



Nassau ocean outfall pipe could help resolve alleged violations, NY says

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The Bay Park sewage treatment plant in East Rockaway on Nov. 14, 2012. Photo Credit: Doug Kuntz

State authorities say alleged environmental violations at the Sandy-damaged Bay Park and Long Beach sewage-treatment plants could be resolved in part by requiring Nassau County to build a \$450 million ocean-outfall pipe by 2019.

But sources said the county won't sign the agreement. County and city officials would say only that they are continuing discussions with the state.

The state Department of Environmental Conservation says that both the Bay Park and the Long Beach plants have violated environmental law and their permits by discharging effluent so high in nitrogen that it is damaging the Western Bays, a series of waterways that are part of the South Shore Estuary Reserve.

In response to the alleged violations, the DEC would require the county to build an ocean-outfall pipe to send its treated effluent from the Bay Park plant in East Rockaway into the Atlantic Ocean, and would require the City of Long Beach to begin pumping its sewage to Bay Park for treatment. Both plants were heavily damaged during superstorm Sandy in October 2012.

Building an outfall pipe that would send the effluent into the Atlantic Ocean, allowing Reynolds Channel and the greater Western Bays eventually to recover, has long been considered a solution to the problem of nitrogen overloading in the bays. At issue has been how to pay for the project.

Bay Park, which serves 500,000 people, is being rebuilt with \$810 million in Federal Emergency Management Agency funds and \$101 million in state-directed storm-recovery money, but funding has not been certain for the outfall-pipe project.

The state's latest proposal is contained in an order on consent, a document used by the DEC to address violations of environmental law and agreed to by all parties.

"We continue to work with New York State and the Department of Environmental Conservation to achieve an ocean-outfall pipe that will strengthen our shoreline and clean up the Western Bays," Nassau County Executive Edward Mangano's office said in a statement.



“The city has done, and continues to do, millions of dollars in repair work since superstorm Sandy to its wastewater facility,” Long Beach Public Works Commissioner Jim LaCarrubba said in a statement. “There has been an open dialogue with both the DEC and Nassau County regarding solutions to improve our bay, and those talks will continue.”

The DEC did not respond to a request for comment.

Assemb. Todd Kaminsky (D-Long Beach) said he was heartened by the prospect of an agreement that leads to the building of an outfall pipe.

“What is important is that the county be bound to invest in denitrification and other plant improvements that will bring it into compliance with state and federal requirements,” Kaminsky said.

The order on consent, dated Sept. 25, would supersede an earlier 2011 enforcement action the DEC brought against the county over its Bay Park plant. The earlier consent order did not include the Long Beach plant.



In the earlier action, signed by Mangano on June 27, 2011, the county admitted to seven violations of environmental statutes and regulations at the plant.

Those violations, which occurred between 2007 and 2010, included discharges of treated but unchlorinated wastewater, effluent that exceeded water-quality standards and failing to report incidents, among other matters.

The 2011 consent order assessed a \$1.5 million penalty against the county — \$500,000 payable, \$500,000 suspended if the county complied with the order, and the remaining \$500,000 to be spent on a feasibility study examining the options for constructing an ocean-outfall pipe at Bay Park. That study was completed in June 2013.

The measures in the new proposed order would be in response to several alleged violations, including those of water-quality standards from Bay Park's effluent.

In the order, the state detailed 40 instances in which it said the effluent from the plant exceeded standards on hydrocarbons, metals and fecal coliform, among other contaminants, from August 2011 to June 2015 — all discharges that exceeded the plant's permit, according to the DEC.

It also said sewage backed up and overflowed from manholes and other openings in the Barnes Avenue neighborhood in Baldwin six times between 2000 and 2011.

And it alleges the county did not fully adhere to the terms of the 2011 order, saying the county submitted an incomplete report assessing the plant's infrastructure and that it did not spend the full \$500,000 on the feasibility study it agreed to in the 2011 order.

The county did not respond to the specific list of violations. Earlier this year, Mangano said the county was not aware of any current permit violations at Bay Park, and county spokeswoman Katie Grilli-Robles said the plant "attained full permit compliance" 45 days after Sandy.

The alleged infractions in Long Beach include violations of its discharge permit by failing to provide plans or a schedule of construction for upgrades to the plant, in addition to violations stemming from the nitrogen levels in its effluent. The city did not respond to questions about the specific list of violations.

