

**NYC DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF ENGINEERING DESIGN AND CONSTRUCTION
CROTON FACILITY MONITORING COMMITTEE MEETING MINUTES
THURSDAY, JULY 28, 2011 – 7:00 PM**

The Croton Facility Monitoring Committee (CFMC) met on Thursday, July 28, 2011 at the DEP Community Office, 3660 Jerome Avenue, Bronx, NY 10467. The meeting was called to order at 7:12 pm.

Attending - CFMC Representatives:

Father Richard Gorman, Chair, CFMC and Community Board # 12; Paul Foster, Chair, Community Board #7; Hector Aponte, Bronx Borough Commissioner, Department of Parks & Recreation (DPR); Robert Fanuzzi, Chair, Community Board #8; Wilhelm Ronda, Bronx Borough President's Office; Council Member G. Oliver Koppell and George Diaz, office of Council Member Koppell; Mark Lanaghan, Department of Environmental Protection (DEP)

Others Attending: DEP Staff; DEP Construction Manager; members of the public.

Attendees are listed on *Attachment 1*. Agenda is *Attachment 2*.

Adoption of CFMC Meeting Minutes

Fr Gorman introduced and welcomed Mr. Fanuzzi, new Chair of Community Board #8. He asked for and received a motion by Mr. Ronda, seconded by Mr. Lanaghan, to approve the June 30, 2011 meeting minutes. They were adopted unanimously.

Jerome Park Reservoir (JPR)

Pathway Design Status

Fr Gorman asked Frank McCue, DPR, to discuss the status of the DPR JPR pathway design, the number of trees to be removed, and the plan for tree restoration. Mr. McCue and Steve DesNoyer, DPR design supervisor for this project, made a presentation (*Attachment 3*). Mr. Fanuzzi said he attended the walk-through arranged by DEP and DPR to view the trees that will be removed. He said many trees were growing adjacent to or into the perimeter stone retaining wall, a criterion for their removal. He said he wants the trees that will be replanted at JPR to appropriately restore the area. Mr. Lanaghan said that most of the trees being removed are on the bank of the JPR earthen dam. There are 77 trees, including 11 that have fallen, which must be cleared. Additionally, the DEP geotechnical consultant recommended that there are other trees that would damage the retaining wall and should be removed. A total of between 159 to 211 trees is under consideration for removal. Fr Gorman asked who has title to and what will be the future of Lehman College's parking area abutting JPR. He said the answer to this question is important if DEP allows public access to JPR because of the narrow pathway around the reservoir inside the fence along this parking area.

Anne Marie Garti, Jerome Park Conservancy, said a copy of the deed shows DEP can take seven acres or may have access to a 15' easement on the Lehman parking area. Mr. Aponte said the 15' easement was likely for construction purposes. Mr. Fanuzzi asked

that a Lehman College representative come to the next FMC meeting to talk about the future and possible public use of a part of the parking area for the jogging path.

Fr Gorman asked what would become of the DPR path design should DEP allow public access to JPR. He said that building the DPR path may give DEP an excuse for keeping the public outside the fence. Mr. Fanuzzi recommended that the DPR path money be spent instead on the internal JPR path between the fences. Mr. Lanaghan said that this is not necessary as DEP will build a new internal perimeter fence and will perform other construction. DEP will pay for these improvements. DEP is now working on a contract mechanism for the improvements. DEP will keep the CFMC informed about progress. Mr. Lanaghan added that the DEP Commissioner wants the internal JPR path improved at a minimum for DEP employees, construction workers and vehicles. Mr. Aponte said that only Phase 1 of the DPR path (the current design) is funded under the DEP/DPR memorandum. He said that DPR plans an improved surface for runners who will use the new path where it is accessible and will use the sidewalk in places where a new path cannot be built. Messrs. Aponte and Fanuzzi and Karen Argenti, Ft. Independence Park Neighborhood Association, spoke about the DOT pedestrian-friendly path being planned near the south end of JPR that is being advanced for safety, not for runners.

Mr. Ronda said that during the tour of JPR to inspect the trees to be removed, DPR had concerns about erosion between the existing sidewalk and the curb. Mr. DesNoyer said a temporary treatment can be utilized in this area but over time the drainage may be a problem. He said the path design is a challenge. Ms. Argenti asked when and how the trees will be replaced. Mr. Lanaghan said that some trees will go back to the area where trees were removed, as long as they don't compromise the earthen dam. Others will be installed in areas agreed to by DPR and DEP. Ms. Argenti asked who will pay for tree removal. Mr. Lanaghan said DEP. In addition to the 77 trees that must be removed for dam safety, other trees will be earmarked for removal, primarily along the west portion of JPR. Mr. Lanaghan said that different vegetation, such as a meadow mix, may be planted on the earthen dam; the discussions are ongoing between DEP and DPR about suitable plantings. Mr. McCue said meadow mix is not suitable due to limited DEP maintenance, and grass may be best on the earthen dam. Mr. Aponte said that the grass planted on the earthen dam must absorb runoff. He said that in the park area and along the sidewalk there will be low shrubs and other plantings with shallow roots. To be planted as part of the DPR path project are 34 shade trees and 69 flowering small trees. He added that catch basins are in this area and they should largely curtail erosion. Ms. Argenti asked for a written commitment about tree replacement. She said paths need to be designed for greater than a two year design storm.

Mr. Aponte said the path will be 4' to 6' wide. Mr. Fanuzzi requested that trees be planted along the path. Mr. Aponte said a decision has not yet been made about this. Ms. Garti requested that the area's improvements be green, not brown, assuming that the path will be grey or brown gravel. Mr. DesNoyer said DPR is not budgeted on this project for area-wide improvement. Mr. Aponte said the goal was to produce a jogging path, not do area-wide greening. Mr. Ronda said that DEP, instead of DPR, should fix the perimeter of JPR, emphasizing green elements.

Gary Axelbank, area resident, asked who is responsible for the continuing removal of volunteer trees. He said he visited a filtered water supply system that allows public access. At this location, historic preservation is a goal that guided the design. He called for similar NYC vision. Ms. Argenti spoke of the emergence of enhanced tree pits with swales and plantings and reductions of combined sewer overflows. Bob Bender, Community Board #8, asked for specifics as to locations of shade and flowering trees. DPR officials said the two agencies are in discussion about locations and will develop a plan. Mr. Aponte said that replacement trees are only required when trees are removed from DPR property. Tree removal will be decided before the path design project goes to the Public Design Commission. Mr. Lanaghan praised DPR for developing the best plan possible for the location. Discussion continued between Anthony Rivieccio, Community Board #7, and Mr. McCue about tree replacement.

Tour of JPR

Mr. Ronda said Borough President Diaz attended the July 19th tour to affirm his commitment to JPR public access. The Borough President wants to know the extent of physical improvements that will be made at JPR in advance of Croton Filter Plant and JPR construction completion in 2013. He asked for a DEP safety plan for the JPR area. Mr. Lanaghan said the JPR improvements may be made through a change order to an existing contract. At the next CFMC meeting, DEP may know how it will conduct the new design, to which contract the change order will be added and preliminary components of the change order. Mr. Ronda asked that this initiative move forward quickly. Bernard Daly, P.E., Bureau of Engineering Design and Construction (BEDC) Executive Project Manager, said the new work will need approval from New York State Office of Historic Preservation (SHPO) and the design will take time. Fr Gorman said he was surprised to find on the tour that the existing path is primitive in places. He said he understands that work will take time but urged that the construction facilitate public access at JPR. He asked for DEP design plans by 2012, and said he will work with the community to develop a community plan. He praised the Borough President's involvement.

Request to Shift Force Main Funds to JPR Improvements

Mr Lanaghan said the CFMC's request for the unspent force main funds to be redirected to JPR improvements will be responded to by DEP in writing.

Federal State Mandates - Attachment 4

Because of the lengthy JPR discussion, Mr. Lanaghan deferred to a forthcoming meeting an update on the city's efforts to reform and/or eliminate unnecessary federal and state mandates. Information about mandate relief was distributed to the CFMC.

Costs - Attachment 5

Mr. Daly reviewed the costs report. He repeated as he has said previously that it does not include Parks mitigation funds.

Mr. Fanuzzi asked whether DEP will be building another wall at Ft Independence Park. Mr. Daly said no. Robert Press, Bronx News, asked the cost of asbestos abatement and from where the asbestos is being removed. Mr. Daly said asbestos removal is being handled by DEP's Asbestos Task Force contractor and is also not reflected in the Croton costs report. He said he does not know the cost of the asbestos removal. Mr. Daly said asbestos was removed previously from the windows of Gate House No 5, from floor tiles in the same Gate House and from the superstructure of the Demonstration Filter Plant prior to its demolition. There was also asbestos removed from the Microstrainer Building and Gate House No 2. Asbestos remains in the demonstration filter plant's foundation and will be removed later. There was a discussion between Mr. Press and Mr. Daly about the history of and requirements for asbestos removal. Mr. Riviuccio asked why the design contract of Metcalf & Eddy/Hazen and Sawyer, JV is so high. Lauren Competello, P.E., BEDC, explained as she has at prior meetings that several designs of the Croton Filter Plant were required, and designs were made for multiple geographic locations during the siting of the Plant. Mr. Ronda requested a chart that shows Croton Bronx-based purchases in a format similar to the jobs report. Thomas Farrell, P.E., DEP's Construction Manager, agreed to provide it at future CFMC meetings.

Ms. Argenti asked that the CRO 334 project manager come to the next CFMC meeting to explain the details of the project. Mr. Lanaghan agreed to have a DEP presentation on CRO 334 at the next CFMC meeting.

Construction Update/Look-ahead *(Attachment 6)*

Mr. Daly provided an update:

The CRO-312 contractors are continuing to construct the facility at the VCP site. Most of the concrete is in place. Work is ongoing on above-ground Arrivals and Receiving Building, Chemical Fill Station and Vent Structures and Stairs. Installation of the 84" water main is ongoing. As previously explained, this water main will be capped at Jerome Ave. and may be connected to the distribution system at a future time. DEP has made progress on relocation of First Tee's electric power. Con Ed electric power is being brought to the plant from Yonkers. Construction in the treatment plant structure continues, including the installation of mechanical, electrical, plumbing and HVAC equipment. Utility work is underway, including sewer and drainage piping. Work in Jerome Ave and Bainbridge Ave will get underway in the fall. Construction of the retaining walls at the Croton Filter Plant entrance will commence once the utility relocation work is complete.

The CRO-313 tunnel contractor is continuing contract close-out. Ms. Argenti said that trees planted on Mosholu Parkway, which she assumed were planted by the CRO 313 contractor, have died. They are in front of DeWitt Clinton High School. Both Mr. Daly and Mr. Aponte said they would visit the location. **[Note: DEP's Construction Manager confirmed that all the trees planted under CRO 313 are alive.]**

The CRO-312-OS contractors at JPR are continuing to place concrete for the roof of the Shaft and Meter Chamber. Lead abatement continues in Gate House No. 5. Sluice gate upgrades are continuing at Gate House No 5 and No 7.

Mr. Daly commented on the \$18.6 million footnote in the Issues and Tasks Report No 79 that Ms. Argenti raised. He said that if a change order brings the cost of a contract above the original CP amount, the Comptroller won't register a change order until an increase in the CP is approved. The original Memorandum of Understanding (MOU) signed in 2004 contained an amount of \$6.5 million for First Tee. However that amount was not sufficient for the scope and an increase in the CP was required. Of the \$18.6 amount in the CP, \$12.5 million has been spent. More funds will be expended since there is continuing lost revenue to First Tee and DPR. Mr. Argenti said that the funds from the 1999 ULURP resolution were not increased and DPR should get more funding for mitigation. Mr. Lanaghan reminded Ms. Argenti that DPR is getting \$240 million under the agreement between DEP and DPR. Mr. Rivieccio said that much of the money has gone to other neighborhoods. Mr. Fanuzzi requested a chart that shows the mitigation funding and it was explained that DPR regularly updates the CFMC by showing progress of the various DPR projects funded by DEP for mitigation.

The Low Service Shaft cap work at the Shaft and Meter Chamber will follow the installation of the plug under Contract CRO 334G. On-site electric work is also underway.

Yard piping will be taking place in the fall. As previously reported, rock excavation will use blasting; the blasting will be similar to excavation of the Shaft and Meter Chamber. All blasts will be behind the noise wall, and will be scheduled after school hours.

Mr. Daly said the initial excavation for the water main connections across from Bronx School of Science has been completed on Goulden Ave and the water mains have been exposed. Traffic Control Agents (TCAs) are manning critical intersections in the surrounding area. Mr. Press said that TCAs are not directing traffic effectively. He also complained about a rat sighting. Mr. Daly added that the contractor will maximize construction while school is on summer schedule by working longer hours; however, the water shutdown that is needed prior to cutting into the pipe was delayed during the extremely hot weather. Work will continue aggressively during the summer, and a lane of traffic in each direction will open during the Labor Day weekend and will be operational while construction continues. Mr. Press asked if the project is on schedule. Mr. Daly said that regardless of the schedule, two lanes of traffic (one in each direction) will be operational in early September to comply with the stipulation.

The second excavation for water main connections near Gate House No 7 will not occur until 2012.

CRO-334 rehabilitation at shaft locations and consolidation grouting in the City section of the New Croton Aqueduct (NCA) is ongoing. JPR basins will remain empty until rehabilitation work is completed on the NCA, including constructing a concrete plug

adjacent to Shaft 21. **[Note: the North Basin received water as part of water supply planning for Hurricane Irene; however, the basin is being drained so that construction work can continue.]** The plug construction is scheduled to start later in 2011 and is scheduled to be complete in mid-2012.

Update on Croton Jobs – (Attachment7)

Mr. Lanaghan spoke briefly about the current Croton jobs report that lists 864 workers or 15% from the Bronx and purchases of Bronx based goods and services at \$1.4 million for the month. These purchases were largely for rebar, sheet metal and concrete, although as the project begins to wind down, the purchase amounts are going to decrease. Mr. Fanuzzi asked for additional outreach with construction union locals. Mr. Lanaghan said that he and Robert Barnes would report back on outreach to the unions.

