



November 26, 2025

Director Matt Garbark  
Baltimore City Department of Public Works  
Abel Wolman Municipal Building, 6th Floor  
200 N. Holliday Street  
Baltimore, MD 21202  
*Via electronic mail*

**Re: Comments on the Phase II Plan for Baltimore City's Modified Consent Decree for Sanitary Sewage Overflows - Civil Action No. JFM-02-1524**

Dear Director Garbark:

Thank you for the opportunity to comment on the Phase II Plan for Baltimore City's Modified Consent Decree for Sanitary Sewage Overflows. Blue Water Baltimore is a nonprofit organization with a mission to protect and restore the quality of Baltimore's rivers, streams, and Harbor to foster a healthy environment, a strong economy, and thriving communities. We have a long history of working with the City of Baltimore, the Maryland Department of the Environment (MDE), the U.S. Environmental Protection Agency (EPA), and community members to address sewage pollution into our waterways and into peoples' homes throughout the Baltimore region. Blue Water Baltimore is a plaintiff-intervenor in the Modified Consent Decree (MCD), and we continue to advocate for increased protections for the environment and the public related to this legal agreement. As a plaintiff-intervenor, we have a direct interest in ensuring that the terms of the MCD are fully implemented and enforced.

This Consent Decree was originally established in 2002, and is a legally-binding agreement to eliminate sanitary sewer overflows for the benefit of our communities and the entire ecosystem. It was formally modified in 2017, due in part to the discovery of major hydraulic restrictions near the Back River Wastewater Treatment Plant. This deficiency required additional capital improvement projects, which in turn rendered many of the original deadlines in the agreement impossible to achieve. The MCD laid out a series of projects to be completed as Phase I of the plan, and all Phase I projects and post-construction flow monitoring were to be completed no later than December 31, 2022. That flow monitoring data was intended to inform the development of Phase II projects, which must achieve the cessation of all sewage overflows beyond the established Levels of Protection in the agreement. Section VI.9.d.ii(b) of the MCD

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outlines a firm deadline of December 31, 2032 for all Phase II projects and post-construction flow monitoring to be completed.

On January 18, 2023 Baltimore City publicly released the first iteration of its Phase II Plan for public comment. Blue Water Baltimore submitted extensive comments on the Plan which centered on three specific recommendations:

1. Use the most recent precipitation data when designing and evaluating projects and flows.
2. Prioritize projects in communities most affected by sewage backups.
3. Ensure the “Affordability” section of the Plan either guides implementation or is removed.

We received responses to each of these comments in a letter from Baltimore City on May 30, 2023, but several of our concerns were not adequately addressed. Ultimately, this plan was rejected by MDE because it was deemed insufficient to meet the Level of Protection requirements of the MCD.

Blue Water Baltimore urges Baltimore City, MDE, and EPA to adopt a transparent, equitable, and science-based Phase II Plan that ends chronic sewage pollution once and for all. We offer the following comments and suggestions for strengthening the Plan. These comments focus on compliance with the federal Clean Water Act, protection of public health and safety, and increased transparency and accountability. These comments seek to provide several key recommendations, including:

- I. The Phase II Plan must **achieve the established Levels of Protection and adhere to the 2032 final deadline** outlined in the MCD unless formally modified through a transparent public process.
- II. The Phase II Plan must effectively **utilize and calibrate the hydraulic model** with the best available precipitation data.
- III. The Phase II Plan should specifically **address the inequities created by Baltimore County’s noncompliance** with their own Consent Decree for sewage overflows.
- IV. The Phase II Plan should **prioritize projects in communities most affected by sewage backups**.

Our comments below identify areas where the Phase II Plan does not currently comply with the MCD or where further transparency and corrective action are necessary.

- I) **The Phase II Plan must achieve the established Levels of Protection and adhere to the 2032 final deadline outlined in the MCD unless formally modified through a transparent public process.**

The proposed schedule outlined in the Phase II Plan extends past the MCD's firm deadline of December 31, 2032 for project completion and associated post-construction flow monitoring. The anticipated construction completion date for the last Phase II Project identified in the Plan, HR-1C, is not until December 31, 2046. This doesn't include the required 24-month post-construction flow monitoring outlined in the MCD agreement or preparing/submitting the MCD closeout report; which means the proposed Phase II Plan extends the final deadline to at least 2049. By that time, Baltimore City will have been under this Consent Decree for 47 years. Baltimore City has experienced substantial delays and has requested numerous deadline extensions throughout the implementation of the MCD, but this is by far the most significant deadline extension proposal that the public has seen thus far. A proposed schedule that openly extends construction completion to 2046 - and final compliance to at least 2049 - constitutes a material deviation from the MCD and cannot be implemented without a formal, transparent modification approved by the Court.

