of infiltration/inflow from the sewer system for each 1 gallon of wastewater flow requested in the permit or request (Title 5 (310 CMR 15) shall be used to determine flow rates), or in lieu of said removal shall be charged a fee. Said fee shall be calculated based on Title 5 flows, a 4 to 1 removal factor, and a cost of \$3.00 per gallon of flow per day. For example, a 10,000 square foot office building has an associated Title 5 flow of 750 gpd, therefore the fee for this connection is \$9,000.00 (750gpd x 4 x \$3.00).

The Director may determine that sources of infiltration or inflow are either not present or are not appropriate for removal at the time of the permit or request, and the Director may therefore assess the monetary mitigation fee. Alternatively, the Director may require a combination of infiltration/inflow removal and mitigation fee.

Any infiltration/inflow removed from the sewer system as part of the infiltration/inflow requirements of this Section shall be verified by a pre-rehabilitation and post-rehabilitation testing program adequate to demonstrate compliance with the removal requirements of this ordinance. In addition, any infiltration/inflow removed from the sewer system as part of the infiltration/inflow requirements of this ordinance shall be the property of the City of Waltham and may not be applied to future removal requirements without the written authorization of the Director.

The removal of infiltration and inflow and payment of any monetary fee assessed shall be required prior to the issuance of a building sewer permit or any other permit, order or permission for any change, alteration, repair, addition or modifications improving the subject property.

The City Council, for good cause shown upon petition, may abate in whole or in part infiltration/inflow fees for connections to any residence existing as of the date of the Administrative Consent Order (May 7, 2003).

The Director shall calculate the infiltration/inflow fee using "Unit Equivalencies" for non-owner occupied Class 1 (Residential) Permits based on the sanitary sewer flow rates described in the Massachusetts Title V Regulations, 310 CMR 15.00, and described as follows:

One (1) unit is equal to three (3) bedrooms is equal to 330 gpd is equal to 4,400 square feet.

Residential Equivalency units shall be calculated in thirds with a minimum unit equivalency of one (1). For example, a four-bedroom house would pay an application/connection fee of \$1,400 (one and one third (1 1/3) unit equivalencies multiplied by \$1,000. All monetary values shall be rounded up to the nearest one hundred dollar increment.

Non-Residential (Commercial/Industrial) Equivalency Units shall be calculated as whole units (all decimals shall be rounded up to the nearest whole number) with a minimum application/connection fee of \$1,000.

Unit equivalencies for all facilities connected to the City's Wastewater System shall be determined using Title V flows and the equivalencies stated above.

For purposes of Section 16-32, "residential" shall mean the uses as defined as residential uses in the Waltham Zoning Ordinance as amended from time to time.

For purposes of Section 16-32, "director" shall mean the director of Public Works, after review, approval and consent by and of the City Engineer.

FURTHER ORDERED: That Chapter 16 of the General Ordinances of the City of Waltham entitled "Sewers, Drains and Sewage Disposal", Article I entitled "In General", Section 16-1 entitled "Definitions" as most recently amended, is hereby further amended by adding the following new definitions within the list of alphabetically arranged terms:

Infiltration. Water other than wastewater that enters a sewer system (including sewer service connections and foundation drains) from the ground through means which include, but are not limited to, defective pipes, pipe joints, connections, or manholes. Infiltration does not include, and is distinguished from inflow.

Infiltration/Inflow. The quantity of water from both infiltration and inflow without distinguishing the source.

Inflow. Water other than sanitary flow that enters a sewer system (including sewer service connections) from sources which include, but are not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage. Inflow does not include, and is distinguished from infiltration.

First Reading December 13, 2004

Attest Rosario C. Malone, CMC
City Clerk

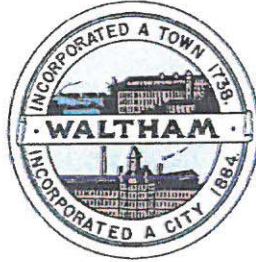
Second Reading December 27, 2004

Third and Final Reading December 27, 2004

Approved December 29, 2004

Jeannette A. McCarthy, Mayor

CITY OF WALTHAM
Engineering Department
Office of the City Engineer



Jeannette A. McCarthy
Mayor

Stephen A. Casazza, P.E.
City Engineer

Sewer Bank Procedure

1. The MassDEP Consent Order (May 7, 2003) states the City shall require the removal of four gallons of infiltration and inflow (I/I) for each additional gallon of wastewater flow that will be discharged to the sewer system. (Copies available)
*Updated – Amended Consent Order 02-10-10
2. The City Ordinance # 30078 (December 29, 2004) states I/I procedures for residential, commercial, and industrial permit applicants. (Copies available)
 - a. Residential Fees are as follows:
Owner occupied single family - \$750.00
Other residential – number of bedrooms divided by 3, times (x) \$1,000.
There is a \$1,000 minimum, rounded up to the nearest \$100 increment
 - b. Commercial Fees are as follows:
Gallons of flow per day, times (x) 4, times (x) \$3.00. There is a \$1,000 minimum
 - c. The City may charge a fee, require an I/I removal project, or use a combination of both.
3. The MassDEP Amended Consent Order (January 31, 2005) mandated that City establish a Sewer Bank. (Copies available)
4. Projects with a design flow of up to 1,320 gpd's (equivalent to four three bedroom houses) will be allowed to pay a fee and a deduction will be made from the Sewer Bank. This deduction is subject to availability of adequate gallonge in the Sewer Bank. First priority is given to the owner occupied single-family applications. Other applications will be given priority by the date the City Engineer signs the permit application.
 - a. Deduction shall be made to the Sewer Bank when both the permit application is signed and the fee is paid.
5. Development requiring a design flow of over 1,320 gpd's shall be required to sign, notarize and record at the Middlesex Registry of Deeds a City of Waltham Covenant and Agreement to Provide Inflow & Infiltration Sewer Mitigation; and

to complete an Inflow and Infiltration Mitigation project. A Sewer Bank Credit will be added to the Sewer Bank when the project is completed and certification, by a Massachusetts Registered Professional Engineer, is received that the estimated flow was removed.

- a. Debits to the Sewer Bank for development that require an I/I project become available after the project is completed and certification, by a Massachusetts Registered Professional Engineer, is received that the estimated flow was removed.
 - b. A Temporary Occupancy Permit may be allowed after the recording of the above Covenant and Agreement if the individual applicant is unable to complete the required mitigation project due to seasonal weather. A permanent Occupancy Certificate will be issued when the I/I Project detailed in the Covenant and Agreement is completed and certification, by a Massachusetts Registered Professional Engineer, is received that the estimated flow was removed.
 - c. *An independent project oversight engineer is required to monitor the I/I project assigned by the City. They will be responsible to report to the City on all aspects of the I/I project, including pre/post flow monitoring, I/I mitigation project schedule, progress and contacts/coordination with all other City Departments.*
6. Credits for the removal of I/I performed by the City will be credited as follows:
 - a. For projects requiring MassDEP notification, the credit will be added when notification is received by the City.
 - b. For projects that fall into the categories already addressed in the ACO (sump pumps etc), credit will be given when the City's inspector has signed off on the inspection.
7. One year rule shall apply to all applicants.
 - a. Property that has been vacant, unused, unplumbed, unoccupied, available, brand new, awaiting final fit-out or otherwise idle for a period of one year (based on commonly available record data including but not limited to water consumption records, building permits, tax records inspection reports and other public documents) shall be deemed and considered to be a new use for the purpose of Waltham Ordinance #30078.
 - b. All sewage flows shall be calculated for the new use and the I/I Mitigation fee and / or project shall be calculated based on a vacant property.

Update: July 31, 2013
Update: May 8, 2009
Update: September 29, 2007
Update: July 25, 2007
Update: July 6, 2007
Update: February 26, 2007
Original: March 20, 2006

Engineering Department 163 Lexington Street
Waltham MA 02452-4638
TEL: (781) 314-3830 FX: (781) 314-3838
scasazza@city.waltham.ma.us

**COVENANT AND AGREEMENT TO PROVIDE INFLOW & INFILTRATION
(I&I) SEWER MITIGATION TO THE CITY OF WALTHAM WITH
REFERENCE TO THE PROPERTY IN WALTHAM KNOWN**

AS _____

1. The Covenantor is an/are owner(s) of property in the City of Waltham known and numbered _____

(hereafter, the Property)

2. The Covenantor is the owner of the Property in or under the following legal identity or title: _____

(For Owner's Title See Deed Recorded in Middlesex South Registry of Deeds Book _____, Page _____.) The above said Covenantor may hereinafter also be referred to as Developer or Owner.

3. Convenantor/Developer, individually and in any and every other applicable legal capacity, for its/his/her heirs, successors and assigns, covenants, warrants and agrees to the following, with respect to the development, alteration, renovation, change, use or other activity involving the Property:

- 3A. In general terms the Developer(s) agrees that Developer(s) is/are subject to and shall comply with all City of Waltham's (City) Ordinances - including but not limited to ordinances relating to sewers and the so-called "I&I" ordinance and all relevant corollary Environmental Protection Agency ("EPA") and Massachusetts Department of Environmental Protection ("DEP") Regulations and requirements, including a Consent Order ("CO") and Amended Consent Order ("ACO") between the Massachusetts Department of Environmental Protection and the City of Waltham - in relation to the Developer' purchase, construction, development, improvement, or use, in, on or of the Property (including all accessory buildings and parking areas). In brief summary the above requires Developer to construct to completion and place in optimal functioning condition, the rehabilitation/repair of a segment or component of sewer connected into the City's sewer system as designated and assigned by the City (hereafter the Project); this is intended to remove so-called "Infiltration & Inflow" to the City's sewer system in an amount estimated by the City to be _____ gallons per day (hereafter gpd), Covenantor/ Developer also covenants and agrees to comply and be bound by all federal, state and local laws, regulations, rules and policies, including but not limited to rules, regulations, policies and procedures of the City of Waltham, as they may be amended from time to time, including those of the City of Waltham's Engineering Department and CPW Department. The Developer will accomplish this above I&I mitigation or rehabilitation by eliminating I&I in the City's sewer system up to the above

_____ gpd in one or more Project(s) of sewer system rehabilitation to be described and identified hereafter and described in more detail in the "Rider" to this Covenant identifying the sewer system rehabilitation to be undertaken and completed by Developer (hereafter accepted I&I Project or the Project). The Project is designated and assigned to Developer based on review, study and Agreement between Developer and the City. If the project is selected, agreed and Covenantor commits to taking a Project by or at the time this Covenant is signed by Developer, this said Project shall be described in summary in an Exhibit A to be attached hereto, which identifies and the area of the sewer system of the project and delineating its nature and extent.

If by the time Developer signs this Covenant the City and Developer have not discussed, reviewed and selected a Project for Developer to be assigned to complete, Developer may study any number of potential projects and areas of the City's sewer system which may provide potential I&I projects, based on an area or segment of the City's sewer system as may be assigned by the City Engineer (hereafter Study Area). The Developer will have a limited but reasonable period of time to review and evaluate this Study Area but shall not have any proprietary or possessory interest in said Study Area. N.B. If Developer has not committed to undertaking and completing a particular Project as referenced above (and obtaining acceptance thereof by the City as hereafter outlined) within a reasonable period of time, the City Engineer may notify the Developer that the Study Area is being withdrawn from Developer and being made available to others. Further, and referenced hereafter, if by the time Developer has signed this Covenant and a reasonable time has expired since the study area was assigned and, Developer has not committed to undertaking and not initiated the construction of the Project within a reasonable period of time, then without prejudice to the city's other remedies, including but not limited to rescission or withholding of Building, Occupancy or other permits, the city reserves the right to assign a Project to Developer to initiate and complete.

Developer acknowledges and understands that among the City's multiple remedies, the City may elect to withhold, or rescind if previously issued, various municipal permits, licenses or approvals, until Developer's I&I obligations are completed. N.B. Developer acknowledges and understands that various municipal permits or approvals can and will be withheld until Developer's I&I obligations are completed. Developer will have a reasonable period of time to review and agree to one or more above I&I Projects; however, if after such time Developer has not agreed to such, the City will and does reserve the right to assign, and Developer will complete, one or more Projects sufficient to satisfy Developers I&I obligations.

- 3B. The previously mentioned _____ gpd is based on information provided by Developer. If this reported volume capacity is in fact determined to be greater than the aforementioned, the above I&I gpd mitigation figure may be increased. In all circumstances the City of Waltham Ordinances (e.g. Sec. 16) always apply and control this Agreement, as do the Consent Order

and Amended Consent Order terms between the City of Waltham and Massachusetts D.E.P., along with rules and regulations of Massachusetts D.E.P. and United States E.P.A.

The City may receive and accept Engineering and other data and calculations relating to the Developer/Owner's obligations, and the determination and calculations relating thereto, from Engineers or consultants provided by or through Developer/Owner. In such circumstances all such data and information will be certified and sworn to as true and accurate by any such Engineer or consultant; any such certified data or information shall be considered also as warranted and certified accurate by Developer. Even if the Developers' Engineer(s) or Consultant(s) this does not prevent or preclude the City from rescinding any such putative acceptance if such data or information is incorrect, inaccurate, incomplete or otherwise inappropriate.

The City also reserves the right, which is agreed and assented to by Developer, to check, retest or recalculate the use and flow of sewer gallongage from the Property from time to time and correct and recalculate Developer/Owner's I&I Mitigation obligations when and where appropriate.

4. **Sewer Rehabilitation Project – Scope of Work:** The scope of work shall be that scope outlined in the project documents for the Project as reviewed and accepted by the City, and approved where necessary by DEP. The work of this Project by Developer shall generally include, but not be limited to all design and engineering, with ancillary project inspection, administration and administrative preparations and filings (e.g. to D.E.P. and E.P.A.), sewer system construction, repair, rehabilitation or replacement, by-pass pumping; clearing and grubbing; easement restoration; pavement replacement and miscellaneous work and cleanup as specified hereafter, (or as also used herein, the Project Work) all as more particularly described in the attached Exhibit A. Developer shall be responsible to obtain all Federal State and local permits, licenses or approvals necessary or convenient for effectuating the Project. The City will cooperate with Developer in facilitating the acquisition of all such permits or approvals. The City will also give and provide permission and license to Developer to use any easement or other rights the City may have in and to the location of and for the laying, use and maintaining of any pipes, sewers or drains in any area(s)/location(s) of the Project when actually undertaken by Developer.
5. The Developer shall oversee and fund all costs associated with the above construction of the Project(s). The Developer shall contract and complete the Project(s) as a private project using private funds. Funding and payment for the Project(s) shall be provided by the Developer and all liability and responsibility emanating from this Project shall be the Developer's. Developer is responsible to have and ensure that all design and construction hereunder is completed by, with and through their own personnel or persons under Developer's control and direction. Notwithstanding anything to the contrary herein the City shall not be responsible for or be required to complete

any of the design, construction, site supervision and construction inspection needed to fully complete the Project. Developer shall not assign or sublet in whole or in part any of Developer's responsibilities or interest under any part of this Agreement. The City does reserve the right to require Developer to submit for review and obtain City approval for:

- a.) the engineering, design, plans and specifications for the Project. The City, including through its own Engineering Department, and its agents and consultants, shall have the right to receive and review all design, engineering plans and specifications prepared by Developer to commence and complete the Project. All such design, engineering, plans and specifications shall be prepared so as to comply with all federal, state and local regulations as well as highest current industry standards including, but not limited to, insuring compliance with the CO and ACO referenced above. Developer shall deliver and submit all documents in any way to be utilized for and in the Project to the City for the City's review and approval/ acceptance at least forty five (45) days in advance of their being considered and accepted by the City, and any other necessary agency, as finally approved for use in the Project – the failure of the City to respond to Developer's document submittals within a reasonable time after all necessary documentation has been supplied to the City shall be considered approval of such complete submittal, the reasonable time referenced above shall in no event exceed sixty (60) days, unless there have been revisions, additions or modifications to such document submittals, which shall extend such period.
 - b.) the construction of the Project and Final Completion and time schedule for such. (N.B. However, the City's failure to object to or to accept or approve the Project, or components or portions thereof, shall not release or absolve the Developer, or their contractors, sub-contractors or agents, of and from failure to comply with any of the above mentioned standards, or from breach of this Agreement.)
6. Start of Construction/Compliance with CO: The City of Waltham entered into a CO in May 2003 and ACO with the DEP on January 24, 2005 (City Council Order #30101). Consistent with the principles outlined above, the City shall have final review and acceptance of the time frame, dates for commencement and completion of all phases of the Project including:
- a.) design and engineering, and;
 - b.) Project Construction – as alluded to and consistent with the above provisions (including paragraph #3) Developer will initiate this process by proposing one or more projects to satisfy the above, and submitting plans and supporting data reasonably sufficient for the City to so identify and evaluate whether such proposal demonstrates Developers' compliance with its I&I obligation. Then the city will either approve one or more of the above projects, as referenced above, or assign one or more other projects to be done by Developer,

including a Project which may include one on or connected to Developer's Property. As outlined above the City agrees to provide permission and license to Developer to utilize any easement or other rights of access or property rights the City may have in or on the land for which a potential Project is being assessed or studied by Developer.

Developer shall propose the dates for commencement and completion of (a) above within fifteen (15) days of the signing of this Agreement if a Project is selected at the same time, and (b) above within 60 days thereafter. If Covenantor has not committed to a Project at the time this Covenant is signed then the above time periods will apply at and from the date after which a Project is assigned.

7. I/I Credit for Completion of I&I Mitigation: The City of Waltham Engineering/Department of Public Works issued a report in February 2003 titled, "Plan for the Elimination of Inflow/Infiltration into Waltham's Sewer System". If some or all above referenced project is not timely commenced and/or timely completed by Developer then the I&I Credit will not be give to Developer but will be allocated by DEP to the City as work is performed on a pro-rata basis - e.g. if 10% of the work is completed, then the City shall be credited with 10% of the project's total I&I Credit. The allocation of gpd I&I Credit by DEP or the City to Developer for the completed Project shall, where applicable, fully satisfy any and all I&I requirements associated with Developer's construction and development of and on the Property/site and of its associated permits and approvals, its DEP permit, the City's Sewer Connection Permit requirements, the City's Infiltration and Inflow Mitigation/Fee requirements and compliance with the Consent Order and Amended Consent Order. When such is the case the Developer may apply for the Certificate of Compliance as outlined in paragraph 17.
8. I&I Credit Granted to the City of Waltham: Any remaining or excess I&I Credit issued to the Project(s) set forth above or in the Rider or Exhibits shall be credited to the City of Waltham and subsequently "banked" for purposes of the "CO" and "ACO" agreement to the extent allowed by the DEP. See also Exhibit A – Legal Description, and Exhibit B – Phased Construction.
9. City Oversight of the I&I Project: As outlined above and in accordance with a directive from DEP, the City shall review and secondarily oversee performance of the work outlined in this agreement. Such oversight shall include, but not be limited to, resident engineers employed or retained by the City serving as the final authority on all design and construction matters and for document interpretation, materials, modifications and substitutions in order to protect the interest of the City in obtaining a quality Project after design and construction, and credit for and by approval from DEP. The City shall not incur nor sustain any

responsibilities, liabilities or obligations for the above said reviews, acceptance(s) or approvals.