CFMC Discussion

The CFMC set the next meeting for Thursday, September 15, 2011 at 7 pm at the DEP community office. Fr Gorman received unanimous agreement to adjourn the meeting at 9:10 pm.

<u>Name</u>	<u>Organization / Company</u>	<u>Address</u>	<u>Phone</u>	<u>Fax</u>	<u>E-Mail</u>
Anne Marie Garti	Jerome Park Conservancy	3967 Sedgwick Ave Bronx NY	(718) 884-7864		annemarie@garti.net
Mark Lanaghan	Department of Environmental Protection	59-17 Junction Boulevard Flushing NY 11368	(718) 595-3519		mlanaghan@dep.nyc.gov
Thomas Farrell, PE	Construction Manager	3701 Jerome Avenue Bronx, NY 10467	(718) 696-2000		thomas.farrell@shawgrp.com
George Diaz	Office of Council Member Oliver Koppell	3636 Waldo Ave Bronx NY 10463	(718) 549-7300	(718) 798-3879	gdiacz@council.nyc.gov
Robert Barnes	DEP Community Office	3660 Jerome Avenue Bronx NY 10467	(718) 231-8470	(718) 231-8857	rbarnes@dep.nyc.gov
Paul Foster	Community Board #7	229A E. 204 Street Bronx NY 10458	(718) 933-5650		pfoster@optonline.net
Fr. Richard Gorman	Chairman, Community Board #12	4101 White Plains Road Bronx NY 10466	(718) 881-4455	(718) 231-0635	cb12@optonline.net rgorman@cb.nyc.gov
Frank McCue	NYC Dept of Parks & Recreation	Olmstead Center Flushing NY 11368	(718) 760 6676		frank.mccue@parks.nyc.gov
Martha Holstein	Strategic Urban Solutions	335 Adams Street Brooklyn, NY 11201	(718) 625-1005 x. 223	(718) 625-1032	mholstein@urbansol.com
Bernard Daly, PE	DEP BEDC Croton Project Manager	3701 Jerome Avenue Bronx, NY 10467	(718) 696-2000	(718) 324-3034	vmooreshead@dep.nyc.gov
Adam Wisnieski	Riverdale Press	6155 Broadway Bronx NY 10471	(718) 543-6065		awisnieski@riverdalepress.com
Ed Neisch	Construction Manager	3701 Jerome Avenue Bronx, NY 10467	(718) 696-2000		ed.neisch@arcadis-us.com
Wilhelm Ronda	Bronx Borough President's Office	851 Grand Concourse Bronx NY 10451	(718) 590 8087		wronda@bronxbp.nyc.gov
Steve DesNoyer	NYC Dept of Parks & Recreation	Olmstead Center Flushing NY 11368	(718)760-6617		steve.desnoyer@parks.nyc.gov
Gary Axelbank			(718) 960 8707		gaxinthebronx@gmail.com
Robert Press	Bronx News	3800 Independence Avenue Bronx NY	(718) 653 6992		100percentbronxnews@gmail.com

NYC DEP - CROTON FCMC

Page 2 Continued.....

<u>Name</u>	<u>Organization / Company</u>	<u>Address</u>	<u>Phone</u>	<u>Fax</u>	<u>E-Mail</u>
Lauren Competello, PE	BEDC Design, NYCDEP	3701 Jerome Ave. Bronx NY 10467	(718) 595-6221	(718) 595-3477	laurenc@dep.nyc.gov
Robert Fanuzzi	Chairman, Community Board #8	5676 Riverdale Avenue Bronx NY 10471	(718) 884-4740	(718) 796-2763	fanuzzir@stjohns.edu
Bruce Rosenbloom		3965 Sedgwich Avenue Bronx NY	(718) 843-0421		
Martin Rosenbloom		PO Box 16325 Plantation FL 33318	(954) 792-2710		
Karen Argenti	Fort Independence Park Neighborhood Assn	PO Box 346 Bronx NY 10471	(646) 529-1990		KarenArgenti@aol.com
Ilona Linins	Lehman College	250 Bedford Park Blvd W Bronx NY	(718) 960-8988		ilona.linins@lehman.cuny.edu
Bob Bender	Community Board #8	5676 Riverdale Avenue Bronx NY 10471	(718) 884-4740		bobbender@optonline.net
Thomas McNeil	Assistant to Assembly Member Dinowitz	3107 Kingsbridge Avenue Bronx NY 10463	(718) 796-5345	(718) 796-0694	thomas0330@hotmail.com
Anthony Rivieccio	Community Board #7	3015 Perry Ave Bronx NY 10458	(347) 575-5045		advisorygroup@gmail.com

Agenda
Croton Facility Monitoring Committee Meeting

Thursday, July 28, 2011 – 7:00 PM

DEP Community Office – 3660 Jerome Avenue, Bronx NY 10467 - (718) 231-8470

I Welcome Father Richard Gorman, Chair

II Consider, Adopt 6/30/11 Meeting Minutes CFMC Representatives

III Jerome Park Reservoir (JPR)

Update on DPR Jogging/Walking Path Frank McCue, DPR

Comments about Borough President's tour
On July 19th CFMC Representatives

DEP Comments about Shifting Force
Main Funding to JPR improvements, etc Mark Lanaghan, DEP

IV Presentation about Federal, State Mandates Mark Lanaghan, DEP

V Construction Update, Schedule & Costs Bernard Daly, P.E., DEP
Status of CRO 312, OS, 313, 334, FM

Items from 6-30-11 Agenda:
\$18,600,000 in CRO 311 for DEP/DPR MOU
& Status of Permits: CSO at SMC

Construction in Goulden Ave & Detour

VI Current Report - Croton Jobs Mark Lanaghan, DEP

VII CFMC Discussion, Set Next Meeting CFMC Representatives

VIII Adjourn

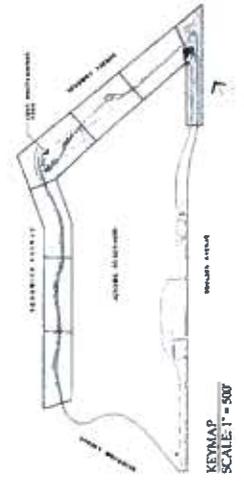
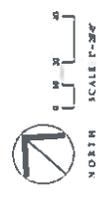
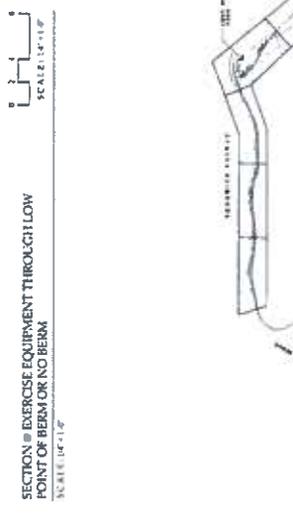
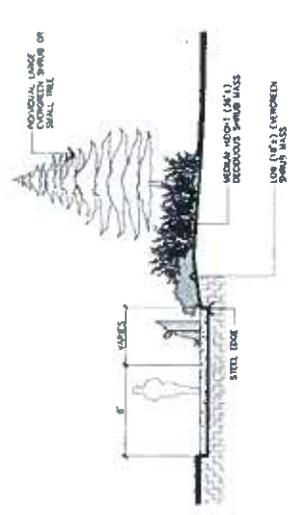
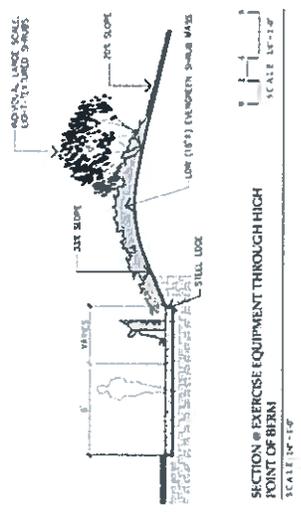
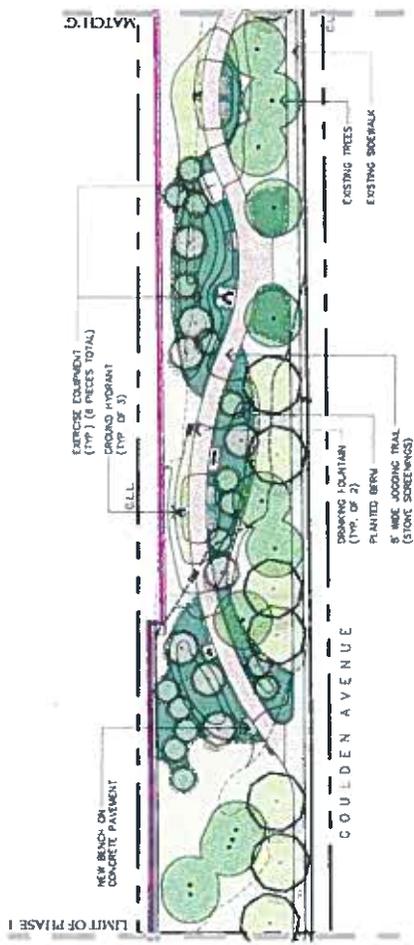
For Final Design Review
By Public Design Commission of The City of New York

JEROME PARK RESERVOIR
RECREATIONAL PATHWAY

Borough of Bronx
18 July, 2011

CITY OF NEW YORK
PARKS & RECREATION

Prepared by MKW + Associates





THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, NY 10007

Stephen Goldsmith
Deputy Mayor for Operations

June 27, 2011

By Electronic and U.S. Mail

The Hon. Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 1101A
Washington, DC 20460

Re: EPA Retrospective Review Plan (Dkt. No. EPA-HQ-OA-2011-0156)

Dear Administrator Jackson:

Thank you for the opportunity to present these additional suggestions of New York City (City) for the U.S. Environmental Protection Agency's (EPA's or Agency's) periodic, retrospective review of existing regulations under Executive Order 13563 (Feb. 18, 2011). These comments supplement the initial submission on behalf of the City by the NYC Department of Environmental Protection (DEP) on March 18, 2011, and reflect our review of the EPA's publication of *Improving our Regulations: A Preliminary Plan for Periodic Retrospective Reviews of Existing Regulations* (May 24, 2011) (Preliminary Plan).

In the City's view, the Preliminary Plan falls far short of the stated objective of EO 13563 to undertake a top-to-bottom review that will improve the regulatory system and align the costs and benefits of regulations based on sound scientific and economic analysis. Because this represents perhaps the last meaningful opportunity to influence the content of the plan before it is finalized, and because so few of New York City's comments are reflected in the draft plan—or have been

taken from the many recent submissions that the City has made in connection with similar EPA requests for public comments that bear upon this reform effort (see note 2 below)—this letter presents our concerns and suggestions in some detail.

The EPA's obligation and authority to enforce landmark environmental legislation that includes (among many others) the Safe Drinking Water Act, the Clean Water Act, and the Clean Air Act are unquestioned, and extremely powerful. These groundbreaking national laws have brought about and continue to drive improvements to water and air quality that in many ways make the United States the envy of the world. But since these laws were codified in the 1970s, many of the readily identifiable and low cost sources of pollution have been addressed, federal funding has dropped substantially, and new concerns such as global warming illustrate the need for cross-media, holistic approaches that encourage low carbon footprints. President Obama's call for a sweeping regulatory review by the EPA (and the Federal government generally) in EO 13563 presents a unique opportunity for the Agency to adapt many of its rules and regulations—indeed, its entire enforcement approach—to support and reinforce the unprecedented commitment of resources by cities around the country to tackle our most pressing environmental challenges.

New York City has been and remains a national leader in its commitment of funding and other resources to implement path-breaking sustainability efforts that include PlaNYC, our overall multi-disciplinary plan to meet local public health and environmental needs. Under Mayor Bloomberg's leadership, we have enacted the most comprehensive set of building efficiency laws in the nation that will reduce carbon emissions by five percent; reduce citywide energy costs by \$700 million annually; and create roughly 17,800 construction-related jobs. We have enacted local heating oil rules that will prevent hundreds of deaths annually and reduce greenhouse gases, planted over 483,000 trees, created or preserved more than 64,000 units of housing, and have built entirely new neighborhoods with access to transit. Among other benefits, these initiatives have reduced our greenhouse gases by 13% compared to a 2005 baseline, and we are well on our way to reducing our greenhouse gases by 30% by 2030.

As part of these efforts, the NYC Green Infrastructure Plan to improve water quality in New York Harbor builds on the more than \$20 billion that Mayor Bloomberg has committed to water and wastewater infrastructure since taking office in 2002, and the City's most recent 10-year capital plan commits over \$735 million to implement the plan. The cost of these efforts is substantial for New Yorkers who, since federal support for water infrastructure virtually ended more than 10 years ago, have seen water rates increase by 134% since 2002, and more than 91% since 2006 alone. Yet, many of these increases have been necessary to comply with rigid, one-size-fits-all mandates imposed by federal regulators in parallel with and without consideration for the more comprehensive environmental efforts and priorities of New York and other big cities across the country. In light of this, no local effort to reduce costs will be truly successful without an equally substantial revision of federal requirements. Because the Preliminary Plan falls far short in this respect, cities across the country can only draw the unfortunate conclusion that EPA will not reduce the economic burden that millions of taxpayers continue to shoulder,

even where that can be achieved without compromising the environmental protection that is EPA's mandate.

In this context, the President's regulatory reform effort embodied in EO 13563 presents a generational opportunity to bring the power, expertise, and administrative support of the federal government into line with local sustainability efforts that have outpaced an increasingly obsolete federal enforcement approach—particularly with respect to clean water. It is an opportunity to re-align the federal bureaucracy to help urban areas revitalize their economies, while combatting sprawl, air and water pollution, habitat degradation, and carbon emissions. Indeed, the Urban Waters Federal Partnership that EPA announced last week on behalf of nearly a dozen Federal agencies is predicated on the fact that the localities chosen to pilot the program “already ha[ve] a strong restoration effort underway, spearheaded by local governments and community organizations.” The absence of new funding or other resources to support this effort implicitly confirms that local tax bases will be expected to continue funding the entire cost of environmental improvements and compliance for the foreseeable future. Since urban taxpayers will be spending hundreds of billions of dollars on water infrastructure —many times the amounts that will be paid for by federal grants — local governments should have more control over the timing, nature, and priority of these investments.

