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Via online submission form

(<https://publicworks.baltimorecity.gov/revised-emergency-response-plan-comments>)

Rudolph S. Chow, P.E.

Director, Department of Public Works

City of Baltimore

RE: February 16, 2018 Emergency Response Plan; Baltimore City Sewage
Consent Decree

Dear Mr. Chow:

The Environmental Integrity Project (“EIP”) and Clean Water Action (collectively, “Commenters”) respectfully submit these comments on the Revised Emergency Response Plan released for public comment by the City of Baltimore (“Baltimore” or “City”) on February 16, 2018 (hereinafter the “ERP”). Paragraph 16(a) of the Modified Consent Decree, *United States v. Mayor of Baltimore*, No. JFM-02-1524 (D.Md. October 6, 2017) (hereinafter “Modified Consent Decree”), requires Baltimore to revise its existing Emergency Response Plan to include several provisions relating to sewage releases into buildings that are caused by conditions or malfunctions in the public portion of Baltimore’s sanitary sewer system (hereinafter “Building Backups” or “Backups”). Appendix E to the Modified Consent Decree also provides details with respect to the Expedited Reimbursement Pilot Program and procedures for evaluating and finalizing that program. Commenters appreciate the opportunity to submit these comments on the ERP.

Introduction

These comments focus solely on the sections of the ERP that relate to Building Backups. Specifically, these sections are the Expedited Reimbursement Program, the program for the City’s response to Building Backup reports, the emergency preparedness training program, and the requirements relating to acute and catastrophic failures of system laterals causing Backups. Commenters also hereby incorporate the attached set of comments on the City’s Draft Building Backups Guide – previously submitted by EIP on March 14, 2018 – into these comments in their entirety.¹

The ERP, once it is approved by the Maryland Department of the Environment (“MDE”) and the U.S. Environmental Protection Agency (“EPA”), “shall be incorporated into, and become enforceable under” the Modified Consent Decree.² MDE and EPA may approve, disapprove, or

¹ EIP Comments on Building Backups Guide (March 14, 2018) (Attachment A).

² Modified Consent Decree, Section VI, Para 16(b).

provide comments on the ERP, and, where the ERP is severable, these agencies may separately approve, disapprove, or comment on parts of the plan.³

I. Expedited Reimbursement Program

Appendix E of the Modified Consent Decree sets forth an Expedited Reimbursement Program that allows residents, for the first time, to seek expedited reimbursement of certain costs associated with Building Backups. This program requires that the City must make a written determination on any reimbursement request within 60 days of receiving “all required information in support of a request.”⁴ Commenters appreciate the establishment of this important program, which is necessary to supplement the City’s sometimes-delayed General Claims Program. An EIP analysis in 2015 found that, of 413 claims received by the City between July 1, 2012 and July 1, 2015, 152 claims (37%) remained open and unpaid as of July 1, 2015.⁵ Of these, 122 claims were over a year old.

While we appreciate the establishment of an expedited program, Commenters consider several elements of the Expedited Reimbursement Program to be problematic, as described in more detail below. We understand that some of the elements we consider troublesome are set forth in Appendix E to the Modified Consent Decree, but we also think that the City, EPA, and MDE clearly have the power to change these aspects of the plan. Appendix E expressly characterizes the initial reimbursement program as a “Pilot Program” and provides for evaluation of and alteration of program elements. Specifically, Appendix E requires that the City, EPA, and MDE assess the effectiveness of the Pilot Program 18 months after the implementation of the Pilot Program.⁶ In addition, three years from the implementation of the Pilot Program, the City must evaluate the Pilot Program and develop a plan for a long-term expedited reimbursement program, which will be implemented for the remainder of the Modified Consent Decree period.⁷ The Pilot Program is to be implemented in April 2018. Thus, the 18-month assessment will take place in October 2019 and the final evaluation and establishment of a long-term expedited reimbursement program will take place in April 2021.

A. The City Should Make the Expedited Reimbursement Program Available for All Backups Caused by Conditions in the Public Collection System, Not Just Backups Caused by Wet Weather Events.

The Expedited Reimbursement Program is limited, in both the ERP and Appendix E of the Modified Consent Decree, to Building Backups caused by “surcharging in the Collection System caused by wet-weather events.”⁸ This prohibits residents from accessing this important

³ *Id.*, Para 20(b).

⁴ Modified Consent Decree, App. E., p. 1.

⁵ Data regarding claims is based on records received in response to an information request sent to the City under the Maryland Public Information Act on June 22, 2015. They likely represent only a fraction of the total complaints about sewage backups submitted to the City during this time period as many residents use the City’s 311 complaint hotline to report problems.

⁶ Modified Consent Decree, App. E, p. 3.

⁷ *Id.*

⁸ Modified Consent Decree, App. E, p. 1; ERP at 2-5.

program for all infrastructure-related events, including problems caused by blockages in the publicly-owned portions of the Collection System.

Commenters are concerned that this may prevent residents from accessing the Expedited Reimbursement Program for many Building Backups, possibly the vast majority of such Backups. We have been unable to identify a summary of the cause of Building Backups in Baltimore City for any time period, and we strongly urge the City to start making such a summary available in its quarterly reports.⁹ However, as a point of reference, the City of New York produces annual “State of the Sewers” reports that include a breakdown of the causes of building backups city-wide and for each of the city’s five boroughs. In 2016, only 8% of city-wide backups are identified as being caused by “heavy rain,” whereas 71% were due to grease, 16% were due to debris, and 5% are attributed to “other.”¹⁰ If the breakdown is similar in Baltimore, then residents would be unable to submit requests to the Expedited Reimbursement Program for the vast majority of Building Backups that occur in Baltimore City.

B. The City Should Revise the ERP to Remove Language Prohibiting Residents from Accessing the Expedited Reimbursement Program for Backups Caused by Five-Year or Ten-Year Storms.