Throughout Section 2 of the Phase II Plan ("Effectiveness of Consent Decree and Modified Consent Decree programs"), the City details how much money has been spent on MCD projects since 2002, and how wastewater rates have increased for DPW customers during that time. There is discussion on page 9 of the document about how many households are currently living below the poverty line, the City's concerns about the utility's financial stability given its current and future debt accumulations, and the projected financial impacts on future ratepayers. Notably, Baltimore City states in this section of the Plan:

The City believes that mandating future improvements based solely on a theoretical hydraulic model and no recorded SSO information is irresponsible and will force the utility to overleverage and accumulate debt, which will jeopardize its financial stability and create an environment where it cannot secure necessary funding for capital projects. (Revised Phase II Plan, p. 9)

This statement signals Baltimore City's explicit intention not to comply with the agreed-upon terms of the Modified Consent Decree for sewage overflows. This intention is further detailed in the map of expected noncompliance with established Levels of Protection on page 43, and the list of remaining SSOs post Phase II rehabilitation which violate the Levels of Protection on pages 47-48 of the Plan. Even after spending more than \$2 billion in taxpayer money on sewer projects over 47 years, this Plan still allows millions of gallons of sewage to enter the Jones Falls, Herring Run, Gwynns Falls, and Baltimore Harbor. This is unacceptable because the MCD unambiguously requires compliance with Level of Protection standards regardless of whether future predictions are model-based or observed. Baltimore City and its regulators must maintain zero tolerance for sewage overflows in sensitive areas beyond the established Levels of Protection outlined in the MCD.

While the water affordability crisis in Baltimore is a valid issue worthy of consideration, the Phase II Plan of the MCD is not the place to make major modifications to the agreement or to allow the City to disregard its legal obligations. There is no question that the City must

adhere to the established Levels of Protection outlined in the MCD by December 31, 2032; unless otherwise agreed by the parties to the MCD and approved by a federal court.

The proposed delay to at least 2049 constitutes a major modification that requires formal renegotiation with Baltimore City, EPA, MDE, the U.S. Department of Justice, and the community; not quiet approval through this plan. By proposing an 18-year extension of the Modified Consent Decree without publicly and explicitly acknowledging the need for a modification of the agreement, Baltimore City is undermining public confidence in the system and legal compliance with the MCD.

**II) The Phase II Plan must effectively utilize and calibrate the hydraulic model with the best available precipitation data.**

Baltimore City claims that the hydraulic model used for evaluating project effectiveness and developing/prioritizing future projects is flawed. The City claims that the model is over-predicting sewage overflows, an assumption that is based on the discrepancy between expected and reported/observed sewage overflow data. However, sewage overflows and backups into homes are both chronically under-reported. Without comprehensive automated flow monitoring in outfalls throughout the sewershed, particularly those in remote areas without easy vehicle or pedestrian access, it is impossible to quantify the true amount of sewage escaping the collection system. Sewage flows may be rerouted to another manhole or into a residence as a result of a corrective action elsewhere in the system; and unless those other manholes are being actively monitored, or a resident reports every sewage backup into their home, Baltimore City would have incomplete information and may come to the incorrect conclusion that the sewage discharge didn't happen at all.

Without automated flow monitoring, Baltimore City must rely on its own staff and the general public to report instances of sewage overflows. Blue Water Baltimore routinely conducts educational programming to train community members how to identify and effectively report sewage overflows to Baltimore City DPW. To our knowledge, the City does not proactively offer programming or guidance to the public about why and how they should be reporting sewage overflows. There is information on the City's website about how to report a sewage overflow to the non-emergency 311 system, but this information must be sought out by the public. There is not a robust effort on the City's part to proactively solicit these reports in order to develop a more comprehensive database of reported sewage overflows. Because of this information gap, it is not surprising that the number of reported sewage overflows throughout Baltimore City does not align with model-predicted sewage overflows; we can't see what we aren't looking for.

