



The Bronx Council for Environmental Quality

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President: Ira Charles Levenberg-Engel

September 18, 2009

Sue McCormick, P.E.
NYS DEC
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Dear Ms. McCormick:

This letter was discussed and approved at the September 9, 2009 meeting of the BCEQ Directors.

There seems to be very little substantial change in the finished Bronx River Watershed Water Facility Plan (Bronx River WWFP, July 2009). There is mention of the Low Impact Development (LID), but only as a model in need of study, and besides which, they make the ridiculous claim that there is no land to do this work! There is mention of Westchester County Improvements, but like the LID, it is also anticipated in the later years of the Long Term Control Plan. There is mention of the shift from the Water Quality Standard of boat and fishable to the LTCP Clean Water Act goal of fishable-swimable. While the upgrade of the Hunts Point WWTP made the biggest difference, it is not new. What is new is the Floatables project for some \$26 to 39 million. They could do much better with half the money going to street cleaning in the watershed!

It is simply incredible that the New York City Department of Environmental Protection (DEP) stated that they did not have enough time or money to do a pilot study, and could not find enough land¹ to absorb stormwater runoff and build LIDs or Green Infrastructure! While it is true that the DEP does not own that much land in this watershed, there are other agencies. Moreover, we have asked them over and over again to expand the responsibility for this consent decree to other agencies, but that has not happened.

Finally, we have attached a report on the work the DEP is doing on the Filter Plant in the north Bronx. They admit in this report that these Green Designs are appropriate for the Mosholu Golf Course (see attached Grimshaw Memo, CWTP, Design Commission - Response to Conditions of Preliminary Approval, July 29, 2009). It is clear that green roofs, stormwater BMPs and created wetlands are being used at this site.

“The Croton Water Treatment Plant is an unsurpassed venue to incorporate the use of innovative ecological water treatment technologies and to educate the public about their value. This integrated set of onsite water management solutions provide tremendous benefit to all stakeholders involved and demonstrates the ecological and economic value of water, in a highly urbanized setting.” (page 1)

¹ “To apply LID technologies current properties must be modified. This will pose a problem because the City of New York is highly developed and most areas are private owned.There are no other NYCDEP-owned facilities in the combined sewershed.NYCDEP will look for opportunities to work with the Bronx community to identify sources of funding to possibly pilot BMPs identified in the JBWPP effort.” WWFP Bronx River, July 2009, page 7-42. (referring to the Jamaica Bay Watershed Protection Plan)

While the filter plant is not in the Hunts Point sewershed, the CWTP plans will add to HP discharge through a connection to its dewatering plant and then to the Bronx River.

In the first two decades of the last century, New York City paid for 75% of the construction costs for the Westchester part of the Bronx River Parkway, and 100% of the costs in the City and the Bronx. A review of the history of the Bronx River Parkway and Roadway² clearly shows that the purpose of the Parkway Project was to clean up the noxious health hazard of the Bronx River, both in the Bronx and Westchester.

This report is deficient. It is no wonder it was denied as a legitimate project for the American Recovery and Reinvestment Act. The Bronx River Parkway was the first organized parkway commission formed; with a little leadership and responsibility, it could have been a great national example once again! It is disturbing to imagine that the only fresh water river in New York City a unique natural resource for 8 million people, is not considered “sensitive”

We will urge the EPA to ask that

1. LID and Green Designs should be written into the LTCP for the long term. Available land and shelf ready projects are on the attached list.
2. The Westchester Plan should be written into the Long Term Control Plan for the long term. It is no longer appropriate to dismiss this.
3. Another baseline method to assess the health of the River, which takes into consideration the pollutants absorbed by the actions in the LID and Westchester part of the plan. We will urge EPA to ask the City and State to follow the TMDL.
4. The 2004 Hunts Point Upgrade improvement should be the baseline, as this is the current existing condition.
5. Some editorial corrections on the existing document – most of which involve stakeholder involvement. Real page numbers should be on the report, not just section and page. After waiting two years, calling a public meeting in the summer and at a place outside the watershed was inappropriate. Clearly the DEP does not know, nor is it interested in promoting stakeholder involvement. See attached corrections.

Please accept this letter and our report as BCEQ’s comments.

