

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Water, Bureau of Water Compliance  
625 Broadway, Albany, New York 12233-3506  
P: (518) 402-8177 | F: (518) 402-8082  
www.dec.ny.gov

July 5, 2017

## SENT VIA EMAIL

Mr. Keith Mahoney, P.E.  
Acting LTCP Program Manager  
Bureau of Wastewater Treatment  
New York City Department of Environmental Protection  
96-05 Horace Holding Expressway  
Corona, NY 11368

Re: Order on Consent ("CSO Order"), DEC Case #CO2-20110512-25 to DEC Case #CO2-20000107-8, Section IV. City-Wide Green Infrastructure Implementation  
**Green Infrastructure Contingency Plan**

Dear Mr. Mahoney:

Pursuant to Section IV.A.3 of the CSO Order, the New York City Department of Environmental Protection (City) was required to submit a Green Infrastructure Contingency Plan (GI Contingency Plan) to the New York State Department of Environmental Conservation (Department) in the event that the City was not able to achieve the 1.5% GI application rate by December 31, 2015. Per Section IV.A.4 of the CSO Order, the GI Contingency Plan must include gray and/or green infrastructure projects sufficient to address the shortfall from the 1.5% green infrastructure application rate by the end of the next 5-year period, which would be December 2020.

As of December 31, 2015, the City was not able to achieve the 1.5% GI application rate and it submitted the GI Contingency Plan on June 27, 2016. The Department provided comments on the Plan on March 16, 2017 and the City responded to the comments on May 30, 2017. According to the GI Contingency Plan and May 2017 letter, the City anticipates achieving the 1.5% GI application rate with the continued installation of right-of-way bioswales throughout the City by December 2020 although the specific locations and timing of construction of the individual GI projects are not yet known.

In retrospect, when the Department established the GI milestones in the CSO Order, it had anticipated that the City would by now know with more certainty the location and timing of GI being installed to meet the GI milestone. While the Department recognizes that the City has made progress towards meeting the 1.5% application rate, the GI Contingency

Plan lacks specificity to provide assurance that the shortfall can be met by the end of 2020. In addition, the GI Contingency Plan encompasses the entire 5-year grace period allowed under the CSO Order to address the shortfall.

In the event that the City is not able to meet the 1.5% GI application rate by end of 2020, it can avoid stipulated penalties under CSO Order by demonstrating it made “best efforts” to fulfill its obligations. Pursuant to Section IV.B.2:

“A finding of best efforts will be supported where the failure to meet an application rate or associated CSO volume reduction results from, among other things: an insufficient rate of development or redevelopment to allow for the accrual of the benefits associated with application of the stormwater control performance standard to new development that was proposed in the GI Plan; insufficient available land to construct the required application rate of green infrastructure projects; or significant unexpected costs of building and maintaining green infrastructure.”

The Department is concerned that the City will not fully achieve the 1.5% green infrastructure application rate by December 2020 but recognizes that City has provided the most complete information it currently has available. As such, the Department hereby approves the GI Contingency Plan submitted on June 27, 2016 but requests that the City provide detailed information on the parameters to be assessed for a finding of “best efforts” at the end of each year until 2020.

According to the June 2016 GI Contingency Plan, the City shall control stormwater from an additional 744 impervious acres to achieve the 1.5% GI application rate. Pursuant to Section IV.A.4, the contingency plan must include an implementation schedule. The following milestones which were proposed by the City in the June 2016 GI Contingency Plan are incorporated by reference into the CSO Consent Order, Appendix A:

<b>Waterbody</b>	<b>Area-Wide ROW Project</b>	<b>Construction Completion Milestone</b>
Flushing Creek	TI-011	December 2019
Newtown Creek	BB Cluster	December 2019
Jamaica Bay	JAM-003	December 2019
EROW/Wallabout	NCB-014	December 2020
EROW/Bowery Bay	BB-005	December 2020
Westchester Creek	HP-014	December 2020
Westchester Creek	HP-033	December 2020
Flushing Creek	TI-010	December 2020
Bronx River	HP-007	December 2020
Bronx River	HP-004 and HP-002	December 2020
Jamaica Bay	26W-005 and 26W-004	December 2020

The approval of the GI Contingency Plan does not relieve the City of its obligations under the CSO Consent Order to achieve the milestones under Section IV.B.2a to 2c.

If you have any questions regarding this letter, please contact Mr. Gary Kline at 518-402-9655 or [gary.kline@dec.ny.gov](mailto:gary.kline@dec.ny.gov).

Sincerely,

A handwritten signature in dark ink, appearing to read "Joseph DiMura", with a stylized, flowing script.

Joseph DiMura, P.E.  
Director, Bureau of Water Compliance  
Division of Water

cc: All sent via email  
G. Kline, P.E.  
M. vonWergers, Esq.  
D. Putnick, Esq.  
L. Allen, P.E.  
R. Elburn, P.E.  
S. Southwell, P.E.  
K. Penner, P.E.  
S. Stephansen  
W. Plache, Esq.  
J. Taylor, Esq.  
A. Licata  
J. Mueller, P.E.  
P. Elardo, P.E.  
N. Cholewka, P.E.  
L. Grieco, P.E.  
L. Pena