

City of Rehoboth Beach Wastewater Projects
Public Hearing Speaker List
November 15, 2016

Name	E-Mail Address	Request Date	Request Time
1. John Weber	jweber@surfrider.org	10-12-16	1:03 PM
2. Gregg Rosner	3lungho@gmail.com	10-12-16	1:22 PM
3. Thomas McGlone	temcglone@comcast.net	10-17-16	2:46 PM
4. Laura Hansen Reynolds	laura9hansen@gmail.com	10-24-16	11:35 AM
5. John Doerfler	chair@delaware.surfrider.org	10-25-16	3:45 PM
6. Hans Medlarz	hans.medlarz@sussexcountyde.gov	11-3-16	8:15 AM
7. Frank Monteferrante	fmonte@comcast.net	11-9-16	8:50 PM
8. William Moore	William.Moore@state.de.us	11-9-16	3:16 PM
9. Walter Brittingham	Called Michael Globetti	11-10-16	2:17 PM
10. Susan Gay	susang1214@comcast.net	11-10-16	5:17 PM
11. Ed O'Connor	edco215@gmail.com	11-11-16	1:26 PM
12. Suzanne Thurman	merrinstitute@gmail.com	11-11-16	3:16 PM
13. Elisabeth Stoner	stoner555@comcast.net	11-12-16	7:41 AM
14. Pete Basile	longboardov@yahoo.com	11-14-16	9:34 AM

Cannot attend.

- Thank-you for this opportunity to speak. I'm Gregg Rosner, and I have a simple ask this evening; that the ocean habitat in Delaware be conserved in compliance with state and federal laws. Both are mutually symbiotic and connected. If the laws are upheld, then all proposed outfall permits must be denied.
 - DNREC has failed for ten years in the presentation of the following specific regulatory facts or concerns, (Federal and state) related in the proposed ocean outfall project final EIS, or any other publicly disseminated paperwork or meetings.
 - The EIS lacks a discussion of either federal or state laws as directed by National Environmental Protection Act (NEPA) which require agencies to "discuss" project alignment with other environmental laws. For the US Army Corps of Engineers, required permit, the NEPA process in its totality is a federal standard and a best practice policy for the interest of the public.
 - Specifically in 40 C.F.R. § 1506.2 (b) Federal agencies shall cooperate with State and local agencies to the fullest extent possible to include: (1) Joint planning processes. (2) Joint environmental research and studies. (3) Joint environmental assessments. **This provision also indicates that "[EISs] shall discuss any inconsistency of a proposed action with any approved State or local plan and laws" to "better integrate environmental impact statements into State or local planning processes.**
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- The merits of this public hearing as directed in Delaware law, is based on "the standard of proof for each findings of fact is by a preponderance of the evidence." **This regulatory discussion is prohibitively propriety under the directive of DNREC, and all concerned citizens lack information to properly address regulatory and subsequent environmental integration of the project.**
 - The environmental analysis in NEPA must be conducted in a neutral and factual manner. The EIS contains extensive bias and prejudice for an ocean outfall.
 - **The applicable statutory and regulatory directives are as follows. Both the proposed project EIS and Record of Decision conclude that all marine species will avoid habitat of the proposed outfall. This clearly violates;**
 - **The Marine Mammal Protection Act defines a Level B Harassment (1994)** as any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

- **The Endangered Species Act (1971)**
Under US Code Title 16 - CONSERVATION CHAPTER 35 - ENDANGERED SPECIES ACT §1531(5) The States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.
- This concurs with the Delaware Wildlife Plan, whose implementation and federal funding occurs under ESA Section 6 monies. I question the DNREC expenditure on a program that is deficient in conservation procedures.

State of Delaware regulations under Section 7 Environmental which are in direct conflict with Coastal Zone Management/Federal Consistency and NPDES permitting.

