



December 21, 2015

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*Commissioner*

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Dear Dr. Young and Mr. Sweeney:

Enclosed is the DEP Response to the NYSDOH/USEPA Comments on Revised 2007 FAD Deliverables submitted through October 2015.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'D.S. Warne', with a long horizontal flourish extending to the right.

David S. Warne  
Assistant Commissioner

**DEP Response to NYSDOH/USEPA Comments on the FAD Deliverable Reports  
Submitted October 31, 2015  
Response Date December 21, 2015**

**4.6 Stream Management Program**

NYSDOH acknowledges that the field-based progress meeting for the program was convened by October 31 (actual date: October 19, 2015), as required by the Revised 2007 FAD.

**DEP Response:**

**Comment noted.**

**6.1 Watershed Rules and Regulations**

Two semi-annual reports on project activities and enforcement actions for the period April 1, 2015 through September 30, 2015 have been submitted as required by the Revised 2007 FAD. NYSDOH/EPA note that all previous recommendations for report enhancements were incorporated into these reports.

**DEP Response:**

**Comment noted.**

The following recommendations are offered and clarifications requested related to the deliverables:

*Project Review Activities*

Several projects under construction WOH (shown on page 9) have proposed completion dates given as “Individual lots”. Does this indicate that the completion date is unknown (i.e., individual lots will be developed as purchased), or that there will be a range of dates? If the latter, an indication of the range of dates, or the latest expected date of completion, would be helpful.

**DEP Response:**

**Each subdivision has an approved stormwater plan. The completion date for the project is unknown. DEP does not mark subdivision projects as completed until all the lots are built. For future reporting on subdivision projects, the ‘proposed completion date’ column will read: “Not all lots built,” instead of reading: “Individual lots.”**

Please provide the proximity of the Hidden Oak Subdivision (Item 3 on page 19) to Kensico Reservoir.

**DEP Response:**

**The Hidden Oak Subdivision is located approximately 500 feet from the Kensico Reservoir and this subdivision is currently under review.**

Section 3.5, Tables 3.5.1 and 3.5.2: NYCDEP has provided explanations for apparent data discrepancies in these tables in previous responses to NYSDOH/EPA comments. For example, at times the number of approvals is greater than the number of applications due to some

applications being received prior to the reporting period. Including a brief explanation for these apparent discrepancies at the beginning of this section would benefit the reader.

**DEP Response:**

**The following has been added to the Report: 3.5 Individual Septic System Review (Please Note: At times, the number of approvals is greater than the number of applications received because some applications are received by DEP prior to the reporting period).**

*Regulatory Enforcement Actions*

On page 3, paragraph 1, and throughout the report, references are made to NOV/NOF actions. Please provide information regarding the distinction between these two protocols.

**DEP Response:**

**For homeowners who have entered the CWC repair program to request assistance to repair a failing septic system, a Notice of Failure (NOF) is a letter that informs the property owner that a violation of the Watershed Regulations exists on their property and describes what they need to do to remedy the violation. It is less serious than a Notice of Violation, created by DEP and not required by the PHL. The intention is to issue a more cooperative-minded instrument in that the property is likely eligible for a repair under a CWC program and legal enforcement is unnecessary.**

**The issuance of a NOF does not apply for commercial/residential mixed use or small business properties, which will receive a Notice of Violation (NOV).**

**<sup>[1]</sup> The New York State Public Health Law (PHL) prescribes service of a Notice of Violation (NOV) where a violation of the Watershed Regulations exists. See PHL § 1102(1).**

To improve the quality of the report, and for consistency purposes, we suggest that descriptions of each project include the basin name. For example, two projects are described on page 9: the first one includes the basin name, the second does not. These discrepancies are noted throughout the report.

**DEP Response:**

**The report has been updated and each of the projects now contains the basin name.**

For those activities requiring enforcement, it would be useful if the “Overview and Action” section of project description included an approximate distance to a watercourse.