10. Developer agrees that Developer will require any and all of their contractors and subcontractors to perform all work in accordance with this Agreement and the specifications, regulations and requirements of the City's Departments of Engineering and Consolidated Public Works and in compliance with applicable federal, state and local laws, ordinances, rules and regulations, including but not limited to those of EPA and DEP, consistent with and in compliance with the terms of the above CO and ACO.
11. Developer agrees for themselves and their successors and/or assigns, and any subsequent owner of the property, its agents, servants, employees and any independent contractors performing work on its behalf, that all work performed in connection with the I&I Project and maintenance thereof, shall be done in a safe, diligent and workmanlike manner and in compliance with all applicable federal, state and local laws, orders, rules and regulations and shall be performed by licensed and bonded contractors. Developer or their heirs, successors, assigns or transferees are and remain bound by all terms of this Agreement and the Project requirements.
12. Developer shall maintain commercial general liability insurance in an amount not less than One Million Dollars, against claims for bodily injury, death and property damage occurring in connection with the construction and maintenance of the I&I Project and shall have the City listed as Additional Insured in said policy, providing evidence of such insurance to the City.
13. Developer shall defend, indemnify and hold harmless the City, its agents, servants and employees from and against all expenses, liabilities, obligations, assessments, damages, penalties, claims, actions, orders and costs paid or expected to be paid in connection with the design, construction or claims arising from or condition of the I&I Project accepted or undertaken by Developer hereunder. Notwithstanding this provision Developer may not be liable for wrongful acts of the City which are solely responsible for causing any of the above resulting damages or costs, for which the City may be liable solely under the provisions of G.L.M. c. 258.
14. The accepted I&I Project(s) shall be constructed in a good and workmanlike manner, substantially in accordance with this Agreement, and the approved plans and specifications, and in accordance with the requirements of all applicable federal, state and local laws and regulations (e.g. those of EPA and DEP), including the City's ordinances and its CPW and Engineering ordinances, regulations or policies. Developer warrants that it will adhere to same and require any and all of its contractors and

subcontractors to perform all work in accordance with same. The following performance requirements are specifically enumerated herein:

- (a) Developer shall perform, or cause to be performed, the Approved I&I Project(s), including but not limited to, investigation, documentation of "I/I" via flow isolation, "flow metering" or other method approved by DEP, survey, all the design and engineering, with ancillary project inspection, administration and administrative preparations and filings (e.g. Conservation Commission, DEP and EPA), permitting of all construction, repair and replacement work, and as may be required, by-pass pumping, sewer system construction, repair, rehabilitation or replacement; costs required to perform all engineering and construction to achieve sewer and storm drain separation, clearing and grubbing; easement restoration, pavement replacement and miscellaneous work and cleanup as more particularly specified by the accepted I&I Project(s) scope of work project documents. After final completion and compliance hereunder the City shall be responsible for ordinary maintenance of the Project components, and repairs thereto, so long as any repair's cause was not contributed to by any non-compliance of Developer, or his agents or contractors hereunder. Developer shall be responsible to obtain all Federal, State and local permits, licenses or approvals necessary or convenient for effectuating the accepted I&I Project(s), as outlined above.
- (b) The I&I mitigation, including design services and improvements necessary to commence and complete the accepted I&I Project(s) and prepared so as to comply with all federal, state and local regulations as well as applicable current industry standards, shall be subject to the review and acceptance of the City (its designated City Engineer and Director of CPW, and their agents and consultants), which acceptance shall not be unreasonably withheld. Developer shall deliver all documents in any way to be utilized for and in the Approved I&I Project(s) to the City for the City's review and acceptance at least forty five (45) days in advance of their being considered and accepted by the City, and any other necessary agency, as finally approved for use in the Approved I&I Project(s) subject also to acceptance by any applicable state or federal agencies. The City shall complete its review of the above within the previously referenced sixty (60) days of receiving such complete set of documents and any amendments or revisions thereto.
- (c) While performing said Approved I&I Project(s), if Developer encounters a Hazardous Environmental Condition (as defined herein) or if Developer or anyone for whom Developer is responsible creates a Hazardous Environmental Condition, Developer shall as soon as possible (i) notify the City and its

consultants (and promptly thereafter confirm such notice in writing; and shall (ii) perform such activities, if any, as are mandated by applicable laws and regulations with respect to such condition, in accordance with the opinion of the Developer's environmental consultant. As used herein, the term "Hazardous Environmental Condition" shall mean the presence of hazardous material as defined by M.G.L. c. 21E which requires reporting to the DEP pursuant to the Massachusetts Contingency Plan. If any claim or action is advanced against the City as a result of Developer's above action(s) or inaction(s) Developer covenants and agrees to defend and indemnify and hold harmless the City therefore. However if such above condition is not located or emanating from or connected to Developer's property(ies) and neither Developer nor its agents, servants, contractors or consultants has not caused or contributed to such Hazardous Environmental condition(s), Developer's liabilities shall not be greater than otherwise applicable under pre-existing or current laws or regulations.

- (d) Developer, and its successors and/or assigns, its agents, servants, employees and any independent contractors performing work on its behalf, warrant and agree that all work performed in connection with this Approved I&I Project(s) and the maintenance thereof, shall be done in a safe, diligent and workmanlike manner and in compliance with all applicable federal, state and local laws, orders, rules and regulations and shall be performed by licensed and insured contractors. Developer or its successors, assigns or transferees are and remain bound by all terms of this Agreement and the accepted I&I Project's requirements.
- (e) Developer agrees to proceed in good faith and will use reasonable diligence to perform and complete its obligations hereunder. To this end, Developer agrees that all the work enumerated in the accepted I&I Project(s) scope of work project documents shall be prosecuted regularly, diligently and uninterruptedly and at such rate of progress as will insure full completion thereof within the time agreed when the Project is selected and accepted and approved by the City Engineering Department, CPW Department and accepted by DEP, subject to unavoidable delays as may be caused by Acts of God. Developer shall provide and assume full responsibilities for, inter alia, all services, materials, equipment, labor transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities incidentals necessary for the performance, testing, start-up, and completion of the work enumerated in the accepted I&I Project(s) scope of work and related project documents. As outlined in preceding paragraphs the City agrees to complete any necessary review of plans,

proposals or any amendments or revisions thereto within a reasonable period of time.

15. The obligations of Developer as set forth in this Agreement shall bind, run, apply and inure to any and all successors in interest to the Property and "run with the land" for this Property, and to that end a copy of this Agreement shall be recorded with the Middlesex South District Registry of Deeds.
16. Upon Execution and notarization of this covenant Developer shall be qualified or otherwise free to apply for any other permits or approvals necessary or convenient for the proposed development, construction or renovations of the Property, other than for a Certificate of Use and Occupancy- i.e. completion of the Project identified herein shall be a condition precedent to being qualified to apply for and seek a Certificate of Use and Occupancy, in addition to compliance with the State of Mass. Building Code, and all other applicable laws, regulations and ordinances.
17. **CERTIFICATE OF COMPLIANCE** - After Covenantor/Developer has completed all his performance and other I&I obligations hereunder, Covenantor may transmit written Certification of Covenantor's compliance with all such obligations hereunder along with similar written Certification from Covenantor's design and project Engineer also certifying compliance with all Covenantor's performance and obligations under the above Covenant. Such certifications shall be in form and substance prepared by and acceptable to the City of Waltham's Engineering and CPW Departments. These above certifications shall be submitted for review to the City Engineer and Consolidated Public Works Director. If these above certifications are found to be in proper form and acceptable, the City will issue the Covenantor a Certificate of Compliance with said Covenant; said Certificate to be in a form suitable for recording in the Registry of Deeds.

Notwithstanding the above, if, in fact, the Covenantor has not actually complied with and completed all Covenantor's I&I obligations hereunder, the above said Certificate of Compliance shall not prevent, foreclose or otherwise constitute defense against the City, or relieve or release Covenantor of its obligations under this Covenant.

Executed under seal this _____ day of _____, 2014, hereunto duly authorized by the following:

Witness

Covenantor/Developer

Witness

Covenantor/Developer

Reviewed by city of Waltham's Engineer

City Engineer

Date _____

COMMONWEALTH OF MASSACHUSETTS

On this _____ day of _____, 2014, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which were _____, to be the persons whose name are signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose, as their free act and deed, Before Me:

Notary Public

I & I Committee Minutes

I&I Committee Meeting

July 8, 2014 at 7:00 PM

These meeting minutes were approved by the committee at the July 22, 2014 meeting.

Present: Randy LeBlanc, Joey LaCava, Bob Coleman, Robin Brodsky, Kathy Luvisi, Paul Finger

Absent: Thomas Dusel

Paul Finger described the process for the I&I fee.

It is applicable for a new use or a change in use.

For a new use (new construction), an application is filed which includes an estimate of sewage flow. The flow estimate is taken from the Mass Title V regulations. For example, in a residence, the flow is 110 gallons per day (gpd) per bedroom. If you add a room that is not a bedroom, then you do not need to mitigate I&I. For office space, it is 75 gpd per 1000 sq. ft. For restaurants, it is based upon the number of seats. For retail, it is 50 gpd per 1000 sq. ft.

For example if you are taking a retail space and converting it into a restaurant: the retail sewage flow is estimated at 50 gpd per 1000 sq. ft. The restaurant sewage flow is estimated at 35 gpd per seat. You would get a credit for the retail estimate of 50 gpd per 1000 sq. ft.

If the property is vacant for one year, then the I&I mitigation fee is assessed. There is nothing written in the Waltham ordinance about the "vacant for one year" clause. The group discussed this issue. Why should vacancy for one year be a reason to assess the fee?

For each gallon of sewerage flow, you need to mitigate at 4-to-1. There is a sewer bank. Small projects can pay cash into the sewer bank at \$3 per gallon. Larger projects have to do a project to mitigate the I&I. The threshold is 1,320 gallons per day. If your project is above that threshold, then you are required to do sewer repairs to mitigate the I&I.

There is an I&I covenant which is put onto the projects. It is onerous. The owner of the property has to sign it. It is a guarantee to complete the project in a certain time period. It is filed with the Registry of Deeds.

The City has done an I&I Study of the entire city. It is not in great detail.

If the developer does the mitigation project, the developer will need to do a flow study during the rainy time of the year, usually springtime. If there is a dry spring, the flow data will not be useful to find the leaks in the sewer system. It may be necessary to wait for another year to obtain good flow data. The developer can continue to develop the

project and get a building permit. But the Certificate of Occupancy will not be issued until the I&I flow has been mitigated as stated in the covenant.

The I&I Administrative Coordinator for the City is Kim Evans.

The cost of the mitigation for larger projects may not be equal for different projects. Sometimes it is a few cents per gallon, sometimes it is \$3 or \$4 per gallon, or more, depending on the scope of repairs.

The I&I mitigation projects which are easy to complete have already been done. Then, when there are no "easy" mitigation projects left, the more difficult projects will get done. This will be difficult, expensive, projects that private developer may not be willing to tackle. Then private development in the City will stop. The City will be left with expensive mitigation projects that they will need to complete.

The group discussed the need to distribute the costs equitably. One suggestion was to create a sewer authority. The group also discussed having a sole source to administer the I&I mitigation (for example, the City Engineer).

There is an appeals process in place for other departments in the City, such as the Conservation Commission and the Building Department. There is no appeals process for the City Engineering Department. It may be useful to have a review board of some kind needs to be created to hear disputes with the City Engineer.

The mission of the I&I Committee is to consult and advise the administration on the impact of Inflow & Infiltration policies and the impact that such policies have on business, the local economy, local property valuations and the commercial/business tax revenue; and to review the City's proposed 5-year mitigation plan. The Mayor has recently hired an engineer to prepare the 5-year plan. We need to identify the issues and problems and make recommendations to the City Council and to review the 5-year plan.

- Review what has been done to date.
- Make recommendations for the 5-year plan for December 2014.
- Review the RFP.

The group discussed administrative matters.

- The group will meet on Tuesdays, every two weeks, from 7:00 PM to 8:30 PM.
- The co-chairpersons are Randy LeBlanc and Robin Brodsky.
- The secretary is Kathy Luvisi.
- The meeting place will be a public building.
- Randy will ask the City Council if they would like the meetings televised.
- Send the attendance list to someone at the City.
- Put together an agenda for the next meeting.

The next meeting will be on Tuesday, July 22, 2014 at 7:00 PM.

I&I Committee Meeting

July 22, 2014 at 7:00 PM

Present: Randy LeBlanc, Joey LaCava, Bob Coleman, Robin Brodsky, Kathy Luvisi, Paul Finger, Bill Doyle

Absent: Thomas Dusel

The meeting was called to order at 7:20 PM.

The next meeting will be on Tuesday, August 5, 2014 at 7:00 PM.

Meeting Minutes: Several edits to the draft meeting minutes of 7/8/14 were made. The edited meeting minutes were approved by a vote of the committee. Copies will be emailed to the committee members and to Tom Curtin, Assistant City Clerk.

Review Goals and Mission of the Committee:

- To consult and advise the administration on the impact of Inflow & Infiltration policies and the impact that such policies have on business, the local economy, local property valuations and commercial/business tax revenue.
- Review the administration's most recent progress report to the MA DEP and administration's proposed 5-year mitigation plan that is due on December 2014.

The 2010 report estimated that the cost of the mitigation would be \$35 million. How much money has been raised (dollars and percent)? How much money has been spent (dollars and percent)? We need to understand the magnitude of the problem.

What are the issues in the mitigation process?

- Education
- Financial Impact on Businesses
- Differing Impact on Small and Large Businesses

The committee needs to come up with two sets of recommendations:

- Policy Changes
- City-Wide Changes (for example, raise funds by bonding)

Questions: What is the rate of increase of the cost estimate? What is the rate of increase of the leaks in the system?

The State ordinance on sewers states that the sewer costs should be equitable. The City's cost for I&I mitigation is not equitable.

The City of Newton has a Power Point presentation on line on their City website. It is 160 pages long, and describes their I&I mitigation program.

A handout was distributed with the committee goals and mission, and administrative considerations.

We need to compile the policies that are in use in Waltham.

It was noted that a cost – benefit analysis may be beyond the scope of the committee.

There are several I&I policies in other municipalities that may be useful for the committee to review. For example, Newton and Saugus. MWRA has a 2013 I&I report that outlines what is being done throughout the MWRA service area.

It would be useful to have a Drop Box Account to share documents. Robin will set up a Drop Box Account for the committee.

One of the items for consideration is to “consider comprehensive strategies and potential funding strategies”. This may be beyond the scope of our capabilities.

The committee needs to look at these issues and respond to them in a broad sense. The plan is that the committee will review the existing policy and comment on it. The committee will review the financial situation (in a “big picture” sense) and make recommendations. One suggestion could be to spread the cost of the I&I mitigation over all sewer users.

We can bring in some representatives of local business to come to a committee meeting and talk about how this is impacting them. For example, Bob Perry of the Elephant Walk Restaurant: he would be interested in talking to the committee.

The committee discussed the issue of the one year vacancy policy. This may be under consideration to remove this. There is a City Council resolution dated 6/9/14 under consideration which proposes to revise the ordinance. The revision adds a sentence that properties that are developed within five years shall not be considered new development as pertaining to potential I&I fees.

The City Engineer office has the following staff: Steve Casazza, City Engineer; Lisa Goyer, Assistant City Engineer, Sewer and Water; Wade Putnam (retired).

There is an amnesty program for sump pumps, in which residents can get their sump pumps removed for free. This is not advertised; most people don’t know about it.

One issue that became evident during the discussion is that there is no equality in terms of the mitigation cost for a project. The costs of projects vary widely. Therefore, some applicants pay a lot, and some applicants pay a little for the same amount of I&I mitigation.

One suggestion could be to consider a sliding scale. High water-demanding projects will pay a higher water rate, and some percentage of that would go to I&I mitigation. The City water rates have 4 different fee rates. The fee rates could be adjusted to be higher.

Another issue is that many different contractors are repairing the leaks in the sewer system. Who should repair the leaks: private contractors, the City, or have the City hire a private consultant. If the City repairs a leak, they would probably replace the entire pipe because they are concerned with the long term. A private contractor would probably repair the leak only, because that is what they have been contracted to do.

The committee discussed whether it would be a good idea to recommend that the City Engineer's Department have a staff increase. Currently, the City has hired CDM for the preparation of the I&I reports, but not the administration of the I&I mitigation program.

The I&I fees are to be paid in a lump sum, before the Certificate of Occupancy can be issued. This is a financial hardship for businesses. A suggestion was made to have the fee administered like a betterment, the business would pay the I&I fee over time.

If the I&I fee is assessed on a business on Moody Street, then the I&I mitigation project is performed someplace else in Waltham.

The current I&I Policy is stymieing good business development on Moody Street. It is stymieing development of vacant properties in Waltham.

Is it a good policy to have developers be responsible for the study, design, and repair of leaks in the sewer system? There is no assurance that mitigation will be done. The covenant will hurt the finances of the business.

Will different contractors provide the same quality of repairs to the sewer system?

The committee agreed that the City should perform sewer evaluations via camera and sewer cleaning of the entire City. The leaks in the system should be prioritized, and the repairs should be done in order of priority. The sewer users should also be taxed the necessary amounts to cover the appropriate operations and maintenance of the system. Any other fee structure is not equitable to the users.

It was suggested that several different kinds of businesses come and speak to the committee: restaurant, office space, etc. Look at the differing costs for residents (\$0) and for the different kinds of business.

The committee needs to look at the current problems with the I&I policy, and to make suggestions to make the process more equitable. In order to administer the engineering aspect of the I&I policy, a full time engineer is needed

The next meeting is Tuesday August 5, 2014 at 7:00 PM.

I&I Committee Meeting

August 5, 2014 at 7:00 PM

Present: Randy LeBlanc, Bob Coleman, Robin Brodsky, Kathy Luvisi, Paul Finger, Thomas Dusel

Absent: Joey LaCava

The meeting was called to order at 7:02 PM.

The next meeting will be on Tuesday, August 19, 2014 at 6:30 PM.

Meeting Minutes: Robin Brodsky has several edits to the draft meeting minutes of 7/22/14. She will email the edits to Kathy Luvisi, and the minutes will be finalized. Copies will be emailed to the committee members and to Tom Curtin, Assistant City Clerk.

Review Goals and Mission of the Committee:

The group discussed the question of how far the City has come with the mitigation of I&I. When will the ACO be done?

Paul Finger said that it is a possibility that repairs and maintenance to the sewer system are only a part of the reason that there are sewer overflows. It could be that the sewer system is not properly designed to handle the flow capacity.

Bob Coleman presented information from the MWRA Project Sheet for Waltham. The average wastewater flow is estimated to be 8.22 million gallons per day. The average infiltration is estimated to be 1.55 million gallons per day, which is 18.9% of the average wastewater flow. The average inflow is estimated to be 0.67 million gallons per day, which is 8.2 % of the average wastewater flow.

Bob Coleman presented some lists that he has prepared. The first is a list of questions. The second is a list of concerns and issues.

One recommendation that the committee could make is that the City could go back to DEP and re-negotiate the ACO.

Questions:

How can the City repair the sewer system?

What things can the City do better?