Sincerely,

Dart Westphal and Karen Argenti

Dart Westphal and Karen Argenti
Co-Chairs, Water Committee

c: EPA - urban.watershed@epa.gov

Attached: Report, Corrections, List of available projects, prior comments, Grimshaw Report of 7/09

²Bronx River Parkway HAER Report http://www.westchesterarchives.com/BRPR/Report_fr.html. “The city’s comptroller, supported by the president of the Borough of Manhattan, maintained that the Bronx River improvements were a sanitary measure rather than a park project, and should be charged against the entire city as were other sanitary measures of general benefit. He reiterated that the parkway project was the most feasible means by which to deal with the problem. The measure to approve the parkway and land acquisition finally passed by twelve votes to four.(65) The final decision was based on the understanding that the city needed to shoulder the primary burden for the project because the Bronx was the main recipient of the Bronx River pollution. The reduced parkway area and official consent of the NYC-BEA was put into effect through a 1913 amendment to the 1907 Parkway Law, which allowed the BPC to begin negotiations for parkway lands and accept gifts of land.(66) The authority to acquire land allowed the BPC to actively moving forward on the parkway project. Without the authority to acquire land, no substantial progress could be achieved on the parkway.”

BCEQ's September 2009 Report on
NYC DEP's Long-Term Control Plans for NYC's Combined Sewer Overflows

According to the MOU finalized in January 2005, New York City agreed to certain actions which **have not yet** been instituted, and therefore, will never be achieved. These actions include: adequate stakeholder involvement, inclusion of more efficient and economical alternatives that will reduce the impact of CSOs on water bodies, failure to recognize the existing uses and its equivalent standard, and revision of site specific state standards. See the document copied in the footnote below for questions.³

1. Stakeholder Involvement

Improved water quality is essential to the thousands of users who come into contact with the river every year. We share the DEP's goal of cleaner water, and we hope to work cooperatively to achieve it. To that end, we advocate for the continued timely involvement of stakeholders during the Long Term Control Plan process. Environmental groups, community organizations, local experts and citizens have specific knowledge of their neighborhoods and watersheds that will prove critical during the analysis of potential solutions to the CSO problem.

2. Inclusion of LID/Green Design in alternatives analysis

While we are glad that the DEP is addressing water quality in the Bronx River, we are concerned that they have discounted natural infiltration of storm water, as well as decentralized micro-scale stormwater controls (low impact development, greenroofs, greenstreets, green parking, etc.) as viable options for reducing combined sewer outfall discharges, providing treatment for contaminated overland stormwater flows, helping to reduce flashy flows, and increasing base flow to the river. Increased base flow from groundwater can improve in-stream habitat, and dilute the affect of contaminants. Also, innovative storm water management techniques, such as bioretention ponds, infiltration basins and green roofs, have multiple benefits. In addition to

³ On page 30 of the **January 14, 2005 Final Version, Response To Comments On The 2004 Administrative Consent Order, For Implementation Of The Combined Sewer Overflow Abatement Program In New York City** the NYS DEC stated:

The Memorandum of Understanding (MOU) referenced in the 2004 ACO details how the foregoing will be accomplished in the development of DEP's LTCP. It is to be noted that the 2004 ACO and MOU do not change current WQS, but rather describe the process by which the CSO Policy review procedure will be accomplished in a manner fully consistent with federal and state law, regulations and guidance. DEP will produce Waterbody/Watershed Facility Plans for each CSO abatement project. The Waterbody/Watershed Facility Plans will provide the technical framework for DEC's Use Attainability Analyses for review of Site Specific Standards. Further, the Waterbody/Watershed Plans will examine the extent to which additional cost-effective CSO control measures may result in WQS being met.

DEP will produce Use Attainability Analysis Reports (UAA Reports) for each basin, using the waterbody/Watershed Facility Plans to identify what aquatic life, recreational, and aesthetic uses can be attained through implementation of the Waterbody/Watershed Facility Plans. These UAA Reports will identify existing uses, use impediments, and appropriate attainable uses based on modeling the impacts of implementing the Waterbody/Watershed Facility plans. The UAA Reports will also analyze, for each basin, the applicability of the criteria set forth in 40 CFR §131.10(g) for modifying WQSs.

Finally, DEP, if it believes circumstances warrant, will petition DEC for review and revision of Site Specific Standards of basin waters in accordance with 6 NYCRR Part 609. [Emphasis added]

controlling polluted run off, these strategies can help to green communities, improving air quality and overall quality of life.

