

1999 - 2001

Office of the Mayor
Rudolph W. Giuliani

Deputy Mayors

JOSH FILLER
JOSEPH LHOTA

ENVIRONMENTAL PROTECTION
DEPARTMENT OF

0048

Folder

02/05/2/002

Box



www.alpha-sys.com



**Department of
Environmental
Protection**

59-17 Junction Boulevard
Corona, New York
11368-3107

**Joel A. Miele Sr., P.E.
Commissioner**

**Diana Chapin, Ph.D.
First Deputy
Commissioner**

Tel. (718) 595-6576
Fax (718) 595-3557
Dchapin@nyc.gov

DEP FAX COVER SHEET

TO FAX # 212-788-3127

DELIVER TO: VINNY LAPADULA

FROM: DIANA CHAPIN

OF PAGES
(Including Cover Sheet)

6

**QUESTIONS OR PROBLEMS
CONTACT:**

TELEPHONE # 718-595-6576

COMMENTS:

Re:

PII

Easement

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(718) DEP-HELP

Speyer Property

- 84 Acre Parcel in Town of North Salem - near Titicus Reservoir
- The issue is an access easement, and the exchange of older easements for a newer one that is more appropriate to the existing parcel subdivisions.

Previously there was a single parcel of land for which the City granted an access easement. This parcel was subsequently subdivided into two parcels, one owned by [PII] and one owned by his neighbor [PII]. The old City easement lies on the parcel owned by [PII]. [PII] previously used the old City easement which crossed the lands of his neighbor, but there is now a dispute with the neighbor involving use of the easement. Litigation involving the older easement had been ongoing between [PII] and the neighbor when [PII] approached the City for his own easement which would avoid the neighbor's property in March of 1997. Negotiations with [PII] and several lawyers representing him then ensued. A number of proposals and counter-proposals were discussed with DEP's objective being to protect the water supply. In addition, several legal instruments were drafted and extensively negotiated.

Administrative Code permits granting new easement in exchange upon determination by the Mayor that the property rights to be acquired by the City are of equal or greater value than the property rights to be surrendered. This determination will be a condition of the exchange and will be based on appraisals. Also, since the easement involves water supply property, its disposition requires Water Board approval.

In exchange for a new City easement which would avoid the neighbors property, [PII] would surrender 2 older easements crossing City lands. He agreed that he restrict development on his 84 acres to a maximum of 6 single family homes and at no time would more than 35% of the property be improved by construction of surfaces impervious to water penetration.

DEP supports the exchange since it will not interfere with the City's water supply and because it would limit development on the [PII] property that would otherwise be allowed by State and local law and under the City's watershed regulations.

9/14/99 memo from Mark Hoffer to the Water Board requesting transfer

9/24/99 the Water Board approved the easement exchange, but with a proviso which states that in addition to limiting future development to a maximum of 6 single family homes and no more than 35% impervious surfaces, "*nor shall its natural vegetative state be otherwise altered or disturbed.*" The intent of this provision was to limit runoff of pesticides and other contaminants into the water supply.

The Law Dept (Chris King) communicated with [PII] and his attorney, but [PII] refused the condition imposed by the Board.

At least 6 months ago, the Executive Director of the Water Board and DEP General Counsel spoke with the Chairman of the Water Board to ascertain if the Board might, after review by DEP engineers, agree to an alternative proposal to protect watershed lands. Receiving an affirmative, she communicated this to Steve Spinola, President of the Real Estate Board, so that [PII] could pursue this alternative if he wished by contacting the Law Department. We've heard nothing further from that time..