How can this be accomplished without inhibiting development in Waltham?

At present, the City is repairing the sewers when leaks are found. The City is not doing maintenance work on the sewer system.

The committee should speak to the department heads. We can ask them about their views on the procedures for the I&I policy.

There should be a sewer authority that could administer the operation and maintenance of the sewer system. If the City did have a sewer authority, would its goal be to repair the leaks in the sewer system, or to maintain the entire sewer system?

We should look at the City policies: what works, what does not work, and what suggestions do we have.

The following issues were brought up:

- The process for tenants occupying the space is a hardship for property owners,
- It is an unknown (unknown cost, unknown time delay),
- It is an inequitable process – it is not administered equitably.

We will keep three running lists:

- Information that we need to request from the City
 - Create a list of information needs, and send it to the City Clerk, Russ Malone. The City Clerk will distribute the list to the City Council.
- Policies that we recommend be revised, along with solutions and recommendations, and their impact on residents and businesses.
- Money: we need a list associated with issues related to money.

The group discussed a possible recommendation to privatize the operation and maintenance of the sewer system. The City of Newton has a lot of information on their I&I mitigation on their website. The committee should talk to Newton. How many people do they have working on the sewer maintenance? How much sewer cleaning do they do each year? For example, do they clean 10% of the system per year?

Tom Dusel said that developers have the money to pay. They just want to know how much they need to pay. They do not want delays; they just want to pay and be done with this requirement.

The committee agreed that we will make a list of questions and submit it to Russ Malone. Also, we want a copy of the RFP that has been issued related to the upcoming five year report to DEP.

Paul Finger will draft a list of concerns associated with the ordinance and the policy; both the content and the administration. This will be presented at the next meeting.

The meeting adjourned at 8:20 PM.

The next meeting is Tuesday August 19, 2014 at 6:30 PM.

I&I Committee Meeting

August 19, 2014 at 6:30 PM

Present: Randy LeBlanc, Robin Brodsky, Bob Coleman, Joey LaCava, Kathy Luvisi

Absent: Paul Finger, Tom Dusel

Guests: Assistant City Clerk Tom Curtin, City Councilors Diane LeBlanc, Bill Fowler, George Darcy

The meeting was called to order at 6:30 PM.

The next meeting will be on Tuesday, September 2, 2014 at 6:30 PM.

Robin Brodsky explained the function of the co-chairs of the committee. It is Robin and Randy's responsibility as co-chairs to lead the committee, set the agenda, and to invite guest speakers. The committee members are not to argue against the agenda, or to change the agenda. If a committee member has an agenda item they wish to discuss, they should contact Robin or Randy and that item will be added to the agenda.

Assistant City Clerk Tom Curtin spoke to the committee and explained the requirements for a public meeting. The committee must meet in a public building, and two doors to the meeting room must be open at all times. The meeting must be publicly noticed 48 hours before the meeting. All of the meetings must be public, and all emails are public.

Requests to any department head must be made through the City Clerk (through the Mayor). The requests may be approved or not approved. The committee members are not to have contact with the department heads directly. The requests should come from the committee chairs (Robin and Randy) through the committee secretary (Kathy). All votes must be documented.

Tom Curtin distributed a CD and a memo dated 8/12/14 from the City Engineer's office. The CD contains information requested by the committee, as follows:

- Administrative Consent Orders ACOP-NE-02-1 003; ACOP-NE-04-IN004; ACOP-NE-10-IN001
- City of Waltham, MA Sewer System Facilities Plan and Hydraulic Model, April 2011 (2 volumes)
- Wastewater Collection System Operation and Maintenance Manual, March 2011
- City of Waltham Updated Sewer System Facilities Plan Proposed Implementation Schedule first five (5) year Plan (2010-2014), April 2012 (update)
- Waltham Administrative Consent Order dated 2/10/10 ACOP-NE-IN001 Semi-Annual Compliance Status Report June 2014.

Tom Curtin requested that Kathy Luvisi submit the meeting minutes to him in pdf format, and to provide him with a distribution list of the committee members.

Randy LeBlanc requested that Kathy Luvisi will maintain three lists as follows:

- Problems
- Questions for the City
- Money

Presentation by Charlie Lombardi

Charlie Lombardi gave a presentation to the committee. He is a lifelong resident of Waltham, and worked for MWRA for many years on the issue of I&I. He had the opportunity to work on community assistance in Waltham. His presentation is made as a citizen of Waltham. He now works for another engineering firm, and is not representing that firm.

The MWRA is made up of 43 communities. There are 270 miles of sewer pipes owned by MWRA in the system, and 5,400 miles of municipally owned sewer pipes in the system. Some of the larger sewer pipes owned by MWRA are interceptor pipes up to 60 inches in diameter.

MWRA is not acting in an enforcement capacity in Waltham. The enforcement is handled by DEP. Charlie works with Glenn Haas, who is the former Assistant Commissioner of DEP. Charlie said that Glenn Haas could come in and speak to the committee.

Charlie presented a Waltham sewer map. There are flow meters which measure the flow going into the MWRA sewer lines. In Charlie's opinion, there is not a problem with I&I in Waltham; there is a problem with maintenance. Charlie explained that, if the sewers are not properly maintained, then sanitary sewer overflows (SSOs) can occur. These overflows can occur in dry weather, or in wet weather. Causes of SSOs can be root blockage or grease blockage. When the capacity of the pipe is reduced due to blockage, an overflow can occur.

When the SSOs occurred in Waltham, the DEP issued the Administrative Consent Order and prohibited new sewage flows into the Waltham sewer system until the I&I is controlled. For every new gallon of sewage added, four gallons of I&I must be removed.

The group discussed the question: When is the ACO "finished"? When does Waltham know that they have complied with the ACO? It is finished when the regulators agree that the City is properly operating and maintaining the sewer system. Would it be possible for the City (Mayor) to re-negotiate with the DEP? Yes, this would be possible: the City would have to be in a good position to negotiate, showing that they are capable of performing proper O&M.

It is an O&M problem, rather than a SSO problem.

Charlie provided a 2013 summary of the sources of flow for all of the 43 MWRA communities. The flow data for Waltham is:

Average Daily Flow = 8.69 MGD
Selected Dry Day Flow = 8.09 MGD
Sanitary Flow Estimate = 5.80 MGD

Estimated Infiltration = 8.09 MGD – 5.80 MGD = 2.29 MGD
Estimated Inflow = 0.59 MGD

Sanitary as a % of Average Daily Flow = 66.7%

Waltham's percent of sanitary flow as a percent of Average Daily Flow is 66.7%. This is relatively high compared to other MWRA communities. This means that Waltham does not have a problem with I&I. Charlie has this flow data going back ten years. Ten years ago, Waltham's infiltration was high. It is not high now. Charlie provided a copy of the flow data to the committee. In 2006, the sanitary flow as a percent of Average Daily Flow was 40.7%. Today, the percent is in the highest of all communities in the MWRA system. There are only three communities in the MWRA system that have a higher percent.

Councillor Diane LeBlanc said that the City Engineer has come before the City Council with a Fats Oils & Grease (FOG) ordinance for consideration. This proposed ordinance is on the docket, but has not been acted upon. Councillor LeBlanc asked if this FOG ordinance should be acted upon. The answer is yes.

Charlie said that the DEP has recently changed their sewer use regulations. The revised regulations require the preparation of a CMOM report. CMOM stands for Capacity, Management, Operation & Maintenance.

- | | |
|---------------|--|
| • Capacity | Blockages, Structural Issues, I&I Issues |
| • Management | Performance Measures, SOPs, Training |
| • Operation | Pump Stations, Programs |
| • Maintenance | Preventative, Predictive, Corrective |

The intent of the CMOM report is to assess the sewer system, identify the problems, and prioritize the problems.

Robin asked whether the City has the capacity to operate and maintain the sewer system. Does Waltham have the staff and the money in the budget? Is there a fee structure or a rate structure?

Charlie described the analysis that his company does to assess a sewer system administration, operation and maintenance.

Where does the City have to be to be in compliance with the ACO? Where is the City now? This results in a gap analysis, and a plan to achieve compliance.

When a sewer overflow happens, the root cause of the overflow should be identified.

A CMOM program would cost \$300,000 to \$500,000 and would take one year to complete.

The group discussed sump pumps. There is a sump pump amnesty program. If a homeowner notifies the City, then the City will remove the sump pump at no cost to the homeowner. Councillor George Darcy suggested that the committee invite the City Engineer to come and speak to the committee. What has happened to the sump pump program over the past five years? Charlie recommended that no action be taken until the entire sewer system is evaluated.

Charlie offered to answer any questions that the committee might have. His telephone number is (617) 799-8847.

K. Luvisi will add the following to the lists:

Problems: sump pumps

Questions: Ask the City Engineer about the sump pump program in Waltham.

Solutions: CMOM program.

Bob Coleman distributed a copy of the Waltham Bond Prospectus dated 6/10/14.

The meeting adjourned at 8:10 PM.

The next meeting is Tuesday September 2, 2014 at 6:30 PM. The meeting will be held at Government Center.

Present: Randy LeBlanc, Robin Brodsky, Bob Coleman, Joey LaCava, Paul Finger, Kathy Luvisi

Absent: Tom Dusel

The meeting was called to order at 6:45 PM.

The next meeting will be on Tuesday, September 16, 2014 at 6:30 PM.

There are two areas for discussion:

- The City needs a comprehensive O&M program for the sewer system.
- The I&I Policy has a lot of problems/issues.

Paul Finger distributed a handout which outlines a comparison of the City Ordinance and the City Policy. His comments are marked in red which identify discrepancies between the ordinance and the policy.

The "covenant" was discussed. The covenant is written into the deed and it is specific to a mitigation project. This tends to hold up the building permit, because the covenant is not satisfied until that specific project is completed. It was suggested that instead of a specific project, a non-specific "mitigation" requirement be included in the covenant. It could be either a project or a dollar amount.

The threshold sewage amount of 1,320 gpd is in the policy, but it is not in the ordinance. It was suggested that the ordinance should identify the threshold of 1,320 gpd.

Paul made three points (see last page of handout). They are repeated here:

1. Applications are delayed waiting for assignment of projects, completion of the covenant and time required to process the application. The covenant is often very specific as to identification of a project which may or may not produce the necessary I/I to meet the requirements of the Covenant. Consider issuing a covenant that commits to I/I mitigation without a specific I/I mitigation project identified.
2. The costs of the I/I mitigation projects vary depending on a number of variables. Equitable mitigation should be considered. What determines if an applicant should undertake a project that cost \$0.50/gal vs. an applicant who pays \$7/gal or more?
3. The language of the covenant is onerous and often lending institutions object to this being placed on the agenda.

For the committee's recommendations to City Council, Randy said we should make a list of the issues, and a list of suggestions. We should not re-write the ordinance. We are making suggestions only.

Kathy will make up some lists: a list of the speakers that have made presentations at our meetings, and a summary of what they spoke about (Bill Doyle, Charlie Lombardi); and a list of people that we want to come and speak to the committee (Joe Connors, Michael Connors).

A suggestion was made that, when a real estate transaction occurs, when the papers are passed, there will be a sump pump inspection at that time.

A suggestion was made that, for small businesses, a formula be devised, so that they will have a smaller I&I fee or a predictable I&I fee.

Bob said that the City of Newton has a fee \$8.50 (per gallon). This is not the way Waltham does it, with a project that has unknown cost and unknown time commitment.

Should the property owner be responsible for the engineering of the mitigation projects, or should the City be responsible?

Bob said that the MWRA report says that there is \$5 million available for I&I mitigation, but the City is not using it.

Paul said that the City will hire a consultant who will prioritize the I&I repairs in the City. The City Engineer, Steve Casazza, has a plan that is \$18 million for capital repairs.

The committee should make a Power Point presentation with the process we used to identify the issues and the people that we talked to, and our suggestions. We should make a presentation to the City Council at the completion of our committee's work.

The meeting adjourned at 7:45 PM.

The next meeting is Tuesday September 16, 2014 at 6:30 PM. The meeting will be held at the City Hall, Council Chambers.

List of Problems

- Small Businesses and equity in the cost for mitigation
- The Covenant issue is not user-friendly.
- There is no FOG ordinance. (There is one that is in the Rules and Ordinance committee of the City Council, but it is not in effect).
- Education

List of People to Invite to Speak to the I&I Committee

- Glenn Haas (formerly of Mass DEP)
- Someone who works at DEP
- Someone who works at MWRA
- Joe Connors (attorney in Waltham who works with small developers)
- Michael Connors (attorney in Waltham who works with large developers)
- Steve Cassaza (City Engineer)
- Waltham Building Department
- Residential Developers

Questions for the City

- What is the sewer fee that the City of Waltham pays to MWRA?
- Why do small businesses need engineers for verification? If there is zero gallons added due to a renovation, then the I&I form should have a check box for zero gallons added and zero dollars I&I fee.

I&I Committee Meeting

September 16, 2014 at 6:30 PM

Present: Randy LeBlanc, Robin Brodsky, Bob Coleman, Paul Finger, Tom Dusel, Kathy Luvisi

Absent: Joey LaCava

The meeting was called to order at 6:35 PM.

The next meeting will be on Tuesday, September 30, 2014 at 6:30 PM.

A copy of the resolution by Councilor George Darcy was distributed. The resolution is dated 6/19/14 and contains suggested revisions to the I&I ordinance (Chap. 16, Art. II).

The group discussed our plan of action.

- Create a Power Point presentation.
- Provide a packet to the City Councilors that they can review before the presentation. The packet may contain the Power Point presentation and a written memorandum to City Councilors.
- Make a progress presentation to the City Council. This is an option; the committee will need to discuss this option with Tom Curtin.

Bob provided information from the MWRA Annual I&I Report to MA DEP. Waltham has \$13.7 million available from MWRA from their Local Funding Assistance Program. Waltham has used \$7.8 million. There is \$5.9 million still available.

Robin asked Bob to make up a list of these statistics. Robin can put it into the presentation.

Waltham has recently prepared the EPA CMOM Self Assessment Checklist. On 9/15/14, Councilor Diane LeBlanc requested that a copy of the checklist be provided to our committee. (The checklist was distributed to committee members by email on 9/19/14).

The committee voted to approve the meeting minutes of 8/19/14.

The committee voted to approve the meeting minutes of 9/2/14, after certain revisions have been made. The revisions are that Joe Connors is an attorney representing small developers. Mike Connors is an attorney representing large developers. Robin may provide Kathy with additional edits.

Three lists were prepared.

- List of Problems
- List of People to Invite

- List of Questions for the City

The group discussed the idea that the most important goal is to get out from under the Administrative Consent Order. This may be the most powerful tool that MA DEP has to ensure that the City works hard to mitigate I&I.

The group discussed the idea that, when a property transfer is done, a sump pump inspection be done at that time, at the time of title change. This can be a suggestion for City Council.

Presentation: We can make a presentation to City Council. The presentation can list problems and possible solutions, so that the City Council can see the solutions. We do not want to list only problems. We can provide examples of things that currently do not work. The City Councilors can give the department heads direction to solve these issues.

The three lists are attached at the end of these meeting minutes.

Bob asked Tom to describe his experience with Vista Print. With Vista Print, Tom had excess I&I mitigation from another project. He was able to “transfer” the excess mitigation gallons to the Vista Print project (300,000 gallons). If it wasn’t for the excess I&I mitigation, it would have been very expensive for Vista Print to achieve their I&I mitigation. The City approved this idea, but they are not consistent in administering the policy.

We only have 5 or 6 meetings left in the term of this committee. We need to focus our efforts.

At the next meeting, the invited guests will be Glenn Haas, who used to be at MA DEP, and is familiar with the Administrative Consent Order, and Joe Connors, attorney who works with small developers in Waltham.

The meeting adjourned at 8:10 PM.

The next meeting is Tuesday September 30, 2014 at 6:30 PM. The meeting will be held in the Hoover Room, 2nd Floor of City Hall.

List of Problems

- Small Businesses and equity in the cost for mitigation
- The Covenant issue is not user-friendly.
- There is no FOG ordinance. (There is one that is in the Rules and Ordinance committee of the City Council, but it is not in effect).
- Education
- Lack of Operation and Maintenance
- City has equipment, but no staff to operate it.
- Lack of equity in the administration of the I&I Ordinance / Policy
- Time delays in resolving the I&I mitigation
- Inconsistency in the way the I&I Mitigation is administered
- Undefined nature of the cost and the time to complete the process
- Ordinance problems and issues
- Policy problems and issues
- The Covenant
- Equitable solutions: the cost varies widely, depending on the project.
- Define more categories of business: small business should have its own category
- Should the City be doing the engineering, or should the property owner be doing the engineering?
- Waltham is a vibrant city; the failure of the sewer system is a major problem: we need a “big picture” mentality to approach this.
- Based upon the map provided by the City Engineer, the I&I problems in Waltham are in the Lakeview area, and the Totten Pond Road area.
- For the sump pump program, there is the issue of private developers going on to private property to remove the sump pumps. This is a liability issue. How is the sump pump ban enforced?
- It is a burden on the property owners to have to find a project for I&I mitigation. There should be the option to pay an amount of money, instead of having to do the project. If you pay the money, then there is no need for the covenant.
- There is no appeal process.
- The CMOM program: will it be a reasonable budget, or will it be an enormous amount, so that the City will give up on trying to improve the operation of the sewer system?

List of People to Invite to Speak to the I&I Committee

- Glenn Haas (formerly of Mass DEP)
- Someone who works at DEP
- Someone who works at MWRA
- Joe Connors (attorney in Waltham)
- Michael Connors (attorney in Waltham)
- Steve Cassaza (City Engineer): ask him what he needs to do his job
- Patrick Powell, Zoning Administrator
- Waltham Building Department

- Residential Developers

Questions for the City

- What is the sewer fee that the City of Waltham pays to MWRA?
- Why do small businesses need engineers for verification? If there is zero gallons added due to a renovation, then the I&I form should have a check box for zero gallons added and zero dollars I&I fee.
- How much money in fines has the City paid each year on the Administrative Consent Order?
- What is happening to the money paid into the Sewer Bank? Is it going into the General Fund, or is it in a dedicated fund used to mitigate I&I?
- How much does the City of Waltham pay in “extra” sewer fees to MWRA due to the additional I&I flow that is entering the Waltham sewer system?
-

I&I Committee Meeting

September 30, 2014 at 6:30 PM

Present: Randy LeBlanc, Robin Brodsky, Bob Coleman, Joey LaCava, Paul Finger, Tom Dusel, Kathy Luvisi

Guest: Joe Connors

The meeting was called to order at 6:45 PM.

The next meeting will be on Tuesday, October 14, 2014 at 6:30 PM.

A copy of the CMOM checklist, which has been filled out by City Engineer Steve Casazza, was distributed by email to members of the committee.

A Request for Proposals (RFP) for a consultant to prepare an I&I Study, is in progress. The proposals are due on 10/2/14. The consultant will answer the questions that we have been asking. The consultant will manage contracts to repair I&I issues in the City. There are projects in Lakeview areas 12B2 and 12B3. The consultant will review available information submitted by Paul Finger on behalf of his client. The consultant will study the Lakeview area with the intent to identify projects for I&I mitigation.

