



## Department of Public Infrastructure

Jamie Ponte  
Commissioner

Water  
Wastewater  
Highways  
Engineering  
Cemeteries  
Park Maintenance  
Forestry

### CITY OF NEW BEDFORD

Jonathan F. Mitchell, Mayor

September 2, 2021

Council President Joseph Lopes and  
Honorable Members of the City Council  
133 William Street  
New Bedford, MA 02744

Dear Council President Lopes and Honorable Members:

I write in the hopes of prevailing upon the body to act on the two loan orders totaling \$128 million for necessary water and wastewater system upgrades that were submitted on June 24, 2021 to the Council. As you are aware from our numerous discussions since December 2019, including several City Council and Committee on Finance meetings, we have consistently outlined a message of the urgency to act and discussed the impacts of in-action. Unfortunately, those scenarios have come to fruition which has led us down the path of serious consequence. By passing these appropriations now, we can only hope to mitigate the financial impacts and damages resulting from legal action – we cannot undo what has been done.

As you are aware, these loan orders are directly attributed to and needed for maintaining compliance with the City's 2019 Administrative Order (AO) and regulatory initiatives being mandated by the Environmental Protection Agency (EPA). As a result of in-action by the Council, our extension to August 31 from the June 30 deadline that we received from the MassDEP to acquire the appropriations has ended. Because the Massachusetts Department of Environmental Protection Agency (MassDEP) is not granting us an extension, the State Revolving Fund (SRF) funding that we were awarded on the 2021 Intended Use Plan (IUP) have been rescinded.

The loss of the SRF money from the IUP has yielded consequences that will directly impact DPI and the rate payers. We have now jeopardized receiving approximately \$11 million in SRF principal forgiveness (grant money) and, depending on timing, we run the risk of costing the taxpayers and rate payers of the City another estimated \$10 million in potential additional borrowing costs. In addition, the City is doing lasting damage to its sterling reputation with both the EPA and MassDEP and triggering damaging and expensive enforcement action.

We are out of time to settle this matter, and the Council members who are refusing to approve the loan authorizations are putting the City in a precarious position regarding its obligations to state and federal authorities, the implications of which could be calamitous. The risk is entirely unnecessary and unwarranted given the clear set of facts arguing for approval of the loan orders and against continued in-action.

MassDEP which will likely cost us significantly more than just the lost grant money. While these amounts are not exact, they are well within the range of what we could have expected for the entire loan amounts based on the Department of Environmental Protection's formulas for principal forgiveness for their Drinking Water and Clean Water State Revolving Fund programs. We have calculated that we would have been eligible for about \$4 million for four wastewater projects and about \$5 million for five water projects. In addition, if we equal previous years' lead service removal activity, we could have been eligible for another **\$2-plus million** in reimbursement for all costs associated with the removal of lead lines on private property.

Because we have missed the SRF deadline and are no longer on the IUP, there is a strong possibility that we now need to take on general obligation debt in place of SRF debt that will cost us dearly. The interest rate differential between the two conservatively is .75 percent. Calculated on \$128 million dollars of debt over a typical 20-year term, that's another **\$10 million**.

The resultant delays have forced DPI to re-submit funding applications to the MassDEP SRF program that duplicates a significant amount of time and level of effort. Not only did we need to resubmit applications for the projects that were rescinded from the 2021 IUP but we needed to prepare new applications for the projects that would have been applied for to receive funding on the 2022 IUP. Given the uncertainties, these applications were all completed on significantly short notice putting a strain on my team. The hope is that the MassDEP accepts these projects for funding on the 2022 IUP; however, there is no guarantee that they will be accepted nor is there a guarantee that the MassDEP will be offering any principal forgiveness to the extent that we could have received if we would have been able to meet the August 30 deadline. Should the program or certain portions of the program not be accepted, then we would be forced to GO fund those projects at a higher interest rate and burden to the rate payers – upwards of **\$10 million**.

### **Enforcement Implications**

The costs outlined above are only those we can predict with some confidence. They do not include the potential impact of federal enforcement action by the EPA and/or Department of Justice (DOJ), the legal fees associated with defaulting on our Administrative Order with the EPA, or the potential schedule modifications that might be mandated by the DOJ on the city to significantly increase its spending rate. I have attached a letter from Richard Davis of the law firm Beveridge and Diamond, one of the country's leading experts on the EPA's wastewater and stormwater programs. In addition to representing major U.S. cities such as Chicago, Milwaukee, San Francisco, and Philadelphia, he has represented New Bedford in matters before the EPA for nearly thirty years. He has appeared before the Council many times and the Council has relied on his recommendations without exception.

His letter doesn't mince words. Based on his extensive experience with EPA on matters such as this, he believes that the Council's current inaction might do significant reputational damage to the City and cost its residents millions of dollars—unnecessarily.

### **ARPA Guidelines and Limitations**

There are restrictions on the use of ARPA funds, even within eligible categories. While water and wastewater spending are eligible under the infrastructure category, that spending is limited to the design and construction of SRF-eligible projects, but not for the debt associated with existing projects.

required. All of this needs to be accomplished by June 30, 2022 for us to maintain compliance. We need to collectively work together to address this need and meet these deadlines.

**Our Collective Obligation**

The fact that the Administrative Order is in place to mitigate sewer overflows to our receiving waters highlights the importance of this program. Not only are we legally obligated to address combined sewer overflows (CSO's), but it is also our responsibility as stewards of the environment and protectors of public health and safety to continue to invest resources in this program. I've included for your information a link to EPA's most recent report to Congress, in which New Bedford is prominently featured for the great progress we've made and will continue to make towards improving the quality of our waters. <https://www.epa.gov/system/files/documents/2021-07/report-to-congress-on-integrated-plans.pdf> It would be tragic to jeopardize our good standing with the agency over an issue that is easily resolvable in a way that aligns with the best interest of the New Bedford ratepayers.

In closing, I urge you, on behalf of our collective constituency, to approve the subject loan orders so we can continue the great and necessary work of improving the quality of our vital wastewater, stormwater, and drinking water systems.

Thank you for your attention to this important matter. Should you have any questions, please contact me at (508) 979-1550.

Sincerely,

  
Jamie Ponte  
Commissioner

Attachments:

Letter dated August 19, 2021 from Richard S. Davis