- *Implementation of demonstration sites is critical for proper analysis by DEP!*
Considering the substantial disparities between models presented by the DEP in 2004 and 2006, we do not believe that modeling alone is sufficient to prescribe water quality solutions in the Bronx River. Natural infiltration, part of low impact development, and best management practices techniques are used in urban areas across the country (including Seattle, Philadelphia, Chicago, Boston and by NYC DEP in Jamaica Bay and Staten Island) to lessen the volume of water being diverted to combined sewer systems improve downstream water quality. We suggest that DEP include an accounting of the potential impacts of these techniques over a wide scale in their model. Since the DEP needs to prove a high likelihood of effectiveness for their other planned actions, we also suggest that they collect and analyze the necessary soil and land use data, and conduct some small-scale demonstration sites to test the efficacy of these techniques.
- *NYC should promote de-centralized, ecologically-focused stormwater capture through available funding, regulations, education, etc.*
We strongly support the promotion of innovative storm water management techniques, and for a comprehensive storm water management strategy for the city. Such a strategy would enable the city to direct its CSO abatement funds to storm water management projects that would provide long-term, cost-effective and attractive solutions to the CSO problem.

At this point, it is not clear why the DEP keeps insisting that they do not have enough information on new technologies. In fact, this is the exact opposite of what was promised in January 2005 when they were negotiating the Consent Decree. See footnote to answer questions.⁴ Where is the DEP report (referenced in the footnote) conducted which states that this approach is not appropriate for NYC? For forty years, the Department has conducted research and has not improved water quality to swimmable-fishable in the Bronx River; it is time for a change.⁵

Moreover, we have attached a report on the work the DEP is doing on the Filter Plant in the north Bronx. They admit in this report that these Green Designs are appropriate for the Mosholu Golf Course (see attached Grimshaw Memo). It is clear that green roofs, stormwater BMPs and

⁴ IBID., page 20 response to comments included the answer to this same question:

DEC and DEP are aware that the CSO controls being developed within the densely populated NYC environment outlined above can be costly and potentially difficult to site. Further, both agencies embrace the use of more natural methods of controlling CSO pollution including infiltration of the rainfall before it has the chance to runoff into the combined sewers. However, New York City is a densely populated urban environment with areas that are nearly 100 percent impervious and with population densities in excess of 100,000 people per square mile (160 people per acre). Excluding Staten Island, the city-wide average population density is nearly 40,000 people per square mile (63 people per acre). In 1999, DEP authorized a study by independent stormwater experts to evaluate the feasibility and potential application of runoff reducing technologies within NYC. This study found that infiltration technologies and green roof technologies had the potential for application in selected areas. However, the study also found that wide scale application of the technologies within acceptable regulatory timeframes was impracticable. [Emphasis Added]

⁵ IBID., “The City has been evaluating solutions to these water quality problems for the past 40-years and continually finds that the most cost effective solutions are large centralized retention facilities that collect CSO during wet weather and pump that CSO back to the existing sewage treatment plants after the rain events end.”

created wetlands are being used at this site. While the filter plant is not in the Hunts Point sewershed, they are planning to add to the HPWWTP impact through a connection to its dewatering plant.

3. The Long Term Control Plan must aim to attain water quality standards for current designated and EXISTING USES in NYC water. For most waterbodies, this includes primary contact recreation (swimming) as well as fish survival and propagation.

4. NYC will only be able to comply with the Clean Water Act by requiring that MULTIPLE agencies play an active role in finding ways to abate CSOs. This was promised in the Consent Decree documents.⁶

NYC's current level of impervious cover diverts too much stormwater to the combined system, therefore causing CSOs to occur. In order to reduce the affect of CSOs on our waterbodies, NYC must focus on capturing, infiltrating or otherwise retaining stormwater before it enters the system. Many opportunities exist to capture water on our streets, rooftops, vacant lots, sidewalks, parks, etc. NYC lawmakers, planners and agencies need to work cooperatively to ensure that both city-owned and private buildings, streets and other lands are managed, developed and re-developed in the most sustainable way possible. All city agencies play some role in regulating the city's impervious surfaces that produce stormwater flows that overburden the sewer system; therefore those agencies are responsible for finding ways to reduce their stormwater outputs. This should be done through a combination of new laws, regulations and incentives.

