



January 5, 2015

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Dear Dr. Young and Mr. Sweeney:

Enclosed is the DEP Response to NYSDOH/EPA Comments on FAD Deliverables submitted October 31, 2014, in accordance with the Revised 2007 Filtration Avoidance Determination (FAD).

As always, if you have any questions about these comments or other aspects of the City's watershed protection efforts, please do not hesitate to contact me.

Sincerely,

David S. Warne
Assistant Commissioner

**DEP Response to NYSDOH/EPA Comments on the FAD Deliverable Reports
Submitted October 31, 2014
Response Date January 5, 2015**

4.2 Land Acquisition Program

The solicitation plan for the two-year period 2015-2016 was submitted as required by the Revised 2007 FAD.

DEP Response:

Comment noted.

In Section 3.1, the plan describes how WAC Agricultural Easement Program acres will be credited towards solicitation goals. Farms that are deemed eligible for an easement will be counted as solicited. It is not clear from this description whether the owners of these farms will be notified that they are eligible. Please confirm whether or not this is the case.

DEP Response:

The Watershed Agricultural Program (WAP) staff meets annually with all active Whole Farm Program (WFP) participants to conduct an Annual Status Review (ASR). The ASR serves as both the opportunity to evaluate current farm operations, as well as to forecast the farmer's future plans and interest in additional WAC programs such as WAC's Conservation Easement Program. The WAP Planner asks the Producer and/or Landowner if they are interested in an easement, marks the ASR accordingly, and follows up with Easement Program staff as appropriate. Easement applications are available both during the actual ASR, as requested by the WFP participant, or through coordinated staff follow up with landowners. All applications received are further reviewed for general eligibility and processed accordingly. The applicant is notified of the status of their application regardless of outcome.

In Section 3.2, NYCDEP notes that the plan incorporates components of the City's Long-Term Land Acquisition Plan for 2012 to 2022 ("LT Plan"), which was issued in 2009. One strategy outlined by the LT Plan was to prioritize solicitation with consideration for the proportions of source water used from each reservoir basin. Describe how source water use has followed those projections considered in developing the LT Plan, and state whether this strategy is still valid.

DEP Response:

Section IV.A of the 2009 LT Plan identifies three factors which would guide the distribution of future solicitations on a regional scale: "Areas of Focus", "Critical Sub-Basins", and "Contribution to Future Supply." As discussed in the Plan, these three factors overlap somewhat, and the resulting strategy for solicitation is a blend of all three. The projections for future contribution to supply by reservoir basin in the LT Plan were based on preliminary output from the Operations Support Tool (OST), which was in the early stages of development at the time of the Plan's publication. Those projections showed that the bulk of Catskill-Delaware supply in future years, over 87%, was projected to originate from five basins (Ashokan, Pepacton, Schoharie, Cannonsville and Rondout) with relative increases, compared

to historical trends, for Ashokan, Cannonsville and Rondout. Since the release of the LT Plan, water supply operations have supported major construction work under the Water for the Future (WFF) program, including the Shaft 4 connection, Gilboa Dam rehabilitation, and preparation work for the Delaware Aqueduct repairs and bypass tunnel construction. Supporting major construction work that followed a very dynamic schedule and which interacted with environmental conditions in unpredictable ways required highly responsive and unique water supply operations over the last few years, and this will continue for several more years until the conclusion of the WFF program. There have also been several major storm events since the release of the LT Plan, including “Superstorm Sandy” and the flood of record at many locations during Irene. Storms such as these are low-probability events that typically do not strongly influence long-term modeling results, but when they occur, they have major impacts that may cause actual operations to vary markedly from modeled operations over periods of a few years.

For these reasons, the “Areas of Focus” and “Critical Sub-Basins” strategies have been the predominant considerations in the regional-scale distribution of LAP acquisitions since 2009. Fully 96% of the acres acquired West-of-Hudson in fee simple or under conservation easement (including WAC Farm Easements) since July, 2009, or about 33,500 acres, are located in Areas of Focus and Areas of High Focus. Since these basins and sub-basins comprise about 89% of the WOH basin land area, these figures demonstrate the extent to which LAP solicitations have emphasized these areas.