**DEP Response:**

**The distance to watercourses is not something DEP tracks in the DEP regulatory database. To provide that information in the enforcement reports would require going into the GIS for each enforcement action and manually entering the information in the database. DEP will not provide this detail for all enforcement actions in the FAD Enforcement Report, but can provide it when requested on a limited, case-by-case basis (e.g., question above about the Hidden Oak subdivision).**

NYSDOH/EPA has commented and NYCDEP has responded previously on the projects entitled 465 Bull Hill Road (page 12) and 466-478 Oliverea Road (page 33). While the septic system issues on these properties continue to present challenges, we commend NYCDEP for their active involvement, which has helped to move these properties towards compliance. For reference, how far are the septic systems on these properties from watercourses?

**DEP Response:**

**The 465 Bull Hill Road (page 12) project septic system is approximately 800 feet from a wetland that drains to a watercourse. DEP has not observed sewage flowing to the wetland.**

**The 466-478 Oliverea Road (page 33) site cesspool is approximately 90 feet from the Esopus Creek. DEP site visits did not reveal any sewage flowing to the Esopus Creek.**

Project 258 County Route 16 (page 22) indicates that the status of the project is “No Application” and the type of violation is “Failed SSTS – DEP NOF”. Several site visits since 1/4/13 have shown “no septic failure observed”. Please provide information regarding the date and the cause of NOF.

**DEP Response:**

**In 2008, the owner of the property contacted DEP and requested to connect the property to the Village of Tannersville City-owned wastewater treatment plant (WWTP). DEP conducted a site visit and observed that the septic system had failed in the past, but there was no active failure the day of the site visit. DEP observed that part of the sewer collection system is located on this property and could be connected by gravity, although the property is outside the Village of Tannersville WWTP Sewer District. DEP issued the Notice of Failure (NOF) on January 23, 2008, because the site did not meet the eligibility requirements for the Catskill Watershed Corporation Septic Replacement Program. . DEP required the owner to perform soils tests to determine if the site could support a subsurface sewage treatment system before allowing it to connect to the WWTP. The property owner moved away in 2008 without performing the soils tests or repair to the SSTS. DEP issued several letters to the property owner in 2009 and 2010 regarding the repair of the SSTS. The house was vacant during this time. DEP performed routine inspections from October 2010 to 2012 and did not observe a SSTS failure. The property was sold and in May 2012 DEP contacted the new owner, who stated there was no problems or issues with the SSTS. The new owner allowed DEP to perform periodic inspections of the SSTS. After 12 consecutive site visits with no signs of SSTS failure with the house in year round use, DEP closed the enforcement action in November 2015. DEP never received an application for the repair of the SSTS and no repair was performed on the SSTS.**

The status for Project 524 County Rt 40 (page 41) shows: “New/Closed”, although the Discovery Date for the project is given as 6/27/2011. Please provide clarification why this project is considered “New” – was the NOV issued on 4/16/15 the first NOV for this project?

**DEP Response:**

**The NOV issued on April 16, 2015 was the first and only NOV issued on this project, therefore, this was the first time this project was reported in the Regulatory Enforcement Actions FAD Report. The project had been ongoing since 2011 in the CWC Septic Repair Program and the property was vacant for some time. DEP observed the house being renovated in March 2014. During routine inspections, sewage was observed in March 2015. DEP sent several letters regarding the septic repair but the property owner was nonresponsive. Therefore, DEP issued the NOV. The septic repair was completed in July 2015 and the NOV closed on August 13, 2015.**

Project status of the Stone Tavern Farm (page 62) is listed as “Closed”. However, the very last inspection on 9/18/15 indicated that the issues had not been completely resolved. Will DEP continue to monitor this project even though it is closed?

**DEP Response:**

**The status was reported in error. The status should not be “Closed” and has been changed to “Open” because there are multiple enforcement actions remaining. There are several septic systems on this parcel of land and some still remain in “enforcement action” status.**