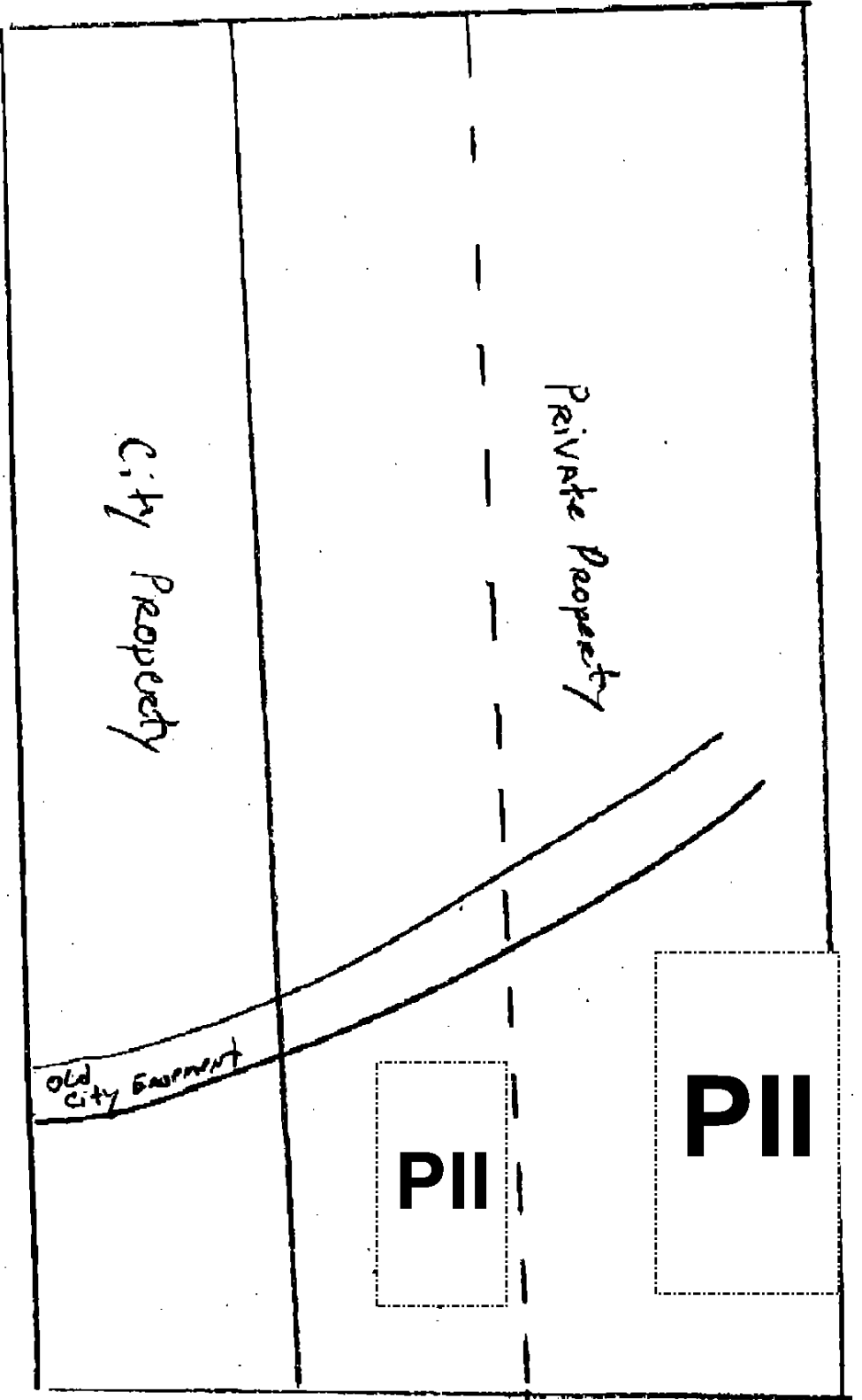
Sep 28 2000 16:48 P.03

Fax: 718-595-3557

DEP

Conceptual Diagram

Road



NEW YORK CITY WATER BOARD

September 24, 1999

RESOLUTION

WHEREAS, pursuant to Section 11.1 of the Lease dated as of July 1, 1985, as amended (the "Lease"), between the Board and The City of New York (the "City") relating to the City's Water and Sewer System (the "System"), the City may not dispose of, or grant interests in, real property included in the Leased Property (as such term is defined therein) without the written consent of the Board; and

WHEREAS, the City has requested the Board's consent to the granting of an easement (the "New Easement") over certain City-owned water supply lands described in Schedule I annexed hereto, to the owner for the purpose of ingress to and egress from certain lands; and

WHEREAS, the proposed New Easement would be granted pursuant to an Easement Agreement (the "Easement Agreement") between the City and the owner, in substantially the form of Exhibit A annexed hereto; and

WHEREAS, in consideration of the granting of the New Easement, the owner has (x) agreed to surrender his rights to use two older easements crossing City-owned lands, and (y) has also agreed to place certain permanent restrictions on his property, limiting the development thereof, pursuant to a Declaration of Protective Covenants in substantially the form of Exhibit B annexed hereto; and

WHEREAS, the Board has received certification of Metcalf & Eddy of New York, Inc., Consulting Engineer, in accordance with Section 11.1(d)(i) of the Lease, with respect

to the proposed New Easement and has delivered to the Board a certificate with respect to the granting of the Easement; it is therefore

RESOLVED, that the granting of the New Easement by the City to the owner as described above is hereby approved pursuant to Section 11.1 of the Lease subject to the following conditions: (i) there will be a determination by the Mayor based on appraisal that the property rights to be acquired by the City are of equal or greater value than the property rights to be conveyed by the City; and (ii) the Easement Agreement shall provide in substance that at no time shall more than 35% of the Property be improved by the construction of surfaces impervious to water penetration or by lawns nor shall its natural vegetative state be otherwise altered or disturbed.