- **§ 5.3.1.3** - The coastal water resources of the state shall be protected and conserved to assure continued availability for public recreational purposes and for the conservation of aquatic life and wildlife. [7Del.C. §6001(a)(4)]
- **§ 5.3.1.4** - It is the policy of the DNREC to maintain within its jurisdiction surface waters of the State of satisfactory quality consistent with public health and public recreation purposes, the propagation and protection of fish and aquatic life, and other beneficial uses of the water
- **§ 5.3.1.11** - (2004) Regulatory mixing zones shall not impinge upon areas of special importance, including but not limited to drinking water supply intakes, nursery areas for aquatic life or waterfowl, approved or conditional shellfish areas or heavily utilized primary contact recreation areas. **Zones shall not be located in such a manner as to interfere with passage of fishes or other organisms.** We all need to be reminded of the proposed design of the outfall diffuser. One mile out in only 40 feet of water. The turbidity alone will constrict important habitat for many species, The negative olfactory stimulus of the effluent plume has never been properly addressed in the EIS. My concern here is for the Atlantic Sturgeon population, which find their way back to the Delaware Bay from this location.
- **§ 5.11.3.2 - Rare and endangered species are in need of active, protective management to preserve and enhance such species.** The diversity and abundance of the native flora and fauna of Delaware, particularly those deemed rare or endangered, shall be preserved and enhanced through the protection of the habitat, natural areas, and areas of unusual scientific significance or having unusual importance to their survival. [7 Del.C. §201(1)(2)]

- **UNDER DE Code 7201 Regulations Governing the Control of Water Pollution. Included in a NPDES permit is;**
- 4.11.12 A statement that the issuance of the permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, **nor any infringement of Federal, State or local laws or regulations.**

That regulation alone should be of grave concern to DNREC and any outfall supporters and disavow the NPDES on such merits.

- The hearing officer must bear the heaviest weight on judgment with *“the absence of documented regulatory facts in the (public) paperwork on the proposed project.”* The legal guidance of fair and impartial due process, accountability and transparency, supersedes the limited interests for the 637 citizens of Rehoboth Beach that voted for the project.
- The recommended approval of any permit would be a concurrence by the Hearing Officer of these described inadequacies of the final Environmental Impact Statement.
- By fiat of Delaware regulations on PROCEDURAL GUIDELINES FOR PUBLIC HEARINGS ON PERMITS AND LICENSES, Section 8
“The burden is on the applicant to demonstrate that the applicant has complied with and fulfilled all programmatic and other requirements to be considered for the permit or license, and that the applicant should be granted the permit or license, consistent with sound public policy and applicable statutory and regulatory directives including without limitation 7 Del. C. §§ 6001, 6301, 6602, 7001 and 7201.”
- As these are qualifiers for permitting, I formally request denial, to the applicant the City of Rehoboth Beach on all permits and any or all future conditions of permit compliance regarding the ocean outfall. Failure by the DNREC Secretary to deny permits, subjects the city of Rehoboth Beach to litigation under these federal and state statues in perpetuity. Conclusively, I submit these considerations to the DNREC Hearing Officer, with objective factual and legal concerns, presently.

Sussex County comments regarding the City of Rehoboth Ocean Outfall

State Permit Number WPCC 3084E/74

NPDES Permit Number DE 0020028

Beach Res. Act.

1. Given the construction limitations associated with directionally drilling an outfall, Sussex County supports the selection of the two potential disposal areas east of Deauville Beach as the only viable off shore locations.
2. Sussex County reviewed the calibration data collection approach for the modelling effort and finds the use of acoustic doppler current profilers & fixed conductivity, temperature, density buoys the most appropriate.
3. Sussex County considers the two stage near/far field finite element ocean modeling the best available technology and we believe the calibrated model runs correctly reflect the anticipated effluent plume dispersions.
4. Sussex County is satisfied that even under a highly unlikely, worst case scenario, with a failed disinfection system, the required dilution of Enterococcus bacteria can be achieved within the initial mixing zone near the point of discharge.
5. Sussex County concurs with the conclusion that EIS Alternative 6: Ocean Outfall is the only environmentally and economically feasible alternative eliminating 100 % of nutrients from the Inland Bays watershed and providing the most protection of human health as well as the environment under all conditions evaluated and the County hence supports NPDES permit issuance.