- *DEP should facilitate stormwater capture wherever possible and should partner with other willing agencies to implement stormwater capture now.*

In recent years, Parks has increasingly focused on facilitating stormwater detention, retention, and natural infiltration on Parks property. The Greenstreets program has made a commitment to using sustainable stormwater capture practices in all new construction and renovation of Greenstreets. In the Bronx River watershed, Parks has worked with various partners, including the Bronx River Alliance, to identify strategies and viable locations for capturing, providing bioremediation for and infiltrating stormwater to alleviate the stormwater burden to the sewer system. See attached wish list of projects.

Through sustained inter-agency cooperation on this issue, NYC should identify locations or facilities for implementation of demonstration projects that can be monitored for

⁶ IBID., page 20 response to comments included the answer to this question:

DEP's current approach to CSO planning provides allowances for future growth and development within NYC. DEP prepares official estimates of population growth and projects water usage and wastewater flows to 2045, the design year for the water pollution control infrastructure including CSO abatement facilities. Currently, all CSO control facilities are evaluated and designed including provision for growth and development during this period. As site-specific projects are developed and considered in the City, DEP has developed the technical tools to evaluate the increased flow to the combined sewer system and wastewater treatment plants, and the potential effect on CSO abatement facilities, the potential for increase in CSO, and the possible impact on water quality and water uses. **New buildings cannot be constructed within NYC** without applying for a sewer connection permit. DEP reviews the capacity of sanitary, storm and combined sewers that are potentially impacted by the sewer connection request to assure capacity to convey storm flows and to treat sanitary flows. Development projects within New York City are subject to the CEQR review process. City Planning or another involved City agency would serve as the lead agency with the responsibility of evaluating environmental impacts of such projects. Where the lead agency finds a significant impact such as a potential violation of the ECL or CWA, that impact must be mitigated before the project is allowed to proceed. [Emphasis Added]

effectiveness and assessed for potential use a part of the strategy for mitigating pollution and reducing CSO discharges for the Long Term Control Plans.

The city and state agreed to be “involved agencies” but that has not happened. See footnote for info.⁷

It is disturbing to imagine that the only fresh water river in New York City a unique natural resource for 8 million people, is not considered “sensitive.”

Dated: September 18, 2009

⁷ IBID., in the section about Development with New York City

Comment: The ACO should provide for special procedures for large development projects - perhaps those defined as those that exceed a Type I threshold under SEQR – that would have the potential to result in CSO overflows to receiving waters during storm events and that do not already embody specific mitigation measures to prevent CSO discharges that exceed those that currently occur. Such projects should be submitted to a DEC public hearing at which comments would be received on whether the proposed development and potential CSO discharges would result in violations of the Clean Water Act (CWA), the Environmental Conservation Law (ECL), applicable State Pollutant Discharge Elimination System (SPDES) permits, and/or the ACO entered into by DEC and the City and DEP. The project could only proceed if DEC made a determination that the CSO impacts were adequately mitigated.

Response: Certain development projects within New York City are subject to the CEQR review process. City agencies with jurisdiction over aspects of a project would be considered involved agencies and may serve as the lead agency with the responsibility of evaluating environmental impacts of such projects. Where this lead agency finds a potentially significant impact that may result from a project, that impact must be mitigated to the maximum extent practicable before the project is allowed to proceed. DEC has the responsibility of enforcing the ECL and CWA and as such DEC regulates CSO discharges through the SPDES permits and ACOs. Therefore, if a project requires DEC’s approval, DEC would be an involved agency in the environmental review process and must issue a finding under CEQR that adverse impacts have been mitigated to the maximum extent practicable. To the extent DEC identifies any deficiencies in the environmental review or mitigation measures proposed for a project, DEC may request the City to take additional actions to mitigate potential impacts and may choose to withhold its regulatory approval and associated CEQR/SEQRA determination. [Emphasis added]

CORRECTION to the City's Report From page 6-5:

Table 6-1 Bronx River Waterbody/Watershed Stakeholder Team Participants

Groups	Organizations
Citizen Groups	delete Bronx CBs – they are city agencies Add: Bronx Council for Environmental Quality North Bronx Bissel Gardens Youth Ministries for Peace and Justice The Point CDC
Federal Government	Add Waterways and Trailways Add Congressman Jose Serrano's name
Interest Groups	Add: New York Academy of Sciences New York Botanical Garden delete Youth Ministries for Peace and Justice The Point CDC
Local/Multi Jurisdictional Government Agencies	Add CBs from above Fix New York City Soil and Water Conservation District Add Bronx River Alliance delete The Bronx Council for Environmental Quality North Bronx Bissel Gardens New York Academy of Sciences New York Botanical Garden