Joe Connors was asked to speak to the committee. Joe is an attorney who works with small developers in Waltham. Joe spoke about his experience with the I&I ordinance and the I&I policy. Since 2004, when the Administrative Consent Order (ACO) came into effect, the I&I ordinance was adopted quickly.

With zoning regulations, if there is an issue, the developer can appeal to the Zoning Board of Appeals (ZBA). With the I&I ordinance, there is no appeals process.

Another issue is that the I&I form gets revised, and there is no formal notice of the changes. There is no way to find out about changes to the forms until you submit your forms, and are told that the forms have been changed. With the zoning regulations, changes to the forms must be publicly noticed.

Joe Connors distributed handouts. The handouts included emails (from 2005) between the City Engineer and the City Law Department seeking clarification on administering the I&I ordinance. The "one year" rule – it is not in writing. The ordinance does not authorize the City Engineer to promulgate rules and regulations. If the City Engineer interprets something in a certain way, there is no way to appeal it. There is a tendency to go along with the Engineer's interpretation, just to get the building permit.

There is a question about why the DEP Title V regulations used to determine sewage flow volumes? This is a septic system parameter, not a sewer flow parameter. The Title V flow amounts are outdated, and do not take into consideration modern, low flow plumbing fixtures. Joe Connors discussed the example of a Laundromat, the I&I fee was calculated to be \$100,000. The property owner had to use manufacturer's data to show

that the washing machines were low flow models. The I&I fee was adjusted to \$30,000. It was suggested that the I&I ordinance be amended so that other forms of documentation, such as manufacturer's specifications, or actual flow readings, be used as an option to the Title V flow amounts. A suggestion was made to amend the ordinance to allow a hearing in front of the City Engineer to present this alternate data.

The City Council can abate residential I&I mitigation fees, but it cannot abate commercial I&I mitigation fees. Why can't the City abate the commercial I&I mitigation fees? This should be a suggestion, it could be achieved by amending the I&I ordinance.

There are some cases in which an existing office building is renovated and remodeled, and the square footage does not change. The City Engineer requires that a registered Professional Engineer complete the calculations, and stamp it that show that there is no change in the sewage flow and no I&I mitigation fee is required. There should be a box to check on the I&I form that says "No Change in Flow – I&I Mitigation Fee = \$0".

Joe Connors discussed emails from 2005 between Joan Lastovicca, City Engineer, and the City Attorney. She is asking the same questions that this committee is asking. She says that rules are needed to administer the I&I Ordinance.

Question: Does the City Engineer have the authority to create rules for I&I Mitigation? The City has a stormwater ordinance, in that ordinance, there is a specific sentence that states that the City Engineer is authorized to create rules for administering the ordinance. The I&I ordinance does not have such language in it.

Joe Connors gave an example: suppose that an engineer stated that the I&I mitigation project has removed 10,000 gpd of I&I. The City Engineer could say that he does not agree, and in his opinion, the I&I mitigation project has only removed 5,000 gpd. The issue is: who has the authority to identify the amount of mitigation for an I&I project?

Another issue is finding the projects to mitigate I&I. There should be a list on the City website (the City Engineer Department website) of available I&I mitigation projects.

The meeting minutes of 9/16/14 were discussed. One revision was to revise "slides" to "Power Point presentation". Another revision was to note that the handout to City Councilors may contain the Power Point presentation and a written memorandum. The committee voted to approve the minutes of 9/16/14 as amended.

These items are to be added to the "List of Problems":

- Appeal Process
- Use Title V or an approved method for flow volumes

The ongoing lists are attached to this memorandum.

The committee discussed making a progress presentation to the City Council. This would let the City Council get an idea of what we are doing, and allow them to provide feedback.

There should be some small, short term changes to the ordinance. Then there should be larger, long term changes to the ordinance.

The committee voted to invite Steve Casazza, City Engineer, and Patrick Powell, Zoning Officer, to the 10/28/14 meeting of the committee. Make a request to Tom Curtin and Russ Malone, and copy Mayor McCarthy and all committee members.

Glenn Haas of MA DEP will be at the 10/14/14 meeting.

The meeting adjourned at 8:00 PM.

The next meeting is Tuesday October 14, 2014 at 6:30 PM. The meeting will be held in the Lecture Hall, on the ground floor of Waltham Public Library.

List of Problems

- Small Businesses and equity in the cost for mitigation
- The Covenant issue is not user-friendly.
- There is no FOG ordinance. (There is one that is in the Rules and Ordinance committee of the City Council, but it is not in effect).
- Education
- Lack of Operation and Maintenance
- City has equipment, but no staff to operate it.
- Lack of equity in the administration of the I&I Ordinance / Policy
- Time delays in resolving the I&I mitigation
- Inconsistency in the way the I&I Mitigation is administered
- Undefined nature of the cost and the time to complete the process
- Ordinance problems and issues
- Policy problems and issues
- The Covenant
- Equitable solutions: the cost varies widely, depending on the project.
- Define more categories of business: small business should have its own category
- Should the City be doing the engineering, or should the property owner be doing the engineering?
- Waltham is a vibrant city; the failure of the sewer system is a major problem: we need a “big picture” mentality to approach this.
- Based upon the map provided by the City Engineer, the I&I problems in Waltham are in the Lakeview area, and the Totten Pond Road area.
- For the sump pump program, there is the issue of private developers going on to private property to remove the sump pumps. This is a liability issue. How is the sump pump ban enforced?
- It is a burden on the property owners to have to find a project for I&I mitigation. There should be the option to pay an amount of money, instead of having to do the project. If you pay the money, then there is no need for the covenant.
- There is no appeal process.
- The CMOM program: will it be a reasonable budget, or will it be an enormous amount, so that the City will give up on trying to improve the operation of the sewer system?
- Appeal Process
- Use Title V or an approved method for flow volumes

List of People to Invite to Speak to the I&I Committee

- Glenn Haas (formerly of Mass DEP)
- Someone who works at DEP
- Someone who works at MWRA
- Joe Connors (attorney in Waltham)
- Michael Connors (attorney in Waltham)
- Steve Cassaza (City Engineer): ask him what he needs to do his job

- Patrick Powell, Zoning Administrator
- Waltham Building Department
- Residential Developers

Questions for the City

- What is the sewer fee that the City of Waltham pays to MWRA?
- Why do small businesses need engineers for verification? If there is zero gallons added due to a renovation, then the I&I form should have a check box for zero gallons added and zero dollars I&I fee.
- How much money in fines has the City paid each year on the Administrative Consent Order?
- What is happening to the money paid into the Sewer Bank? Is it going into the General Fund, or is it in a dedicated fund used to mitigate I&I?
- How much does the City of Waltham pay in “extra” sewer fees to MWRA due to the additional I&I flow that is entering the Waltham sewer system?
-

Present: Randy LeBlanc, Robin Brodsky, Bob Coleman, Joey LaCava, Paul Finger, Tom Dusel, Kathy Luvisi

Guest: Patrick Powell, Building Department

The meeting was called to order at 6:36 PM.

Patrick Powell of the Building Department was invited to the meeting. Robin Brodsky asked him what issues he is experiencing in the administration of the I&I ordinance and/or I&I policy.

Patrick Powell explained that, since the Administrative Consent Order, any permit issued by the City must have the I&I Certification before the permit can be issued. The Engineering Department does the calculation for the gallons of flow which must be abated and calculates the fee or determines the engineering project (if applicable).

The Building Department has 30 days to process the permit application. If the time to process exceeds 30 days, then the permit application is rejected.

Randy asked: what determines if the permit application is sent upstairs to Engineering? Patrick said that 99% of the applications are sent to Engineering. It is the Engineering Department's responsibility to calculate the gallons. The Building Department does not have this responsibility. For example, adding a bedroom would result in an I&I fee. Renovating a kitchen or adding a bathroom does not result in an I&I fee.

Randy suggested that the Engineering Department prepare a list for the Building Department with examples of projects that do not require an I&I fee. This would save un-needed analysis by the Engineering Department. Patrick Powell welcomed this suggestion. The I&I Committee understands that it is not the responsibility of the Building Department to prepare such a list; it is the responsibility of the Engineering Department.

Robin asked: have the citizens (permit applicants) given a lot of feedback on this I&I process? Patrick said yes. He discussed the process with the former City Engineer, as well as the process today.

Randy asked about the temporary Certificate of Occupancy (C.O.). Patrick said that sometimes, a temporary C.O. is extended until all of the I&I can be mitigated, and the covenant can be lifted.

Bob Coleman asked Patrick for suggestions. Patrick said it is the responsibility of the Engineering Department and the Legal Department to administer the I&I ordinance and policy.

Paul Finger commented that some developers go through the entire design and planning of their project, and they have no idea about the I&I mitigation requirements. How can the public be educated about these requirements? Patrick suggested that the information be put onto the City website. The developers know the process. The homeowners do not know the process. A suggestion was made to add some information to the Building Department website to explain that the I&I mitigation must be done.

Robin asked Patrick for suggestions. Patrick gave the following suggestions and comments:

- The Engineering Department needs help. They need personnel. One person retired; all of his knowledge is gone with him. The Engineering Department is having a hard time hiring someone as a replacement.
- People ask: where are the rules? Who is making the rules? There need to be written rules.
- The group discussed the 5-year vacancy rule that is being proposed by Councilor George Darcy.

The process is first the Zoning Department. Next, the Building Department. The Building Department sends the application up to the Engineering Department. The I&I, Drainage, and Fire Department signoff occur at this point. These are specific to the project (every project will not need all of these). After construction is complete, then a Certificate of Occupancy is issued.

The next item on the agenda was that City Engineer Steve Casazza was to appear before the I&I Committee. Steve Casazza did not show up for the meeting. Steve Casazza sent a written response to the committee's questions.

The Committee requested that the following note be included in the meeting minutes: The I&I Committee requested the attendance of Steve Casazza at this meeting. He confirmed that he would attend the meeting. He did not inform the committee that he would not be at the meeting.

The group discussed what action to take regarding the absence of Steve Casazza. Inform Tom Curtin and the City Council that Steve Casazza did not show up.

Kathy Luvisi will distribute Steve Casazza's written responses to all on the committee.

The committee summarized the information and suggestions provided by Patrick Powell:

- The guidance from the Engineering Department to the Building Department needs to be expanded. For example, a list of activities that do not require I&I mitigation needs to be provided to the Building Department.
- The education and information on the City website needs to be improved so that applicants know they need to start the I&I mitigation process sooner.

Bob Coleman suggested that an independent consultant be hired by the City to review the I&I applications, rather than the City Engineer.

Charlie Lombardi was asked to speak to the committee. He looked over the questions that were asked of Steve Casazza and said that he could answer the questions. He can also answer the questions that Bob Coleman distributed, which are Bob's questions about the CMOM checklist which Steve Casazza had completed. Charlie asked whether the committee would like him to respond to these questions.

Charlie Lombardi said that there is a discrepancy in the CMOM Self Assessment Checklist. The City does not have an I&I problem; they have an O&M and Management problem. In Charlie's experience, it is the inflow that is causing the problem.

There is MWRA money available for Waltham. Waltham has not spent all of the available money. MWRA might take back some of the money.

Charlie asked "What is the direction of this Committee?" Randy said that there are short term, medium term, and long term goals.

Charlie said that there is an EPA guideline: for a City with population of 60,000, there should be 17 or 18 full time employees working on collection system O&M.

Paul Finger listed some issues:

- There is a delay in processing applications in the Engineering Department.
- There is a lack of O&M in the collection system.

We cannot do anything (as a committee). We can inform the City Council. It is their responsibility of how to solve these issues. The collection system needs long term capital improvements and O&M.

Another issue is Fats, Oils, & Grease (FOG). There are MWRA limits on the amount of FOG that can be discharged to the sewer. Some municipalities have a limit of 100 mg/L. Some have a limit of 300 mg/L. Grease trap design is also important. Grease traps must be cleaned out properly. There is also a process which adds specialized bacteria to the grease trap that eat the FOG.

Charlie Lombardi said: using fees to pay for this, hire a consultant to administer the I&I program. Bob will email the CMOM checklist document to Charlie. Charlie will respond to the questions and will distribute it to committee members.

Kathy Luvisi will send a thank you note from the committee to Patrick Powell.

Kathy Luvisi will send a note to the City Council (through the City Clerk) which states that Steve Casazza said that he would attend the meeting and he did not attend. He has a

lot of pertinent information and the committee cannot obtain this information without him.

Randy suggested that we make a list of short term goals.

- Education: literature, on-line, outreach
- I&I Policy: 5-year vacancy (Paul recommended deleting the years limit entirely)
- Regulations: drafting, vetting, and promulgating I&I regulations
- Covenant: remove the project specific identification. Just put in an amount of gallons to be removed.
- Review the Covenant (for the legal requirements).
- If you can't sign the Covenant, then there should be the option of submitting a bond.

The next meeting will be on Tuesday, November 11, 2014 at 6:30 PM.

The ongoing lists are attached to this memorandum.

The meeting adjourned at 8:05 PM.

The next meeting is Tuesday November 11, 2014 at 6:30 PM. Due to the Veteran's Day holiday, public buildings are closed. The meeting will be held at the office of Paul Finger, 14 Spring Street, Waltham.

List of Problems

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-

CMOM Request

Waltham City Council Request

Request, the Mayor and City Engineer complete the attached CMOM Program Self-Assessment Checklist as published by the United State Environmental Protection Agency and return it to the Council by June 23, 2014. An electronic copy of the document is also available at <http://www.epa.gov/npdes/pubs/cmomselfreview.pdf>.

The purpose of this Request is to assist the Inflow and Infiltration Business Advisory Committee deliberations.

Respectfully,

Thomas M. Stanley
Councilor-at-Large

June 16, 2014



City Council Request Form

Date: 9/15/2014

Date Sent: / /

Date Sent: ____/____/____

Council request to be forwarded to the I + I Committee

To: Clerk, Committee of the whole

Please reply to: * _____ by _____ / _____ / _____

Request :

That the Clerk of the Committee of the Whole send a copy of the Capacity Management Operations and Maintenance Self Assessment Checklist completed by the City Engineer and sent to the City Council on July 30, 2014, to each member of the I + I Committee.

Respectfully submitted by, Diane P. LeBlanc Councillor At Large

* Please send Council Responses to the City Clerk, Russ Malone.

Committee responses go to the Clerk of the appropriate Committee with copy to Assistant City Clerk Tom Curtin.

Licenses and Franchises Committee and Ordinance and Rules - Assistant City Clerk Tom Curtin.

Finance and Committee of the Whole - Paul Centofanti.

Long Term Debt - Thomas Magno.

Economic and Community Development Committee and Public Works Committee - Michelle Neville.

EXCERPTS FROM CMOM SELF ASSESSMENT CHECKLIST MEMORANDUM

SOURCE: City of Waltham Engineering Department Memorandum
to Waltham City Councilors

DATE OF DOCUMENT: July 30, 2014

FROM: Stephen Casazza, PE City Engineer

UTILITY CONTACT INFO: Completed by: Stephen A. Casazza, City Engineer
Date: July 28, 2014
Phone: 781.314.3830

COLLECTION SYSTEM DESCRIPTION: Name: Waltham Sewer Collection System
Staff: Lisa M. Goyer, PE (Assistant City Engineer)
Phone: 781.314.3820
Fax: 781.314.3535
Email: lgoyer@city.waltham.ma.us
NPDES/Permit#: MA0410066

TREATMENT FACILITIES

AVERAGE DRY WEATHER FLOW: **8.69 Million Gallons per Day (MGD)**

AVERAGE DAILY FLOW: **8.09 MGD**

ACCESS AND MAINTAINENCE

MANHOLES: **4,000**

NUMBER OF AIR VACUUM RELIEF VALVES: **12**

CONVEYANCE & PUMPING:

	Gravity Sewers	Force Mains	Pump Stations
Pipes and Pumps	138 miles	1 mile	6
0-25 years old	7%	10%	-----
26-50 years old	33%	90%	-----
51-75 years old	54%	-----	-----
>76 years old	6%	-----	-----

NUMBER OF INVERTED SIPHONS: **3**

**SERVICE AREA
CHARACTERISTICS**

SERVICE AREA: **8,704 Acres**

SERVICE POPULATION: **61,000 People**

ANNUAL
PRECIPITATION: **33 Inches**

NUMBER OF SERVICE
CONNECTIONS:

Residential: **12,657**

Commercial: **638**

Industrial: **188**

Total: **13,483**

PIPE DIAMETER:

	Gravity Sewers	Force Mains
8 inches or less	72.5%	100%
9-18 inches	24%	-----
19-36 inches	2%	-----
>36 inches	1.5%	-----

PIPE MATERIALS:

High Density Polyethylene (HDPE)	1%
Reinforced Concrete Pipe (RCP)	11%
Polyvinyl Chloride (PVC)	10%
Vitrified Clay Pipe (VCP)	60%
Ductile Iron	8%
Asbestos Cement Pipe	8%
Brick	2%

INTERNAL TV
INSPECTION (TVI):

Percent of Total Defects Determined by TVI During the Last Five (5) Years (Best

- Fats, Oils and Grease: **35%**
- Broken Pipes: **15%**
- Line Deflection: **10%**
- Joint Separation: **15%**
- Root Intrusions: **25%**

SEWER CLEANING (CLN):

System Cleaning

Frequency: **12 years**

Utility Plan for System

Cleaning: **5 years**

Percent of sewer lines are cleaned, even high/repeat cleaning trouble spots during the past year: **15%**

There is a root control program.

The utility has a fats, oils, and grease (FOG) program.

The average number of stoppages experienced per mile of sewer pipe per year is **1.5%**.

**MANHOLE INSPECTION
AND ASSESSMENT
(MAN):**

Approximately **50** manholes were inspected during the past year.

TRACKING SSOS (TRK):

70 SSO events have been reported in the past Five (5) years.

60% of the SSOs were less than 1,000 gallons in the past Five (5) years.

**TRACKING SSOS
(TRK) cont'd:**

Approximate percent of SSOs discharge were from the following in the past Five (5) years:

- Manholes **85%**
- Pump Stations **1%**
- Main and Trunk Sewers **9%**
- Lateral and Branch Sewers **5%**

Best guess estimates for the cause of SSOs discharges by percent in the last Five (5) years:

- Debris Buildup **25%**
- Collapsed Pipe **25%**
- Root Intrusion **25%**
- Fats, Oils and Grease **25%**

75% of SSOs is released to **soil**, **24%** to **paved areas** and **1%** to **surface water** (rivers, lakes, streams).