It should be noted that water supply operational projections are based on expectations of use over a long time period measured in decades. Actual operation of the system over shorter periods - months or several years – will not necessarily follow the anticipated long-term pattern. These short-term variations are to be expected and reflect the dynamic nature of water supply operations.

The LT Plan also identifies, as a priority for solicitation, parcels that adjoin previously acquired lands. Explain how such parcels are recognized in the LAP Parcel Ranking Tool.

DEP Response:

As detailed in the LT Plan, properties adjoining previously-acquired fee lands were to be a priority for solicitation and acquisition. As detailed below, LAP staff have successfully implemented this policy using several methods. In fact, since July, 2009, LAP has signed contracts to acquire about 22,500 acres of land in fee simple and of these about 16,000 acres, or 71 percent, adjoin other City-owned fee lands.

The following methods are employed to make properties adjacent to City-owned lands a priority for solicitation:

Review for City-initiated solicitations: While the LAP Ranking Tool does not explicitly incorporate adjacency¹ in determining rank, this factor is taken directly into account by LAP staff in reviewing ranking results as part of selection for solicitation. The Ranking Tool is a model using GIS inputs, and as such the results

¹ The three inputs to the ranking tool are size (acres), percent surface water criteria and slope score. As described above, other property characteristics are evaluated qualitatively, using the ranking tool as an initial filter.

are considered a coarse screening tool; all ranked properties are manually reviewed by staff prior to solicitation. Staff reports are sorted by rank from high to low. During their review, each property is viewed on the WaLIS GIS system, and qualitative factors such as adjacency, configuration, access and development potential are added considerations beyond the numerical rank. The final decision about which properties to solicit incorporates these qualitative factors, and results in a mix of higher-ranked properties and lower-ranked parcels with strong qualitative characteristics.

Review of Owner-Initiated Solicitations: Another solicitation strategy identified in the LT Plan was to emphasize owner-initiated solicitations, which have a higher likelihood of resulting in accepted offers. In our review of these properties prior to committing to appraisal, adjacency to previously acquired land is a strong factor, along with the usual considerations of water features, slope and size.

Surveyor Outreach: LAP orders a boundary survey of all properties under contract. As part of that process the surveyor sends a letter to all adjoining property owners notifying them that the survey will be conducted as part of the Land Acquisition program. Over the years these letters have resulted in a significant number of referrals back to LAP from neighbors interested in selling land to the City. In addition, survey vendors often encounter neighbors in the field, and LAP has emphasized the importance of these interactions as an opportunity to explain the benefits of the program to watershed landowners.

NYSDOH acknowledges that a contract has been negotiated with the Catskill Center for Conservation and Development for implementing a Riparian Buffers Program. Please provide an estimated timeline for registration of this contract and implementation of the program.

DEP Response:

DEP expects the contract with Catskill Center for Conservation and Development to register no later than June 30, 2015, and implementation to begin at that time.

4.6 Stream Management Program

NYSDOH acknowledges that the field-based progress meeting for the program was convened by October 31 (actual date: October 29, 2014), as required by the Revised 2007 FAD.

DEP Response:

Comment noted.

4.11 Catskill Turbidity Control Program

NYSDOH acknowledges that NYCDEP put out to bid the contract for improvements to the Catskill Aqueduct Stop Shutters by October 31, 2014, as required by the Revised 2007 FAD.

DEP Response:

Comment noted.

6.1 Watershed Rules and Regulations and Other Enforcement/Project Review

The semiannual reports (*Enforcement Actions* and *Project Activities*) were submitted as required by the Revised 2007 FAD.

DEP Response:

Comment noted.

Project Activities

NYSDOH requests the following clarifications:

This well-designed report will benefit from the inclusion of the list of acronyms, with figures/maps submitted in color.

DEP Response:

A list of acronyms and color maps in the printed version will be provided in the next report.

The report states (p.3, para. 3) that “The Agreement is funded for \$5,340,000 and additional funding will be provided as needed”. Additional clarification regarding the extent, justification, and the cap cost of eligible projects, if any, will be appreciated.