Baltimore City has not publicly shared the data needed to confirm the veracity of the hydraulic model, but we know that it has not been properly calibrated with the best available precipitation data to be as accurate as possible. As we previously noted in our April 2023 comments on the first Phase II Plan, the model uses precipitation data from 1991-2010 despite

the fact that newer data has been made available since the signing of the MCD. This leaves out important events like Tropical Storm Lee, Superstorm Sandy, the 2014 6-inch rain event that led to the CSX rail line collapse in Baltimore, the 2016 storm that flooded Ellicott City, and the multiple storms in 2018 that flooded Ellicott City & the Frederick Road corridor amidst the wettest year on record. The time period from 1991-2010 is not representative of expected precipitation levels today, let alone 21 years from now when the projects outlined in the Plan must be completed. There is updated precipitation data available from the U.S. National Oceanic and Atmospheric Administration (NOAA), and DPW should utilize this best-available dataset to update its model and inform the Phase II Plan.

The most recent release in 2021 by NOAA of decadal climate data and trends shows that the long-term average annual rainfall totals at the BWI monitoring station increased by nearly five and a half inches from the 1981-2010 period to the 2006-2020 period.<sup>1</sup> This new data release must be incorporated if we are to make sound infrastructure investment decisions based on reality.

Additionally, it is widely understood that the principle of stationarity in climate science is obsolete and fatally flawed. Thus, any plan based on sound science must begin to recognize efforts, such as one being undertaken by the Chesapeake Bay Program Partnership, NOAA, and several other academic and private experts to project future precipitation intensity, duration, and frequency.<sup>2</sup> The tool, specifically designed to enable decision makers and infrastructure planners to make sound infrastructure plans, shows that, even under a conservative scenario for global climate change, and even under the near term planning horizon for which current infrastructure should be designed (2020-2070), storm events are very likely to be larger and more intense, with peak flows into the system that could easily be up to 40% greater in Baltimore, with the greatest increases coming from the largest and most severe storm events.

The hydraulic model is an integral part of the MCD and it is essential that the model be updated with the best available data, and utilized fully for the planning and prioritization of Phase II projects. Baltimore City must not abandon the model in favor of incomplete on-the-ground observations that are inherently underrepresentative of true conditions in the system. The Plan should use the most recent precipitation data available so that Phase II projects are able to handle increased rainfall and flooding due to climate change. The City should not knowingly use outdated precipitation data to feed its hydraulic model and guide its work under the Modified Consent Decree. By not using updated information and accounting for the realities of a changing climate, we are setting ourselves up for future failure and yet another extension of the Consent Decree when our rehabilitated sanitary sewer system still can't handle the increased inflow and infiltration caused by more frequent and more intense rain storms. Failure to update the model with the best available precipitation data risks designing a Phase II program that cannot meet the MCD requirements.

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<sup>1</sup> U.S. Climate Normals. NOAA National Centers for Environmental Information. <https://www.ncei.noaa.gov/products/land-based-station/us-climate-normals>

<sup>2</sup> Projected Intensity-Duration-Frequency (IDF) Curve Data Tool for the Chesapeake Bay Watershed and Virginia. <https://midatlantic-idf.rcc-acis.org/>

**III) The Phase II Plan should specifically address the inequities created by Baltimore County's noncompliance with their own Consent Decree for sewage overflows.**

A significant amount of the sewage treated by Baltimore City originates in Baltimore County. Yet County sewer pipe rehabilitation work remains incomplete, despite the fact that the County has been under its own Consent Decree for sewage overflows since 2005. Because Baltimore County contributes substantial flows into the City system, insufficient County rehabilitation directly limits the City's ability to meet its own Level of Protection standards. Without clear County commitments and accountability, the City will continue to suffer an inequitable burden of sewage overflows, backups, and waterway pollution; and ultimately, it will be unable to adequately achieve the terms of its own MCD. In this way, Baltimore City and Baltimore County are intrinsically linked. We have a regional water and sewer system, regardless of how it is currently administered.

Blue Water Baltimore applauds Baltimore City and Baltimore County for strengthening their relationship in the recent past as it relates to our shared regional sanitary sewer system. Based on the updates in this Phase II Plan, it has become clear to us that Baltimore City and Baltimore County were previously using two separate hydraulic models to achieve the terms of their independent Consent Decrees. Separate models will perpetuate mismatched assumptions and inconsistent planning, undermining both jurisdictions' compliance.