But without extensive revisions to the Preliminary Plan that incorporate substantive, meaningful reforms that New York City and others have proposed—in some cases, for several years—EPA will miss this generational opportunity; and, with it, the Obama administration's only meaningful chance to modernize an environmental enforcement paradigm still rooted in the punitive, litigious, and costly regulatory approach of the 1970s and 1980s. The Preliminary Plan includes some general initiatives that the City would support, such as the Agency's intent to use systems approaches and integrated problem-solving strategies that include non-regulatory tools (Preliminary Plan, § 1.1.4) as well as some specific reviews that the City certainly welcomes (for example, comparisons of cost estimates developed prior to the issuance of a regulation and actual costs of compliance (Preliminary Plan, § 2.1.16)). In the main, however, the reviews proposed are largely superficial, or else re-state regulatory actions that EPA already has underway; by our count, at least 26 of the 31 (84%) actions proposed in the Preliminary Plan fall into the latter category (see Table 1 below), and virtually none seek to address the most significant regulatory burdens that cities across the country face.

Perhaps the most glaring omission in this respect is any mention of the EPA's combined sewer overflow (CSO) policy in the Preliminary Plan, despite the fact that this has been and remains a top reform priority for cities across the country. See U.S. Conference of Mayors, *Local Government Recommendations to Increase CSO/SSO Flexibility in Achieving Clean Water Goals* (Oct. 28, 2010) (enclosed). EPA's approach of working through its Office of Enforcement and Compliance Assistance to obtain rigid schedules in judicial consent orders—rather than working through its Office of Water to encourage innovative methods of reducing pollution—is a policy and practice that imposes tens of billions of dollars of compliance costs, and is among those most badly in need of reform. The complete absence of CSOs from the Preliminary Plan is

particularly noteworthy given EPA's stated focus on green infrastructure and other innovative approaches to improve water quality that will not only meet Clean Water Act goals but can also save city residents struggling in these difficult economic times many billions of dollars.

A second prominent omission is the badly needed, and more-than-scientifically justified, review of the Long Term Enhanced Surface Water Treatment Rule (LT2). As currently codified and enforced, there is perhaps no better example of an unduly burdensome rule that will cost New York City billions to implement, with little to no public health benefit. Section 4 below describes the basis for including this rule in EPA's final EO 13563 plan in detail; in brief, LT2 would require New York City to spend \$1.6 billion or more to cover a 90-acre reservoir to address pathogens that DEP and the City's Health Department have shown are not a meaningful public health risk at that facility. Indeed, the data suggest that EPA's risk assessment that was used as a primary basis for the rule overstated the projected risk from the pathogens in question by several orders of magnitude (there are approximately 100 documented cases of cryptosporidiosis in New York City every year; EPA's risk assessment inexplicably claimed that the LT2 would prevent between 112,000 and 365,000 cases per year.)

The omission of the CSO Policy and the LT2 rule from EPA's Preliminary Plan are only the most prominent examples of the ways that the plan falls far short of the meaningful, comprehensive review intended under to EO 13563. EPA's Preliminary Plan, even if fully implemented, includes only very modest reforms that would not provide real, immediate relief; nor does the plan lay the groundwork for a long-term paradigm shift. This is particularly troubling because EPA has indicated that the first review period will last until 2016, and the initial list will not be reevaluated for five more years. (Preliminary Plan, §§ 4.6, 5, pp. 41-42.)

EPA was apparently unable to process and address each of the 1,400 comments received prior to publication of the preliminary plan, including those submitted by the Agency itself (Preliminary Plan, p. 34). It is perhaps because of this that the initial list of items for review reflects a number of internally-generated review items, as 11 of the 31 items are not marked as having been "suggested in one or more public comments." As the Agency considers all public comments, we hope that the final plan will reflect and incorporate the following elements.

1. Provide real mandate reform that is aligned with municipal priorities.

The preliminary list of regulations to be reviewed includes only three topics that even touch upon the recommendations submitted by New York City.¹ DEP is the largest water utility in the

¹ These are discussed in Preliminary Plan, § 2.1.11, removing outdated but unspecified NPDES permit requirements (DEP had suggested the Industrial Pretreatment Program in particular), § 2.1.16, improving cost estimates by comparing pre-adoption cost estimates to post-adoption action costs (EPA will focus on five unspecified rules; DEP has strongly urged that actual costs to comply with the CSO Policy should be compared to predicted costs, and compared to actual benefits), and § 2.2.10, the Lead and Copper Rule (the EPA did not specify the reforms it expected to consider, but did say that it would hold stakeholder meetings). Other review items that might appear

country, serving over nine million customers and millions of visitors daily, and its comments requested review of many of the same items sought by the National Association of Clean Water Agencies (NACWA) and the Association of Metropolitan Water Agencies (AMWA), who represent utilities and cities who collectively serve more than 160 million Americans. Yet the Preliminary Plan includes only two items related to those suggested by NACWA (on its blending policy and certain elements of water quality standards criteria, and the EPA's proposed review is much narrower than sought) and only one item suggested by AMWA (comparing actual costs of compliance with forecasted costs). Furthermore, the U.S. Conference of Mayors (USCM), which consists of the mayors of over 1,200 cities with populations of 30,000 or greater, has raised many of the same issues outside of this docket. (See enclosed white paper on changes sought in the EPA's CSO and separated sewer overflow (SSO) policies and enforcement actions.)

More generally, the Preliminary Plan ignores the broader water quality issues that DEP and other organizations have raised on multiple occasions in prior submissions and public forums, including the EPA's combined sewer overflow controls, financial capability/affordability, green infrastructure, and nutrients.² EPA's plan for regulatory reform should be directed towards relief for the greatest number of Americans; that necessarily requires a review of the water quality mandates borne by the millions of Americans represented by DEP, NACWA, AMWA, and the USCM. America's cities are seeking a rational policy developed through constructive engagement, but we are being largely ignored. We cannot wait until 2016 for the EPA to address the regulatory burdens that matter the most to municipalities.

The 31 specific items identified for review in the Preliminary Plan do not address regulatory mandates that impose significant costs on cities, or include the water quality programs of greatest concern, including the CSO and SSO policies. Only 12 of the 31 items identify cost savings, which total only hundreds of millions of dollars—a fraction of the hundreds of billions that will be spent on infrastructure upgrades in the water sector alone. And of the 31 short- and long-term items that EPA identified for review, by our count only five (5) arguably concern emission or discharge limits or other substantive requirements;³ the balance of the review items concern

similar do not match DEP's suggestions. For example, DEP suggested a holistic review of the EPA's enforcement policies regarding SSOs, but the EPA's review of SSOs (§ 2.1.2) is limited to its blending policy. Similarly, while DEP suggested a holistic review of water quality standards as applied, the EPA's review (§ 2.2.7) is limited in scope.

² The City has submitted comments through DEP on numerous EPA proposals over the past 18 months, including EPA's proposed "Coming Together for Clean Water" strategy, proposed water quality standards revisions, proposed rulemaking related to sanitary systems/SSOs, draft FY2011-2015 strategic plan, and proposed regulations for MS4 systems. To date, very little in the submissions is reflected in EPA's final publications. These submissions are collected together and available on the City's website at www.nyc.gov/html/dep/html/regulatory_reform/regulatory_reform_index.shtml.

³ Preliminary Plan, §§ 2.1.1, 2.1.2, 2.2.10, 2.2.13, and 2.2.14.

internal matters such as developing better policy or cost estimates (6 items),⁴ harmonizing standards and encouraging technology (7 items),⁵ and reforming reporting, recordkeeping or improving information exchanges for regulated entities (9 items),⁶ or for states, or the EPA itself (4 items).⁷

As the City's initial comments of March 18, 2011 emphasized, a comprehensive overhaul of EPA's approach is needed to allow local governments and utilities to prioritize infrastructure investments and address our most pressing needs using holistic, multi-media risk assessments and cost-benefit analyses. New York City and other municipalities have adopted strategic sustainability plans that integrate environmental and regulatory investments with economic development. Federal and state regulators can be partners in this process if they modify the current approach, which adopts rigid compliance deadlines in programs that operate independently from each other, without reference to overall benefits and costs. EPA has substantial discretion to adopt just such a flexible approach, as it is doing with regard to farmers' practices to reduce runoff pollution (Preliminary Plan, § 2.1.5). While this may be an effective policy to reduce pollution from one of the greatest sources of water pollution given the current limitations in the Clean Water Act, the EPA's efforts seem misplaced, as the agricultural sector is largely exempt from any requirements to reduce water pollution, and thus does not bear a significant regulatory burden to be addressed in this review effort. Instead, the EPA's review should be focused on areas where the regulatory burden is greatest.

2. Take a fresh look at regulatory burdens and reform, rather than simply repackage existing initiatives.

The EPA has identified 31 items for review, 16 of which are "Early Action" items and 15 of which are longer term actions. As noted above, 26 of these items—84%—were already under review or development in one form or another (see Table 1 below). Under existing Executive Orders, including not only EO 13563 and EO 12866, but also EO 12291, 12044 and 11821, the Regulatory Flexibility Act, the Unfunded Mandate Reform Act, and other authorities, EPA should have been considering the costs and benefits of its regulations or policies under development. Without any effort to closely scrutinize long-standing mandates beyond those that the Agency has already been working on, this review will not achieve the comprehensive regulatory reform mandated by EO 13563.

⁴ Preliminary Plan, §§ 2.1.5, 2.1.6, 2.1.8, 2.1.16, 2.2.6, and 2.2.7.

⁵ Preliminary Plan, §§ 2.1.3, 2.1.11, 2.1.12, 2.1.13, 2.1.14, 2.1.15, and 2.2.12.

⁶ Preliminary Plan, §§ 2.1.4, 2.1.7, 2.1.9, 2.2.1, 2.2.2., 2.2.3, 2.2.5, 2.2.9, and 2.2.11.

⁷ Preliminary Plan, §§ 2.1.10, 2.2.4, 2.2.8, and 2.2.15.

Table 1: Assessment of Rules Proposed for Review under EPA’s Preliminary Plan

No.	Preliminary Plan Proposal	Already Proposed/ under Review Prior to the EO 13563 Preliminary Plan?	Comments
1	Lead renovation, repair, and painting program: new post-work requirements	Yes	Review of rule additions proposed on May 6, 2010, as well as original rule that took effect on April 22, 2010.
2	Sanitary Sewer Overflow and peak flow wet weather discharges: clarifying permitting requirements	Yes	Review would include only wet weather blending practices, one element of an SSO policy under development and that was subject to public comment in Fall 2010.
3	Vehicle fuel vapor recovery systems: eliminating redundancy	Yes	Policy development well underway; EPA has been planning to publish a proposed rule in summer 2011.
4	Gasoline and Diesel regulations: reducing reporting and recordkeeping	Yes	Will be part of long-planned modifications to gasoline and diesel regulations in late 2011, which are already required to consider cost and benefits under various Executive Orders.
5	Regulatory certainty for farmers: working with the USDA and states	Yes	EPA effort with the USDA already under way, and is expected to be in place by late 2011.
6	Modern science and technology methods in the chemical regulation arena: reducing whole-animal testing	Yes	EPA has been drafting a work plan to modernize its toxicology analysis and has planned stakeholder meetings in 2011.
7	Electronic only reporting of health and safety data	Yes	EPA has already implemented electronic reporting under TSCA and has already launched a pilot for accepting electronic copies of pesticide information under FIFRA and FFDCA.
8	National Priorities List rules: improving transparency	Yes	EPA already shares some information about its NPL process, and the Preliminary Plan characterizes this item as “redoubling” its existing efforts.
9	Quick changes to some TSCA reporting requirements: reducing burden	Yes	EPA has been developing a proposal to change minor reporting requirements, with a proposal scheduled for late 2011.

No.	Preliminary Plan Proposal	Already Proposed/ under Review Prior to the EO 13563 Preliminary Plan?	Comments
10	Integrated pesticide registration reviews: reducing burden and improving efficiencies	Yes	FIFRA requires review of pesticide registrations every 15 years, and will bundle classes together to ease a burden that falls largely on EPA.
11	Coordinated NPDES permit requirements and removing outdated requirements	No	This appears to be a new initiative, but may be limited to notice and reporting requirements.
12	Vehicle regulations: harmonizing requirements	Partially	EPA has already been working with DOT, FTC, and CARB on various labeling requirements and fuel-economy standards; other efforts to harmonize arose from public comments, but the scope of the effort seems to have been broadened.
13	Multiple Air Pollutants: coordinating emission reduction regulations and using innovative technologies	Partially	A court-imposed deadline for re-issuance of rules for the pulp and paper mill industry requires a proposed rule by summer 2011, but the EPA intends to explore additional ways to reduce emissions.
14	New Source Performance Standards reviews and revisions: setting priorities to ensure updates to outdated technologies	Partially	The Clean Air Act requires EPA to review and update NSPS reviews every eight years; a more strategic approach will be announced in summer 2011.
15	Innovative technology: seeking to spur new markets and utilize technological innovations	Unclear	Arguably the EPA has always been obliged to assess innovative technology; while the scope of this effort is unclear, it appears to focus on cooperative programs rather than on reviewing existing regulatory burdens.
16	The costs of regulations: improving cost estimates	Unclear	The EPA will complete a review of pre-proposal cost estimates and post-adoption actual costs for five unspecified rules by fall 2011; this effort is focused on improving EPA's cost estimation methods rather than on revising regulatory requirements.
17	E-Manifest	Yes	EPA has been working on the E-Manifest system since 2004.
18	Electronic hazardous waste side ID form	No	It does not appear that the EPA was already considering the use of electronic ID forms to reduce printing and mailing costs.