Commenters also strongly object to the City’s attempt to prohibit residents from using the Expedited Reimbursement Program if the Building Backup was caused by a larger storm (i.e., five-year storms or greater). This restriction, which appears to further narrow the set of Building Backups for which residents can access the expedited program, is one that appears in the ERP but not in Appendix E to the Modified Consent Decree. The City should revise the ERP to remove this restriction, and EPA and MDE should not approve the ERP unless this language is removed.

The ERP states that the Pilot Program “will not apply to wet weather events that exceed the applicable level of protection established in the [Modified Consent Decree].”¹¹ As an initial matter, the meaning of this language is not clear and the City must, at minimum, revise the ERP to clarify. The Modified Consent Decree defines “level of protection” to mean “all the rehabilitation projects and corrective actions necessary to limit the occurrence of sanitary sewer overflows to one event for each of the specified return periods of time (e.g. one overflow event in five years). [Level of protection] shall be based on peak flow recurrence.”¹² It is not immediately apparent how this definition can be applied to limit the Expedited Reimbursement Program for Backups as set forth in the ERP. Commenters believe that the City’s intent may be

⁹ The City’s quarterly report for the quarter ending 12/31/17 includes a required table of backups occurring during the quarter, with information for each event. *Modified Calendar Quarterly Report No. 1 for Calendar Quarter Ending December 31, 2017*, Att. 3, pp. 22-62. However, there is no summary information relating to this table, such as the total number of backups and percent of backups caused by different events. In addition, the table identifies the cause of all backups as “mainline” and/or “lateral.” Based on the information in this table, a reader would assume that no backup that occurred during the 4th quarter of 2017 was caused by a wet weather event, which seems unlikely.

¹⁰ New York City Department of Environmental Protection, *State of the Sewers 2016; Performance Metrics*, p. 7 at <http://www.nyc.gov/html/dep/pdf/reports/state-of-the-sewers-2016.pdf>

¹¹ ERP at 2-5.

¹² Modified Consent Decree, Section V, Para 7(p).

to apply the levels of protection required for different areas of the City under the Phase II Sewershed Plan section of the Modified Consent Decree. This section states that a 10-year level of protection applies in “Sensitive Areas” and a 5-year level of protection applies in all other areas.¹³ “Sensitive Areas” include waters with threatened or endangered species and their habitat, public drinking water intakes or their designated protection areas, and “areas within one hundred (100) feet from a public recreation area, a school, a day care center, a hospital or a similar establishment with potentially sensitive populations.”¹⁴

If it is, in fact, the City’s intent to prohibit residents living in sensitive areas from recovering under the Expedited Reimbursement Program for a Backup caused by a 10-year storm and residents living elsewhere from recovering for a Backup caused by a 5-year storm, then these limitations are completely arbitrary. A person’s home should be considered the most sensitive area that there is in terms of providing protection from sewage. It appears utterly inappropriate to apply this standard to a program meant to assist people facing the health and financial risks of raw sewage inside of their homes.

Further, 5-year and 10-year storms are far too frequent for this kind of a limitation, and these storms are increasing as climate change causes the number of extreme weather events to rise. According to the U.S. Global Change Research Program, “the frequency of heavy downpours is projected to continue to increase [with time],” with the Northeast already experiencing a 71 percent increase in precipitation over the last 50 years.¹⁵ An analysis by Climate Central, an organization of journalists and scientists reporting on climate change,¹⁶ found that, in Baltimore City, there was a 67% increase in the heaviest precipitation events from the 1950s to the 10-year period ending in 2016.¹⁷ This caused the organization to rank Baltimore 31st in its list of U.S. cities with the biggest increases in heavy downpours.

The City must remove the language from the ERP that purports to limit the Expedited Reimbursement Program based on “level of protection.”

C. The Expedited Reimbursement Program Should Not Cap Recovery at \$2,500 or Prohibit Residents from Receiving Reimbursement for Property Loss. At the Very Least, the City Should Exempt Persons Experiencing Financial Hardship From These Limits.

The ERP and Appendix E to the Modified Consent Decree place two significant restrictions on the ability of residents to recover monetarily under the Expedited Reimbursement Program. First, the City is preventing persons affected by Backups from seeking expedited reimbursement for any property loss – including real or personal property – caused by the Backup. The Expedited Reimbursement Program is limited to costs of clean-up and disinfection

¹³ Modified Consent Decree, Section VI, Para 9(b)(i).

¹⁴ Modified Consent Decree, Section V, Para 7(dd).

¹⁵ U.S. *Global Change Research Program, National Climate Assessment* (2014), at <https://nca2014.globalchange.gov/report>.

¹⁶ Climate Central, *Who We Are*, at <http://www.climatecentral.org/>.

¹⁷ Climate Central, *Across U.S. Heaviest Downpours on the Rise* (May 27, 2015), at <http://www.climatecentral.org/news/across-us-heaviest-downpours-on-the-rise-18989>. The analysis looked at the days where total precipitation exceeded the top 1% of all rain and snow days.

only. Second, the total amount that a resident can be reimbursed under the expedited program is capped at \$2,500 per residence for each incident.

The cost to residents dealing with sewage Backups can be in the tens of thousands of dollars. Many people have relatively expensive fixtures, such as furnaces or hot water heaters, in their basements. The fact that the Expedited Reimbursement Program is capped at \$2,500 and does not include property loss will require many residents to continue to seek recovery for property loss, a substantial portion of the costs associated with Backups, through the much slower General Claims Program. This poses a particular hardship to residents with limited finances and/or residents on a fixed income, such as retired persons. The City should revise the Plan to allow residents to seek reimbursement for at least some property costs and should also raise the cap on recovery. At the very least, the City should consider establishing such a program for residents who are experiencing financial hardship and have particular difficulty paying for the costs associated with a Backup.

D. The City Should Revise the ERP to Provide a Time Frame by Which the City Must Issue Payment After it Determines That the Resident is Entitled to Reimbursement.