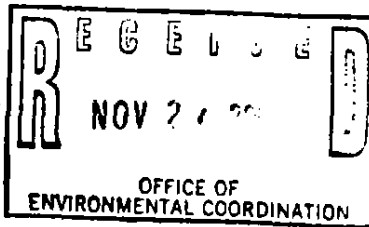
↓
Water Board Proviso



The City of New York
Department of Environmental Protection

59-17 Junction Boulevard
 Corona, New York
 11368-5107

Setup meeting on Dec 18/19 or 20th.



November 21, 2000

Dec 18

Joel A. Miele Sr., P.E.
Commissioner

Re: Membership and Participation of the City of New York in the One Call Users' Council, Inc.

Mark D. Hoffer
General Counsel
Bureau of Legal Affairs

Tel (718) 595-6555
 Fax (718) 595-6543
www.ci.nyc.ny.us/dep

Dear Ms. *Alessandra* Sumowicz:

As I promised in our recent conversation, I am writing to enlist your assistance in coordinating and facilitating the City's participation in the One Call Users' Council, Inc. ("One Call"). Article 36 of the New York State General Business Law and 16 NYCRR Part 753 require Operators of underground facilities within the State of New York to participate in and be responsible for administration of a One Call notification system to receive and disseminate information concerning proposed excavations and to designate their underground facilities by staking and marking when notified of proposed excavation work.

Over the past months, Commissioner Joel A. Miele, Sr., P.E. has received correspondence from both the State Department of Public Service and One Call reminding DEP of the statutory requirements and soliciting the City's participation in the One Call system currently operating in this area. Commissioner Miele has acknowledged the important public safety aspects of participation in the One Call System and has directed DEP staff to do what is necessary to ensure our participation at the earliest possible date.

We have been in contact with One Call and have been informed that City of New York as a municipality would by statute be exempt from paying a proportionate share of the cost of operating the One Call system. This membership however, would entitle the City to receive the One Call notifications (which would enable the marking out of City facilities) at only one location which we would designate. If the City determined that it required additional notifications (i.e. to more than one agency) it would have to pay a full charge for each. We have been informed that the Department of Transportation (DOT),



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the Fire Department and Police Department also maintain facilities which must be marked in response to One Call notifications. In addition, DEP currently does not have the staff which would enable it to mark its facilities at the approximately 100,000 excavations which occur in the City each year.

DEP has explored the possibility of arranging for an outside vendor to receive the One Call notifications on behalf of the City and mark out the City's underground facilities as required. Our research indicates that there are a number of firms which would be willing to bid to perform this work for a fee. As DEP is the agency responsible for the vast majority of the City's underground facilities, it is prepared to join One Call and seek a budget in order to initiate a procurement for the mark out work for itself; however we believe it may be advantageous for all of the City's underground facility operators to join together in this endeavor. Also, it is our belief that the entities which seek to excavate in the streets of the City and therefore require the mark outs should be made responsible for the City's costs in performing this service and that such costs should not be passed along to the ratepayers/taxpayers. This can be accomplished by adding a small additional amount to cover the cost of the mark out contract onto the fee paid for DOT street opening permits.

We have already taken the liberty of reaching out to DOT and DOT staff has expressed interest in joining in this initiative subject to discussions and input by Commissioner Weinshall. Therefore, I would seek the assistance of your good offices in securing necessary input and advice from City Hall and coordinating the involvement of the various agencies should the decision be made to move forward in the manner which I have outlined above.