REHOBOTH OUTFALL PUBLIC HEARING NOV. 15, 2016 *Edited*
Comments submitted by Frank J. Monteferrante, Ph.D.
(LSU Marine Science/Coastal Ecology)

Thank you for the opportunity to speak.

We all know how special the beaches are in Rehoboth and the national recognition they have received.

At issue is the selection process and the guiding ^{les}principals that have steered the selection to the most cost effective, in the short term, solution of an ocean sewage outfall. By that I am referring to the outdated concept of “Dilution is the solution to pollution” which was prevalent in the 1960s and 70s when the Ocean City outfall was built, and is mentioned in various ways throughout the current Final Environmental Impact Statement (FEIS). No consideration has been given to long-term consequences of such an obsolete way of thinking. Is Rehoboth about to receive a permit to implement an outdated 1970’s technology for a 2016 problem. There are many better ways of doing this.

What seems to be missing is a commitment to the long term future and health of the ocean and how it relates to the health and economy of the Cape region. When it comes to the annual sand and beach replenishment efforts, there is hardly a question as to the funding of this work to keep the beaches in prime condition for the tourist season.

Millions of dollars are spent each year replenishing the constantly eroding beaches in order to attract vacationers. The same effort should be put towards preserving the quality of the ocean water for all to enjoy. So cost should not be the deciding factor.

I see no evidence of adherence to the a comprehensive planning Document for Sussex County which recommends the use of Rapid Infiltration Basin systems and

further, **in the ROD for the FEIS, DNREC clearly states that the preferred method of wastewater effluent disposal is spray irrigation land application.**

The State authored Final Environmental Impact Statement (FEIS) dated December 2012, and the Record of Decision (ROD) dated January 2015 are inadequate, outdated and need to be revised for a number of reasons related to recent events. This document is not an EIS which meets federal standards of the National Environmental Policy Act, aka (NEPA) which the Corps of Engineers must adhere to in order to issue their 404 permit. The Army Corps of Engineers should completely revise or complete a new EIS in accordance with the NEPA (National Environmental Policy Act) as required for all federal actions before any permit can be issued.

The reasons the FEIS requires additional work are as follows:

1. PUBLIC CONTROVERSY:

There is significant public controversy over this proposed project with an almost even vote for and against the referendum to fund the project. There is much disagreement in the community as to the construction of this project, so further analysis of alternatives is needed.

2. CLIMATE CHANGE :

I recently read a letter in the Cape Gazette which said essentially build the outfall, and instead let's move on to do what is needed to address climate change. Climate change analysis is now recommended for all federal agencies when conducting their NEPA analysis in guidance issued by

President's Council On Environmental Quality on August 1, 2016. Agencies should consider alternatives that would make the actions and affected communities more resilient to the effects of changing climate. The FEIS does not take into account the effects of climate change on the proposed updated Rehoboth Wastewater Treatment Plant (WWTP). A WWTP on the coast warrants significant analysis for climate change issues.

3. PUBLIC HEALTH:

The potential for, and consequences of uncontrolled releases on health and safety are not addressed in the current FEIS. Overflows of the WWTP will impact human health and safety if malfunctions continue to occur due to faulty maintenance and especially when combined with heavy rain events. Most recently a Notice of Violation occurred on July 26, 2016, ~~as reported in the Cape Gazette on August 12.~~ If the outfall had been in operation, the discharge of brown sludge and solids would have happened in front of the Rehoboth bathing beaches during the height of the summer tourist season.

4. ALTERNATIVES ANALYSIS

The alternatives in the present EIS do not reflect current thinking ^{innovative} and technologies proven to be successful elsewhere.

An ecosystem approach would show that neither discharging into the canal or into the ocean are acceptable, and that a more sustainable, less environmentally adverse solution should be selected.