An essential feature of the Expedited Reimbursement Program is that it is expedited. The City is required under the ERP and Appendix E to the Modified Consent Decree to make a determination on reimbursement requests within 60 days of receiving all necessary documents.¹⁸ However, once the determination has been made, neither Appendix E of the Modified Consent Decree nor the ERP requires that payment be issued within a certain time frame. This program is intended to ensure that residents, especially those experiencing financial hardship, receive some financial assistance for Building Backups that they had no fault in causing. If a determination is made but payment is not issued in a timely manner, which is a possibility under the current draft of the ERP, then the expedited time frame for the determination will make no difference to the affected resident. The City should revise the ERP to include a time frame by which the City must issue payment after a determination has been made that the resident is entitled to reimbursement. Commenters believe that such a payment should be mailed by the City within 7 business days of the City's receipt of a signed release from the resident.

E. The City Must Revise the ERP to Clarify that Residents Need Sign a Release Only for Cleanup and Disinfection Costs in Order to Receive Reimbursement. The City Should Further Limit the Release to the Actual Amount Received, Rather Than All Potential Cleanup and Disinfection Costs.

The ERP and Appendix E of the Modified Consent Decree provide that a resident may obtain reimbursement under the expedited program only if he or she signs a release. Appendix E to the Modified Consent Decree expressly states that such a release will be for costs of cleanup and disinfection and that costs of property damage may still be pursued under the General Claims Program.¹⁹ However, the ERP refers to a release that must be signed in order to receive reimbursement and does not expressly limit this release to costs of cleanup and disinfection. The ERP states: “[i]f [the DPW Office of Legal and Regulatory Affairs (“OLRA”)] determines that

¹⁸ Modified Consent Decree, App. E., p. 1.

¹⁹ Modified Consent Decree, App. E., p. 2.

an application is eligible for reimbursement, OLRA will provide the homeowner with a final, written determination and include a release for signature. OLRA will not authorize reimbursement for any application until a signed release is received.”²⁰ The City must revise this section to clarify that the release may be only for costs of cleanup and disinfection and that a resident may still seek costs of property damage through the General Claims Program. MDE and EPA should not approve the ERP unless this change is made.

In addition, even with this revision made, the general approach may force residents to make the difficult choice between receiving limited reimbursement for cleanup costs sooner and potentially receiving full and fair recovery at an unknown future date. The City should also revise the ERP to state that the release is for only the amount actually received under the Expedited Reimbursement Program. This is particularly important as the ERP includes no provision guaranteeing that each resident will receive the full \$2,500 in capped costs for cleanup. If a resident is awarded only \$800 under the Expedited Reimbursement Program - due to investigator error, lack of funds in the expedited program, or for some other reason – but would have been entitled to \$5,000 in reimbursement for cleanup and disinfection costs under the General Claims Program, it is unfair for that resident to be penalized for receiving a small portion of the total costs of the Backup under the expedited program.

II. Building Backups Response Program

The Modified Consent Decree also requires that the ERP include the City’s plans for responding to Building Backups and conducting associated activities. Specifically, the ERP must include:

A detailed plan describing the standard operating procedures that Baltimore will have in place and follow in order to track, identify, respond to and relieve Building Backups as soon as possible. The plan shall include identification of the City offices responsible for tracking and responding to reports of Building Backups; timeframes for response; training to ensure the preparedness, including responsiveness, of call center and response personnel; procedures for determining whether a water-in-cellar incident is a Building Backup and for determining the cause of Building Backups²¹

A. The City Should Provide Assistance with Cleanup As Part of the Backups Response Program.

Neither the Modified Consent Decree nor the ERP requires that the City must provide cleanup assistance to residents experiencing a Building Backup. However, nothing in the Modified Consent Decree prohibits the City from providing such services, either directly or through a contractor. “Response” is not defined in the Modified Consent Decree, and may be interpreted to include provision of cleanup services. Thus, the City may choose to include cleanup assistance in the ERP, and Commenters believe that the City should do this.

²⁰ ERP at 2-7.

²¹ Modified Consent Decree, Section VI, Para 16(a)(xi).

i. The Cincinnati Area May Serve As a Model for a Baltimore Cleanup Assistance Program.

Several local sanitary sewer authorities provide cleanup assistance to residents experiencing building backups. The Metropolitan Sewer District of Greater Cincinnati (“MSD”) provides cleanup assistance, through a contractor, at no charge to residents who experience backups caused by the public sewer system.²² MSD’s cleanup process is described on its website and includes cleanup, basement drying, and post-cleanup inspection.²³ After a “catastrophic” rainstorm in August 2016, MSD took the step of “adding professional cleaning contractors to expedite cleanups” after receiving more than 2,600 reports of backups, about 1,940 of which were approved for cleanup.²⁴

In addition, it does not appear that MSD serves a population that is drastically wealthier or larger than Baltimore City’s. MSD “serves homes, businesses, and institutions in 43 of the 49 cities, villages and townships in Hamilton County, [Ohio] as well as a small number of properties in Butler, Clermont and Warren counties.”²⁵ Its service area includes the City of Cincinnati.²⁶ Table 1 below provides a rough comparison, using data for Hamilton County, Ohio, between the populations served by MSD and Baltimore City’s DPW. Given the relative similarity between the two populations, it does not appear unreasonable to think that Baltimore City could provide its residents with a similar level of cleanup assistance with basement sewage Backups.

	Baltimore City	Hamilton County, OH
Total Population	621,000	802,374
Median Household Income	\$44,262	\$50,399
% of Individuals Living Below Poverty Level	23.1%	17.8%

²² MSD, Cleanup Assistance, at <http://sbu.msdcg.org/sbu/page/cleanup-assistance.aspx>.

²³ MSD, Cleanup Assistance/Cleanup Procedures, at <http://sbu.msdcg.org/sbu/page/cleanup-procedures.aspx>.

²⁴ MSD Press Release, Assistance from MSD’s Sewer Backup Response (SBU) Program for August 28th Rainstorm (Oct. 17, 2016), at http://msdcg.org/downloads/news/Press_Release_Sewer_Backup_Update_10-17-16_Rev1.pdf.

²⁵ MSD, About Us, at <http://sbu.msdcg.org/sbu/page/about.aspx>.

²⁶ MSD, Political Subdivisions Served by MSD, at http://www.msdcg.org/about_msdcg/political_subdivisions/index.html.