Very truly yours,



Frank Schiano
Assistant Counsel

xc: Comm. Joel A. Miele
D. Chapin
M. Hoffer
D. Greeley
M. Krysko

THE COMMUNITY PRESERVATION CORPORATION

5 West 37th Street
New York, New York 10018
Tel (212) 869-5300
Fax (212) 719-9374



*file: DEP
c: VL
AS
Stanckev* December 20, 2000

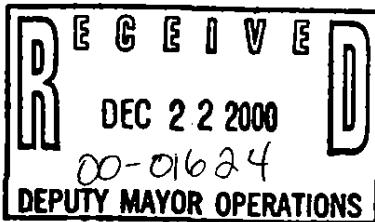
Mayor Rudolph Giuliani
Office of The Mayor
City Hall
New York, NY 10007

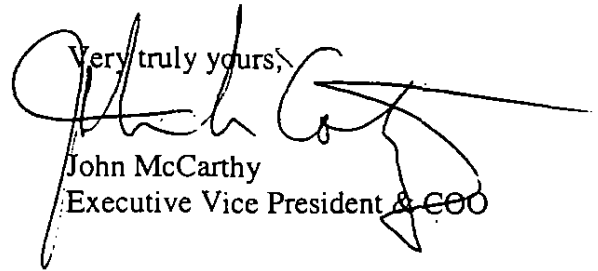
Re: New York Times – December 15, 2000 Water Meters Article

Dear Mayor Giuliani:

The Community Preservation Corporation, along with numerous other affordable housing lenders and providers, has long been engaged with DEP on water/sewer pricing.

Enclosed is a copy of a letter To The Editor of the New York Times which we sent in response to the article on water meters.



Very truly yours,

John McCarthy
Executive Vice President & COO

cc: Deputy Mayor Joseph Lhota ✓
Commissioner Joel Miele Sr.

THE COMMUNITY PRESERVATION CORPORATION

5 West 37th Street
New York, New York 10018
Tel (212) 869-5300
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December 18, 2000

Letters to the Editor
The New York Times
229 West 43rd Street
New York, NY 10036

To The Editor:

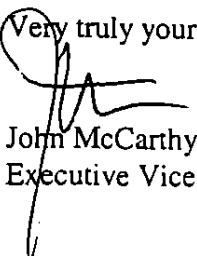
In your December 15 article on flat rate water billing, the City is not given due credit for developing a mechanism that reasonably balances water revenue needs and the economic health of affordable housing. In fact, The Community Preservation Corporation, one of the State's major affordable housing lenders, along with over 100 banks, non-profits, and multifamily owners, urged the City to pass such a policy. The flat rate option resulted from several years of discussion on ways to mitigate the burden of escalating water/sewer costs on the affordable housing sector.

Without this change, water/sewer bills in many low- and moderate income apartment buildings would immediately double or triple, or worse. This is because of a key fact your article misunderstood: consumption by each tenant cannot be metered. An apartment building has one meter in its cellar, and the owner pays a lump sum bill for the building's total consumption. For tenants, the "pay for what you use" price signal is broken.

Numerous studies since the late-1980's have proven higher-than-average consumption in lower-income buildings. Larger family size and higher daytime occupancy are among the causes. By contrast, luxury buildings have actually seen bills decline under metering.

Billing in proportion to consumption would therefore disproportionately allocate water system costs from high-income buildings to low-income ones. This is not only inequitable, but would starve long-term mortgage investment in necessary rehabilitation of aging buildings.

Very truly yours,


John McCarthy
Executive Vice President

DEC-20-2000 16:59 FROM DEP LEGAL

TO 912127883127

P.01/05



**Department of
Environmental
Protection**

59-17 Junction Boulevard
Corona, New York
11368-5107

**Joel A. Miele Sr., P.E.
Commissioner**

**Mark D. Hoffer
General Counsel**

**Bureau of Legal
Affairs**

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Fax (718) 595-6543
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FACSIMILE TRANSMISSION

TO: VINNIE LAPADULA
FAX #: 212-788-3127

FROM: Mark D. Hoffer

TELEPHONE #: (718) 595-6528
FAX #: (718) 595-6543

DATE: 12/20/2000

TOTAL PAGES (including this cover page): 5

Comments:

PLEASE CALL ME TO
DISCUSS.