No.	Preliminary Plan Proposal	Already Proposed/ under Review Prior to the EO 13563 Preliminary Plan?	Comments
19	Consumer confidence reports for primary drinking water regulations	No	It does not appear that the EPA was already considering streamlining drinking water reports.
20	Reporting requirements under Section 303(d) of the CWA	Yes	In 2006, over 21 states asked to reduce the reporting frequency of the Integrated Report and the EPA committed to "pursue a series of alternatives to respond to the underlying concerns of collecting and reporting the information on a biennial schedule."
21	Export notification for chemicals and pesticides	Partially	Since 2006, EPA has been reviewing the Reporting Requirements of the Export Notification Rule; some aspects of the planned review, however, may be new.
22	Water Quality trading	Partially	EPA is already required to conduct program evaluations and periodic review in accordance with the final Water Quality Trading Policy published in 2003, but some aspects of the planned review may be new.
23	Water Quality Standard Regulations	Yes	Since 2010, EPA has been accepting comments on the WQS regulations and plans to publish a new rule in summer 2011.
24	State Implementation Plan process	Yes	EPA has already streamlined the information that it requires of states, and has in place a state-EPA working group on the issues; while some additional changes may result from the review, the timeframe is to be determined at a later date.
25	CAA Title V Permit Requirements	Yes	As EPA stated in the Proposed Plan, the Clean Air Act Advisory Committee developed ideas for review in 2006 which EPA intends to reconsider at a date to be determined later.
26	National primary drinking water regulations for lead and copper	Yes	The Preliminary Plan commits to consider topics identified in a 2004 review.
27	Adjusting threshold planning quantities for solids in solution	Yes	EPA already had this program underway and recently closed the comment period.

No.	Preliminary Plan Proposal	Already Proposed/ under Review Prior to the EO 13563 Preliminary Plan?	Comments
28	Certification of pesticide applicators	Yes	EPA has been reviewing the pesticide regulations in collaboration with the Certification & Training Assessment Group since 1997 and issued a report in 2005 committing to near term actions and a long term strategy including some of those suggested in the Plan.
29	PCB reforms	Partially	EPA has already initiated a rulemaking to update TSCA, but it appears that the EPA's effort will include additional reforms.
30	SDWA contaminants	Yes	This review is implementing measures included as part of the March 2010 Drinking Water Strategy and a February 2011 regulatory proposal.
31	Section 610 Reviews	Yes	This initiative will combine reviews of regulations already required by the Regulatory Flexibility Act with regulatory review initiated by EO 13563.

3. Look at all regulatory burdens, not just published regulations adopted through notice and comment rulemaking.

The City's initial comments urged EPA to undertake a comprehensive review of all administrative actions, as the text and intent of EOs 13563 and 12866 is to reduce the overall regulatory burdens that create significant costs. Accordingly, EPA's review should extend to final regulations, baseline studies, preliminary determinations, guidance, policy statements, enforcement policy, and enforcement actions. In this respect, the City is encouraged by the EPA's Preliminary Plan; of the 31 items for review, 13 are formal regulations, while 18 are other types of administrative actions. But the items actually reviewed must address real costs and regulatory burdens.

As we noted at the outset, one of the City's greatest concerns, shared by municipalities across the country, is CSO Policy; specifically, EPA's approach of working through its Office of Enforcement and Compliance Assistance and the Department of Justice (DOJ) to obtain rigid schedules in judicial consent orders, rather than working through its Office of Water to encourage innovative methods of reducing pollution. This concern has been raised repeatedly over the last few years (see the attached letter from the U.S. Conference of Mayors). Yet the Preliminary Plan does not mention any aspect of the CSO Policy, which is costing

municipalities—many of whom are older cities in the Northeast and Midwest that are contending with declining populations and manufacturing bases—tens of billions of dollars in compliance costs that must be incurred on a schedule mandated by EPA/DOJ, without consideration of balancing priorities.

This is a glaring omission. Had the CSO Policy been adopted as a regulation, EPA would have been required to balance the tens of billions of dollars in capital and operating costs for compliance against the value of public health and environmental benefits, but it has never done so. The EPA has estimated that only 5,576 people per year or fewer suffer gastrointestinal illness as a result of CSOs or SSOs,⁸ an estimate that stands in stark contrast to those affected by air regulations, which typically estimate a positive impact of thousands of lives saved, and tens of thousands of hospital visits avoided every year. The CSO Policy has incurred many tens of billions in compliance costs without any estimate of benefits that would approach that of air regulations.

The absence of review of the CSO Policy is compounded by the omission of the EPA's "affordability" policy from the Preliminary Plan. That policy— also adopted outside of the regulatory process and requiring some assessment and disclosure of costs and benefits—is being used by the EPA/DOJ as a floor for negotiation, forcing cities to spend an arbitrary amount set at around 2% of median household income, without reference to city-specific shelter costs, impoverished sub-populations, or competing priorities. EPA should not be involved in setting municipal budgets. Similarly, the Agency's recent enforcement actions concerning its "capacity, management, operations and maintenance" policy for separately sewered systems has not been adopted as a regulation and has not been scrutinized for the relative level of benefits for the high costs of compliance. These items, identified as priorities for review by New York City and many others should be included in EPA's final list for regulatory review. We cannot continue the present course until the next review period starts in 2016.

4. Eliminate costly requirements that are not based on sound science and accurate risk assessments.

One of the rules with the greatest imbalance between significant costs and insignificant benefits is the Long Term Enhanced Surface Water Treatment Rule (LT2). As a result of LT2, New York City, for example, may have to spend \$1.6 billion to cover the 90-acre, 900-million gallon Hillview reservoir used to balance flows and maintain citywide water pressure. The City has already nearly completed construction of a \$1.6 billion ultraviolet treatment facility approximately 10 miles north of the reservoir that will be the largest of its kind in the world, and cost up to \$34 million per year to operate. Yet the rule, which will affect many water utilities and cost billions to implement, was not on the EPA's review list, while relatively minor items relating to changes in notices and information sharing have been included.

⁸ EPA, *Report to Congress on the Impacts and Control of CSOs and SSOs* (2004), p. 6-10.

The purpose of the LT2 rule is to reduce illness linked with the contaminant *Cryptosporidium* and other disease-causing microorganisms in drinking water. However, as noted in New York City's initial comments to the proposed rule,⁹ LT2 substantially overestimates the risk of illness due to *Cryptosporidium* in drinking water and underestimates the cost of implementation. The number of cases of cryptosporidiosis averted in New York City was estimated by EPA to range from 112,000 to 365,000 each year. In contrast, the number of cases of confirmed cryptosporidiosis in NYC is approximately 100 cases a year. Moreover, as noted by the City's Department of Health and Mental Hygiene (DOHMH), even prior to implementing LT2, the number of reported cases has been decreasing in New York City. Overall, DOHMH concluded that "it is unlikely that drinking water represents a major or predominant risk of exposure for cryptosporidiosis in New York City."¹⁰ While cases of illness due to cryptosporidiosis go unreported, at a minimum the disparity in the estimates between EPA's risk assessment and the cases of cryptosporidiosis actually reported in New York City suggest that the benefits of LT2 implementation are at best highly uncertain, and are likely to be insignificant.

After public comment and during adoption of the rule, EPA eliminated a key provision from the final draft that would have allowed for consideration of a less costly alternative to covering open finished water reservoirs: allowance for the development of a risk management plan in lieu of covering or treatment. EPA seems to have based this decision principally on one study in which the concentrations of *Cryptosporidium* and *Giardia* entering and leaving several open finished water reservoirs in New Jersey were measured. The City believes the decision to remove this option was not based on sound science or robust data, nor were the reservoirs studied representative of all reservoirs in the United States. DEP conducted its own 18-month study to demonstrate that New York City's uncovered Hillview Reservoir is not a source of either *Cryptosporidium* or *Giardia*.¹¹

Given these uncertainties, the City has repeatedly requested that EPA exercise the discretion afforded by the variance provision of the Safe Drinking Water Act to consider waivers based on alternative proposals, such as risk management plans, that would achieve the same public health benefits. EPA has repeatedly refused to do so for years; one stated ground for refusal is the Agency's view that the rule, as adopted, does not afford it the discretion to use the SDWA's variance provisions. Now, presented with an express opportunity—at the direction of the President—to reconsider and amend the rule to expressly allow a more flexible approach where the science and circumstances demonstrate that an uncovered finished water storage facility does not pose a public health risk, EPA has not proposed doing so. EPA should be encouraging facility-specific risk mitigation plans to identify and address specific risks, rather than imposing a one-size-fits-all solution that will cost billions for New York City to implement. Such an approach would encourage investments that achieve cost-effective, tangible public health

⁹ DEP, "DEP Comments on Proposed Rule-Docket OW-2002-0039" (Jan. 9, 2004).

¹⁰ DOHMH, Public Health Review for the Hillview Reservoir (Sept. 2010).

¹¹ DEP Hillview inflow/outflow study.

benefits without unduly burdening water suppliers and taxpayers—exactly the outcomes that EO 13563 seeks to achieve.

5. Integrate regulatory review with strategic planning.

The EPA should integrate this regulatory review effort with its core strategic documents such as its clean water strategy. Otherwise, programs will persist in “silos” with little coordination and thus little consideration of overall public health and environmental risks, overall benefits and costs, and the cumulative regulatory burden on regulated entities and regulatory authorities. Both Executive Order 12866 and 13563 affirm that federal agencies are to seek the “least burden on society ... [after considering] the costs of cumulative regulations.” A cross-media and cumulative effects assessment will help to ensure that EPA achieves this fundamental goal, and to better articulate its mission and the need for compliance costs to New Yorkers, and people across the country.

New York and other cities and organizations provided detailed suggestions in response to EPA’s request for ideas to integrate regulatory review into the culture of the Agency, a key reform of EO 13563. The Preliminary Plan does not summarize or respond to those suggestions and contains only a general intent to undertake an integrated approach (Preliminary Plan, § 1.1.4). The final plan should translate these intentions into actionable items.

6. Apply the Principles in Executive Orders 12866 and 13563 to Rules and Initiatives under Development or Underway.

Finally, EPA should apply its obligation to undertake rigorous cost-benefit analysis to existing initiatives and policies, as well as to rules that are under development. This should include putting various unpromulgated policies and guidance through the public notice and comment rulemaking process. Some of the initiatives of greatest interest to cities and utilities include:

- CSO enforcement actions
- CSO policy
- SSO enforcement actions
- CMOM policy
- Affordability guidance
- MS4 Rule proposal
- Guidance for MS4 permit writers
- Water Quality Standards regulations
- BEACH Act rulemaking
- Nutrient standards and enforcement

7. Encourage Innovation.

With the shortfalls in the Clean Water and Safe Water Revolving funds, and in the absence of an infrastructure bank, local governments that provide critical transportation, safety, water, and sewage services to the American people need to conserve capital resources and spend money wisely on infrastructure construction and repair. The public needs better and more flexible regulations that allow for risk balancing between future compliance needs and future and current infrastructure needs. To that end, EPA should look for ways to encourage innovation that, while protective of public health, allows local governments to plan for and prioritize how scarce capital dollars should be spent for capital projects based on their knowledge of the needs of their communities. Some suggestions include:

- Provide increased flexibility in meeting compliance requirements for systems that adopt a risk-based total quality management approach to compliance. Municipalities would have to evaluate and rank the various compliance and infrastructure risk issues, based on local circumstances, but might be granted a more flexible compliance schedule or reduced compliance requirements to address the highest priority risk issues first. The plan would have to be transparent and subject to regulatory review and would provide long-range risk reduction. The municipality would have to implement the plan, check that it is performing as planned, recommend improvements, and re-assess its effectiveness at routine intervals (e.g. every five years).
- EPA should review and consider implementation of past innovations. For example, from 1995 to 2002, EPA undertook a national pilot program called Project XL. The program was an effort to help businesses, state and local governments, and federal facilities work with EPA to develop and test innovative approaches to achieve better and more cost-effective environmental and public health protection. EPA should consider implementing a similar program geared to the water and wastewater sector.

Thank you for the opportunity to provide these comments which we hope will inform EPA's formation of a final plan pursuant to EO 13563. We look forward to working with you on this process as it moves forward and can be available to meet at any time on this or any other issue.