**EXCERPTS FROM MASSACHUSETTS WATER RESOURCE AUTHORITY
ANNUAL INFILTRATION AND INFLOW (I/I) REDUCTION REPORT
FOR FISCAL YEAR 2014**

SOURCE:

Massachusetts Water Resource Authority
MA Water Resources Authority NPDES Permit
Number MA0103284 – MWRA Annual
Infiltration and Inflow (I/I) Reduction Report for
Fiscal Year 2014

MWRA I/I LOCAL FINANCIAL
ASSISTANCE PROGRAM
FUNDING SUMMARY
AS OF JULY 2014:

Community	Total Allocations (Phases 1- 10)	Total Distributions (Phases 1- 10)	Percent Distributed	Funds Remaining
Waltham	\$13,732,400	\$7,808,400	57%	\$5,924,000

WALTHAM: NORTH SYSTEM
(COMMUNITY 35):

BACKGROUND INFORMATION

MILES OF SEWER:

138

SEWERED POPULATION:

61,120

THREE (3) YEAR ('11-'13)
ANNUAL AVERAGE I/I:

3.35MGD

MASSDEP ADMINISTRATIVE
ACTIONS:

ACOP-NE-10-1N001 (February 2010)
ACOP-NE-04-1N004 (January 2005)
ACOP-NE-02-1003 (May 2003)
NON-NE-01-1066 (April 2001)

LATEST I/I OR SSES REPORT:

Updated Wastewater Facilities Plan (including
Operations and Maintenance Plan) (April 2011)

Rangley Acres — I/I Removal Project Report
(Spring 2012)

Polaroid Redevelopment Project Report
(Summer 2013)

Inflow & Infiltration Improvements Section 5C
(Lexington St Trapelo Rd to Town Line) (March

2014)

Inflow & Infiltration Analysis Sewer System
Section 12A-2 Lakeview Area (July 2014)

Inflow & Infiltration Improvements Phase 5.1,
Section 6B6 — Pond End Lane Area (August
2014)

PRIVATE SOURCE INFLOW
REMOVAL PROGRAM:

The contract for 59 illegal sump pump removal
(Contract #2 — Areas 5B, 5D and 15 under the
Sump Pump Amnesty Program) was awarded
to Gravity Construction. To date, 55 illegal
sump pumps have been removed.
Construction is ongoing with completion
Expected in Summer 2014. This project is
expected to remove 66,000 GPD of peak
inflow.

SUMP PUMP AMNESTY PROGRAM

THREE SDE ENGINEERING MEMOS,
CITY'S CONSULTING ENGINEER
FOR ADMINISTERING THE THIRD
PHASE OF THE PROGRAM:

Memo 1 — "Single Family Residence Survey"
6129 homeowners received survey of which
3303 responses were received. Date, February
13, 2014

Memo 2 — "Inspection Results of Single
Family residences", 337 internal building
inspections were performed. Date, February
13, 2014

Memo 3 — "Sump Pumps Discharging to
Sanitary Sewer" 169 illegal sump pumps
were detected. Date, February 7, 2014.

I/I REHABILITATION PROJECTS
IN DESIGN OR CONSTRUCTION:

In February 2014, City hired Tighe & Bond
Engineers to design the Cedarwood Area
13/14 A, SSO Mitigation Project. This project
also includes flow metering, pipe cleaning and
CCTV which was completed Spring 2014.
Project design is ongoing.

- Repair of Rich Street / Elson Road sewer

casement pipe, removed six-foot section of damaged sewer main.

- Remove and repair severely leaking wye in sewer main on No. 1099 Trapelo Road (in front of Boston Chicken), approximately 89,000 gpd infiltration removed.
- Forty-eight (48) sewer service repairs were performed by City with some help from Contractors (assume 5 gpd I/I per service = 240 gpd removed).
- Sewer Main cleaned and CCTV inspected on Lexington Street, Pond to School Street and School Street, including siphon from Lexington Street to Exchange Street (no significant I/I detected).
- Heavy cleaning of sewers on Livingstone Lane along with sewer mains tributary to the Spencer Street Sewer Pumping Station.

REPORTING PERIOD ACTIVITY:

The following sewer rehabilitations were performed under the Illicit Discharge Detection and Elimination (IDDE) Project for the period July 2013 to June 2014:

- For the Phase 2 and Phase 3 portions of this project, construction work package will be bid Fall 2014. City is procuring for an engineering consultant to continue this program.
- Smoke test, direct connection removal of inflow in Cedarwood Area to be performed in conjunction with SSO mitigation project / sewer rehabilitation. Work to be bid Summer 2014.

MWRA I/I LOCAL FINANCIAL ASSISTANCE PROGRAM:

The community has financed seven (7) I/I investigation projects through the Authority's funding assistance program. Of the \$13,732,400 allotted through the Program's Phases 1 - 10, the community has \$5,924,000 remaining in funding assistance.

TABLE 1 - CV13 WMRA WASTEWATER
METERING SYSTEM COMMUNITY
FLOW ESTIMATES:

COMMUNITY	TOTAL POPULATION	SEWERED POPULATION
WALTHAM	61,181	61,120

CY13 AVERAGE DAILY FLOW (ADF) BY CALENDAR MONTH (MDG)												
JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT	OCT	NOV	DEC	AVG.
9.87	10.14	14.12	9.34	8.16	12.68	7.78	6.66	6.29	5.97	6.13	7.22	8.69

TABLE 2 -2013 MWRA COMMUNITY
WASTEWATER FLOW COMPONENT
ESTIMATES (CY-13-12 MONTHS):

COMMUNITY	WALTHAM
TOTAL POPULATION	61,181
SEWERED POPULATION	61,120
NO. OF CONNECTS TO MWRA SYSTEM	5
MILES OF LOCAL SEWERS	138
NO. OF METERS FOR PERMENANT SYSTEMS	4
AVERAGE DAILY FLOW ADF (MGD)	8.69
PERCENT AVERAGE DAILY FLOW (ADF)	2.90%

SELECTED DRY DAT ADF (MGD)	8.09
AVERAGE DAILY INFILTRATION (MGD)	2.29
INFILTRATION AS A % OF ADF	26.40%
AVERAGE SANITARY FLOW (MGD)	5.8
SANITARY AS A % OF ADF	66.70%
AVERAGE DAILY INFLOW	0.59
INFLOW AS A % OF ADF	6.80%
PEAK MONTH ADF (MGD)	14.12
PERCENT PEAK MONTH ADF	2.89%

Comparison of MWRA Wastewater Flow Component Estimates (FY- 2009 - 12 Months) To (FY 2013 - 12 Months)

TABLE 2 - MWRA WASTEWATER FLOW COMPONENT ESTIMATES (CY- 2009 - 12 MONTHS) to (CY 2013 - 12 MONTHS) - COMPARISON												
COMMUNITY:	WALTHAM	% Δ	WALTHAM	% Δ	WALTHAM	% Δ	WALTHAM	% Δ	WALTHAM	% Δ	WALTHAM	% Δ
	(CY- 2009 - 12 MONTHS)	CY 08 V CY 09	(CY- 2010 - 12 MONTHS)	CY 09 V CY 10	(CY- 2011 - 12 MONTHS)	CY 10 V CY 11	(CY- 2012 - 12 MONTHS)	CY 11 V CY 12	(CY- 2013 - 12 MONTHS)	CY 12 V CY 13		
A- TOTAL POPULATION:	60,325		60,325		60,325		61,181		61,181			
B- SEWERED POPULATION:	60,265		60,265		60,265		61,120		61,120			
C- NO. OF CONNECTIONS TO MWRA SYSTEM:	3		3		3		5		5			
D- LOCAL MILES OF SEWERS (3)	138		138		138		138		138			
E- NO. OF METERS FOR PERMANENT SYSTEM	3		3		3		4		4			
AVERAGES (1)												
F- AVERAGE DAILY FLOW ADF (MGD)	10.34	-14.262%	10.4	-7.965%	10.93	-9.370%	8.22	-20.962%	8.69	5.718%		
G- PERCENT OF AVERAGE DAILY FLOW (6)	3.16%	-7.872%	3.09%	-2.524%	3.08%	-10.204%	2.96%	-4.207%	2.90%	-2.027%		
H- SELECTED DRY DAY ADF (MGD)	9.62	-10.428%	8.92	-14.395%	9.91	-7.728%	7.55	-15.359%	8.09	7.152%		
COMPONENTS OF AVERAGE DAILY FLOW (ESTIMATED) (2)												
I- AVERAGE DAILY INFILTRATION (MGD)	4.02	-21.790%	2.92	-49.828%	3.91	-23.930%	1.55	-46.918%	2.29	47.742%		
J- INFILTRATION AS % OF AVERAGE DAILY FLOW	38.9%	-8.780%	28.1%	-45.486%	35.8%	-16.065%	18.9%	-32.840%	26.4%	39.751%		
K- AVERAGE SANITARY FLOW	5.6	0.000%	6	30.435%	6	7.143%	6.00	0.000%	5.80	-3.333%		
L- SANITARY AS % OF AVERAGE DAILY FLOW	54.2%	16.634%	57.7%	41.722%	54.9%	18.220%	73.0%	26.521%	66.7%	-8.562%		
M- AVERAGE DAILY INFLOW (MGD)	0.72	-45.038%	1.49	69.318%	1.02	-22.137%	0.67	-55.034%	0.59	-11.940%		
N- INFLOW AS % OF AVERAGE DAILY FLOW	7.0%	-35.896%	14.3%	83.971%	9.3%	-14.088%	8.2%	-43.108%	6.8%	-16.703%		
O- PEAK MONTH ADF (MGD)	12.98	-21.995%	23.31	51.364%	18.87	13.401%	9.45	-59.459%	14.12	49.418%		
P- PERCENT OF PEAK MONTH	3.26%	-1.212%	3.36%	20.863%	3.85%	16.667%	2.78%	-17.262%	2.89%	3.957%		
TOTAL - INFLOW & INFILTRATION (MGD)	4.74	-26.512%	4.41	-34.179%	4.93	-23.566%	2.22	-49.660%	2.88	29.730%		
INFILTRATION & INFLOW AS % OF AVERAGE DAILY FLOW	45.8%	-14.287%	42.4%	-28.483%	45.1%	-15.664%	27.0%	-36.309%	33.1%	22.713%		

FOOTNOTES:

- FIGURES TABULATED USING DATA FROM MWRA WASTEWATER METERING SYSTEM
- WASTEWATER FLOW COMPONENTS ARE ESTIMATED THROUGH ENGINEERING ANALYSIS BY MWRA STAFF
- MILES OF LOCAL SEWERS ARE FROM MWRA'S REGIONAL COLLECTION SYSTEM DATABASE OR AS REPORTED BY THE COMMUNITY AND DO NOT INCLUDE SERVICE LATERALS
- AVERAGE DAILY INFLOW IS CALCULATED AS A TOTAL INFLOW OVER THE PERIOD OF JANUARY THROUGH DECEMBER 2012 DIVIDED BY 366 DAYS.
- PERCENT AVERAGE DAILY FLOW AND PERCENT PEAK MONTH ADF ARE THE TWO FLOW BASED COMPONENTS OF MWRA'S WHOLESALE SEWER RATE

SUMMATIONS:

AVERAGE DAILY FLOW (ADF) - F=HK+M
AVERAGE DRY DAY FLOW - H=HK

TABLE 3 – 2014 FINAL COMMUNITY
WASTEWATER FLOW COMPONENT
ESTIMATES:

COMMUNITY	WALTHAM
SEWERED POPULATION	61,051
MILES OF LOCAL SEWERS	138
IDM OF LOCAL SEWERS	1,380
AVERAGE DAILY FLOW ADF (MGD)	9.52
AVERAGE ANNUAL INFILTRATION (MGD)	3.05
AVERAGE ANNUAL INFLOW (MGD)	0.67
AVERAGE SANITARY FLOW (MGD)	5.8
ADF (GDP PER IDM)	6,899
I/I (GDP PER IDM)	2,696
INFILTRATION (GDP PER IDM)	2,210
INFLOW (GDP PER IDM)	486
INFLOW (GDP PER SEWER MILE)	4,855
AVERAGE SANITARY (GDP PER SEWER POPULATION)	95

TABLE 3 – 2014 FINAL COMMUNITY
WASTEWATER FLOW COMPONENT
ESTIMATES (RANKED DETAIL):

COMMUNITY	SEWERED POPULATION	RANK
FRAMINGHAM	62,092	6
WALTHAM	61,120	7
MALDEN	60,011	8

COMMUNITY	MILES OF LOCAL SEWERS	RANK
BRAINTREE	140	9
WALTHAM	138	10
NATICK	135	11

COMMUNITY	IDM OF LOCAL SEWERS	RANK
WOBURN	1,410	10
WALTHAM	1,380	11
BROOKLINE	1,332	12

COMMUNITY	AVERAGE DAILY FLOW ADF (MGD)	RANK
BROOKLINE	8.82	6
WALTHAM	8.69	7
MALDEN	8.41	8

COMMUNITY	AVERAGE ANNUAL	RANK
FRAMINGHAM	2.33	11
WALTHAM	2.29	12
WOBURN	2.22	13

COMMUNITY	AVERAGE ANNUAL INFLOW	RANK
MALDEN	0.67	11
WALTHAM	0.59	12
BRAINTREE	0.56	13

COMMUNITY	AVERAGE SANITARY FLOW	RANK
NETWON	7	4
WALTHAM	5.8	5
SOMERVILLE	5.3	6

COMMUNITY	ADF (GPD PER IDM)	RANK
MELROSE	6,381	10
WALTHAM	6,297	11
WINTHROP	6,235	12

COMMUNITY	I/I (GPD PER IDM)	RANK
<i>EVERETT</i>	2,157	19
WALTHAM	2,087	20
<i>DEDHAM</i>	2,055	21

COMMUNITY	INFILTRATION (GPD PER IDM)	RANK
<i>CHELSEA</i>	1,699	15
WALTHAM	1,659	16
<i>DEDHAM</i>	1,623	17

COMMUNITY	INFLOW (GPD PER IDM)	RANK
<i>BRAINTREE</i>	431	19
WALTHAM	428	20
<i>BELMONT</i>	424	21

COMMUNITY	INFILTRATION (GPD PER IDM)	RANK
<i>CHELSEA</i>	1,699	15
WALTHAM	1,659	16
<i>DEDHAM</i>	1,623	17

COMMUNITY	INFLOW (GPD PER IDM)	RANK
<i>BRAINTREE</i>	431	19
WALTHAM	428	20
<i>BELMONT</i>	424	21

COMMUNITY	INFLOW (GPD PER SEWER MILE)	RANK
<i>HINGHAM</i>	4,545	17
WALTHAM	4,275	18
<i>BRIANTREE</i>	4,000	19

COMMUNITY	AVERAGE SANITARY (GPD PER SEWER POPULATION)	RANK
<i>CANTON</i>	97	5
WALTHAM	95	6
<i>BWSC</i>	93	7

Steadily Increasing MWRA Sewer Assessments



MWRA SEWER ASSESSMENTS FOR WALTHAM, MA	
DATE	2008
AMOUNT	\$10,567,428
DATE	2009
AMOUNT	\$10,890,696
\$ Δ FY 08 v. FY 09	\$323,268
% Δ FY 08 v. FY 09	3.1%
DATE	2010
AMOUNT	\$11,731,972
\$ Δ FY 09 v. FY 10	\$841,276.00
% Δ FY 09 v. FY 10	7.7%
DATE	2011
AMOUNT	\$11,906,428
\$ Δ FY 10 v. FY 11	\$174,456
% Δ FY 10 v. FY 11	1.5%
DATE	2012
AMOUNT	\$12,347,461
\$ Δ FY 11 v. FY 12	\$441,033
% Δ FY 11 v. FY 12	3.7%
DATE	2013
AMOUNT	\$12,485,924
\$ Δ FY 12 v. FY 13	\$138,463
% Δ FY 12 v. FY 13	1.1%
DATE	2014
AMOUNT	\$12,759,248
\$ Δ FY 13 v. FY 14	\$273,324
% Δ FY 13 v. FY 14	2.2%
DATE	2015
AMOUNT	\$12,953,820
\$ Δ FY 14 v. FY 15	\$194,572
% Δ FY 14 v. FY 15	1.5%

EXCERPTS FROM FINAL OFFICIAL STATEMENT DATED JUNE 10, 2014
CITY OF WALTHAM, MASSACHUSETTS
\$3,500,000 GENERAL OBLIGATION TAXABLE BOND ANTICIPATION NOTES

FISCAL YEAR	REAL ESTATE VALUATION
2014	\$ 8,361,208,824
2013	\$ 8,214,545,834
2012	\$ 8,145,298,634
2011	\$ 8,121,192,934
2010	\$ 8,286,176,362

FISCAL 2014

TYPE OF PROPERTY	ASSESSED VALUATION	% OF TOTAL ASSESSED VALUATION
RESIDENTIAL	\$ 5,772,320,361	66.4
COMMERCIAL	\$ 2,127,776,189	24.5
INDUSTRIAL	\$ 461,112,274	5.3
PERSONAL	\$ 336,977,250	3.9
TOTAL	\$ 8,698,186,074	100

STATE EQUALIZED VALUATION

JANUARY 1	STATE VALUATION	% CHANGE
2012	\$ 9,279,182,000	0.72
2010	\$ 9,212,986,100	(7.26)
2008	\$ 9,934,066,400	7.23
2006	\$ 9,264,421,800	11.76
2004	\$ 8,289,720,700	11.19

CITY OF WALTHAM, MASSACHUSETTS

SEWER FUND

CITY OF WALTHAM, MASSACHUSETTS					
Sewer Fund					
Comparative Statement of Revenues, Expenditures and Changes to Net Assets (1)					
June 30					
	2013	2012	2011	2010	2009
Operating Revenues:					
Charges for service	\$ 19,582,834	\$ 15,854,585	\$ 18,222,159	\$ 14,029,718	\$ 14,557,425
Operating Expenses:					
Maintenance and operations	2,583,419	3,089,360	2,929,606	3,808,659	2,623,561
State assessments	12,485,924	12,347,481	11,906,428	11,731,972	10,860,696
Employee Benefits	804,885	679,880	721,290	607,012	732,863
Depreciation	1,026,034	954,735	925,935	923,685	914,880
General fund services	-	-	-	-	-
Total operating expenses	16,880,262	17,071,436	16,483,259	17,071,328	15,182,000
Operating Income (Loss)	2,702,572	(1,216,851)	1,738,900	(3,041,610)	(604,575)
Non-Operating Revenues (Expenses):					
Investment Income	17,789	17,278	20,999	23,965	62,053
Interest expense	(501,916)	(310,505)	(293,204)	(313,757)	(350,343)
Intergovernmental	-	-	1,370,700	-	247,500
Other	49,438	-	-	-	-
Total non-operating revenues (expenses)	(434,689)	(293,227)	1,098,495	(289,792)	(40,790)
Net Income (Loss)	2,267,883	(1,510,078)	2,837,395	(3,331,402)	(645,365)
Transfers Out	-	(55,127)	-	(1,003,201)	-
Change in Net Assets	2,267,883	(1,565,205)	2,837,395	(4,334,603)	(645,365)
Net Assets(deficit), beginning of year	13,669,349	15,234,550	12,397,158	16,731,761	17,377,126
Net Assets(deficit), end of year	<u>\$ 15,937,232</u>	<u>\$ 13,669,345</u>	<u>\$ 15,234,553</u>	<u>\$ 12,397,158</u>	<u>\$ 16,731,761</u>

(1) Extracted from the Audited Financial Statements of the City.

THERE IS NO SEPARATE ACCOUNTING OF RECEIPTS OR DISBURSEMENTS FOR I&I IN THE CITY'S FINANCIAL STATEMENTS.