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JAN-16-2001 15:33

MAYOR'S OFC of ENV. COORD

1 212 788 2941 P.01/11

Mayor's Office of Environmental Coordination
Director, Alessandra Sumowicz
100 Gold Street, 2nd Floor
New York, NY 10038
Tel. 212-788-2924, Fax 212-788-2941

*File
DEP*

Fax

To:

Vinny LaPadula -
8-3127

From:

Alessandra

Tel. 212-788-2937

Date:

1/16/01

Pages (including cover sheet):

11

Comments:

☐ Urgent

☒ For your review

☐ Reply ASAP

☐ Please comment

☐ Per your request

Vinny -

FyI - update on Diversion / Schwarz

matter. (DEP)

A

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MAYOR'S OFC of ENV. COORD

1 212 788 2941 P.02/11



**Department of
Environmental
Protection**

59-17 Junction Boulevard
Corona, New York
11368-5107

**Joel A. Miele Sr., P.E.
Commissioner**

**Mark D. Hoffer
General Counsel**

**Bureau of Legal
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FACSIMILE TRANSMISSION

TO: ALESSANDRA SUMOWICZ

FAX #: _____

FROM: Mark D. Hoffer

TELEPHONE #: (718) 595-6528

FAX #: (718) 595-6543

DATE: 212-788-2941

TOTAL PAGES (including this cover page): 10

Comments:

OUR LATEST TO SCHWARTZ. HE SALES ON
FRI DAY AND ACCEPTED ^{APPROX.} 99% OF IT (SUBJECT
TO HIS LAWYERS SIGNING OFF) - STAY TUNED.
CHARLIE THOUGHT YOU & JOE LHOA SH HAVE
THIS IN CASE YOU GET A CALL.

If you experience any problem in receiving this transmission, please call (718) 595-6528.

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MAYOR'S OFC of ENV. COORD

1 212 788 2941 P.03/11



VIA TELECOPIER
& REGULAR MAIL

January 11, 2001

PRIVILEGED & CONFIDENTIAL

Mr. Lawrence S. Schwartz
Chief Advisor to the County Executive
Westchester County
Michaelian Office Building
White Plains, New York 10601

Re: Proposed Sewer Diversion Project ("Project") - City
of New York (City) / New York City Department of
Environmental Protection (DEP) / County of
Westchester (County)

Dear Larry:

Further to our telephone conversation, DEP has now reviewed your proposed revisions to the draft Term Sheet which accompanied my letter of November 30, 2000.

We appreciate the time you have taken and the careful attention you have given in reviewing the draft Term Sheet, as well as the time and attention you have spent in numerous telephone conversations about the Project. We believe we can accommodate virtually all of the County's concerns in a way that preserves the basic terms we have discussed, and that will allow the Project to move forward.

Enclosed with this letter is a revised draft Term Sheet, which has been blacklined to show the location of all changes we are now proposing. What follows is an explanation of why the changes are proposed and why we believe they represent a fair basis for moving ahead (references are to paragraph numbers in the revised draft Term Sheet).

1 - We have made the corrections you requested with respect to identifying the various facilities involved in the Project. We have also included Baldwin Place (a/k/a Shop-Rite) as a WWTP to be diverted, for two reasons: (i) we believe it would benefit water quality to do so, and (ii)

JAN-16-2001 15:34

MAYOR'S OFC of ENV. COORD

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P.04/11

it will contribute (by our estimate) \$884,000 in "savings" that we will apply towards the Project. Please note that we estimate it will cost approximately \$355,000 to make Baldwin Place part of the Diversion Project (decommissioning/connection).

1 - We have revised the language dealing with Yeshiva Farm Settlement to make clear that to the extent feasible, all State Environmental Bond Act or other State funds remaining after design and construction of a sewage collection system at Yeshiva Farm Settlement will be applied toward the remainder of the Project including connection to the Yonkers Joint WWTP. We have understood that the Diversion Project costs include the costs to divert flow from Yeshiva Farm Settlement and Stanwood areas to the Yonkers Joint WWTP, as well as the costs to sewer those particular areas. Please confirm that our understanding is correct.

2 - Because Baldwin Place has been added, we have raised the \$29 Million ceiling to \$29.355 Million. We have also added an \$1.039 Million contribution by the City in respect of the savings from diverting Baldwin Place. We have dealt with the issue of Regulatory Upgrade review fees by agreeing to pay a \$200,000 fee but stipulating that this sum will be applied by the County towards the Project (thus, in effect, bringing the City's contribution on Baldwin Place up to a full \$1.239 Million (see discussion of Baldwin Place above). In the end, this results in a capital "gap" which the City is willing to share on a 50/50 basis (your request), and does not require the County to forego review fees.