DEP Response:

The WWTP Capital Replacement Program includes funding for the replacement of capital equipment installed per: (i) Watershed MOA ¶141, WWTP Regulatory Upgrade Program, (ii) Watershed MOA ¶122, New Sewage Infrastructure Program and Community Wastewater Management Program, (iii) Watershed MOA ¶143, Future Regulatory Upgrades Program, or (iv) any other projects as may be identified by DEP as eligible for Capital Replacement. There is no cap to eligible costs. The \$5,340,000 is an initial allocation for this program based on currently projected needs. Additional funding will be added as required. Although DEP’s current agreement with EFC is for ten years it can be extended and renewed.

In Table 3.2.1, please provide a brief description of item #1, project Log # 2014-SC-0040 (C & C Excavation).

DEP Response:

Special Use Permit for C&C Excavating, Inc. located at 3563 Route 23C in the Town of Jewett, NY. The Tax ID No. is 130.00-4-45. The property is located on 2.5 acres in the Rural Residential Zoning District, it was a rental unit. The property has recently been purchased, the new owners, will continue to rent some of the upper level storage spaces, but will primarily be using the place to store and work on their own equipment.

Table 3.2.2 lists three projects in the Kensico basin (2008-KE-2045, 2014-KE-0108, and 2014-KE-0011). Please provide brief descriptions of these projects (e.g., type of operation and anticipated discharge/runoff).

DEP Response:

2008-KE-2045: A 52,000 square foot parking garage has been proposed in close proximity to Rye Lake, in the Town of North Castle. The project proposes to convey stormwater generated in the parking area of the garage to two detention basins that will be created within the wetlands buffer zone.

2014-KE-0108: Subdivision of a residentially zoned property into three building lots located in the Town of North Castle. Access will be obtained via a 24-foot wide subdivision road that intersects with Hidden Oak Road, a public road. Wastewater will be disposed of in an on-site septic system on each lot. Stormwater flow will be conveyed following quantity reduction and quality improvement to wooded areas that presently receive runoff from the property.

2014-KE-0011: Whippoorwill Club is proposing a new two-story, 7,200 square foot Turf and Maintenance Facility to replace the existing facilities along with new associated environmental storage and wash down structure in the Town of North Castle. The project will include demolition of the existing building and the construction of a new facility in the same location. The facility has a new SSTS with a design flow of 320 gpd.

In Table 3.3.1, item #24 (Leak Stabilization Pilot Plant) indicates the proposed completion date is "on hold." It was the understanding of NYSDOH that this pilot work had been completed. Does DEP plan to move forward with additional work related to leak stabilization in the RWBT?

DEP Response:

There was little activity occurring on site, so the construction was listed as "On Hold." Since the October FAD Report, the Pilot Program has been completed; the trailers have been removed and the site is stabilized.

Table 3.5.1 shows several rows where the number of approvals is greater than the number of applications (such as for Shandaken). Please provide clarification on these numbers, and note whether the number of approvals listed may include those for applications received outside the reporting period.

DEP Response:

This table lists the number of applications received and the number of approvals issued in this reporting period. However applications for some of the approvals issued in the reporting period were received prior to reporting period. Also, the projects for which Construction Certifications were issued may be different projects than the applications received and project approvals issued in this reporting period.

Enforcement Actions

NYSDOH requests the following clarifications:

It is recommended that for consistency and clarity that all described enforcement actions/projects include the name of the impacted reservoir basin. In addition, a list of acronyms will further improve the quality of the report.

DEP Response:

The basins for all projects and a list of acronyms will be included in future reports.

As stated in page 3, paragraph 4, the EOH Water Quality Investment Program fund was “provided by DEP through 1999 MOA”. This presumably should refer to the 1997 MOA.

DEP Response:

The 1999 has been changed to 1997 for all future reports.

Section 3.2.1 provides detailed information regarding enforcement actions undertaken by NYCDEP with regards to violations in subsurface treatment systems/discharges in the Catskill District. A specific concern is posed by the illegal subsurface discharge made by the camping trailer in the Town of Jewett (2013-SC-0129; pp. 26-28). Please clarify why the project status is listed as “New”, while the “discovery date” is listed as 4/10/2013. In addition, clarification is needed regarding the process of decommissioning that illegal system. Since no tank was found during the inspection, are there any remedial actions to be taken towards the on-site soil contamination?