We are pleased to know that the hydraulic modeling partnership between Baltimore City Department of Public Works and Baltimore County Department of Public Works and Transportation is bearing fruit, and that communication and information-sharing has improved. Furthermore, we are encouraged by reports in Section 6.8 of the Plan that detail ongoing work between Baltimore City and Baltimore County to engage in joint modeling and flow monitoring analysis.

To solidify this joint planning effort, Blue Water Baltimore calls upon Baltimore City and its regulators to require the development and use of a single hydraulic model for the entirety of the collection system, to be utilized by Baltimore City and Baltimore County. This model should be consistently updated with the best available precipitation, population, and post-construction flow monitoring data as detailed previously in these comments. In order to effectively stop sewage overflows into our homes and waterways, the sewage collection system must be treated as a holistic entity, and one unified hydraulic model must be utilized for the entire system. Additionally, the Phase II Plan should evaluate how adequate cost-sharing can be established between the City and the County so that City ratepayers are not forced to subsidize County noncompliance with their own Consent Decree.

**IV) The Phase II Plan should prioritize projects in communities most affected by sewage backups.**

Baltimore residents, especially in Black and low-income neighborhoods, continue to bear the burden of basement backups and flooding despite years of steep water and sewer rate hikes. Baltimore City's "affordability" and "financial risk" assessments on page 9 of the Plan rightly point out that the City's Water4All customer assistance program only covers household incomes up to 200% of the federal poverty line, which leaves a significant portion of the population living just above the poverty line but still facing financial hardship given rising water rates. However, this analysis neglects the fact that these are the same households already at a higher risk of experiencing sewage backups into their homes and the financial ruin they can cause.

We must acknowledge that there are already inequities in who experiences sewage backups caused in part or in full by conditions in the City-owned portion of the sewage collection system; and the people most likely to have a backup are least likely to be able to afford the costs of cleanup, disinfection, and associated material losses. Unfortunately, the programs designed to assist those people - specifically the MCD's Basement Backup Expedited Reimbursement Program and the City's Sewage Onsite Support direct assistance program - aren't working. According to the most recent MCD quarterly report, the Expedited Reimbursement Program has only reimbursed residents \$35,861.53 for costs associated with sewage backups since April 2018 despite the fact that \$2 million is set aside for this program each year.<sup>3</sup> In FY2025, all 59 claims were denied. By failing to prioritize communities facing chronic backups, the Plan effectively relegates these neighborhoods to continued elevated risk - creating de facto sacrifice zones, which is antithetical to Baltimore City's stated Environmental Justice goals.

Baltimore City already tracks residential sewage backup data via its 311 non-emergency call system. The City should utilize that dataset in conjunction with data from its Basement Backup Expedited Reimbursement Program, the newer Sewage Onsite Support Program, and the hydraulic model to more accurately account for the number and frequency of sewage backups occurring throughout the City. All sewage backups should be included to ensure that the communities with the highest rates of sewage backups - regardless of the size of the pipes the backups are occurring in - are first in line for infrastructure improvements during Phase II of the MCD. By prioritizing these communities for Phase II projects, we can begin to address the systemic inequities already at play.

Thank you for your consideration of our comments. We appreciate Baltimore City's efforts to construct a comprehensive Phase II Plan, and we offer these comments in the spirit of collaboration towards a stronger, healthier, more resilient Baltimore. Our interest continues to be the protection and restoration of the Patapsco and Back River and its communities, for

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<sup>3</sup> City of Baltimore Department of Public Works Modified Consent Decree Calendar Quarterly Report No. 32 - for Calendar Quarter Ending September 30, 2025. Section 2.2, Building Backups, page 6.

generations to come. We appreciate the opportunity to work together with you in pursuit of these common goals.

Sincerely,

A handwritten signature in black ink that reads "Alice Volpitta". The signature is written in a cursive, flowing style.

Alice Volpitta  
Baltimore Harbor Waterkeeper  
Blue Water Baltimore

Jennifer Kunze  
Maryland Organizing Director  
Clean Water Action

Cc: Steve Sharkey – Baltimore City DPW  
Michael Hallmen – Baltimore City DPW  
Paul Sayan – Baltimore City DPW  
Caitlin Rayhart – Baltimore City DPW  
Lee Currey – MDE  
Andrew Gosden – MDE  
Arno Laud – MDE  
Lynn Angotti – MDE  
Amy Van Blarcom-Lackey – U.S. EPA