Land application needs to be seriously considered in the FEIS, especially when compared to the adverse effects that an ocean outfall can have on tourism and public health. There have been proposals offered for land application, but it is my understanding that they were rejected based on cost. ~~In the ROD, DNREC clearly states that the preferred method of wastewater effluent disposal is spray irrigation land application. In addition the Sussex County Plan recommends the use of Rapid Infiltration Basin systems. Neither of these methods were selected in the FEIS.~~

In addition, various closed loop technologies for recycling and reusing wastewater are not addressed in the EIS. There are ^{currently} 426 being implemented in Florida.

~~Two prime examples of reuse systems include the Disney World's 15mgd wastewater treatment plant, and also a 12 mgd WWTP~~

~~in Cary N.C.~~ These systems result in nearly zero output through the reuse of wastewater for irrigation, rapid filter basins and other design techniques.

And finally,

5. CUMULATIVE IMPACTS:

The analysis of cumulative impacts are an integral part of the NEPA EIS. The discussion of impacts to the near shore ecosystem and public health in the current EIS is inadequate, or non-existent. This needs to be corrected in the EIS.

For these reasons, the EIS needs to be ~~re-visited and~~ revised according to applicable federal standards of the National Environmental Policy Act before a decision to issue a permit can be made.

Mayor and Council
Rehoboth Beach, DE

Re: Rehoboth Beach Outfall
Public Hearing
11/15/16

From: MERR Institute, Inc.
Suzanne Thurman presenting
302-228-5029

Dear Mayor and Council,

I am presenting comments on behalf of the Marine Education, Research & Rehabilitation Institute, Inc. (MERR), which provides rescue and response for stranded marine mammals and sea turtles, as well as contributing to research on ocean health and offering education on these topics to students and the public.

Our organization has been providing researched comments on the ocean outfall proposal since 2009, which we have provided to the City, DNREC and the Army Corps of Engineers. We maintain that an outfall is the most environmentally harmful method of treatment due to its impacts on ocean and marine animal health, and have asked the City to fully investigate other methods of wastewater treatment, all of which would be more environmentally and economically sound.

Delaware waters serve as essential foraging ground and migratory pathway for over 32 species of marine mammals and sea turtles, (large whales, dolphins, seals, manatees and sea turtles.) These animals already face threats to their survival from many origins, including environmental toxins. The long-term health effects from exposure to toxins from the effluent plume, combined with prey and habitat loss for these endangered and protected species of marine animals constitutes level B harassment under the Marine Mammal Protection Act (MMPA), the Federal law protecting these species. NOAA, who oversees marine mammal protection, determined that this type of toxic intrusion into the oceans over an extended period of time would be detrimental to a variety of marine species, including fish, mammals and turtles.

We fully acknowledge the need to improve the current wastewater treatment process to benefit the inland bays, which ^{is} part of the marine ecosystem, but not at the expense of the ocean. We are concerned that the treated effluent is being portrayed as harmless to the marine ecosystem. We could not disagree more.

Our greatest concerns are:

- traditional wastewater treatment methods do not eliminate certain toxins such as heavy metals, pharmaceuticals, caffeine, endocrine inhibitors, and other toxic

substances from the effluent plume. These toxins are known to have adverse impacts on marine mammal health, and human health.

- High concentrations of chlorine will be contained within the effluent plume, which is known to destroy plankton, the basis of the marine food web, including fisheries species, and will effect benthic organisms in the same way
- The placement of the outfall is in close proximity to the Hens and Chicken Shoals, which has been identified as essential fish habitat. The long shore current in this area runs northward, conducting the plume past the Hens and Chicken Shoals and up to the mouth of the Delaware Bay, which is one of the richest nursery and feeding areas in the vicinity. This precious ecosystem provides habitat and prey source for numerous species, including the severely endangered North Atlantic Right whale and Humpback whale. Our data confirms their presence in these waters. Adult females historically take their calves back to the same feeding and foraging area where they themselves were taught to feed- the Delaware Bay is one of these identified areas and therefore critical to the continued survival of these species.