Currently, an average of 50 million gallons per day of treated effluent from Bay Park and 4.5 million gallons per day from Long Beach flows into Reynolds Channel, part of the Western Bays.

Nitrogen in the effluent weakens the area's coastal marshlands, which the state says are critical natural buffers against harsh waves and flooding during severe storm events.

About 74 percent of the total nitrogen load in the Western Bays comes from the Bay Park plant, while Long Beach contributes about 5 percent.

The proposed order on consent also says the existing Bay Park plant could be retrofitted to remove additional nitrogen — effectively retiring the idea that the

state would need to spend \$150 million on denitrification at the plant, as it announced it would do.

By retrofitting the plant's current facility, the nitrogen can be reduced without the need to expand the plant's physical size, the DEC said in the order.

The order referenced a March 2014 letter from the DEC to the county stating the state agency does not "foresee circumstances where a nitrogen discharge limit would be more stringent" than what can be achieved with the retrofit — if there is an ocean outfall in place.

The Governor's Office of Storm Recovery said it still is committed to spending the \$150 million for denitrification at the facility, although in August Gov. Andrew M. Cuomo's aides said at a meeting with Long Island environmentalists and others that the state would rather direct the \$150 million to the outfall pipe and wait to see if denitrification was needed at the plant.

That move met with opposition from environmentalists and others, who were concerned that nitrogen still would need to be reduced, even if an ocean outfall was built.

"EPA continues to advise the county to install comprehensive denitrification technology as soon as practicable and take steps to build the ocean outfall," Judith Enck, regional administrator for the U.S. Environmental Protection Agency, said. "We're very concerned about the continuing damage to the Western Bays. So nitrogen removal needs to be prioritized."

The proposed order on consent also would require the county to pay a civil penalty of \$58,680 and spend \$528,120 on environmental benefit projects — a number that includes \$242,440 the county did not spend on the feasibility study, as was required in the 2011 consent order.

The City of Long Beach would have to pay \$20,102 in a civil penalty and spend \$80,410 in environmental benefit projects in or around its borders.

Other corrective measures would include the county and the city adhering to a construction schedule for upgrades at both plants. The county also would have to provide up to two full-time environmental monitors to oversee construction.

Meanwhile, the state and Nassau County still seek a patchwork of sources to fund the pipe.

In September, New York State asked FEMA for approval to use \$150 million of its Hazard Mitigation Grant Program funds for the outfall pipe. The federal agency in May had approved an additional \$210 million in such funds for the state.

That extra money was triggered by a request from Sen. Charles Schumer (D-N.Y.) for FEMA to recalculate the state's portion of federal disaster funds according to a set formula.

The state now is receiving a total of \$1.38 billion under the program. Schumer, among others, had been urging the state to dedicate the additional funds for the outfall pipe.

"The outfall pipe is needed to reduce nitrogen loads caused by Bay Park in Nassau's Western Bays allowing natural, storm-reducing wetlands to grow back and prevent future environmental disasters," Schumer wrote this month to FEMA Administrator Craig Fugate.

FEMA spokesman Ray Perez said the agency will conduct a "thorough review" of the state's application that will consider several factors, including eligibility, cost-effectiveness and engineering feasibility.

Perez said there is no timeline, but “the review will be done as expeditiously as possible.”

“We’re hopeful that it is approved,” said Kristin Devoe, spokeswoman for the state’s Division of Homeland Security and Emergency Services, which administers the hazard mitigation grant program for the state.

State and federal officials previously had requested public-assistance funding from FEMA for the pipe, but those requests had been rejected repeatedly on the grounds that the pipe hadn’t existed when Sandy hit.

But hazard-mitigation money can be used for new projects such as the ocean-outfall pipe, according to FEMA.

In October, the state applied for a \$150 million grant for the pipe from the U.S. Department of Housing and Urban Development, under that agency’s National Disaster Resilience Competition.

And the county also has indicated it is willing to commit to \$150 million in funds for the project, including \$11 million from the Environmental Facilities Corporation, with the rest — \$139 million — coming from the county’s capital budget, a spokesman said.

“To get a half-a-billion-dollar value out of a \$139 million investment does make sense as long as the county is prepared to actually pay the” annual debt service on the funds, said Jon Kaiman, chairman of the Nassau Interim Finance Authority, which oversees the county’s finances.

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