Sincerely,



Caswell F. Holloway
Commissioner, NYC DEP



Stephen Goldsmith
Deputy Mayor for Operations

Encl.: U.S. Conference of Mayors, *Local Government Recommendations to Increase CSO/SSO Flexibility in Achieving Clean Water Goals* (Oct. 28, 2010)

c: Robert Perciasepe, Deputy Administrator, EPA
Judith Enck, Regional Administrator, EPA Region 2
Cass Sunstein, Administrator, OIRA
New York City Congressional Delegation
Ken Kirk, Executive Director, NACWA
Diane VanDe Hei, Executive Director, AMWA
Thomas Cochran, President and CEO, USCM



FY12 water rate increase

New York City Council Hearing

May 6, 2011

FY 2011 Highlights

- ❖ Developed and launched 100-point Strategic Plan
- ❖ Implemented major Customer Service initiatives, including Wireless Meter Reading Online and Leak Notification
- ❖ Achieved 8% expense reduction of \$75M
- ❖ Reprioritized entire 10-year capital plan to focus on greatest needs, asset management, and state-of-good repair
- ❖ Unveiled design and timeline to repair leaks in the Delaware Aqueduct
- ❖ Proposed landmark Green Infrastructure Plan to address combined sewer overflows (CSOs)
- ❖ Strongly advocated for regulatory reform at the State and Federal levels



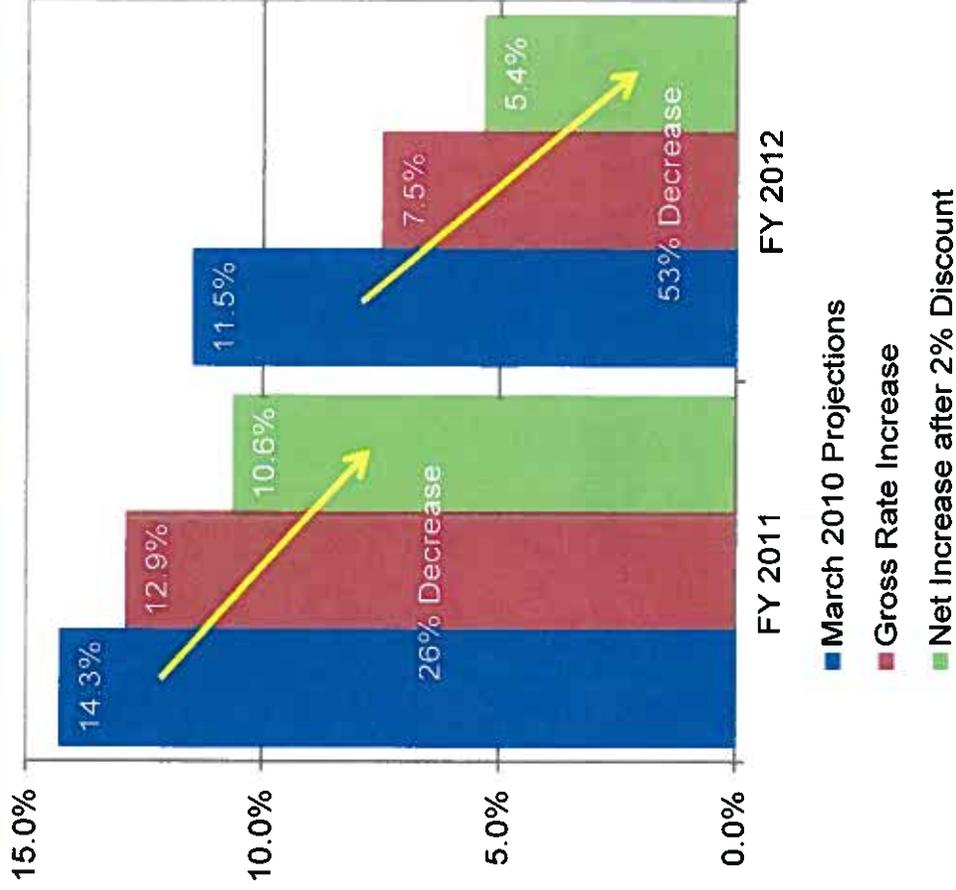
NYC GREEN INFRASTRUCTURE PLAN
A SUB-ANNUAL STRATEGY FOR CLEAN WATERWAYS



STRATEGY
2011-2014



FY 2012 Rate Proposal Summary



- ❖ Proposing 7.5% rate increase; 35% lower than March 2010 projection
- ❖ Offering 2% discount for enrolling in paperless billing and direct debit
- ❖ Create a My DEP Account and register online at www.nyc.gov/dep
- ❖ Net increase for customers who take advantage of discount is 5.4%

	FY 2011	FY 2012 (7.5%)	FY 2012 (5.4%)
Single Family (80,000 gal)	\$816	\$877 (\$61)	\$860 (\$44)
Multi-family Unit (52,000 gal)	\$531	\$571 (\$40)	\$559 (\$28)

DEP's Mission

DEP must supply, deliver, and treat the water 9 million New Yorkers need every day; protect and improve the waters that surround us, the air we breathe, and New Yorker's overall quality of life.

STRATEGY 2011-2014

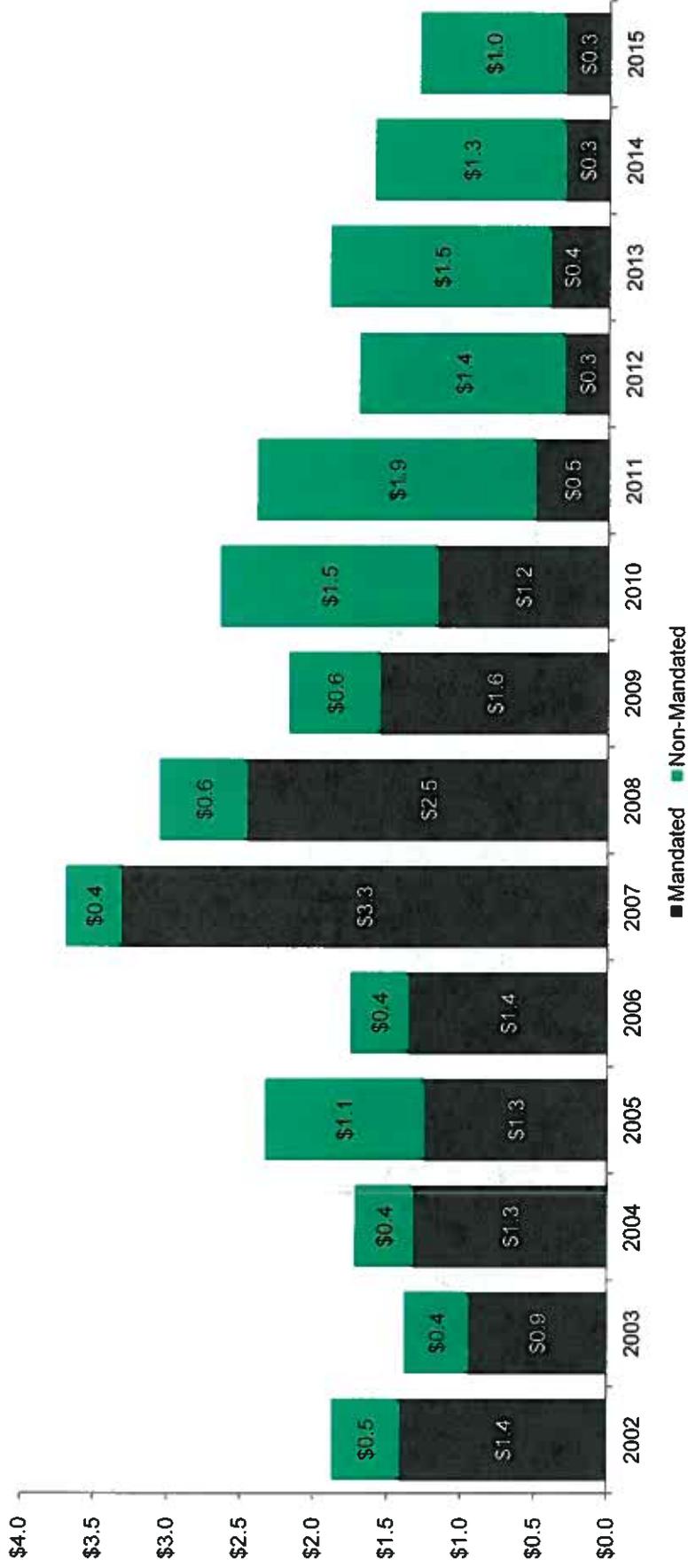
- ❖ 100 Strategies and Initiatives to achieve this mission in 4 core areas:
 - Serving 9 million customers
 - Operating the safest, highest-performing water utility at the lowest possible cost
 - Building capital projects on time and on budget
 - Delivering clean waters, clean air, and a sustainable quality of life for all New Yorkers

Capital Outlook

- ❖ \$14.9B (72%) of capital commitments for FY 2002 to 2010 were driven by mandates
- ❖ DEP is working with state and federal regulators to eliminate, reduce and defer future mandates

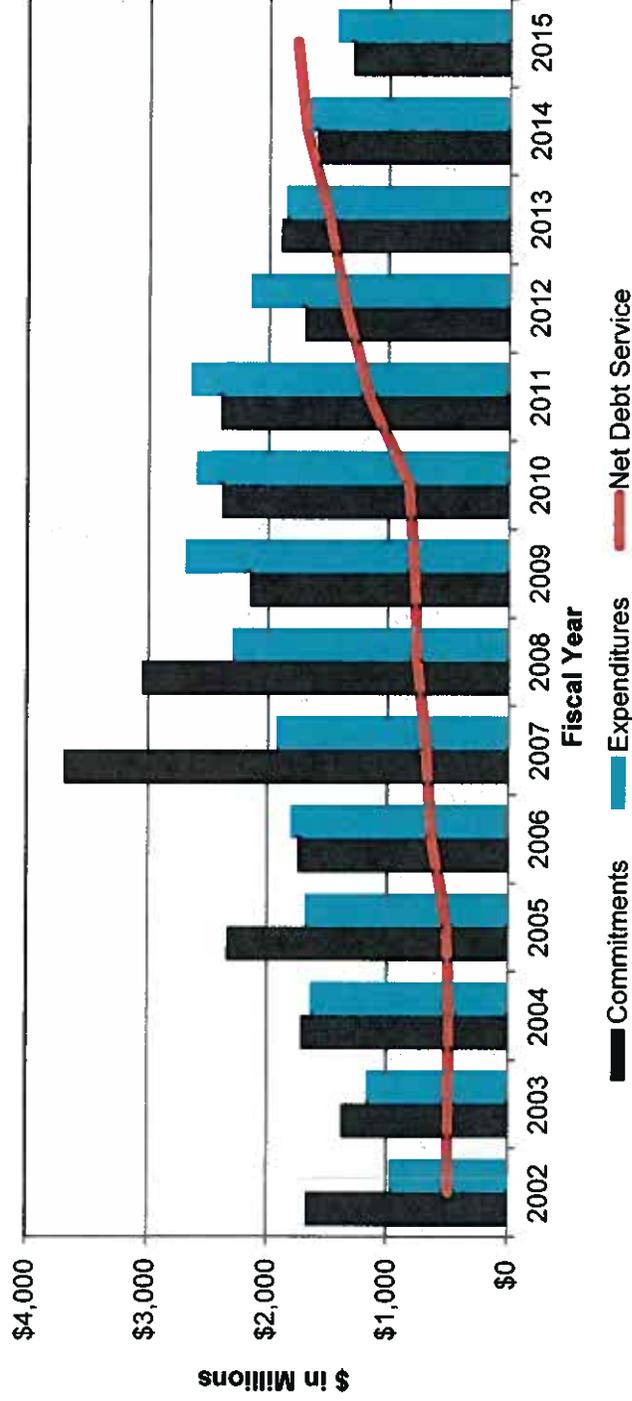
Capital Outlook FYs 2007—2015 (\$ in billions)

FY	Total									
2007	2008	2009	2010	2011	2012	2013	2014	2015	2015	
\$3.7	\$3.1	\$2.2	\$2.7	\$2.4	\$1.7	\$1.9	\$1.6	\$1.3	\$1.3	\$20.6

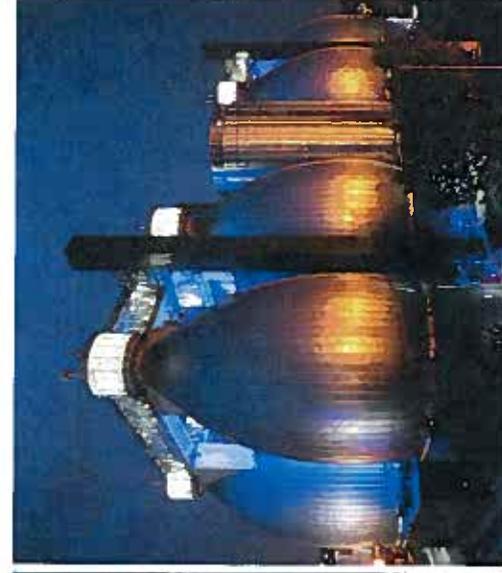


Capital Expenditures & Debt Service Impact

- ❖ There is a time lag between Commitments and Expenditures; debt is issued as Expenditures are incurred
- ❖ From \$22.5B of Commitments made from FY 2002 to 2011, Expenditures have totaled \$19.4B and net debt issuance is projected to total \$16.6B in the same period
- ❖ Annual Net Debt Service increased by 134% between FY 2002 and FY 2011 and is projected to increase by \$193 million or 17% in 2012
- ❖ In future years, even though annual Commitments and Expenditures decrease, Annual Net Debt Service continues to rise



Legal Mandates Cost Average Homeowner \$169



Mandate	Cost (\$B)	Annual Debt Service Impact* (\$M/year)	Annual Household Cost (\$/year)
Croton Filtration Plant	\$3.0	\$153	\$44
Ultraviolet Disinfection Plant	\$1.6	\$80	\$23
Newtown Creek Treatment Plant	\$5.0	\$144	\$42
All Other	\$7.1	\$206	\$60
Total	\$16.7	\$582	\$169

❖ The annual cost for commercial and industrial customers is \$2,108 and \$210,831 respectively

*Debt Service Impact is net of any carryover for the years in question

Critical System Investments



Critical System Investment	Cost (\$M)	Annual Debt Service Impact* (\$M/year)	Annual Household Cost (\$/year)
City Water Tunnel No. 3	\$5,000	\$250	\$72
Land Acquisition Program	\$585	\$29	\$8
Wireless Meter Reading	\$250	\$13	\$4
Total	\$5,835	\$292	\$84

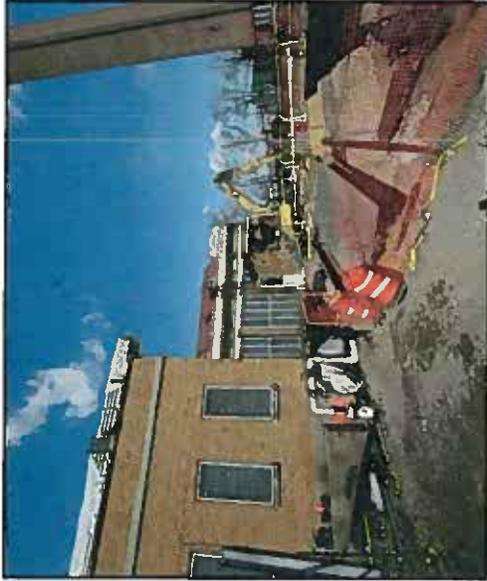
❖ The annual cost for commercial and industrial customers is \$1,057 and \$105,660 respectively