The essential mathematics are as follows:

Cost:	original project cost as estimated by the County	\$29.0 Million
+	additional cost associated with Baldwin place	<u>\$.355 Million</u>
	TOTAL	\$29.355 Million

LESS

a) City contributions per MOA Paragraph 140(l):	\$21 Million
Yorktown Heights, Riverwoods, Random Farms	\$ 1.039 Million
Baldwin Place	

b) Application of \$200,000 review fee	<u>\$.2 Million</u>
(City pays it; County applies it)	

CAPITAL "GAP"	\$7.316 Million
----------------------	------------------------

YIELDS 50/50 sharing of capital gap	\$3,658,000 each
--	-------------------------

3 - We have revised the language to make clear that the four existing WWTPs being diverted are not required to surrender any existing SPDES permit capacity that it not being used. However, the Project may not take in any flow from those WWTPs that is above and beyond their existing SPDES flow limit (which you and David both indicated was acceptable). We have also made clear that, with respect to Yeshiva Farm Settlement and Stanwood, the Project will

JAN-16-2001 15:34

MAYOR'S OFC of ENV. COORD

1 212 788 2941 P.05/11

only accept existing flow from existing occupied structures (not new development). Finally, we have allowed for the Project to be sized to accommodate specific, identified "focus areas" (these will need to be identified and agreed upon), with the understanding that (i) the City will not pay for any incremental costs associated with bringing these areas in (we did not discuss anything other than Yorktown Heights, Riverwoods and Random Farms originally and our financial analysis makes no allowance for these "focus areas"); and (ii) the flow to be accepted is again limited to existing flow to septic systems from existing occupied structures (not new development).

4 - We accept the 36 month timetable you suggested in our last telephone conversation. We feel that the Project must have a set start date, which we believe should be pegged to execution of the formal Intermunicipal Agreement. However, we recognize that delays in obtaining permits may slow the Project down and require an extension of time. The City will agree to a reasonable extension if the Project is delayed for this reason, so long as the County has diligently pursued the necessary permits, the delay is not due to its own acts or omissions, and EPA and the State have agreed in advance to the extension. We also feel that first priority should be given to design work and permitting for the Yorktown Heights portion of the Project.

5 - We believe the language should stay as originally written. As I have explained, the City cannot and will not commit to simply write a check for an agreed-upon amount each year, in respect of O&M. We would commit to make payments, up to the agreed-upon amount each year (for 15 years), against proof of actual and reasonable O&M expenses incurred by the County during such year. Given your projections of O&M expenses, this should not prove to be burdensome.

6 - We have made the changes you requested.

7 - See (2) above. We have provided for a review fee of \$200,000, which will ultimately be applied towards the capital costs of the Project. In this way, we can reach a 50/50 sharing of the capital "gap" as well as preserving a review fee.

7 - We feel very strongly that basic review of Regulatory Upgrade plans can and should be completed in 21 days, except in cases where a plant poses unusual/complex issues. In effect, the County has already accepted this time frame by taking delegation of NYSDEC's review and approval role re WWTPs in the watershed portion of the County (as per a prior MOU between the City and NYSDEC, NYSDEC committed to a 21-day turnaround on plans). Nonetheless, we recognize that circumstances associated with certain plants may require more time, perhaps as long as 60 days (your suggested text would allow for a review period of 60 days, at maximum). There are a number of ways this flexibility can be built in (we are uncomfortable with general language dealing with "administrative burden"; the test should be facts and circumstances associated with a given plant). We suggest that the County identify, in advance, those plants where, due to size, age or other unique factors, a longer review period would be appropriate, if necessary.

8 - We have altered the language to make clear, as per previous discussions, that the County may approach the City with other projects whenever it chooses. However, the City's

JAN-16-2001 15:34

MAYOR'S OFC of ENV. COORD

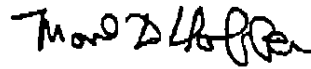
1 212 788 2941 P.06/11

only obligation vis a vis diversion is as stated in MOA Paragraph 140(l), and the City makes no commitment or promise whatsoever that it will support any other diversion project.

10 - We have changed the date by which the County must obtain approval of the Diversion project from DEC, DOH and EPA to January 31, 2001.

I would appreciate your reviewing the enclosed document and advising me whether we have an understanding or whether further discussion is needed. We are willing to come to your offices for such discussion, if that is desirable. I thank you again for all of your time and effort on this initiative, which is very much appreciated.