²⁷ U.S. Census Bureau, American Community Survey, 5-year estimate (2012-2016) at https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml.

ii. Several Local Sewer Authorities Provide Cleanup Assistance to Residents Experiencing Backups.

In addition to Cincinnati, the following local governments also provide or appear to provide cleanup assistance:

- **King County, Washington.** Though not required under its sewage system Consent Decree,²⁸ King County, Washington, which includes the City of Seattle, states on its website that the county provides emergency cleanup support to residents who experience a residential sewage spill caused by the regional conveyance system.²⁹
- **The City of Gresham, Oregon.** The City’s website states it is the City’s responsibility to respond to all sewer backups by, among other things “provid[ing] initial, preliminary clean up in order to protect public health.” For sewage backups within homes and buildings, “cleanup . . . may be completed by one of the City’s service providers, unless the cause of the backup is clearly the responsibility of the private property owner.”³⁰
- **The Washington Suburban Sanitary Commission (“WSSC”).** Although not advertised on its website,³¹ WSSC, which is the wastewater utility serving Montgomery and Prince George’s Counties in Maryland, is required to provide some cleanup assistance under its sewage Consent Decree to residents who experience building backups. That Consent Decree states that WSSC’s Emergency Response Plan must include “[a] description of WSSC’s response to Building Backups including . . . [t]he measures taken to cleanup Building Backups found to be caused by conditions in WSSC’s Collection System.”³² WSSC’s Emergency Response Plan must also include “[a] description of WSSC’s follow-up process to insure adequacy of cleanup.”³³
- **The City of Akron, Ohio.** Similarly, while not advertised on its website,³⁴ Akron is required under its sewage Consent Decree to include in its Emergency Response Plan “[a] description of [its] procedures for responding to Building/Property Backups, including . . . the measures for cleanup of Building/Property Backups found to be caused by conditions in Akron’s Sewer

²⁸ See King County, WA Consent Decree, available at <https://www.epa.gov/sites/production/files/documents/kingcountywashington-cd.pdf>.

²⁹ King County, Sewage spill response, Call for help, at <https://www.kingcounty.gov/depts/dnrp/wtd/response/sewage-spill.aspx>.

³⁰ City of Gresham, Oregon, Sewer backup brochure, available for download at <https://greshamoregon.gov/Sewer-Backups/>.

³¹ See WSSC, Sewer Blockages and Backups, at <https://www.wsscwater.com/backups>.

³² WSSC Consent Decree, Article 12, Para B(2)(b)(ii), available at https://www.wsscwater.com/files/live/sites/wssc/files/PDFs/Final_CD_w_Signatures_1010853.pdf.

³³ WSSC Consent Decree, Article 12, Para B(2)(c).

³⁴ See City of Akron, Ohio, Basement Backups/Odors/Lateral Inspections, at http://www.akronohio.gov/cms/sewer/sm_basement/index.html.

System (such as procedures to ensure disinfection or removal of items potentially contaminated by Building/Property Backups)”³⁵

B. The City Must Revise the ERP to Clarify Time Frames for Response After a Backup is Reported.

Commenters respectfully request that the City revise the ERP to clarify the time frames for responding to a report of a Building Backup, which time frames are a required component of the ERP under the Modified Consent Decree.³⁶ The ERP states that, once DPW assigns a Utility Maintenance Division Investigator to a Backup service request, the service request “is to be investigated as soon as possible, but in no case later than 48 hours.”³⁷ The City should revise the ERP to clarify whether this 48 hours is being measured from the time the service request is made, or from the time DPW assigns the Investigator to the service request. If the City means the latter, then the ERP should also state a time period for DPW to assign an Investigator to the service request. Commenters believe that the time frame for responding should be 48 hours from the time that the service request is made.

In addition, in two subsections of the ERP - Procedures for Addressing Mainline Blockages and Addressing Collection System Lateral Blockages – it states that the City typically responds within five hours after the Work Order is assigned.³⁸ Here, it is similarly unclear how long the response will take when measured from the time that the Backup is reported. The City should revise the ERP to state the time frame for assigning the Work Order after the initial service request is made and/or the total time frame for response when measured from the time that the service request is made.

III. Emergency Preparedness Training Program.

The Modified Consent Decree requires the City to incorporate into its ERP “[a] detailed plan describing the standard operating procedures that Baltimore will have in place and follow in order to track, identify, respond to and relieve Building Backups as soon as possible The plan shall include . . . training to ensure the preparedness, including responsiveness, of call center and response personnel”³⁹ The ERP lays out the details of its Preparedness Training Program for Building Backups in Table 7-3.⁴⁰ Given the important role they will play in carrying out the City’s programs related to Building Backups, Commenters emphasize the importance of sufficiently training both 311 operators and investigators.

³⁵ Akron Consent Decree, Attachment C, p. 8, *available at* <https://www.epa.gov/sites/production/files/documents/amendedcityofakron-cd.pdf>.

³⁶ Modified Consent Decree, Section VI, Para 16(a)(xi).

³⁷ ERP at 2-1.

³⁸ ERP at 2-2, 2-3.

³⁹ Modified Consent Decree, Section VI, Para 16(a)(xi).

⁴⁰ ERP at 7-4.

A. The City Must Ensure That 311 System Personnel are Properly Trained to Provide Information to Callers with Building Backup Inquiries and to Properly Handle Service Requests.