*Debt Service Impact is net of any carryover for the years in question

Other Critical Infrastructure Investments

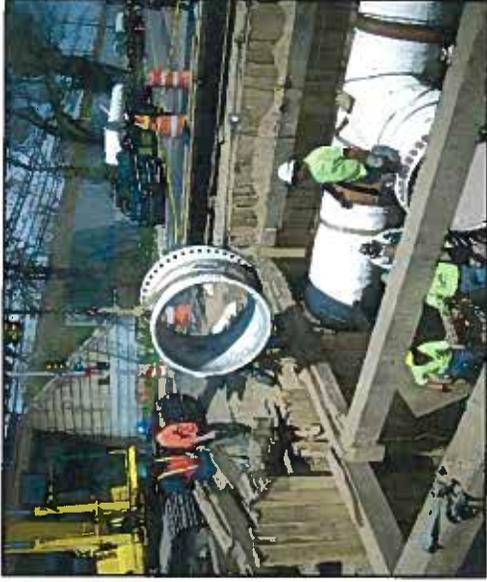
BROOKLYN

Avenue V Pumping Station
\$207M



BRONX

Croton Force Main
\$31M



STATEN ISLAND

Bluebelts
\$150M



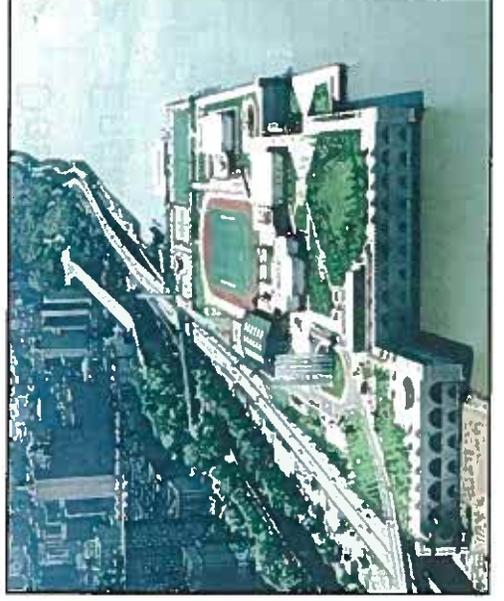
QUEENS

Jamaica Bay Restoration
\$115M



MANHATTAN

North River Wastewater Treatment Plant
\$165M



Projected FY 2012 O&M Changes

Significant Reductions

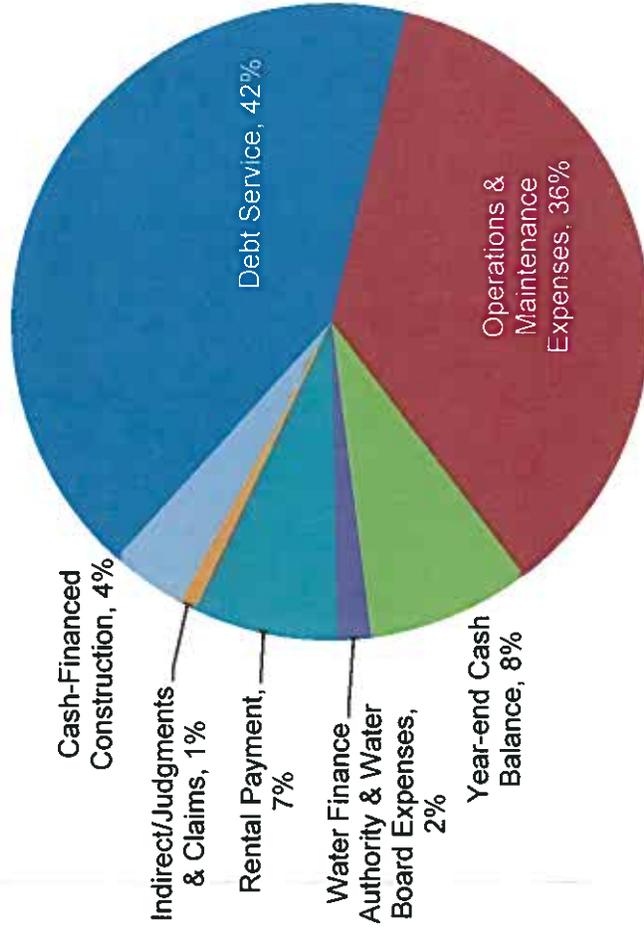
- ❖ Eliminating 108 positions due to consolidations and efficiencies, saving \$10.8 million
 - Reductions come from existing vacancies or attrition; none will impact critical operations
- ❖ Expected savings of \$29.1M from the landfilling of biosolids, space consolidation, and other reductions in supplies and contract services

New Needs

- ❖ Adding positions for mandated new facilities and programs
 - Catskill/Delaware UV disinfection plant (28; \$8.0M)
 - Designing and managing Green Infrastructure projects (20; \$2.1M)
 - English Kill Aeration facility (6; \$0.7M)
- ❖ Projected increase in fringe and pension contributions

Financial Outlook for FY 2012

FY 2012 Budget Forecast



Financial Outlook through 2012 (\$M)	FY 2011 Forecast	FY 2012
Consumption (MG)	379,737	370,685
Revenue	\$3,027	\$3,231
Operations & Maintenance	\$1,107	\$1,243
Debt Service & Defeasance (net)*	\$1,423	\$1,357
Rental Payment	\$202	\$237

* Debt Service is net of prior year-end cash balances and includes \$260 million of cash defeasance of bonds in FY 2011

Rate Increase Necessary to Fund Expenses

Rate Model - Cost/(Revenue)	FY 2011 Plan	FY 2012
Debt Service (net of carryforward revenues)	\$1,231	\$1,357
Operations & Maintenance	\$1,268	\$1,243
Rental Payment	\$220	\$237
Year-end Cash Balance	\$234	\$269
Cash Financed Capital Construction	\$0	\$125
FY Revenue Requirement	\$2,952	\$3,231
Upstate & Other Non-City Revenue	(\$144)	(\$199)
In-City Revenue Need	\$2,808	\$3,032
Revenue at Prior Year's Rate	(\$2,486)	(\$2,821)
Additional Revenue Required	\$322	\$212
Rate Increase Required	12.9%	7.5%

\$ in millions

Proposed Rate Changes

- ❖ Offering a 2% discount to customers who take advantage of direct debit payments and register for paperless billing
 - Set up a My DEP Account and register online at www.nyc.gov/dep
- ❖ Installment payment agreement terms revised to include options for no down payment, a repayment period of up to ten years, and new default provisions
- ❖ Participants registered in the lead and copper monitoring program will receive a new credit of \$25 on their water bills upon successful completion of a lead and copper monitoring test
- ❖ Delivery of the first notice under a denial of access proceeding will be delivered by first-class mail only; this notice has no immediate financial impact on customers
- ❖ The maximum fixture flow-rates to qualify for a reduced water rate pursuant to the Board's Comprehensive Water Reuse program will be conformed to recent changes to the NYC Plumbing Code

Strategic Initiatives to Reduce Costs

- ❖ **Reduce overhead and collect what is owed to us**
 - Paperless billing (#10)
 - Lien sale reauthorization (#12)
 - RFP for collection enforcement (#11)
- ❖ **End unfunded Federal and State mandates**
 - Advocate for regulatory reform and flexible regulations (#74 and 75)
- ❖ **New approaches**
 - Green infrastructure (#79)
- ❖ **Achieve cost savings & increase efficiencies**
 - Operational Efficiencies RFP
 - Service Line Protection Program (#7)
- ❖ **Take advantage of our unique assets**
 - Energy creation to lower NYC energy costs (#88)
 - Newtown Creek-National Grid & Wards Island Cogeneration projects
- ❖ **Strategies & investments to prevent filtration**
 - Maintain the FAD (#25)
 - Purchase watershed lands that protect water quality (#26)
 - Prevent hydrofracking (#29)



Green Infrastructure

❖ “Green infrastructure changes improve the health of our waters while creating local jobs, saving communities money and making them healthier and more prosperous places to raise a family and start a business.”

– *U.S. Environmental Protection Agency (EPA)
Deputy Administrator Bob Perciasepe*

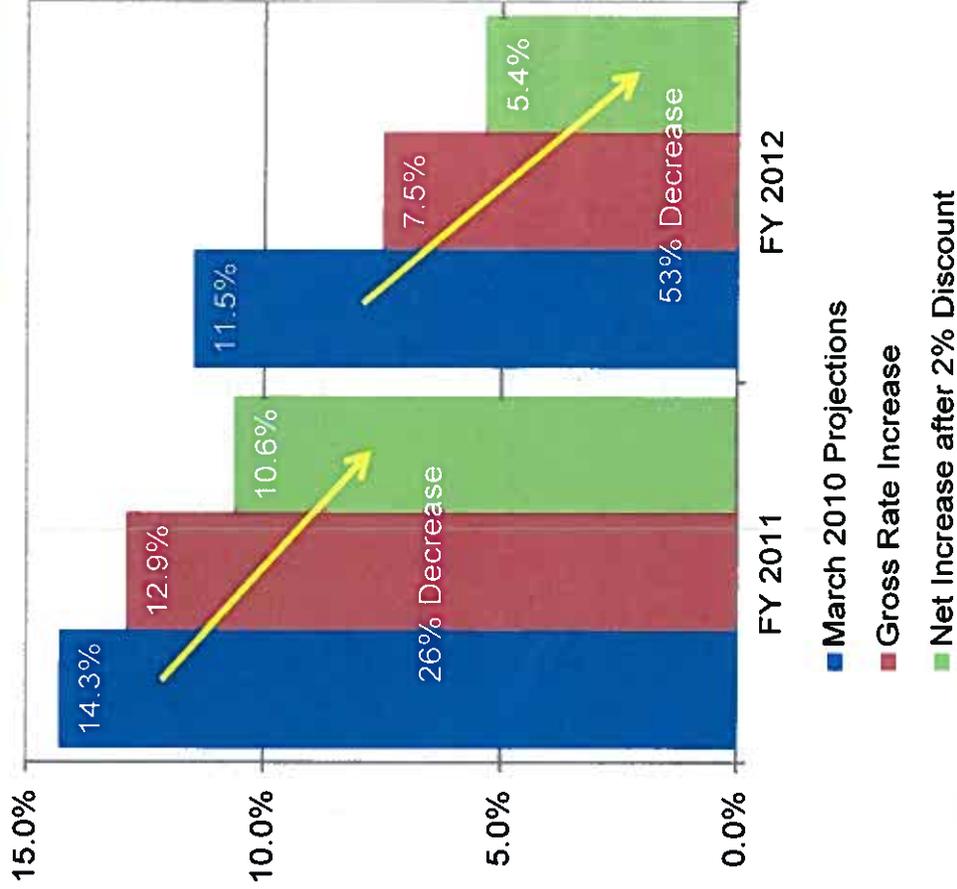
❖ U.S. EPA launching new strategy to promote the use of green infrastructure by cities and towns to reduce stormwater runoff that pollutes streams, creeks, rivers, lakes and coastal waters

❖ U.S. EPA will work with local communities to achieve stormwater goals:

- Decrease pollution to local waterways
- Protect Americans’ health by decreasing water pollution
- Provide community benefits, including increased economic activity and neighborhood revitalization, job creation, energy savings and increased recreational and green space



FY 2012 Rate Proposal Summary



- ❖ Proposing 7.5% rate increase; 35% lower than March 2010 projection
- ❖ Offering 2% discount for enrolling in paperless billing and direct debit
- ❖ Create a My DEP Account and register online at www.nyc.gov/dep
- ❖ Net increase for customers who take advantage of discount is **5.4%**

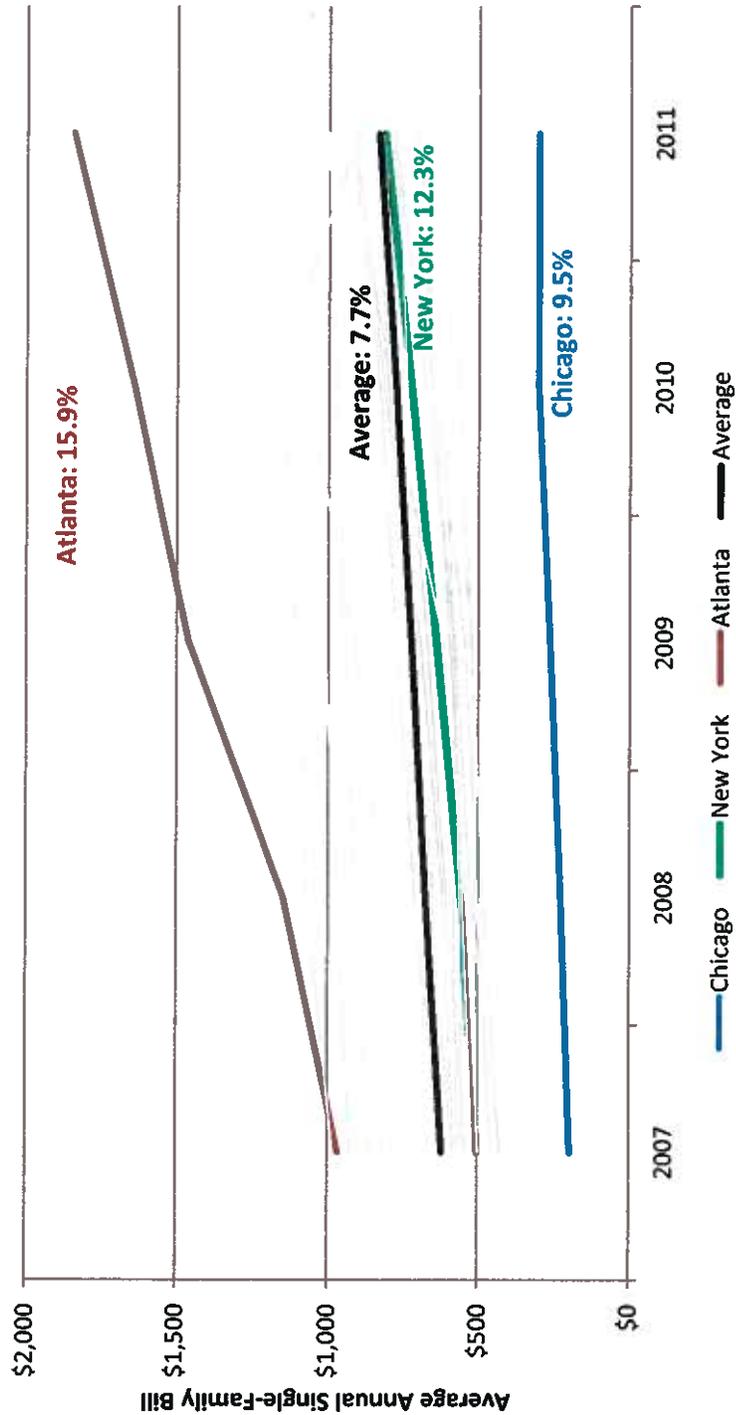
	FY 2011	FY 2012 (7.5%)	FY 2012 (5.4%)
Single Family (80,000 gal)	\$816	\$877 (\$61)	\$860 (\$44)
Multi-family Unit (52,000 gal)	\$531	\$571 (\$40)	\$559 (\$29)