The installation of an outfall will create an out of sight out of mind solution to manage the City's wastewater. But it is not out of sight for our team of rescuers, who tend to these ailing and suffering animals. We see the impacts of marine toxins and other harmful human behaviors with every animal that strands-90 % of strandings are attributable to human impacts. These animals tragically succumb to horrific injuries and illnesses as they simply try to survive in their natural habitat. We consistently see animals that have slowly starved to death because they were too ill and debilitated to eat-animals that are riddled with tumors, and lungs that can't breathe due to pneumonia and other respiratory illnesses, all attributable to marine toxins.

We identify the need to do everything that can be done to lessen the harmful impact we have on the ocean that we all love and revere. Since the time that this project was first proposed many years ago, new and more prudent technologies have become available. We strongly recommend that the City fully investigate other technologies, such as those that we have recommended. These include Constructed Wetlands and Electro-coagulation, both of which are environmentally and economically beneficial systems.

- a. Constructed Wetlands
 - i. Cost effective thanks to wetlands mitigation credits system
 - ii. Environmentally responsible
 - iii. Creates habitat
 - iv. Neutralizes heavy metals and pharmaceuticals
 - v. Successfully utilized for municipal and industrial wastewater treatment nationwide
 - vi. Creates positive public perception

Viewed as a win win-we have been advised that land was successfully lined up. This method needs to be accurately evaluated by accredited and experienced wetlands engineers to factor the output numbers correctly.

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- b. Electrocoagulation
 - i. Closed loop system
 - ii. Uses electricity to drive chemical reactions in wastewater to remove contaminants with 99.9 percent effectiveness
 - iii. Systems can treat up to 15 million gallons per day
 - iv. Neutralizes bacteria, mold, algae
 - v. Clean, neutralized water can be reused in a variety of applications
 - vi. This system increases the capacity of traditional wastewater treatment facilities strained by increases in population and aging infrastructure.

In light of the immense environmental cost and the controversial nature of an ocean outfall, which has served as a divisive force in this community, we urge and support a thorough investigation of these other options.

Our state and community has numerous environmental organizations, which could serve as a valuable advisory resource in this and future projects, and I myself would be more than happy to assist in anyway possible.

Thank you for your time and your consideration of our recommendations, and please do not hesitate to ask if we can be of any assistance.

This may very well be the last time we, the beach enthusiasts, have an opportunity to remind DNREC, the City of Rehoboth, our State Legislators, and Governor Elect John Carney that you are asking us for permission to change the ecology and health of one of Delaware's most prized assets, it's ocean health.

This may be the very last time we can say, on record, that our answer is a resounding no – you do not have our permission.

Our answer was “NO” in 2009 during the first hearing for the Rehoboth Beach Outfall. Seven years later, our answer is still no.

We do not give you permission to alter our ocean.

We do not give you permission to risk the health of our beaches.

We do not give you permission to jeopardize the very thing that gives so many people in this community, neighboring communities, and Delaware a sense of pride, joy, and well-being.

Our answer is a collective “NO”.

The City of Rehoboth and DNREC have not done their due diligence in exploring effective alternatives, including spray irrigation. Instead, they made consequential decisions based on outdated and unexplained information. Opting to dismiss meetings behind closed doors with Tidewater and Artesian because the information didn't fit into the predefined square hole. We all understand the importance of our children doing their homework thoroughly and correctly. We expect nothing less from our Governing bodies.

Surfrider is asking the hearing officer to take into consideration the polarized emotions this project has conjured up in the community. Whether or not DNREC thinks it has all the information it needs, it's very apparent that the public has some very mixed emotions about this project. The fact that so many Delawareans are uncertain about the long term effects of this outfall should signal that this is a bad idea.

This is a bad idea for the ocean.

This is a bad idea for Delaware.

This may be the last chance Surfrider and beach enthusiasts up and down the coast get a chance to voice our opposition against a project with too many uncertainties that may affect too many people and ocean critters. Our answer is NO. DNREC, the Army Corp of Engineers, Delaware Legislatures, and Governor Elect Carney need to answer the same. NO. *decision needs to reflect the same.*

Comments for Rehoboth Ocean Outfall Permit Application Hearing

Nov. 15, 2016

Edco215@gmail.com

Ed O'Connor

10 Cornwall Road

Rehoboth Beach, DE 19971

To whom it may concern.