The ERP fails to meet the Modified Consent Decree requirement that the ERP include provisions for training “call center . . . personnel”⁴¹ because the plan omits the City’s 311 call system personnel from its list of City staff required to receive preparedness training for Building Backups. Currently, the ERP states that staff from the following City departments will receive preparedness training for Building Backups: “Utility Maintenance Division Supervisors, Superintendents, Investigators and crews; Public Information Officers; as appropriate, employees from the following Offices in DPW: Office of Asset Management, Office of Engineering and Construction, Control One; [and] Baltimore City Health Department.”⁴²

In addition to being a requirement under the Modified Consent Decree, training of 311 system operators and those reviewing service requests made through the 311 system online is important because these staff members will most likely be the first City representatives that homeowners and residents speak to after experiencing a Building Backup. The 311 system personnel should be well-versed in all Building Backup programs, including the City’s response program, Expedited Reimbursement Program, and the General Claims Program. The 311 personnel should be trained to warn callers of the health risks from coming into contact with sewage and be able to guide callers on how to obtain more information on the City’s Building Backup programs (e.g., how to receive the Sewage Backup Guide). Further, the 311 system operators should advise callers on the importance of calling 311 within 24 hours of discovering that a Building Backup has occurred and submitting a service request for each Building Backup event. Comments first expressed the importance of properly training 311 operators in our January 19, 2018 comments on the draft Revised Operation and Maintenance Plan, since the City is also relying on service requests made through the 311 system to identify laterals to replace or repair for its Lateral Prioritization Program.⁴³

B. The City Must Ensure That Investigators are Properly Trained to Respond to Building Backups.

Second, Commenters stress the importance of properly training the Investigators responding to Building Backup service requests. Investigators are responsible for properly identifying events as Building Backups that may qualify for the City’s Expedited Reimbursement Program and/or General Claims Program, as well as identifying laterals causing Building Backups for the City’s Lateral Prioritization Program. For these reasons, the City must ensure that the Investigators are properly trained to respond to Building Backups.

IV. The City Has Failed to Comply with the Modified Consent Decree Requirement Relating to Acute and Catastrophic Failures of Lateral Lines Causing Building Backups.

Between the ERP and the Operations and Management Plan (“O&M Plan”), the City has still failed to set forth procedures that meet the Modified Consent Decree’s mandate relating to

⁴¹ Modified Consent Decree, Section VI, Para 16(a)(xi).

⁴² ERP at 7-2.

⁴³ See O&M Plan, Section 5.

“acute or catastrophic failures [of laterals] causing Building Backups.” The Modified Consent Decree clearly states that a program must be established “to prioritize corrective action in Collection System laterals that cause recurring Building Backups” and that this program must include “prompt repair or replacement of laterals with acute or catastrophic failures causing Building Backups. . . .”⁴⁴ The Modified Consent Decree requires that this program must be set forth in the City’s O&M Plan, but the O&M Plan released by the City for public comment on December 19, 2017 states that this plan will be in the ERP.⁴⁵

The ERP, however, includes only two cursory statements regarding how these failures will be addressed. The first is as follows:

In the event that an acute or catastrophic failure in a lateral has caused a Building Backup, [the Utility Maintenance Division (“UMD”)] will create a child Work Order⁴⁶ and refer to a UMD construction crew or transmit it to [the Office of Engineering and Construction] for repair and/or replacement of the laterals by the On-Call contractor.⁴⁷

In addition, the ERP provides that:

If [an] inspection reveals an acute or catastrophic failure in the Collection System lateral, the crew will either address the issue or notify Control One to create a child Work Order. This may include a Work Order to implement bypass pumping. The referral will be documented and the new Work Order(s) will be assigned by a UMD supervisor to the appropriate UMD crew or transmitted to [the Office of Engineering and Construction] for assignment to an On-Call contractor for resolution as soon as possible.⁴⁸

Lastly,⁴⁹ the ERP lists “addressing acute or catastrophic failures in Collection System laterals” among the topics on which response and call center personnel will receive emergency preparedness training.⁵⁰

These provisions are insufficient to meet the requirements of the Modified Consent Decree. The City must revise the ERP and/or the O&M Plan to include the following provisions relating to the acute and catastrophic failures.

⁴⁴ Modified Consent Decree, Section VI, Para 13(a)(iv).

⁴⁵ O&M Plan at 5-1. (“Collection System laterals with acute or catastrophic failures causing Building Backups will be remediated promptly as provided in the City’s Emergency Response Plan.”) Commenters objected to the City’s failure to include this program in the O&M Plan in their written comments on the O&M Plan dated January 19, 2018.

⁴⁶ A “child Work Order” is described previously in the ERP as a “separate, linked” Work Order. ERP at 2-3.

⁴⁷ ERP at 2-3.

⁴⁸ ERP at 2-4.

⁴⁹ The ERP also states that inspections using closed-circuit television (“CCTV”) will continue “as far as possible” along a lateral if an acute or catastrophic failure is observed. ERP at 2-4. While potentially useful, this cannot be considered part of a program to ensure the prompt repair or replacement of lateral exhibiting such failure.

⁵⁰ ERP at 7-1, 7-3.

A. The City Must Define “Acute or Catastrophic Failures.”

Commenters understand that the Modified Consent Decree does not include a definition of “acute or catastrophic” in the context of the failure of a lateral line (or in any other context). However, we believe that this term must be defined in order for it to have any meaning, particularly in the context of preparedness training. If personnel are to receive training on how to “address”⁵¹ such failures, they will have to be given some instruction on how to identify these failures. Thus, the City will have to define or characterize what constitutes an “acute or catastrophic failure” at some point. The purpose of making the ERP and the O&M Plan available online and for public comment is to increase transparency and allow members of the public, particularly those affected by sewage overflows and backups, to understand the City’s policies. Failing to include the definition of “acute and catastrophic” in the ERP or O&M Plan prevents the public from understanding how the City inevitably defines these failures and from understanding the City’s policy on these failures.

The City must define “acute or catastrophic failures” of lateral lines and revise either the ERP or the O&M Plan, preferably both, to include the definition.

B. The City Must Establish a Plan for Prompt Repair or Replacement of Laterals Experiencing Acute or Catastrophic Failures.

The combined effect of the plans set forth in the ERP and O&M Plan is that, when the City’s crews respond to reports of Building Backups and observe an (as of yet undefined) acute or catastrophic lateral line failure causing the Backup, the crew will address it, which may or may not involve repair or replacement of the failed lateral. There are no provisions ensuring that repair or replacement will take place and, most importantly, there is no requirement that such actions will be prompt. Further, the Modified Consent Decree clearly requires that the plan for repair or replacement of such failures is to be included in the City’s program to identify laterals causing recurring Backups, which is set forth in the O&M Plan.