Appendix

Rate Increase Comparison

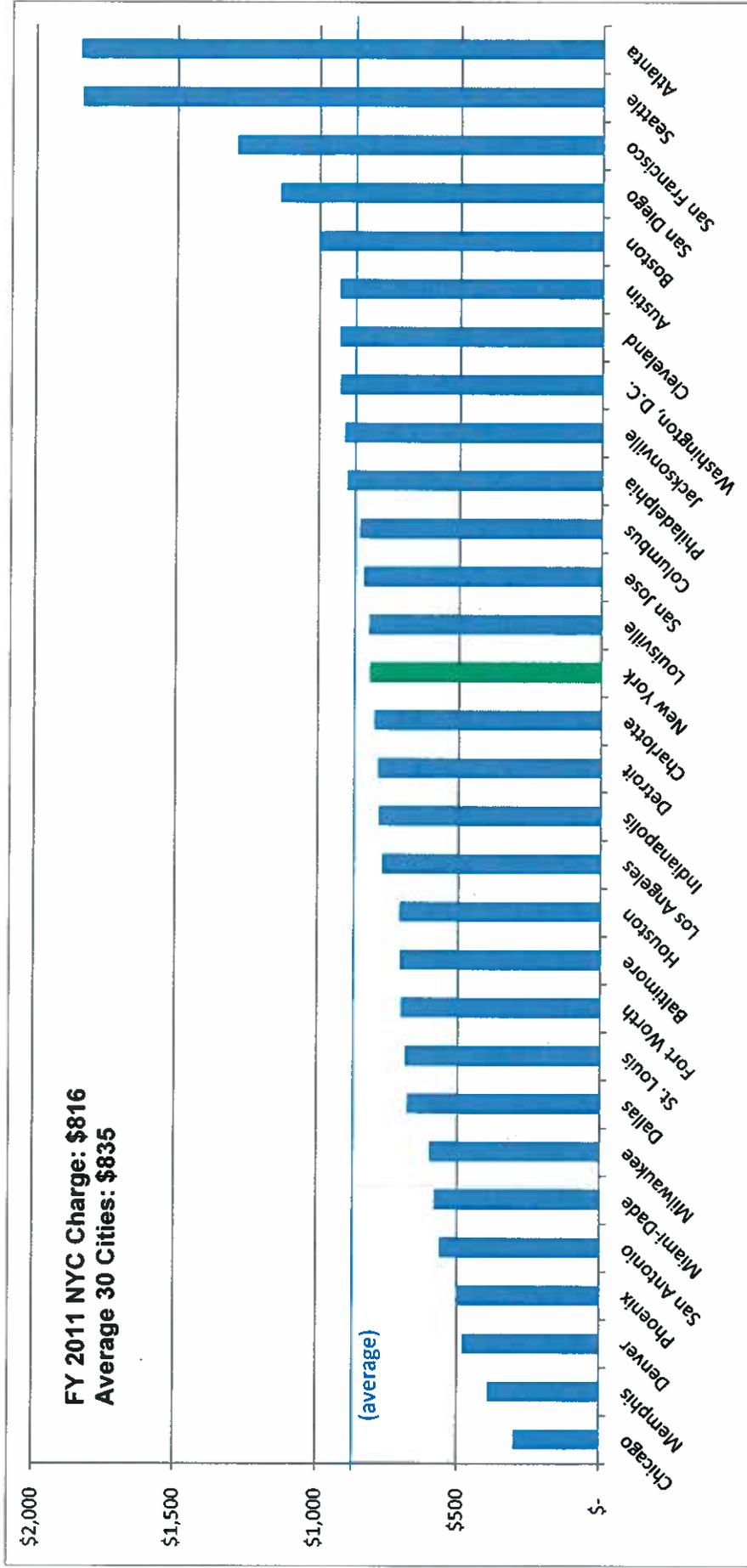
Rate Increase of Various Major Cities over Time



Annual Water/Wastewater Charge Comparison



Annual Residential Water & Wastewater Charges

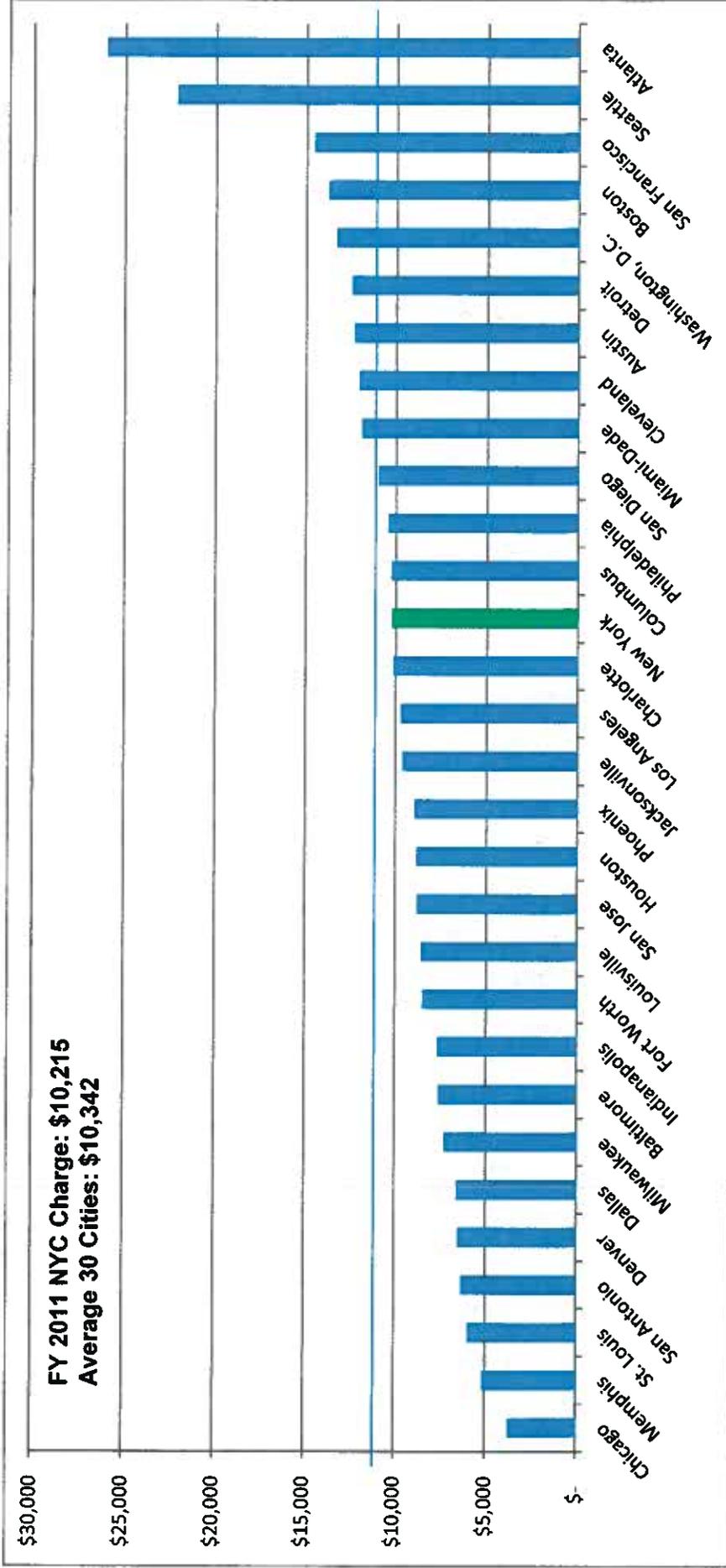


All estimates based on consumption of 80,000 gallons at rates in effect March 1, 2011

Annual Water/Wastewater Charge Comparison



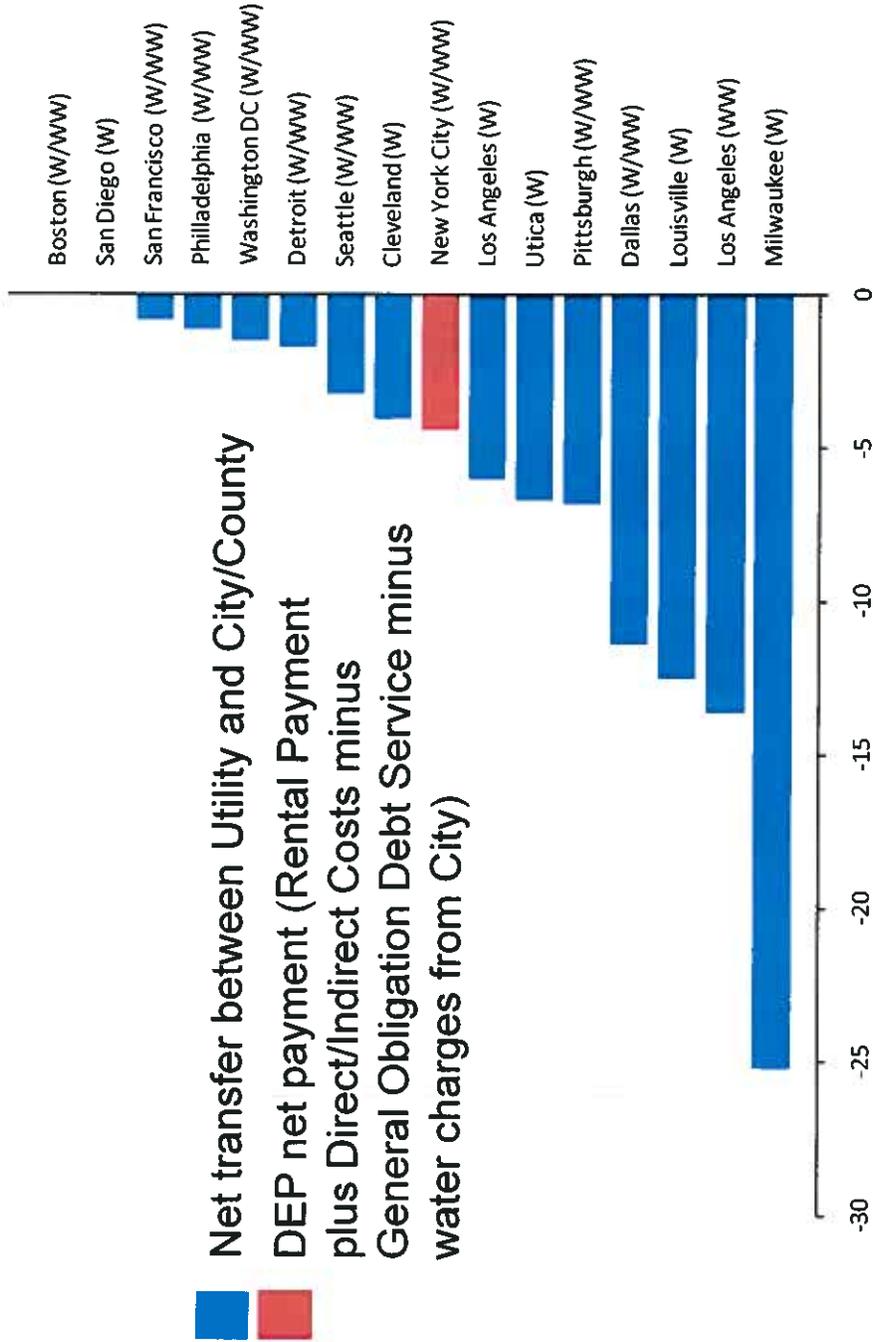
Annual Commercial Water & Wastewater Charges



All estimates based on consumption of one million gallons at rates in effect March 1, 2011