Very truly yours,



Mark D. Hoffer

MDH:mdh
SCHWARTZ.WPD
Enc.

cc: Commissioner Miele
FDC D. Chapin
C. Sturcken
M. Principe
R. Ravallo
E. Polese
S. Adams (Law)

DRAFT- 1/11/2001

PRIVILEGED & CONFIDENTIAL

**COUNTY OF WESTCHESTER (COUNTY) /
NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP)**

**Sewage Diversion Project
Term Sheet**

1 - Diversion Project (Project): Design, construction and installation of equipment and facilities necessary to decommission the following wastewater treatment plants (WWTPs) (including relinquishment of their SPDES permits), convert same to pump stations (as necessary) and divert sewage now treated at those WWTPs to the County-owned Peekskill WWTP or the municipally-owned Yonkers Joint WWTP for secondary treatment and discharge to the Hudson River:

- a) Yorktown Heights WWTP, Baldwin Place (a/k/a Shop-Rite) WWTP diverted to Peekskill WWTP
- c) Riverwoods WWTP, Random Farms WWTP diverted to Yonkers Joint WWTP

In addition, design, construction and installation of equipment and facilities to collect and divert sewage now treated and disposed of subsurface (via septic systems) at Yeshiva Farm Settlement and Stanwood, located in the Town of New Castle, New York, to the Yonkers Joint WWTP (via Riverwoods).

Yorktown Heights, Riverwoods, Random Farms, Yeshiva Farm Settlement (septic) and Stanwood (septic) collectively referred to as "Diverted Facilities".

Re Yeshiva Farm Settlement - County to cause Yeshiva Farm Settlement (YFS) to ~~apply any State Environmental Bond Act funds already awarded/granted for collection and diversion of its sewage to be applied towards the Project, and to utilize all existing plans or designs already developed for such collection and diversion, to the extent consistent with the Project. County to cause Yeshiva Farm Settlement to make diligent application for any additional federal/State monies available for the collection and diversion of its sewage, to be applied towards the City's share of the capital costs of the Project.~~ make diligent application for New York State Clean Water/Clean Air Bond Act, Environmental Protection Fund, or other State funding program monies to which YFS may be eligible for the design and construction of a sewage collection system at YFS and connection of such system to the Yonkers Joint WWTP. If YFS enters into a State assistance contract for any such monies, such monies shall be applied (to the extent eligible) to the overall Project, first towards such sewage collection system and thereafter towards the remainder of the Project including connection to the Yonkers Joint WWTP.

2 - Capital Cost of Project

a) Estimated at ~~\$29~~ 29.355 Million

b) City of New York (City) to pay ~~\$20.7~~ 22.039 Million under MOA Paragraph 140(l), as avoided capital costs of upgrading Yorktown Heights, Riverwoods, Baldwin Place and Random Farms under DEP's Regulatory Upgrade Program.

County to apply the review fee (\$200,000) collected under (7) below towards the capital cost of the Project.

City and County to share funding balance of capital cost (difference between ~~\$20.7~~ 29.355 MM and ~~\$29~~ 22.239 MM) as follows: County to contribute ~~\$5~~ Million \$3,658,000; City to contribute ~~\$3.3~~ 3,658,000 Million.

If actual costs come in below ~~\$29~~ 29.355 Million, or if additional funds from other sources are made available for the Project (e.g., federal or State funds), thereby reducing such balance, County and City to cover such reduced balance ~~in a ratio of 5.3 to 4 on a 50/50 shared basis.~~

c) If actual and reasonable cost of Project exceeds ~~\$29~~ 29.355 Million, County will bear the excess cost except for any portion thereof due to extraordinary, unforeseeable circumstances (e.g., material change in amount of subsurface rock to be excavated, beyond what could reasonably be anticipated), which the County and City will share on a 50/50 basis.

3 - No Growth Project: The Project is intended to divert sewage currently treated by the Diverted Facilities out of the New York City Watershed, not to facilitate additional growth. Accordingly

~~* Project facilities will be sized to handle current sewage flows treated at Diverted Facilities.~~

~~* No additional flow to be handled by Project except with City's consent (whether through unused capacity at Diverted Facilities, or through other connections).~~

~~* No additional connections to Project without City's consent.~~

* Project facilities (pumping stations and pipelines) will be sized to handle flows to be treated at the Diverted Facilities, as follows:

for Yorktown Heights, Riverwoods and Random Farms - the flow as approved by DEP under the Conceptual Upgrade Plans (CUPs) for such facilities, or, if higher, as allowed under the existing SPDES permit for the facility. In no event shall the Project be sized to handle flows from any such facility at a level greater than its existing SPDES permit flow level.

for Yeshiva Farm Settlement and Stanwood - the flow currently being handled by on-site septic systems from existing occupied structures at those areas, as of the date hereof. In no event shall the Project be sized to handle flows from any new hook ups after the date hereof at either such area.