The City must establish a plan for acute or catastrophic failures of lateral lines causing Backups. As stated above, this must define or characterize said failures. It must also provide a time frame for the City’s repair or replacement of such laterals, in order to ensure that such actions are prompt. If the City believes that repair or replacement of the lines will not always be the proper response in the case of acute or catastrophic failures of lateral lines causing Backups, it may explain the circumstances in which it believe this to be the case and provide for the possibility of a different response in such circumstances.

⁵¹ The City’s use of the word “address” appears inexact in the context of acute or catastrophic failures of lateral lines causing backups, given that the Modified Consent Decree clearly requires that the program for these lateral lines result in specific actions: repair or replacement.

Thank you for the opportunity to submit these comments.

Sincerely,



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March 14, 2018

Via online submission form

(publicworks.baltimorecity.gov/revised-emergency-response-plan-comments)

Rudolph S. Chow, P.E.
Director, Department of Public Works
City of Baltimore

Re: Public Comments on the Baltimore Sewage Backup Guide

Dear Mr. Chow,

The Environmental Integrity Project respectfully submits these comments on the draft Sewage Backup Guide,¹ which the City of Baltimore (“Baltimore” or “City”) was required to develop as part of the Revised Emergency Response Plan (“Revised ERP”) pursuant to Paragraph 16 of the Modified Consent Decree, *United States v. Mayor of Baltimore*, No. JFM-02-1524 (D.Md. October 6, 2017) (hereinafter “Modified Consent Decree”). Paragraph 16 of the Modified Consent Decree requires Baltimore to revise the Emergency Response Plan to “adequately protect the health and welfare of persons in the event of an unpermitted release, spill or discharge of pollutants from the Collection System or in the event of a reported Building Backup.” We appreciate the opportunity to submit these comments on the Sewage Backup Guide.

Introduction

These comments focus solely on the City’s Sewage Backup Guide, which is a deliverable under Paragraph 16 of the Modified Consent Decree. Pursuant to Subparagraph 16(a)(xii) of the Modified Consent Decree, the City’s Revised ERP must include “a detailed description of the actions Baltimore will take to educate the public through appropriate and current methods, including Baltimore’s website, brochures, billing insert and other methods, regarding Building Backups.”² These actions must include:

[D]evelopment of a guide that will be provided to customers whenever Baltimore responds to a sewage backup, and which includes detailed information on:

- (a) How to report suspected Building Backups to the City;

¹ The Sewage Backup Guide is attached hereto as Exhibit 1 and is also available on the Baltimore City Department of Public Works website: https://publicworks.baltimorecity.gov/sites/default/files/Sewage_Backup_Guide.pdf (last accessed Mar. 11, 2018).

² Modified Consent Decree, Para. 16(a)(xii).

- (b) Protection from contact with sewage during cleanup;
 - (c) Potential health effects and safety issues related to contact with sewage;
 - (d) How to clean up Building Backups, including professional cleanup assistance;
- and
- (e) The procedures for filing a claim for cleanup costs and/or damages resulting from Building Backups; including information on how Baltimore evaluates and adjudicates claims regarding Building Backups, how to obtain a claim form and instructions for filing a claim, and the average timetable for claim determination.³

The Revised ERP, once it is approved by the Maryland Department of the Environment (“MDE”) and the U.S. Environmental Protection Agency (“EPA”), “shall be incorporated into, and become enforceable under” the Modified Consent Decree.⁴ MDE and EPA may approve, disapprove, or provide comments on the Revised ERP, and, where the Revised ERP is severable, these agencies may separately approve, disapprove, or comment on parts of the plan.⁵

The City has not attached the Guide to the Revised ERP that was published for public comment. However, we submit these comments on the Sewage Backup Guide because it is clearly a deliverable that is subject to specific requirements under the Modified Consent Decree.⁶ In addition, EIP understands that the Guide will play a significant role in informing Baltimore residents and homeowners on how to protect themselves from the health risks associated with sewage contact and the programs offered by the City to help residents respond to and alleviate the financial burden incurred when a Building Backup event occurs.

I. The Sewage Backup Guide Does Not Adequately Describe the Procedures for Filing a Claim for Cleanup Costs and/or Damages Resulting from Building Backups

The Modified Consent Decree requires that the Sewage Backup Guide provide “detailed information on... [t]he procedures for filing a claim for cleanup costs and/or damages resulting from Building Backups; including information on how Baltimore evaluates and adjudicates claims regarding Building Backups, how to obtain a claim form and instructions for filing a claim, and the average timetable for claim determination.”⁷

Although the Sewage Backup Guide mentions both the Expedited Reimbursement Program and the General Claims Program, it fails to clearly explain how the two programs differ from one another. For example, the Guide fails to state that the financial assistance available to homeowners and residents impacted by Building Backups depends on the cause of the backup. The Sewage Backup Guide also fails to explain that homeowners and residents can be compensated for different types of financial loss through the Expedited Reimbursement Program

³ *Id.*

⁴ *Id.*, Para 16(b).

⁵ *Id.*, Para 20(b).

⁶ *Id.*, Para. 16(a)(xii).

⁷ *Id.*

and General Claims Program. Building backups can inflict substantial unexpected harm on the finances of an individual or family, and can cause a major disruption in the lives of those in the household where the Building Backup event occurred. During this almost certainly stressful time, homeowners and residents should not have to decipher the opportunities available to them. To help homeowners and residents, it is Baltimore’s responsibility to clarify the details of the Expedited Reimbursement Program and the General Claims Program. Further, failure to include this information is a violation of the Modified Consent Decree’s requirement that the City provide “detailed information on... [t]he procedures for filing a claim for cleanup costs and/or damages resulting from Building Backups.”⁸

The current version of the Sewage Backup Guide is also confusing because it lists vital pieces of information for one program but not the other. For example, the Guide states that the Reimbursement Program will cover cleanup and disinfection costs, but fails to mention that the General Claims Program will cover cleanup and disinfection costs as well as property damage and property loss. Meanwhile, while the Sewage Backup Guide states that investigations for a claim submitted through the General Claims Program may take up to 180 days, it fails to mention that the Modified Consent Decree requires the City to make a determination in no more than 60 days after receiving all required documentation.⁹ EIP strongly encourages the City to revise the Sewage Backup Guide to include or make more evident the following detailed information, especially the information that is missing from the current version of the Guide [note: information with an asterisk(*) are not provided in the current version of the Guide]:

	Expedited Reimbursement Program	General Claims Program
Building Backups Covered Under the Program	Backups caused by: <ul style="list-style-type: none"> Capacity issues in the sanitary sewer system caused by wet weather events (that do not exceed the applicable level of protection established in the Modified Consent Decree*)¹⁰ 	Backups caused by: <ul style="list-style-type: none"> Capacity issues in the sanitary sewer system caused by wet weather events* regardless of size of storm Deficiencies in public lateral lines*
Type of Financial Loss Eligible for Reimbursement	<ul style="list-style-type: none"> Cleanup and disinfection costs only 	<ul style="list-style-type: none"> Cleanup and disinfection costs* Property damage and loss (e.g., furniture; hot water heater)*
Monetary Cap on Reimbursement?	Yes; \$2,500	No*

⁸ *Id.*

⁹ *Id.*, App. E., pg. 2.

¹⁰ EIP strongly objects to the City’s decision to preclude from its Expedited Reimbursement Program those homeowners and residents suffering from Building Backups caused by wet weather events larger than the five-year or ten-year level of protection. As we will lay out in our March 23, 2018 comments on the Emergency Response Plan, this exclusion was not approved of in the Modified Consent Decree.

	Expedited Reimbursement Program	General Claims Program
City Department to Submit Application/Claim and to Contact with Inquiries	Department of Public Works, Official of Legal and Regulatory Affairs (410) 396-3312* between 8:30am and 4:30pm*	City Law Department (410) 396-3400 between 8:30am and 4:30pm
Deadline to Submit Application/Claim	Call 311 to report backup within 24 hours . Submit application to DPW within 90 days of incident.	Submit claim to Law Department within 1 year of incident.
Documentation to Submit Along with Application/Claim	Unclear	Bills, photographs, receipts, estimates
Deadline By Which the City Must Respond	60 days*	None; Guide states that investigations may take up to 180 days, but the City has taken more than a year to respond to numerous claims.

*Not provided in current Sewage Backup Guide

The Sewage Backup Guide must also state “the average timetable for claim determination,”¹¹ and this information does not appear in the current draft of the Guide. This is a different metric than the deadline by which the City must respond to a claim. While we understand that the City does not yet have this information for claims submitted under the Expedited Reimbursement Program, it must include this information in the Guide for the General Claims Program.

EIP also believes that the Sewage Backup Guide should include, but not be limited to, the following:

- (1) List the “documentation” that applicants must submit along with their applications for the Expedited Reimbursement Program. The City should make it clear what required documentation is needed, as the City must “make its determination in no more than 60 days from receiving all required documentation...”¹²
- (2) Emphasize the importance in providing updated contact information to the Department of Public Works in the application for the Expedited Reimbursement Program and while the application is pending, as the City’s 60 day time-limit to make a determination only tolls upon receipt of a completed application.
- (3) Clearly state that homeowners and residents can take advantage of both the Expedited Reimbursement Program and the General Claims Program. Although a homeowner or resident can only recover for the costs of cleanup and disinfection through one program for each Building Backup event, he or she can recover simultaneously for

¹¹ Modified Consent Decree, Para. 16(a)(xii)(e).

¹² *Id.*, App. E., pg. 2.

the costs of cleanup and disinfection through the Expedited Reimbursement Program and the costs of property damage or loss through the General Claims Program, for each Building Backup event.

II. The Sewage Backup Guide Should State the Importance of Reporting Each Building Backup Incident to 311.

EIP recommends that the City revise its Sewage Backup Guide to emphasize the importance of reporting each Building Backup incident to 311. Moreover, the Guide should clearly advise that during the call or online report to 311, homeowners and residents should make a service request for the City to respond to, stop, and investigate the cause of the backup. It is important for the City to emphasize contacting 311 since many of Baltimore's programs relating to Building Backups rely on homeowners and residents to notify 311 of each Building Backup event. As mentioned in the previous chart, a homeowner or resident must first contact 311 within 24 hours upon discovering a Backup in order to be eligible for the City's Expedited Reimbursement Program.¹³ Further, Baltimore's Lateral Prioritization Program, in which the City prioritizes the replacement or repair of lateral lines causing Building Backups, relies on service requests made through the 311 system to identify lateral lines for this program.¹⁴

III. Dissemination

The Modified Consent Decree requires Baltimore to educate the public regarding the actions it will take related to Building Backups "through appropriate and current methods, including Baltimore's website, brochures, billing insert, and other methods..."¹⁵ Currently, the City plans to distribute the Sewage Backup Guide "to customers when the City responds to sewage backups..."¹⁶ Although EIP agrees that the City should provide the Sewage Backup Guide when responding to a Backup, it is contrary to common sense for this to be the first instance in which Baltimore provides hardcopies to the public. The City has also developed a program for responding to Building Backups and a reimbursement program for Backups, as required under the Modified Consent Decree.¹⁷ However, as previously mentioned, the City places the burden on homeowners and residents experiencing a Building Backup to contact 311 before it will respond or allow recovery of cleanup costs through the Expedited Reimbursement Program. If the Guide is meant to educate the public about these programs, it is backwards to first provide the Guide during performance of one of these programs.

To resolve the problem described above, the City must include the Sewage Backup Guide as an annual billing insert along with residents' water bills. The importance of distributing the Sewage Backup Guide to Baltimoreans should outweigh any financial costs of printing and mailing the Guide, especially since the Department of Public Works will be distributing a new monthly newsletter on the Department's initiatives and activities along with monthly water bills mailed to

¹³ *Id.*; Draft Revised ERP, pg. 2-6.

¹⁴ Revised Operation and Maintenance Plan, pg. 5-1.

¹⁵ Modified Consent Decree, Para. 16(a)(xii).