Rental Payment Comparison

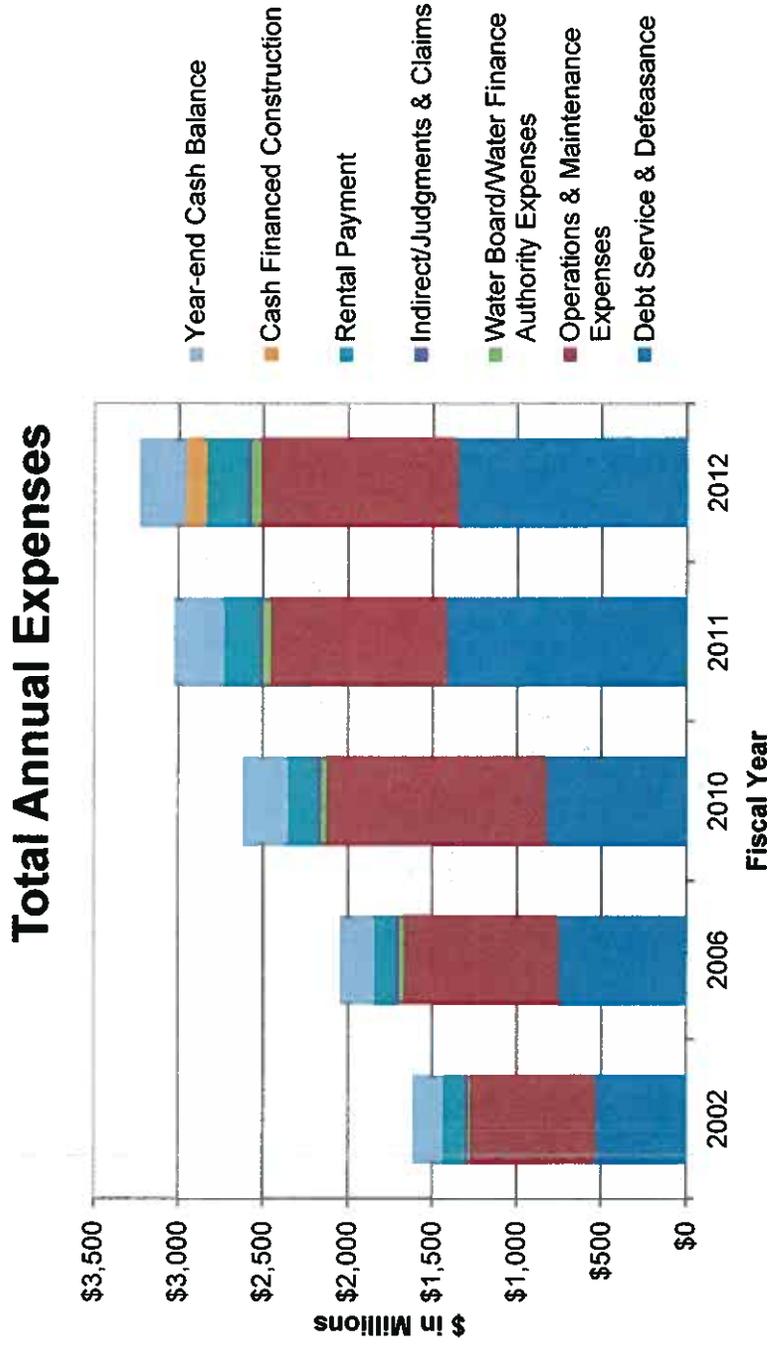
Annual Intergovernmental Payments



Note: Payments from Boston & San Diego to Utility exceed Utilities' payments to their respective cities.

Comparative Expense History

- ❖ Debt Service is the largest single cost to the System



WM-11 Croton Water Treatment Plant
Cost Summary as of 6/30/2011

Croton WTP Construction Costs						
Contract	Contractor Name	Original Contract Price	Registered Change Orders	Current Contract Amount	% Contract Increase	
CRO-311	Schiavone Construction Co.	\$127,660,000	-\$14,445,214	\$113,214,786	-11%	
CRO-312G	Skanska/Tully, JV	\$1,327,700,000	\$102,467,416	\$1,430,167,416	8%	
CRO-312E1	Schlesinger-Siemens, LLC	\$134,680,000	\$9,359,753	\$144,039,753	7%	
CRO-312E2	Schlesinger-Siemens, LLC	\$37,678,000	\$6,537,799	\$44,215,799	17%	
CRO-312H	Durr Mechanical Construction	\$105,700,000	\$12,274,628	\$117,974,628	12%	
CRO-312P	Picone/WDF, JV	\$58,475,000	\$10,407,907	\$68,882,907	18%	
CRO-312OS-G	Picone-Schiavone, JV	\$96,842,500	\$17,560,916	\$114,403,416	18%	
CRO-312OS-E	Eldor Electric	\$15,762,500	\$932,871	\$16,695,371	6%	
CRO-312OS-H	AWL Industries	\$822,000	\$12,901	\$834,901	2%	
CRO-312OS-P	JPP Plumbing	\$872,000	\$155,165	\$1,027,165	18%	
CRO-312FM (1)	Maspeth Supply Co. LLC	\$18,626,745	\$12,519,525	\$31,146,270	67%	
CRO-313	Schiavone/Picone, JV	\$212,227,000	\$1,998,084	\$214,225,084	1%	
CRO-315G	Angelakis Construction Corp.	\$3,641,000	\$14,894	\$3,655,894	0%	
CRO-315E	Interphase Electric	\$807,317	\$145,800	\$953,117	18%	
CRO-312CE	Con Edison	\$4,074,526	\$0	\$4,074,526	0%	
TOTAL		\$2,145,568,588	\$159,942,444	\$2,305,511,032	7%	
Croton WTP Design / Construction Management Costs						
HED-543 DES	Metcalf & Eddy / Hazen and Sawyer, JV	\$44,226,000	\$222,182,648	\$266,408,648	502%	
HED-545 CM	URS/Malcolm Pirmle, JV	\$63,400,000	\$32,936,305	\$96,336,305	52%	
TOTAL		\$107,626,000	\$255,118,953	\$362,744,953	237%	

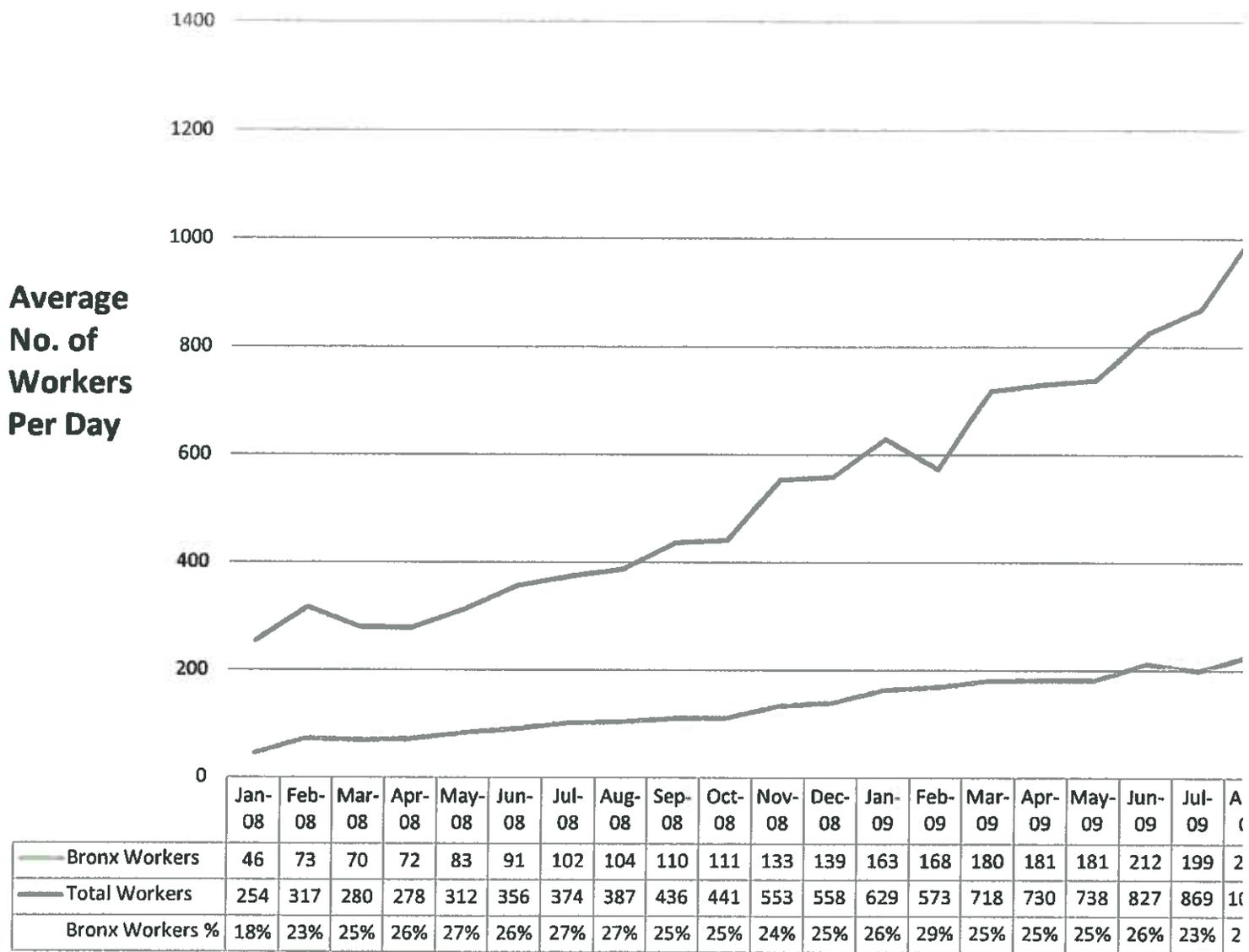
Rehabilitation of the New Croton Aqueduct Construction Costs						
Contract	Contractor Name	Original Contract Price	Registered Change Orders	Current Contract Amount	% Contract Increase	
CRO-334G	Frontier-Kemper/Schiavone/Picone JV	\$91,696,805	\$9,386,843	\$101,083,648	10%	
CRO-334E	Community Electric	\$1,119,000	\$247,275	\$1,366,275	22%	
TOTAL		\$92,815,805	\$9,634,118	\$102,449,923	10%	
Rehabilitation of the New Croton Aqueduct Construction Management Costs (2)						
TCM-CRO-334	Washington/HAKS JV	\$5,952,446	\$0	\$5,952,446	0%	
TOTAL		\$5,952,446	\$0	\$5,952,446	0%	

Notes:

(1) Costs shown for CRO-312FM are for the original Force Main Route to Hunts Point WPCP.

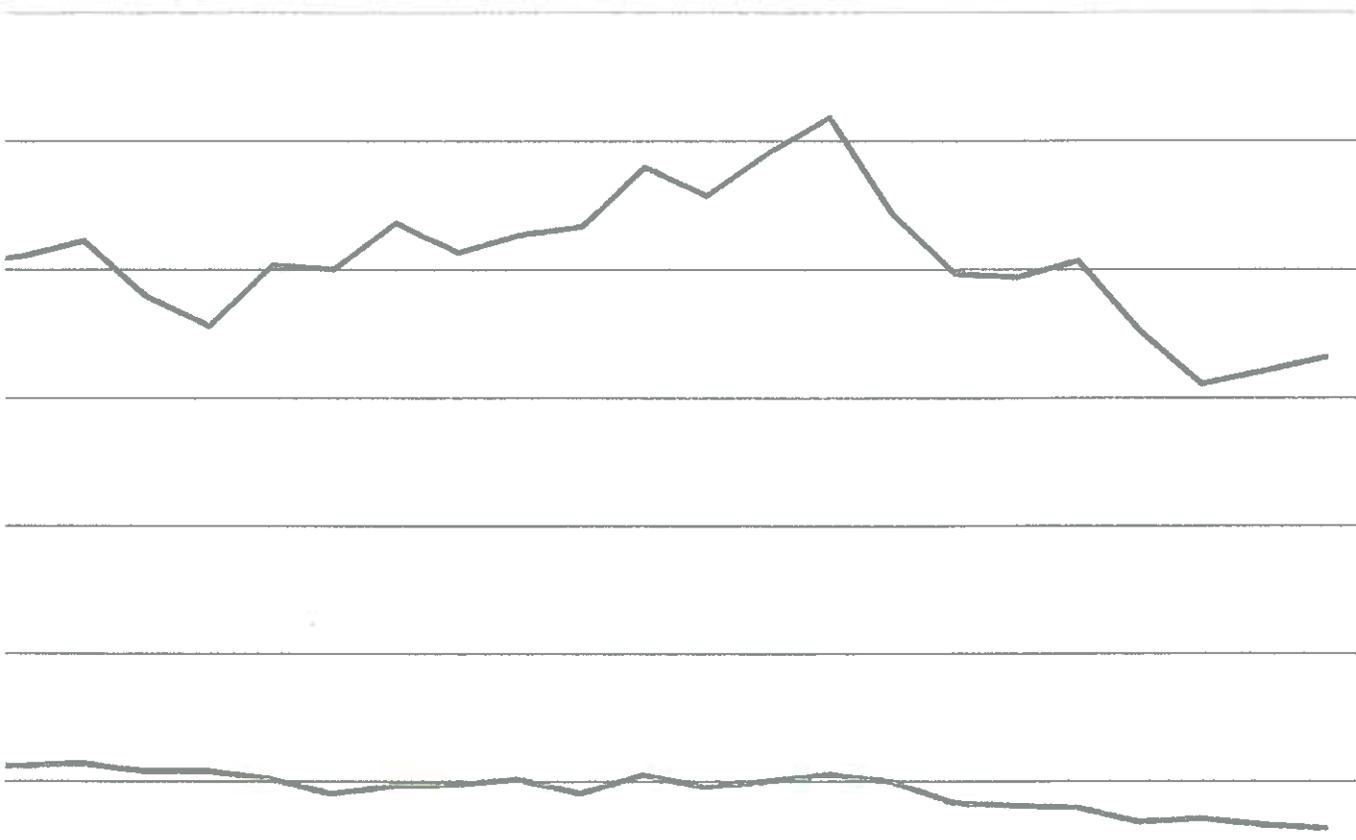
(2) Design costs for CRO-334G and CRO-334E are included in Contract HED-543 DES.

CROTON WATER TREATMENT PLANT AND OI



Total Average Overall= 20%

SITE FACILITIES AT JEROME PARK RESERVOIR



ep-09	Oct-09	Nov-09	Dec-09	Jan-10	Feb-10	Mar-10	Apr-10	May-10	Jun-10	Jul-10	Aug-10	Sep-10	Oct-10	Nov-10	Dec-10	Jan-11	Feb-11	Mar-11	April-11	May-11	June-11
224	228	216	216	204	181	193	195	203	181	210	191	200	211	200	166	162	159	137	142	132	127
1021	1045	959	912	1007	1001	1073	1027	1054	1067	1160	1115	1182	1237	1088	994	988	1014	906	822	842	864
2%	22%	23%	24%	20%	18%	18%	19%	19%	17%	18%	17%	17%	17%	18%	17%	16%	16%	15%	17%	16%	15%