**DIRECT DEBT SUMMARY
PROJECTED AS OF JUNE 30, 2014**

LONG-TERM INDEBTEDNESS	
SEWER	\$ 10,728,120

OVERLAPPING DEBT ASSESSED TO THE CITY:

MA WATER RESOURCES AUTHORITY	OUTSTANDING	ESTIMATED SHARE OF WALTHAM	ASSESSMENT FOR OPERATIONS AND DEBT SERVICE FISCAL YEAR 2014
SEWER	\$ 4,033,856,000	2.978%	\$ 12,759,248

DEBT AS OF JUNE 30, 2013. MWRA RATES AND CHARGES ARE BASED, IN THE CASE OF SEWER RATES, ON POPULATION AND POPULATION EQUIVALENTS OF THE MUNICIPALITY. DEBT SERVICE ON ITS BONDS IS ONE COMPONENT OF THE OVERALL COST OF MWRA SEWER ASSESSED TO ITS MUNICIPALITIES, AND ALLOCABLE SHARES ASSESSED TO INDIVIDUAL MUNICIPALITIES WILL VARY FROM YEAR TO YEAR TO REFLECT CHANGES IN USE AND POPULATION.

**EXCERPTS FROM CITY OF WALTHAM, MASSACHUSETTS
COMPREHENSIVE ANNUAL FINANCIAL REPORT
FOR THE FISCAL YEAR ENDED JUNE 30, 2013**

	Beginning Balance	Increases	Decreases	Ending Balance
Sewer Activities:				
Capital assets not being depreciated:				
Land.....	\$ 38,550	\$ -	\$ -	\$ 38,550
Capital assets being depreciated:				
Buildings and improvements.....	3,160,827	24,760	-	3,185,587
Equipment.....	938,439	70,550	-	1,008,989
Infrastructure.....	34,132,380	3,061,971	(55,322)	37,139,029
Total capital assets being depreciated.....	38,231,646	3,157,281	(55,322)	41,333,605
Less accumulated depreciation for:				
Buildings and improvements.....	(1,404,202)	(87,363)	-	(1,491,565)
Equipment.....	(783,662)	(48,469)	-	(832,131)
Infrastructure.....	(20,406,531)	(890,202)	692	(21,296,041)
Total accumulated depreciation.....	(22,594,395)	(1,026,034)	692	(23,619,737)
Total capital assets being depreciated, net.....	15,637,251	2,131,247	(54,630)	17,713,868
Total sewer activities capital assets, net.....	\$ 15,675,801	\$ 2,131,247	\$ (54,630)	\$ 17,752,418

Bonds and Notes Payable - Enterprise Funds

Sewer Enterprise

Project	Interest Rate	Outstanding at June 30, 2012	Issued	Redeemed	Outstanding at June 30, 2013
Sewer Projects.....	2.00-5.00%	\$ 3,240,000	\$ -	\$ (340,000)	\$ 2,900,000
Sewer Improvements.....	4.00%	615,000	-	(37,000)	578,000
Sewer Equipment.....	2.00-5.00%	656,000	-	(83,000)	573,000
MWPAT.....	2.00%	2,877,947	-	(218,391)	2,659,556
MWRA.....	0.00%	1,461,240	-	(395,560)	1,065,680
Sewer Projects.....	3.00-5.00%	2,661,000	-	(132,550)	2,528,450
Sewer Improvements.....	3.00-5.00%	3,868,500	-	(194,250)	3,674,250
MWPAT.....	2.00%	384,193	-	-	384,193
Traffic & Signal Improvements....	3.00-5.00%	385,000	-	(47,000)	338,000
Sewer Improvements.....	2.00 - 4.25%	-	1,439,440	-	1,439,440
Sub-total.....		16,148,880	1,439,440	(1,447,751)	16,140,569
Add: unamortized premium.....		570,272	-	(29,242)	541,030
Total sewer enterprise.....		\$ 16,719,152	\$ 1,439,440	\$ (1,476,993)	\$ 16,681,599

Debt service requirements for principal and interest for the sewer enterprise fund in future fiscal years are as follows:

Fiscal Year	Principal	Interest	Total
2014.....	\$ 1,562,398	\$ 532,114	\$ 2,094,512
2015.....	1,368,569	515,219	1,883,788
2016.....	1,364,782	473,593	1,838,375
2017.....	1,032,042	430,997	1,463,039
2018.....	1,042,471	385,902	1,428,373
2019.....	1,045,009	341,102	1,386,111
2020.....	853,031	299,397	1,152,428
2021.....	856,049	268,926	1,124,975
2022.....	829,125	238,463	1,067,588
2023.....	826,266	202,174	1,028,440
2024.....	829,471	173,233	1,002,704
2025.....	842,740	143,946	986,686
2026.....	785,075	115,325	900,400
2027.....	608,478	91,105	699,583
2028.....	478,027	72,841	550,868
2029.....	472,763	56,874	529,637
2030.....	427,515	42,776	470,291
2031.....	428,281	29,072	457,353
2032.....	406,710	15,786	422,496
2033.....	81,767	2,932	84,699
Total.....	\$ 16,140,569	\$ 4,431,777	\$ 20,572,346

The Massachusetts Water Resource Authority (MWRA) operates financial assistance programs for community owned collection systems. Financial assistance received from the MWRA consists of non-interest bearing loans (payable in five equal annual installments) and, in some instances, grants. At June 30, 2013, the outstanding principal amount of MWRA loans in the sewer enterprise fund totaled \$1,065,680.

The City issued \$1,439,440 of general obligation bonds on June 27, 2013 for sewer improvement projects.

The City is subject to various debt limits by statute and may issue additional general obligation debt under the normal debt limit. At June 30, 2013, the City had the following authorized and unissued debt:

Purpose	Amount
Sewer.....	\$ 5,969,940

City of Waltham, Massachusetts
Operating Indicators by Function/Program
Last Ten Fiscal Years

Function/Program	Fiscal Year									
	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013

Sewer										
Service repairs.....	23	25	30	45	43	40	26	30	29	29
Stoppages - mains.....	118	98	18	150	125	100	79	72	92	124
Stoppages - services.....	232	290	41	275	249	300	238	175	253	281

Best Practices for a Fully Functional Sewer System

- Maintain a system that is in good physical condition
- Maintain a system that is well maintained
- Maintain a system that is updated appropriately
- Maintain a system that has a program of predictable preventative maintenance
- Maintain a system that is operationally sound and efficient
- Maintain a system that provides for sufficient current flow and contemplated future flow
- Maintain a system that provides for elimination of contamination and pollution of public waters
- Maintain a system that is supported by appropriate financial reserves
- Maintain a system that has stabilized and sustainable rates that are “fair and equitable”

Goals for Waltham’s Sewer System

- Eliminate all Sewer System Backups
- Eliminate all Health and Environmental Impacts of Sewer System Overflows
- Remove All and Prevent New Inflow Sources from Public and Private Sources
- Minimize System Wide Infiltration
- Educate and Involve the Public about Inflow & Infiltration
- Develop an Operation and Maintenance Program
- Improve Funding Mechanisms for Identifying and Removing I / I

What are the Problems with Waltham's Sewer System?

- Inflow and Infiltration (I / I) - primary problem resulting in ~ 30% of MWRA Sewer Charges
- Sewer System Overflows (SSOs) and Sewer System Back-ups which violate the Clean Waters Act
- Aging Infrastructure where 60% of the Sewer System is over 50 years old with Significant Structural Problems – breaking, collapsing and sagging pipes with major leaks – Intrusion/Blockages from roots, grease, etc.
- Increasing State and Federal requirements for sewer system and storm water management
- Steadily increasing MWRA Sewer Assessments exacerbated by I / I
- Steadily Increasing Sewer Costs and Budgets

What are the Solutions?

- A Sewer System Management Plan based on Capacity, Management, Operations and Maintenance (CMOM) that investigates and tests the system and documents its problems, utilizes competent and experienced engineers to designs repairs and fixes to the system, contracts with competent experienced contractors to clean, repair, replace, seal and re-line the Sewer System
- Undertake a comprehensive program of public education about sewer system issues and problems
- Develop a Master Plan for Capital Improvement Sewer Projects with an appropriate financial plan, rate structure and bonding mechanism
- Re-structure the I / I payment and funding mechanism to make it “fair and equitable”
- Develop a Sewer System Financial Statement with full Disclosure of I & I Funds collected and expended

Sewer System Investment Benefits

- Rehabilitate aging sewer system infrastructure
- Reduce costly future repairs
- Reduce costs of reactive maintenance
- Reduce costly emergency repairs
- Improve sewer service to residents and businesses
- Reduce inflow and infiltration
- Reduce sewer system overflows and pollution of city waters and properties

Best Practices for Sewer System Maintenance

- Inspection and assessment of the sewer system using current technologies
- Oversight of inspection and assessment by experienced and competent engineers
- Television inspection
- Smoke testing
- Dye testing
- Flow isolation
- Pipe cleaning
- Manhole inspection, cleaning and repair
- Repairs and upgrades to the system designed by experienced and competent engineers
- Retain competent and experienced engineers, consultants and contractors
- Undertake construction in a timely and cost effective manner
- Post-construction retesting and Flow Evaluation



Administrative Consent Order - May 7, 2003

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:)
)
City of Waltham)
Department of Public Works)
)

FILE NO. ACOP-NE-02-1 003

ADMINISTRATIVE CONSENT ORDER

DEP MAY 07 2003

I. THE PARTIES

1. The Department of Environmental Protection (the "Department") is a duly constituted agency of the Commonwealth of Massachusetts, established pursuant to M.G.L. c. 21A § 7, having a principal office at One Winter Street, Boston, MA 02108 and a regional office at 205A Lowell Street, Wilmington, MA 01887. The Department has the authority to implement and enforce the requirements of M.G.L. c. 21 §§ 26 – 53 and the regulations promulgated thereunder at 314 CMR 3.00 and 314 CMR 12.00 and M.G.L. c. 21A § 16 and the regulations promulgated thereunder at 310 CMR 5.00.

2. The City of Waltham, Department of Public Works (the "City") is a municipal corporation in the Commonwealth of Massachusetts, having a principal place of business and mailing address at the Department of Public Works, Municipal Center, 169 Lexington Street, Waltham, MA 02452-4638. The City owns, operates and maintains a municipal sewer system that collects and transports sewage and other wastes from properties connected thereto to the MWRA Sewer Interceptor.

II. STATEMENT OF FACTS AND LAW

3. The Department implements and enforces the provisions of M.G.L. c. 21 §§ 26-53, the Massachusetts Clean Waters Act ("the Act") and the regulations promulgated thereunder at 314 CMR 3.00 ("the Surface Water Discharge Regulations") and 314 CMR 12.00 ("the Operation, Maintenance, and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers.")

4. The Department is authorized to assess civil administrative penalties by G.L. c. 21A, § 16 and the regulations promulgated thereunder at 310 CMR 5.00.

5. 314 CMR 3.03(1) provide as follows:

No person shall discharge pollutants to surface waters of the Commonwealth without a currently valid permit from the Department pursuant to M.G.L. c. 21 § 43 and 314 CMR 3.00, unless exempted in 314 CMR 3.05. No person shall construct, install, modify, operate or maintain an outlet for such a discharge or any treatment works required to treat such discharge without having first obtained a discharge permit in accordance with 314 CMR 3.03(1) and written approval from the Department for such activity, unless exempted pursuant to 314 CMR 3.05.

6. 314 CMR 3.02 defines "discharge" to be any addition of any pollutant or combination of pollutants to waster of the Commonwealth from any source, including but not limited to discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person, which do not lead to a POTW; and discharges through pipes, sewers or other conveyances, leading into privately owned treatment works.

7. 314 CMR 3.02, defines "pollutant" to be any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other mater, in whatever form and whether originating at a point or major non-point source, which is or may be discharged, drained, or otherwise introduced into any sewerage system, treatment works, or waters of the Commonwealth.

8. 314 CMR 3.02, defines "Point Source" to be any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel conduit, well, discrete fissure, contain, rolling stock, concentrated animal feeding operation, vessel, or other floating craft from which pollutants are or may be discharged.

9. 314 CMR 3.02, defines "Waters of the Commonwealth" to be all waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and ground waters.

10. 314 CMR 12.02 defines "Treatment Works" to be any and all devises, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation or reuse of waterborne pollutants, but not including any works receiving hazardous waste from off the site of the works for the purpose of treatment, storage or disposal.

11. 314 CMR 12.03(8) states in part:

No person responsible for the operation of treatment works shall permit wastes to bypass the facility or any portion, unit or part thereof, except as may be necessary under existing design limitations as approved by the Department, unless in accordance with the provisions of a discharge permit. If bypass due to an emergency condition occurs, the Department shall be notified immediately.

12. 314 CMR 12.04(8) states:

Any person operating a treatment works shall maintain the facilities in a manner that will ensure proper operation of the facilities or any part thereof.

13. 314 CMR 12.04(9) states:

Any person operating treatment works shall establish and implement a preventive maintenance program to assure the efficient operation of all facilities and equipment.

14. On April 30,2001, the Department issued Notice of Noncompliance Number NON-NE-01-1006 (the "NON") to City for the non-reporting of sewer overflows. The Notice of Noncompliance required the City to:

a) Within thirty (30) days from the date of this notice, submit a written response to the Department for its review and approval which contains plans and a schedule for addressing overflows including a description of the cause of the discharge near the former Metropolitan State Hospital, 475 Trapelo Rd., Waltham and all overflows or discharges from the City sewer system, a report of the overflow(s) in Waltham since March 1, 2001 with an estimate of each flow, the treatment used, the measures implemented or to be implemented to clean up the residue of the overflow and steps taken and to be taken to reduce the frequency and duration of these overflows in the future. Thereafter implement the plans and schedules as approved by the Department.

b) From the date of receipt of this notice and thereafter, notify the Department of all sewer overflows or bypasses in accordance with 314 CMR 12.03(8) on the Department approved form. A copy of this form is enclosed.

15. On May 31, 2001, in response to the NON, Mr. David L. Savoy, Superintendent Department of Waltham Public Works stated in a letter to the Department, that the sewer design for this area was expected to begin in June 2001 and the advertisement for bids in the fall 2001. Inspection and root removal was completed in September, 2002. Design for the Beaver Brook Sewer was completed in January, 2003. The contract was subsequently awarded.

16. On May 9, 2002, an engineer from the Department observed a sewer leak from the City's sewer line in the area across from the of MDC Beaver Brook Reservation Building and notified the City.

17. On May 10, the City became aware of sewer problems again occurring in the MDC Beaver Brook Reservation area. In response, the City dispatched DPW personnel to monitor the area. On May 13, 2002 the City requested a proposal for repair work. On May 14, 2002, the City notified the Department of the overflow problems that had occurred on May 10, 2002 and indicated that the repair of the leak was to be completed shortly and the design of the overall project was underway.

18. On May 14, 2002, an engineer from the Department inspected the sewer area near the Metropolitan State Hospital entrance road off Trapelo Road. Sewage was seen surcharging and overflowing from a City sewer line onto the adjacent wetland and an unnamed brook (tributary to Beaver Brook). There was no treatment or any containment to prevent the discharge of pollutants of the Waters of the Commonwealth.

19. On May 15, 2002, the Department notified the Waltham Department of Public Works by phone that sewer overflows were still occurring at the MDC Beaver Brook Reservation Building and at the Metropolitan State Hospital. That afternoon, the City dispatched DPW personnel to inspect the site of the overflow.

20. On May 16, 2002, an engineer from the Department re-inspected the sewer overflow at the Metropolitan State Hospital property. No sewer overflow was observed during that visit. The Department saw no indication of any clean up of the sewage or sanitary waste that had collected near the manhole, or in the wetland.

21. The unpermitted discharge of pollutants to the waters of the Commonwealth and non-notification of the discharge is a violation of the Massachusetts Clean Waters Act and the regulations promulgated thereunder, including 314 CMR 3.03(1), 314 CMR 12.03(8), 314 CMR 12.04(8), and 314 CMR 12.04(9).

III. DISPOSITION AND ORDER

22. Based upon the foregoing Statement of Facts and Law, and pursuant to its authority under G.L. c. 21 §§ 26 – 53 and the implementing regulations at 314 CMR 3.00 and 314 CMR 12.00, and G.L. c. 21A, § 16 and the regulations promulgated thereunder at 310 CMR 5.00, the Department hereby issues, and City hereby consents to the terms and conditions of the Administrative Consent Order.

23. On or before the date of this Order, the City shall have submitted for the Department's approval, the following:

- a) Plans and drawings for the sewer lines running to and along Beaver Brook.
- b) A summary of all efforts to evaluate, repair, replace, and construct work on the sewer and storm drains in the City for the past ten (10) years.

24. From the date of this Order and thereafter, the City shall notify the Department of all sewer overflows or bypasses in accordance with 314 CMR 12.03(8) on the Department approved form.

25. On or before July 1, 2003, and in accordance with the applicable provisions of 314 CMR 12.00 et seq., the City shall submit to the Department for its review and approval an 'Operation and Maintenance Manual and staff plan' ("the plan") that address how the City intends to operate and maintain its sewer system including pump stations. Among other things required by the regulations at 314 CMR 12.00, et seq., the staff plan must identify staff responsible for plan implementation.

26. On or before June 1, 2003, the City shall submit to the Department for its review and approval a plan and schedule for the elimination of infiltration and inflow into the Waltham sewer system. Thereafter, the City shall implement the plan and schedule as approved by the Department. Failure to implement the plan and schedule as approved by the Department shall be a violation of this Consent Order.

27. From the effective date of this Consent Order and thereafter, before issuing a sewer connection permit the City shall require the removal of four gallons of infiltration and inflow for each additional gallon of wastewater that will be discharged to the sewer system. This information shall be included in the Municipal Sewer Connection Report as required by 314 CMR 12.07.

28. The Department hereby determines, and City hereby agrees, that the deadline(s) set forth above constitute reasonable time for performing the activities described above and coming into compliance with the requirements set forth in this Consent Order.

29. For the violations of G.L. c. 21 § 43 and the Massachusetts Surface Water Discharge Regulations, as identified in Article II above, the City agrees to pay to the Commonwealth a civil administrative penalty in the amount of five thousand (\$5,000) dollars, twenty-five hundred dollars (\$2,500) of which shall be paid on or before June 1, 2003, and twenty-five hundred dollars (\$2,500) of which shall be paid on or before September 1, 2003.

30. In addition to being an Administrative Consent Order, this is also a Notice of Noncompliance issued pursuant to G.L. c. 21A, § 16 for the City's noncompliance with G.L. c. 21, § 43, 314 CMR 3.00, and 314 CMR 12.00. Future violations of those requirements or the requirements of this Administrative Consent Order may result, without limitation, in the assessment of additional civil administrative penalties for each day, or portion thereof, each such violation occurs or continues.

31. Submittals required by this Administrative Consent Order shall be considered delivered upon receipt by the Department. All submissions required by this Administrative Consent Order shall be submitted to:

David Ferris
Division of Wastewater Management
Department of Environmental Protection
Northeast Regional Office
205A Lowell Street
Wilmington, Massachusetts 01887

32. The City admits to the jurisdiction and authority of the Department to issue this Administrative Consent Order. The City understands and hereby waives its right to an adjudicatory hearing before the Department on, and judicial review of, the issuance and/or terms of this Administrative Consent Order and to notice of any such rights of review.