DEP Response:

DEP may perform pre-application conferences, soils testing, and investigate enforcement actions before an application is received; these activities are recorded in DEP’s database. Once the application is received, the project becomes a “New Project”, and all previous history is included in the FAD report. For this particular project, DEP staff spoke with the owner before the application was received. This owner stated that the illegal discharge was only graywater. There is a functional outhouse on the property. There was no sign of accumulated solids in buried solid PVC pipe that was previously connected to the trailer. This line was exposed, a section cut off, and then backfilled so that it could no longer be connected to the trailer. No further action was taken by DEP regarding decommissioning or cleaning up soils that received the graywater discharge. This was a camping trailer that appeared to have minimal use. Plans for a new SSTS were approved by DEP on 10/24/14 and the owner recently stated he will begin clearing the lot over the winter and will start construction of SSTS in spring 2015.

Additional information is needed regarding the status of operation of the Harrison Waste Facility (2013-KE-0313), which is located in the Kensico basin (Section 3.2.4, pp.67-68). A very detailed summary of communication between NYCDEP, NYSDEC, Corporate Counsel, and the Town of Harrison engineer was provided in the report, but it is still unclear whether this facility is operational. In addition, please clarify how close this facility is to Kensico and/or a watercourse.

DEP Response:

The Town of Harrison’s organic waste transfer station is currently operational and has been since 2004. The facility accommodates 10,000 tons of yard waste annually, with a peak operational period occurring from October through December. The waste loading/transfer portion of the site is located approximately 800 feet from Kensico Reservoir and about 550 feet from a reservoir stem.

One area of concern is amount of time required to design and replace an onsite wastewater treatment that has failed. The project descriptions indicate that it generally takes one to one and

a half years for this process. We understand that potential water quality impacts from failed systems can be mitigated during this period (e.g., with septic tank pump outs). However, please provide a brief description of the steps involved in correcting a failed onsite wastewater treatment system, including any suggestions for ways that this timeline might be shortened.

DEP Response:

Most failed residential SSTS replacement projects located in the WOH are brought to DEP's attention by the Catskill Watershed Corporation (CWC). Since the CWC program is voluntary, in years past, it was decided that very aggressive enforcement of such projects by DEP would deter property owners with failed SSTSs in the watershed from coming forward. However, a project that is considered to be an imminent threat to water quality (i.e., direct discharge to stream), would receive a higher level of enforcement attention for an expeditious resolution. It is common that project completion is delayed due to schedules of engineers and contractors. Other common reasons for delayed completion of projects include the owner's financial status, deaths, nonresponsive owners, or a determination that the failure is intermittent or has been abated., The CWC repair process generally proceeds as follows: (1) homeowner contacts CWC to conduct inspection of their SSTS; (2) homeowner completes paperwork to enter CWC program, if eligible; (3) CWC sends SSTS data collection form to DEP; (4) DEP sends homeowner a notice describing the agency's involvement in SSTS repair process; (5) Homeowner hires engineer; (6) Engineer contacts DEP to schedule soils testing; (7) Engineer submits plans to DEP for review and approval; (8) DEP either approves or issues comments to engineer requiring resubmission and review/approval; (9) With approved plans, owner hires contractor; (10) Contractor submits bid to CWC for approval; (11) CWC approves or rejects bid or requires quotes from two more contractors; (12) For projects where the bids exceed \$25,000, the project must be approved by the CWC Septic Committee, which meets monthly \$25,000; (13) For projects approved by the CWC Septic Committee, approval is required at the CWC Board of Directors' monthly meeting; (14) 15 Day Right of Refusal Period must pass before contractor can start work. DEP is in communication with the owner, engineer, and CWC throughout the process of completing repair of failed SSTS. DEP has developed a series of standard letters to be sent out after certain timeframes have been exceeded without progress. DEP also follows up with parties related to a project via telephone and email, and at times posts notices on properties to help stimulate forward progress in the remediation efforts. If cases are still not resolved in a reasonable time, DEP will pursue enforcement action.

CWC has recently made improvements to their workflow by having the Septic Committee Meeting and the Board of Directors' Meetings vote on projects on the same day (previously there was a one month interval between Committee and Board approval). This will help expedite the approximately ten percent of projects where costs exceed \$25,000.