I am opposed to the Rehoboth Beach Ocean Outfall Pipe proposal for the following reasons:

-The previous secretary of DNREC stated repeatedly that he did not think this outfall pipe was a good idea. When the application was submitted during his tenure, he did not sign off on it. The current Secretary approved this project within months of coming into office claiming publicly that this was the best solution to Rehoboth's wastewater issue. I would like to know what new information may have come to light in the time between Secretary O'mara not approving this and Secretary Smalls approval to move forward. Was there any change to the EIS? Were there any conversations or communications with interested parties that brought to light this new 'good news?' I would also like to know how Secretary Small can come to the complete opposite conclusion that his predecessor did.

I would like to point out that the design engineer that made a presentation at City Hall for this project was asked, "Which is better for the environment?" His answer was not outfall. It was land application.

I would also like to point out that DNREC has also said publicly about how another project is "the best option." The Allen Harim outfall pipe. Who recently was cited by DNREC for violations going back YEARS. While DNREC was telling us this was the "best option" Allen Harim was in violation as they increased production at the plant for years.

- Delaware Code states: 5.3.1.3 The coastal water resources of the state shall be protected and conserved to assure continued availability for public recreational purposes and for the conservation of aquatic life and wildlife. [7 Del.C. §6001(a)(4)]

I fail to see how putting an outfall pipe into the ocean can be legal under this code. Water resources of the state SHALL be protected and conserved.... Adding pollutants to a valuable resource is not protecting or conserving.

- Deauville Beach was purchased by the state in the 60's with federal grants for states to buy land for recreational purposes. It is currently leased to the city. I would like to know how closing the park for nearly a year to use as a staging area and permanently installing an outfall pipe and associated permanent structures for non-recreational purposes meets the criteria by which this land was purchased.

- Decades ago DNREC and the City of Rehoboth felt an outfall pipe into Rehoboth Canal was a good idea. They City of Rehoboth felt that this pipe was such a great idea they sued to keep the pipe there and lost. Let's not make the same mistake with the ocean. If dilution is your solution, it's still pollution.

- At a public meeting a few months ago the Mayor stated that this project was over budget. He wouldn't say by just how much it was over budget but that it was within "acceptable limits" or something similar. We are over budget and a contract hasn't even been secured for construction. How much over budget is this project now?

- In 2012 there was a ribbon cutting for Millsboro's wastewater treatment plant. DNREC approved a spray irrigation plan and treatment plant upgrades. Grant money and low interest loans supplied the tens of millions of dollars for the project. This project is the reason I find Secretary's Smalls claim that we can't have land application here due to water contaminants seeping into the water table and the bays to be specious at best. Millsboro is in the inland bays watershed.

-At the last workshop meeting, it was mentioned by DNREC or the engineering company that there are studies of both the Bethany and Ocean City outfall pipes and that "everything is fine." Where are these studies and why are these studies not included in the EIS? Instead a report on an outfall pipe in California that goes into 240 feet of water is used? Who really is ultimately responsible for the information in the EIS? Is it the City? DNREC? The engineer? We should seek a higher standard and best science in making our decisions. Since these studies are not in the ROD or EIS, they do not exist for the purposes of this project.

- In closing, based on the above (and more), I believe this project is a mistake, wrong headed and probably not permissible by Delaware Code. If we do proceed with this project, DNREC should attach a requirement that the City of Rehoboth move forward on a storm water run-off plan with benchmarks and deadlines as a condition of this permit. The Mayor was quoted in the Cape Gazette as saying "The bigger problem is storm water run-off." (paraphrasing) The City was required to submit a report on storm water run-off as a condition to move forward on this wastewater project. Let's make sure that report is put to good use and leads to action.

Thank you.

Sincerely,

Ed O'Connor
Rehoboth Beach, De