33. Nothing in this Administrative Consent Order shall be construed or operate as barring, diminishing, adjudicating, or in any way affecting: (1) any legal or equitable right of the Department to issue any future order with respect to the subject matter covered by this Administrative Consent Order or (2) any other legal or equitable right of the Department to pursue any claim, action, suit, cause of action, demand or right to relief that the Department may have with respect to the subject matter covered by this Administrative Consent Order. This Administrative Consent Order shall not be construed to, or operate as, barring, diminishing, adjudicating, or in any way affecting any legal or equitable right of the Department or the City with respect to any subject matter not covered by this Administrative Consent Order.

34. This Administrative Consent Order shall apply to and be binding upon the City. The City shall not violate this Administrative Consent Order and shall not allow or suffer its boards, officers, employees, agents, consultants, successors, or assigns to violate this Administrative Consent Order. A violation of this Administrative Consent Order by any of the foregoing shall constitute a violation of this Administrative Consent Order by the City.

35. Except as provided herein, this Administrative Consent Order does not relieve the City or any other person of the necessity of complying with all applicable federal, state, and local statutes, regulations and approvals while performing activities pursuant to this Administrative Consent Order. Except as provided herein, any noncompliance with the foregoing shall constitute a violation of this Administrative Consent Order.

36. Failure on the part of the Department to complain of action or inaction on the part of the City shall not constitute a waiver by the Department of any rights under this Administrative Consent Order, nor shall a waiver by the Department of any provision of this Administrative Consent Order be construed as a waiver of any other provision of this Administrative Consent Order.

37. This Administrative Consent Order may be modified only by the written agreement of the parties. This Administrative Consent Order and the obligations hereunder may not be assigned by the City.

38. If the City violates this Administrative Consent Order, the City shall pay to the Commonwealth stipulated penalties of five hundred (\$500.00) dollars per day for each day of each violation of this Administrative Consent Order. All stipulated penalties accruing under this Administrative Consent Order shall be paid within thirty (30) days of the date the Department sends a written demand therefore. Stipulated penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day that the City corrects the violation or completes performance, whichever is applicable. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Administrative Consent Order. Stipulated penalties shall accrue regardless of whether the Department has notified the City of a violation. The payment of stipulated penalties shall not alter in any way the City's obligation to complete performance as required by this Administrative Consent Order. The stipulated penalties set forth herein shall not preclude the Department from electing to pursue alternative remedies or alternative civil or criminal penalties which may be available by reason of the City's failure to comply with the requirements of this Administrative Consent Order. In the event that the Department collects alternative civil administrative penalties, the City shall not be required to pay stipulated penalties pursuant to this Administrative Consent Order.

39. Payment of all penalties due under this Administrative Consent Order is necessary for the City to come into compliance with G.L. c. 21, § 43 and the Massachusetts Surface Water Discharge Regulations at 314 CMR 3.00 et seq. In the event the City fails to pay in full any penalty on or before the date due under this Administrative Consent Order, the City shall pay to the Commonwealth three times the amount of the penalty together with costs, plus interest on the balance due from the date the penalty became due. The rate of interest shall be the rate set forth in G.L. c. 231, § 6C. If a court judgment is necessary to execute a claim for any penalty due under this Administrative Consent Order, the City agrees to assent to the entry of such judgment.

40. The City shall pay all penalties due under this Administrative Consent Order by certified check cashier's check or money order payable to the Commonwealth of Massachusetts. The City shall clearly print the name "City of Waltham," and the City's FEIN Number, and File No. ACOP-NE-02-1003 on the face of the payment and shall mail it to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 3584
Boston, Massachusetts 02241-3585

and shall deliver a copy of the payment to:

Madelyn Morris
Deputy Regional Director
Bureau of Resource Protection
Department of Environmental Protection
205A Lowell Street
Wilmington, Massachusetts 01887

41. The Department may extend the time for performance of any terms(s) or requirements(s) of this Administrative Consent Order, if the Department determines that: (1) an event(s) have occurred or will occur which delay such performance, (2) the occurrence of such an event(s) is beyond the control of the City, and (3) the delay could not have been prevented, avoided, or minimized by the City's exercise of due care ("Force Majeure Event"). Events for which the Department may extend performance deadlines include, but are not limited to: (i) acts of God; (ii) acts of war; (iii) unanticipated delays due to accidents, strikes, freight embargoes, or other work stoppages; (iv) flood, fire, extreme weather conditions, or other natural disasters; or (v) delay in the obtaining of permits and/or approvals from state, local, or federal governmental authorities as required to comply with the terms and requirements of this Administrative Consent Order, provided, however, that the City demonstrates to the satisfaction of the Department that it used best efforts to obtain such permits or approvals.

42. Financial inability to meet increases in costs and expenses associated with the implementation of any action(s) required by this Administrative Consent Order, or action(s) of the City's officers, boards, employees, agents consultants, contractors, subcontractors, and assigns, or other representatives, shall not be considered a Force Majeure Event under this Administrative Consent Order.

43. If any event(s) occurs or has occurred that delays or will delay the performance of any requirement(s) in violation of this Administrative Consent Order, the City shall notify the Department in writing no later than ten (10) calendar days from the date the City first became aware of such event(s). The notice shall describe in detail: (i) the reason for and the anticipated length of the delay, (ii) the measures taken and to be taken to minimize the delay, and (iii) the timetable for taking such measures. Failure to comply with the notice requirements set forth herein shall constitute a waiver of the City's right to request an extension based on the event(s). The City shall take all reasonable measures to avoid or minimize any delay resulting from a Force Majeure Event.

44. In the event that the Department determines that the City has met the requirements stated herein for a Force Majeure Event, the Department may extend the time for performance of the affected terms or requirements of this Administrative Consent Order. Such extension shall be made in writing, for the period of any such unavoidable delay resulting from the Force Majeure Event and no penalties will become due for noncompliance with the terms and requirements of this Administrative Consent Order occurring as the direct result of such Force Majeure Event.

45. The City shall allow Department personnel to enter and inspect the area where it is performing any work under this Administrative Consent Order at reasonable times and without notice for the purpose of assessing compliance with this Administrative Consent Order, G.L. c. 21§ 43 and the Massachusetts Surface Water Discharge Regulations at 310 CMR 3.00, et seq.

46. The provisions of this Administrative Consent Order are severable and if any provision of this

Administrative Consent Order or the application thereof is held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision of this Administrative Consent Order which shall be given full effect without the invalid or unenforceable provision provided, however, that the Department may, in its sole discretion, elect to void the entire Administrative Consent Order in the event of such invalidity or unenforceability.

47. This Administrative Consent Order constitutes the entire understanding and agreement between the Department and the City with regard to its obligations arising out of the subject matter of this Administrative Consent Order.

48. The undersigned represent that he/she has the authority to sign this Administrative Consent Order and to legally bind the City on whose behalf such representative is signing. This Administrative Consent Order shall take effect on the date that the Department signs it.

City of Waltham

By: David F. Gately
Title: MAYOR
Typed Name: DAVID F. GATELY
FEIN No.: 04-600-1416

Department of Environmental Protection

By: William F. Gaudin
Title: Regional Director
Date: 5/14/03

Amended Consent Order - January 31, 2005

Attachment #4

COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of
City of Waltham)
)

File NO. ACOP-NE-04-1N004

AMENDED CONSENT ORDER

I. The Parties

1. The Department of Environmental Protection (the "Department") is a duly constituted agency of the Commonwealth of Massachusetts, established pursuant to M.G.L.c. 21A, sec. 7 with an office at One Winter Street Boston, MA 02108. The Department has the authority to implement and enforce the requirements of M.G.L.c. 21, sec. 26 through 53 and the regulations promulgated thereunder at 314 CMR 3.00 and 314 CMR 12.00 and M.G.L.c. 21A, sec. 16 and the regulations promulgated thereunder at 310 CMR 5.00.
2. The City of Waltham (the "City") is a municipal corporation in the Commonwealth of Massachusetts. The Department of Public Works for the City has a principal place of business and mailing address at the Department of Public Works, Municipal Center 169 Lexington Street, Waltham, MA 02452-4638. The City owns, operates and maintains a municipal sewer system that collects and transports sewage and other wastes from properties connected thereto to the MWRA sewer interceptor.

II. Statement of Facts and Law

3. The Department implements and enforces the provisions of M.G.L.c. 21, sec. 26-53, the Massachusetts Clean Waters Act (the "Act") and the regulations promulgated thereunder at 314 CMR 3.00 (the "Surface Water Discharge Regulations") and 314 CMR 12.00 (the "Operation and Maintenance and Pretreatment Standards for Wastewater Treatment Works and Indirect Dischargers").
4. The Department is authorized to assess civil administrative penalties by M.G.L.c. 21A, sec. 16 and 310 CMR 5.00.
5. 314 CMR 3.03(1) states in part:

"No person shall discharge pollutants to surface waters of the Commonwealth without a currently valid permit from the Department pursuant to M.G.L.c. 21, sec. 43 and 314 CMR 3.00, unless exempted in 314 CMR 3.05. No person shall construct, install, modify, operate

or maintain an outlet for such a discharge or any treatment works required to treat such discharge without having first obtained a discharge permit in accordance with 314 CMR 3.03(1) and written approval from the Department for such activity, unless exempted pursuant to 314 CMR 3.05. ...”

6. 314 CMR 3.02 defines “discharge” in part to be “any addition of any pollutant or combination of pollutants to waters of the Commonwealth from any source, including but not limited to, ... discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person, which do not lead to a POTW; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works....”
7. 314 CMR 3.02 defines “pollutant” to be “any element or property of sewage, agricultural, industrial, or commercial waste, runoff, leachate, heated effluent, or other matter, in whatever form, and whether originating at a point or major non-point source, which is or may be discharged, drained, or otherwise introduced into any sewerage system, treatment works, or waters of the Commonwealth.”
8. 314 CMR 12.02 defines “Treatment Works” to be “any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage, or disposal.”
9. 314 CMR 12.03(8) states in part:

“No person responsible for the operation of treatment works shall permit wastes to bypass the facility or any portion, unit or part thereof, except as may be necessary under existing design limitations as approved by the Department, unless in accordance with the provisions of a discharge permit. If bypassing due to an emergency condition occurs, the Department shall be notified immediately.”
10. 314 CMR 12.04(8) states:

“Any person operating treatment works shall maintain the facilities in a manner that will ensure proper operation of the facilities or any part thereof.”
11. 314 CMR 3.02 defines “Waters of the Commonwealth” to be “all waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and ground waters.”
12. On April 30, 2001, the Department issued a Notice of Noncompliance Number NON-NE-01-1066 (the “NON”) to the City for the non-reporting of sewer overflows. The NON required the City to:
 - (a) Submit a written response to the Department for its review and approval which contained plans and a schedule for addressing overflows including a description of

the cause of the discharge near the former Metropolitan State Hospital, 475 Trapelo Road, Waltham and all overflows or discharges from the City sewer system, a report of the overflow(s) in Waltham since March 1, 2001 with an estimate of each flow, the treatment used, the measures implemented or to be implemented to clean up the residue of the overflow and steps taken and to be taken to reduce the frequency and duration of these overflows in the future. Thereafter the City was to implement the plans and schedules as approved by the Department. The written response was to be received by the Department by May 30, 2001.

- (b) From the date of receipt of the NON and thereafter, the City was to notify the Department of all sewer overflows or bypasses in accordance with 314 CMR 12.03(8) on the Department approved form.
- 13. On May 31, 2001, in response to the NON, Mr. David L. Savoy, Superintendent Department of Waltham Public Works stated in a letter to the Department that the sewer design for this area was expected to begin in June 2001 and the advertisement for bids in the fall 2001. Inspection and root removal was completed in September 2002.
- 14. On May 9, 2002, an engineer from the Department observed a sewer leak from the City's sewer line in the area across from the MDC Beaver Brook Reservation Building and notified the City.
- 15. On May 10, 2002, the City became aware of sewer problems occurring in the MDC Beaver Brook Reservation area. In response, the City dispatched DPW personnel to monitor the area. On May 13, 2002, the City requested a proposal for repair work. On May 14, 2002, the City notified the Department of the overflow problems that had occurred on May 10, 2002 and indicated that the repair of the leak was to be completed shortly and the design of the overall project was underway.
- 16. On May 14, 2002, an engineer from the Department inspected the sewer area near the Metropolitan State Hospital entrance road off Trapelo Road. Sewage was seen surcharging and overflowing from a City sewer line onto the adjacent wetland and an unnamed brook (tributary to Beaver Brook). There was no treatment or any containment to prevent the discharge of pollutants into waters of the Commonwealth.
- 17. On May 15, 2002, the Department notified the Waltham Department of Public Works by phone that sewer overflows were still occurring at the MDC Beaver Brook Building and at the Metropolitan State Hospital. That afternoon, the City dispatched DPW personnel to inspect the site of the overflow. Design for the Beaver Brook Sewer was completed in January 2003. As of October 29, 2004, the City had started but not completed the sewer rehabilitation work needed to address the Beaver Brook overflow.
- 18. On May 16, 2002, an engineer from the Department re-inspected the sewer overflow at the Metropolitan State Hospital Property. No sewer overflow was observed during that visit. The Department saw no indication of any clean up of the sewer or sanitary waste that had collected near the manhole or in the wetland. As of the effective date of this Amended

Consent Order, the City had not commenced the Metropolitan State Hospital sewer rehabilitation project needed to address this overflow.

19. The unpermitted discharge of pollutants into waters of the Commonwealth and non notification of the discharge is a violation of the Massachusetts Clean Waters Act and the regulations promulgated there under including 314 CMR 3.03(1), 314 CMR 12.03(8), 314 CMR 12.04(8), and 314 CMR 12.04(9).
20. To address these discharges, on or about May 7, 2003, the City entered into an Administrative Consent Order ACOP-NB-02-1003 (the "2003 Consent Order") with the Department in which the City agreed to take certain actions to reduce the frequency and duration of sanitary sewer overflows to waters of the Commonwealth. The 2003 Consent Order required that on or before June 1, 2003, the City submit to the Department for its review and approval a plan and schedule for eliminating infiltration and inflow. Although Waltham submitted a Phase I Infiltration and Inflow Report that included a plan for elimination of infiltration and inflow on February 28, 2003, the City did not submit the schedule by June 1, 2003 as required by the 2003 Consent Order. The City did not submit a schedule for implementing its infiltration and inflow removal plan until February 19, 2004, more than eight months after the deadline in the 2003 Consent Order, and only after the Department reminded the City of its obligation to provide a schedule in its written comments on the Phase I Infiltration and Inflow Report.
21. On January 16, 2004, the Department submitted written comments to the City on its Phase I Infiltration and Inflow Report. The City submitted a Phase II Infiltration and Inflow Report on July 6, 2004. This report identified additional infiltration and inflow removal work beyond that recommended in the Phase I Infiltration and Inflow Report. Like the Phase I Report, the Phase II Report did not contain a schedule for the infiltration and inflow removal work identified therein.
22. On August 6, 2004, the Department met with a representative of the City to discuss the infiltration and inflow schedule submitted on February 19, 2004 and a schedule for the work recommended in the July 6, 2004 Phase II Report. On August 19, 2004, the Department submitted detailed comments to the City on the Phase II report and required the City to respond to these comments by September 30, 2004. The City did not provide the required response.
23. On October 1, 2004, the Department sent a revised Administrative Consent Order with a detailed schedule for the infiltration and inflow projects identified in the Phase I Infiltration and Inflow Report. The City did not comment on this document.
24. The 2003 Consent Order required the City to implement a private inflow removal program. As of the effective date of this Consent Order, the City has not implemented a private inflow removal program.
25. The 2003 Consent Order required the City to implement a sewer bank. On November 18, 2003, the Department met with representatives of the City to assist Waltham in implementing

the sewer bank. On January 15, 2004, the Department issued a letter specifying the criteria for documenting and administering the sewer bank. Despite these efforts by the Department, proponents of projects in Waltham have complained to DEP that City has made it difficult to comply with the Sewer Bank requirements.

26. Sanitary sewer overflows continue to occur in Waltham. In 2004 alone, the City reported seven overflow events. These overflows resulted in the unpermitted discharge of pollutants to waters of the Commonwealth in violation of 314 CMR 3.03(1), 314 CMR 12.03(8), and 314 CMR 12.04(8).
27. The 2001 NON and the 2003 Consent Order required the City to report all overflows. On October 29, 2004, multiple DEP Personnel noted strong sewage odor in the Brook at the Beaver Brook Reservation Area and evidence of wastewater discharge. On November 9, 2004, DEP conducted an inspection of the Brook at Trapelo Road in the Beaver Brook Reservation Area. Division of Watershed Management (DWM) assisted in sampling the Brook for E. Coli at the suspect locations. The City was aware of the complaint and acknowledged that wet weather wastewater discharge had occurred and that this area was a problem area for such events. The City had also sampled for bacteria upstream (600 cfu/100mL) and downstream (>30,000 Cfu/100mL) of the sewer and drainage pipes located under the bridge and confirmed high counts at the point of the suspected discharge from the City's sewers and storm drains. DEP was not notified of the unpermitted discharge of sewage to the Brook as required by the 2003 Consent Order and the 2001 NON. The unpermitted discharge of pollutants to the Brook and the failure to notify the Department of the discharge are violations of 314 CMR 3.03(1), 314 CMR 12.03(8), and 314 CMR 12.04(8).
28. On November 24, 2004, the City informed DEP that 500 feet of drain and sewer pipes were replaced at the location of the suspected wastewater discharge in the Beaver Brook Reservation Area. The City followed through with sampling at locations in Beaver Brook up gradient and down gradient of the discharge pipe and reported results of 2,000 Cfu/100 mL in both samples.
29. On November 16, 2004, DEP received a complaint letter from the City of Cambridge. The letter stated that Cambridge Water Department (CWD) had been monitoring the water quality at the drainage basin at the Costco parking lot on Second Ave. and other downstream locations. This basin drains into a tributary of Stoney Brook Reservoir. Elevated levels of bacteria were measured in the samples collected from the drainage basin, on Second Avenue at the ADP parking lot and at the Industrial Brook. According to the letter, CWD had made multiple efforts to resolve this problem with the City of Waltham without success. As of the effective date of this Consent Order, the City has not determined if the bacteria found in the drainage basin results from an ex-filtrating sewer pipe, an illegal sanitary sewage connection to the Town's storm drains, or some other source.