¹⁶ Draft Revised ERP, pg. 2-6.

¹⁷ Modified Consent Decree, Para 16(a)(xi).

Baltimore City residents.¹⁸ It is our understanding that this monthly newsletter is completely voluntary. Since the development of the Sewage Backup Guide is a requirement of the Modified Consent Decree, which also mandates that the City distribute detailed information of its actions regarding Building Backups “through appropriate and current methods, including...billing insert...”, Baltimore must mail out the Guide annually to residents along with their water bills.

Further, EIP recommends that the City make the Sewage Backup Guide more visible and accessible on the Department of Public Work’s website. Presently, the public can access the Guide online through the webpage for the Modified Consent Decree by clicking on a link titled: Learn More About Preventing Basement Backups (*see* <https://publicworks.baltimorecity.gov/sewer-consent-decree>). We believe the location of the Guide is insufficiently noticeable. Moreover, this reference is misleading, as much of the information provided in the Guide relate to programs that Baltimore is required to implement through the Modified Consent Decree for Building Backups that are caused by the City’s sewer infrastructure – which are unpreventable by homeowners or residents through no fault of their own.

Thank you for the opportunity to submit these comments.

Sincerely,



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¹⁸ See attached Email from Baltimore Department of Public Works re: “DPW Introduces Customer Report Newsletter” (Mar. 6, 2018).

Sylvia Lam

To: jkunze@cleanwater.org
Subject: RE: DPW Introduces "Customer Report" Newsletter

-----Original Message-----

From: "Baltimore Public Works" <baltimorecity@alerts.baltimorecity.gov>
Sent: Tuesday, March 6, 2018 9:00am
To: jkunze@cleanwater.org
Subject: DPW Introduces "Customer Report" Newsletter



FOR IMMEDIATE RELEASE

Tuesday, March 6, 2018

Having trouble viewing this email? [View it as a Web page.](#)



DPW Introduces Monthly Newsletter
Look for the Customer Report Newsletter in March Water Bills

The Baltimore City Department of Public Works (DPW) is pleased to introduce the *Customer Report*, a new monthly newsletter providing essential information about DPW initiatives and activities.

Starting in March, a printed copy of the newsletter will arrive with monthly water bills mailed to Baltimore City residents. The newsletter will also be available on the DPW website:

<https://publicworks.baltimorecity.gov/>.

“This newsletter is one more way for us to provide information about DPW and to better inform and engage our customers,” said DPW Director Rudolph S. Chow, P.E. “At DPW, our most important priority is to serve the citizens of Baltimore.”

The first edition of the *Customer Report* includes information water main repair activity during the “Bigger Freeze,” Dec. 24, 2017, to Jan. 23, 2018, and upcoming DPW events.

[DPW "Customer Report" Newsletter](#)

Customer Report



Baltimore City Department of Public Works

2018 | Volume I

Director's Welcome



Welcome to Customer Report, the new newsletter from the Baltimore City Department of Public Works (DPW)! This is one more way for us to give you information about DPW, and help you understand how we serve you, your neighborhood, and all of Baltimore. Customer Report will arrive with your monthly water bill.

DPW is an essential part of your everyday life. In addition to providing drinking water, we also collect and clean your wastewater, maintain the stormwater system, collect your trash and recycling, clean the streets, and even help the City make sustainable energy choices. We help develop the local economy through investments in our infrastructure, promote new technology in our engineering and asset management offices, and work to protect the environment.

Most importantly, we're here to serve the citizens of Baltimore. If you need a DPW cleaning or water-related service, please call 311 to let us know about it. Our Customer Support and Services Division provides water billing assistance for our customers. Reach our trained representatives at 410-396-5398 or send an email to DPW.Billing@baltimorecity.gov for help understanding charges on your bill. You may contact this division if you are having difficulty paying your bill.

DPW customers can monitor water costs and daily water usage with the online water billing portal at <https://waterbillportal.baltimorecity.gov>.

By working together we move the City forward!

Rudolph S. Chow, P.E.
Director, Department of Public Works

DPW Fights the Cold, Fixes Hundreds of Main Breaks

The winter has turned a corner toward spring. February temperatures moderated from the bitter cold of late December and virtually all of January. With temperatures hovering just above zero degrees Fahrenheit, and water pipes buckling amid the prolonged deep freeze, thousands of requests for water service assistance came in to the 311 Call Center during the first month of winter.

Consider:

- The impact was in some ways even more severe than the "Big Freeze" of January 2014. During that month the Department of Public Works addressed over 300 water main breaks alone, along with hundreds of frozen meters and service lines.

- During this latest one-month "Bigger Freeze" from Dec. 24, 2017, to Jan. 23, 2018, DPW responded to 559 confirmed water main breaks! That is roughly half of all the water main breaks in 2017.
- There were more than 5,600 "No Water" complaints related to the freezing, and sometimes breaking, of smaller service lines and water meters.



Water main repair at W. Baltimore Street & N. Howard Street.

- DPW crews worked around-the-clock on 12-hour shifts, with crews from our on-call contractors to thaw lines and meters, repair broken mains, and replace damaged lines and valves. All of this was done in the bitter cold because of the critical need to keep the water flowing to our customers.

If your property was affected by a frozen or broken service line or water meter, take precautions. Simple steps to protect your pipes include:

- Turn off water to, and drain, outdoor spigots.
- Insulate indoor pipes from the cold.
- Keep a thin but steady stream of water flowing when temperatures drop below 25 degrees.

###

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After hours, weekends, or holidays please call 410-396-3100 for the duty officer

The Baltimore City Department of Public Works supports the health, environment, and economy of our City and region by cleaning our neighborhoods and waterways and providing its customers with safe drinking water and sustainable energy practices.

For additional information visit: publicworks.baltimorecity.gov; [Facebook](#) and [Nextdoor](#) at Baltimore City Department of Public Works; and Twitter at [@BaltimoreDPW](#).



Questions?
[Contact Us](#)

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This email was sent to jkunze@cleanwater.org on behalf of: City of Baltimore · 100 N. Holliday Street · Baltimore, MD 21202 · 443-263-2220