III. Disposition and Order

30. Based upon the forgoing Statement of Facts and Law, and pursuant to its authority under G.L.c. 21, sec. 26-53 and the implementing regulations at 314 CMR 3.00 and 314 CMR 12.00 and G.L.c. 21A, sec. 16 and the regulations promulgated thereunder, the Department hereby issues and the City hereby consents to the terms and conditions of this Amended Consent Order.
31. From the effective date of this Amended Consent Order and thereafter, the City shall notify the Department of all sewer overflows or bypasses on the Department approved form in accordance with 314 CMR 12.03(8).
32. On November 8, 2004, the City submitted a response to some of the DEP's comments on its Draft Operations and Maintenance Manual and Staffing Plan. On or before May 9, 2005, the City shall submit to the Department for its review and approval a Final Operations and Maintenance Manual and Staffing Plan that responds to all the Department's comments on the Draft Operations and Maintenance Manual and Staffing Plan. Upon approval by the Department, the City shall operate its sewer system in accordance with the Final Operations and Maintenance Manual and Staffing Plan as approved by the Department. Failure to operate the sewer system in accordance with the Final Operations and Maintenance Manual as approved by the Department shall be a violation of this Amended Consent Order.
- 33. On or before February 28, 2005, the City shall submit to the Department for its review and approval a plan and schedule for eliminating the infiltration and inflow identified in the report entitled Wastewater Collection System Infiltration/Inflow Report June 2004 prepared by Guertin Blkerton and Associates Inc. (the "Phase II Infiltration and Inflow Report"). Thereafter, the City shall remove the infiltration and inflow identified in the Phase II Infiltration and Inflow Report as approved by the Department in accordance with the schedule approved by the Department. Failure to remove the infiltration and inflow identified in the Phase II Infiltration and Inflow Report as approved by the Department in accordance with the schedule approved by the Department shall be a violation of this Amended Consent Order.
34. From the effective date of this Amended Consent Order and thereafter, the City shall not issue a sewer connection/ extension permit or an occupancy permit for any project that adds flow to the sewer system unless the permits are issued in compliance with the Sewer Connection Permitting Program and Sewer Bank described herein. From the effective date of this Amended Consent Order and thereafter, the City shall implement the Sewer Bank as follows. The City may add one gallon of flow to the Sewer Bank for every four gallons of infiltration and inflow removed from the system. The Department reserves the right to disapprove any addition of flow credit to the Sewer Bank. Notwithstanding the foregoing, the City may add 500 gallons to the Sewer Bank, when a sump pump has been redirected from the sewer system. From the effective date of this Amended Consent Order and thereafter, whenever the City issues a sewer connection /extension permit, allows an increase in flow or issues an occupancy permit, the City shall reduce the Sewer Bank balance by the

approved design flow. From the effective date of this Amended Consent Order and thereafter, the City shall not issue a sewer connection permit, allow an extension of the sewer system or an increase in flow or issue an occupancy permit, unless there is a sufficient balance in the Sewer Bank to accommodate the new use. Notwithstanding anything to the contrary in this Amended Consent Order, the City shall not require a deduction for the Sewer Bank when it issues an occupancy permit for a particular project, if the deduction was already taken when the City issued the sewer connection or extension permit for that project. From the effective date of this Amended Consent Order and thereafter, the City shall not issue a sewer connection permit, allow an extension of or allow an increase in flow to any sewer or issue an occupancy permit if the resulting discharge would result in the sanitary waste design flow component for the sewer or any downstream sewer to be exceeded. The Sewer Connection Program shall include at a minimum standards for acceptable infiltration for construction of new street sewers, manholes, service connections and building sewers, a prohibition on stormwater or groundwater connections and a post construction testing and inspection program to ensure that new construction prior to acceptance by the City meets standards and does not include any illegal stormwater, groundwater or other unpermitted connections.

3 in
12-16
+ 1/2 in
plus
200 gpd

35. From the effective date of this Consent Order and thereafter, the City shall maintain the following records for review by the Department: (a) sewer connection and extension permits issued including the permitted flow rates; (b) occupancy permits issued; (c) work performed to reduce infiltration and inflow including any private sources of inflow; (d) field measurements taken, field observations made, and engineering calculations used to estimate infiltration and inflow reduction before and after infiltration and inflow removal work was done; (e) results of any acceptance inspections and testing performed for any sewer connections, sewer extensions, rehabilitation work, sewer improvement projects and inflow removal work; and (f) copies of all overflow/bypass notifications.
36. On or before June 30, 2005, the City shall submit to the Department for its review and approval a plan and schedule for implementing a private inflow removal program. Thereafter, the City shall implement the plan and schedule as approved by the Department. The plan and schedule as approved by the Department shall be deemed incorporated and made part of this Amended Consent Order. Failure to implement the plan and schedule as approved by the Department shall be a violation of this Amended Consent Order.
37. On or before July 18, 2005, the City shall complete construction of the Beaver Brook sewer rehabilitation project and notify the Department in writing that the project is complete.
38. On or before June 30, 2005, the City shall commence construction of the Hobbs Brook sewer rehabilitation project and notify the Department in writing that the project has begun.
39. On or before April 1, 2006, the City shall complete construction of the Hobbs Brook project and notify the Department that construction is complete.
40. On or before January 18, 2005, the City shall commence design of the Roberts Trunk Line sewer and notify the Department in writing that the design is underway.

41. On or before September 20, 2005, the City shall complete the design of the Roberts Trunk line sewer and notify the Department in writing that the design is complete.
42. On or before April 15, 2006, the City shall commence construction of the Roberts Trunk Line sewer and notify the Department in writing that the construction has begun.
43. On or before April 15, 2007, the City shall complete the construction of the Roberts Trunk line sewer and notify the Department in writing that the construction is complete.
44. On or before March 18, 2005, the City shall complete design of the Met State project and notify the Department in writing that the design is complete.
45. On or before July 31, 2005, the City will commence construction of the Met State project and notify the Department in writing that construction has begun.
46. On or before July 31, 2006, the City will complete construction of the Met State project and notify the Department in writing that the construction is complete.
47. On or before January 31, 2005, the City will commence design of the Carter/Felton /Elm Street sewer rehabilitation project and notify the Department in writing that design is underway.
48. On or before June 30, 2005, the City will complete design of the Carter/Felton/Elm Street sewer rehabilitation project and notify the Department in writing that design is complete.
49. On or before September 21, 2005, the City will commence construction of the Carter/Felton/Elm Street sewer rehabilitation project and notify the Department in writing that construction has begun.
50. On or before June 14, 2006, the City will complete construction of the Carter/Felton/Elm Street sewer rehabilitation project and notify the Department in writing that construction is complete.
51. On or before January 2, April 1, July 1, October 1 of each year, the City shall submit a quarterly report to the Department. The first report shall be due on or before January 18, 2005. At a minimum, the quarterly report shall provide details on the City's compliance with the terms and conditions of this Amended Consent Order and all actions the City has taken within the last three months to comply with the Amended Consent Order and all actions the City intends to take within the next three months to comply with the Amended Consent Order. The quarterly report shall describe all infiltration and inflow removal work including actions to remove private inflow sources along with estimates of the volume of infiltration and inflow removed; operation and maintenance efforts including pump station inspections, repairs to address deficiencies identified as a result of the pump station inspections or otherwise, actions taken to prevent excessive amounts of oil and grease from entering the sewer system including enforcement actions; sewer rehabilitation and replacement work; the

results of all infiltration and inflow investigations and post rehabilitation flow metering. The quarterly report shall include the most recent records documenting the amount of flow in the sewer bank including all sewer connection permits, extension permits, occupancy permits or increases in flow issued since the effective date of this Amended Consent Order with the date the permit was issued, the location and design flow, the infiltration and inflow removal work completed since the effective date of this Amended Consent Order, along with the date that the work was completed, location and estimated reduction in flow to the sewer system and a running total of the flow remaining in the sewer bank after applying the appropriate ratio for infiltration and inflow removal credits.

52. The City shall document flow removals as a result of construction of all the sewer construction projects that are subject of this Amended Consent Order by post rehabilitation flow metering and include this information in the quarterly report (stated in paragraph #51 above) immediately after completion of the projects.
- 53. On or before January 31, 2005, the City will submit to the Department for its review and approval a scope of work and schedule for an investigation of the sources of elevated levels of bacteria at the Costco drainage lot referenced in paragraph #29 and other locations that have been monitored for bacteria by the Cambridge Water Department. The scope of work shall call for the City to identify the sources of the bacteria and to provide a plan and schedule for eliminating those sources. The schedule shall call for submission of the report on or before June 30, 2005.
54. On or before June 30, 2005, the City shall submit to the Department for its review and approval the report on the investigation required by paragraph 53 in accordance with the scope of work approved by the Department. Thereafter, the City shall implement the plan included in the investigation report required by paragraph 53 as approved by the Department in accordance with the schedule approved by the Department. Each failure to implement a component of the plan as approved by the Department in accordance with the schedule approved by the Department shall be a violation of this Consent Order.
55. For the violations of G.L. c. 21 § 43 and the Massachusetts Surface Water Discharge Regulations, as identified in Article II above and alleged in the Consent Order, the City of Waltham will pay to the Commonwealth of Massachusetts a civil administrative penalty of \$30,000 within thirty days of the effective date of this Consent Order.
56. In addition to being a Consent Order, this document is also a Notice of Noncompliance issued pursuant to M.G.L.c. 21A, sec. 16 for the City's noncompliance with M.G.L.c. 21, sec. 43 and 314 CMR 3.00 and 314 CMR 12.00. Future violations of these requirements or the requirements of this Amended Consent Order may result without limitation in the assessment of civil administrative penalties for each day or portion thereof each such violation occurs or continues.
57. Submittals required by this Amended Consent Order shall be considered delivered upon receipt by the Department. All submissions required by this Amended Consent Order shall be submitted to:

Section Chief
Division of Wastewater Management
Department of Environmental Protection
Northeast Regional Office
One Winter Street, Fifth Floor
Boston, MA 02108

58. In entering into this Consent Order, the City does not admit to the truth of any of the factual allegations set forth in the Statement of Facts and Law nor that it has violated any provisions of the Clean Water Act and the regulations promulgated thereunder. The City enters into this Consent Order solely to conserve resources that the litigation of these matters will involve. That being said, the City admits to the jurisdiction and authority of the Department to issue this Amended Consent Order. The City understands and hereby waives its right to an adjudicatory hearing before the Department on, and judicial review of the issuance and/or terms of this Amended Consent Order and to notice of any such rights of review.
59. Nothing in this Amended Consent order shall be construed or operate as barring, diminishing, adjudicating or in any way affecting: (1) any legal or equitable right of the Department to pursue any claim, action, suit, cause of action, demand or right to relief that the Department may have with respect to the subject matter covered by this Amended consent Order. This Amended Consent Order shall not be construed to or operate as barring, diminishing adjudicating or in any way affecting any legal or equitable right of the Department or the City with respect to any subject matter not covered by this Amended Consent Order.
60. This Amended Consent Order shall apply to and be binding upon the City. The City shall not violate this Amended Consent Order and shall not allow or suffer its boards, officers, employees, agents, consultants, successors or assigns to violate this Amended Consent Order. A violation of this Amended Consent Order by any of the foregoing shall constitute a violation of this Amended Consent Order by the City.
61. Except as provided herein, this Amended Consent Order does not relieve the City or any other person of the necessity of complying with all applicable federal, state, and local statutes, regulations and approvals while performing activities pursuant to this Amended Consent Order. Except as provided herein, any noncompliance with the foregoing shall constitute a violation of this Amended Consent Order.
62. Failure on the part of the Department to complain of action on the part of the City shall not constitute a waiver by the Department of any rights under this Amended Consent Order, nor shall a waiver by the Department of any provision of this Amended Consent Order be construed as a waiver of any other provision of this Amended Consent Order.
63. This Amended Consent Order may be modified only by the written agreement of the parties. This Amended Consent Order and the obligations hereunder may not be assigned by the City.

64. If the City violates this Amended Consent Order, the City shall pay to the Commonwealth stipulated penalties of five hundred (\$500.00) dollars per day for each day of each violation of this Amended Consent Order. All stipulated penalties accruing under this Amended Consent Order shall be paid within thirty (30) days of the date the Department sends a written demand therefore. Stipulated penalties shall begin to accrue on the day a violation occurs and shall continue to accrue until the day that the City corrects the violation or completes performance whichever is applicable. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Amended Consent Order. Stipulated penalties shall accrue regardless of whether the Department has notified the City of a violation. The payment of stipulated penalties shall not alter in any way the City's obligation to complete performance as required by this Amended Consent Order. The stipulated penalties set forth herein shall not preclude the Department from electing to pursue alternative remedies or alternative civil or criminal penalties which may be available by reason of the City's failure to comply in the future with the requirements of this Amended Consent Order. In the event that the Department collects alternative civil administrative penalties, the City shall not be required to pay stipulated penalties pursuant to this Amended Consent Order.
65. Payment of all penalties due under this Amended Consent Order is necessary for the City to come into compliance with M.G.L.c. 21, sec. 43 and the Massachusetts Surface Water Discharge Regulations at 314 CMR 3.00 et seq. In the event that the City fails to pay in full any penalty on or before the date due under this Amended Consent Order, the City shall pay to the Commonwealth three times the amount of the penalty together with costs plus interest on the balance due from the date the penalty became due. The rate of interest shall be the rate set forth in M.G.L.c. 231, sec. 6C. If a court judgment is necessary to execute a claim for any penalty due under this Amended Consent Order, the City agrees to assent to the entry of such judgment.
66. The City shall pay all penalties due under this Amended Consent Order by certified check, cashier's check or money order payable to the Commonwealth of Massachusetts. The City shall clearly print the name "City of Waltham" and the City's FEIN Number and File No. ACOP-NE-04-1N004 on the face of the payment and shall mail it to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 3982
Boston, MA 02241-3982

And shall deliver a copy of the payment to:

Madelyn Morris
Deputy Regional Director
Bureau of Resource Protection
Department of Environmental Protection
One Winter Street, Fifth Floor
Boston, MA 02108.

67. The Department may extend the time for performance of any term or requirement of this Amended Consent Order, if the Department determines that (1) an event has occurred or will occur which will delay such performance; (2) the occurrence of such an event is beyond the control of the City. And (3) the delay could not have been prevented, avoided, or minimized by the City's exercise of due care ("Force Majeure Event"). Events for which the Department may extend performance deadlines include but are not limited to (i) acts of God; (ii) acts of war; (iii) unanticipated delays due to accidents, strikes, freight embargoes or other work stoppages; (iv) flood, fire, extreme weather conditions or other natural disasters; or (v) delay in obtaining the permits and/or approvals from state, local or federal governmental authorities required to comply with the terms and requirements of this Amended Consent Order, provided, however, that the City demonstrates to the satisfaction of the Department that it used best efforts to obtain such permits or approvals.
68. Financial inability to meet increases in costs and expenses associated with the implementation of any action required by this Amended Consent Order or actions of the City's officers, boards, employees, agents, consultants, contractors, subcontractors, and assigns or other representatives shall not be considered a Force Majeure Event under this Amended Consent Order.
69. If any event occurs or has occurred that delays or will delay the performance of any requirement in violation of this Amended Consent Order, the City shall notify the Department in writing no later than ten (10) calendar days from the date that the City first became aware of such event. The notice shall describe in detail: (i) the reason for and the anticipated length of the delay; (ii) the measures taken and to be taken to minimize the delay; and (iii) the timetable for taking such measures. Failure to comply with the notice requirements set forth herein shall constitute a waiver of the City's right to request an extension based on the event. The City shall take all reasonable measures to avoid or minimize any delay resulting from a Force Majeure Event.
70. In the event that the Department determines that the City has met the requirements stated herein for a Force Majeure Event, the Department may extend the time for performance of the affected terms or requirements of this Amended Consent Order. Such extension shall be made in writing for the period of any such unavoidable delay resulting from the Force Majeure Event, and no penalties will become due for noncompliance with the terms and requirements of this Amended Consent Order occurring as the direct result of the Force Majeure Event.
71. The City shall allow Department personnel to enter and inspect the area where it is performing any work under this Amended Consent Order at reasonable times and without notice for the purpose of assessing compliance with this Amended Consent Order, M.G.L.c. 21, sec. 43, and the Massachusetts Surface Water Discharge Regulations at 314 CMR 3.00 et seq.
72. The provisions of this Amended Consent Order are severable and if any provision of this Amended Consent Order or the application thereof is held invalid or unenforceable such

invalidity or unenforceability shall not affect the validity or enforceability of any other provision of this Amended Consent Order which shall be given full effect without the invalid or unenforceable provision provided however that the Department may in its sole discretion elect to void the entire Amended Consent Order in the event of such invalidity or unenforceability.

73. This Amended Consent Order constitutes the entire understanding and agreement between the Department and the City with regard to its obligations arising out of the subject matter of this Amended Consent Order.
74. The undersigned represents that he/she has the authority to sign this Amended Consent Order and to legally bind the City on whose behalf such representative is signing. (See Attached City Council Order No. 30101). This Amended Consent Order shall take effect on the date that it is signed by the Department.
75. It is hereby agreed to by and between these parties that the City of Waltham will be credited in its Sewer Bank for the work performed in the Beaver Brook, Hobbs Brook, Roberts Trunk, Met State and Carter/Felton/Elm Projects, and for any other work required to be done by the City of Waltham, pursuant to this Amended Consent Order.

Consented to on behalf of the City of Waltham:

By: Jeanette A. McCarthy
Title Mayor

Date: 1-31-05

Printed Name JEANETTE A. MCCARTHY

FEIN No. 046 001 416

Approved as to form, not substance:

[Signature] Jan 31, 2005
City Solicitor Date

Issued on behalf of the Department of Environmental Protection

By: Edward P. Kance

Title Regional Director

Date 31 Jan 05

Printed Name Edward P. Kance

Order # 30101

Ordered: Intercepting

Amend

Consent Order

In the City Council

Read and Adopted 1-24-05

Edward I. Tamm

City Council President

Approved: 1-24-05

Donald C. McCaskey

Mayor

CC: _____

IN THE CITY COUNCIL
IN THE YEAR TWO THOUSAND FIVE

#30101

Ordered : That the Mayor is hereby authorized to enter into the amended Consent Order Agreement, with the Massachusetts Department of Environmental Protection, on behalf of the City of Waltham. The consent order agreement shall be substantially the proposed amended consent order submitted by the Mayor, to the City Council on January 20, 2005, with only those changes required to correct errors.

Provided further, that the Mayor may initiate an amendment to the proposed amended Consent Order agreement, which, if agreed to by the Department of Environmental Protection, would clarify and document that the various sewer projects being committed to by the City will have all resulting inflow and / or infiltration reduction credited to the so called "Sewer Bank".


Provided further, that implementation of the amended Consent Order shall be subject to appropriation by the City Council of all funds necessary, and that the amended Consent Order shall be reviewed by the City of Waltham Law Department.

Read & Adopted January 24, 2005

Attest Rosario C. Malone, CMV
City Clerk

Approved January 24, 2005
Jeannette A. McCarthy, Mayor

A True Copy Attest:


Rosario C. Malone, CMC
City Clerk



City of Waltham
In the City Council

Date: January 24, 2005

Amended Consent Order

Roll Call

	YEA	NAY	Abstained
Paul J. Brasco	✓		
Sarafina Sally Collura	✓		
Thomas J. Curtin	✓		
George A. Darcy, III	✓		
Kenneth B. Doucette	✓		
Joseph M. Giordano, Jr.	ABSENT		
Robert S. Kelly	✓		
Robert G. Logan	✓		
Gary J. Marchese	✓		
David H. Marcou	✓		
Kathleen B. McMenimen	✓		
Patrick J. O'Brien	✓		
Stephen F. Rourke	✓		
Robert J. Stanton	✓		
Edmund P. Tarallo	PRESENT		

YEA _____ A True Copy Attest: Rosario C. Malone CMC
NAY _____
Abstained _____ Ruling Accepted

Rosario C. Malone, CMC
City Clerk