* No additional connections may be made to the Project without the City's written consent. The City will consent to the connection of any of the following areas, currently served by failing or soon-to-be failing septic systems, subject to the limitations noted below:

[Identify areas and estimated aggregate flow]

Limitations

a) The City will not be responsible for any costs associated with connecting such areas to the Project, including, without limitation, any costs for upgrades or improvements to the Peekskill or Yonkers Joint WWTPs to handle flows from such areas, nor for any incremental operational and maintenance costs related to Project facilities or to such WWTPs.

b) Flows to be handled from such areas are limited to current flows from existing occupied structures in such areas, connected to operating septic systems as of the date hereof; flows to be handled shall not include any flows from new development.

* 10% diversion "credit" earned available under Watershed Rules and Regulations, after completion of Project, to be limited to accommodating needs of County for school expansion/construction and/or construction of affordable housing, as per in accordance with and limited by the [reference court decree/plan or other relevant document(s) spelling out plans for affordable housing construction]. County to enact local legislation to effect this limitation.

4 - Design, Construction, Project Timetable:

* County to bid out, contract for, and manage design and construction of Project.

* ~~Project to be completed within 27 months of commence work order.~~

* County to complete Project within 36 months of date of execution of Intermunicipal Agreement (see below); County to make diligent application for all necessary permits upon commencement of Agreement and while design work is underway; first priority shall be given for the permitting and design of Project facilities necessary to divert the Yorktown Heights WWTP. If the County at any time determines that it requires additional time to complete the Project because of delays associated with issuance of permits by permitting agencies, the County may request an extension of the Agreement for a reasonable additional amount of time, provided the County demonstrates that:

- the County has been diligent in its pursuit of the permit(s) in question and the delay is not due to any act or omission of the County;

- the County obtains the consent of USEPA and the State of New York to such extension; and

- the County commits at its own expense to implementing any interim mitigation measures are required by USEPA and the State and are directly attributable to such approved extensions (e.g., pump-outs).

5 - Operation and Maintenance (O&M) Costs:

To facilitate implementation of Project, City will contribute funds towards actual and reasonable O&M Costs of the Project (as hereinafter defined), subject to the following limits:

* Maximum annual City contribution to fund: \$400,000 first year, escalating by 3% each year through the fifteenth year of term (see below). Payment to be made against documented actual and reasonable O&M Costs incurred. County to pay for any O&M Costs above the City's maximum contribution for a given year.

* Term: 15 years; City to make initial annual contribution (\$400,000) in calendar year 2002, to start funding an account for O&M Costs. No City O&M obligations after the 15th year. Monies paid by City for O&M to be returned to City if the Project is not completed.

* O&M Costs of Project: Actual and reasonable costs of operating and maintaining the pump stations, pipelines and other equipment constructed as part of the Project and used to divert sewage from the Diverted Facilities to Peekskill or Yonkers WWTP, PLUS actual and reasonable incremental O&M Costs incurred by the County at the Peekskill WWTP as a result of County improvements at Peekskill necessary to re-rate such WWTP to accept sewage from the Project without loss of existing unused capacity (see below).

6 - Improvements at Peekskill WWTP: County solely responsible for funding any necessary improvements at the Peekskill WWTP to re-rate upgrade the WWTP to accept flow from the Project without loss of existing unused capacity (estimated by County as ~~\$8-10~~ 12 Million). City not responsible for the costs of any necessary improvements at Peekskill WWTP or Yonkers WWTP to accept flow from Project.

7. Review of Regulatory Upgrades in Westchester County: In consideration of City support for the Project, County to make the following accommodations to the City, in connection with County DOH review of WWTP upgrades under the Regulatory Upgrade Program:

* ~~No review fee payable by City for County DOH review of such upgrades.~~
Review fee payable by the City for review by County DOH of all WWTP upgrades under Program shall be \$200,000 in the aggregate.

* Subject to exception noted below, County DOH to turn around reviews of final upgrade plans within 21 days of submission; plan deemed approved if no response given in 21 days. DEP to cooperate with County DOH by promptly submitting copies of facility plan and PUP PUP for each upgraded facility upon receipt from WWTP owner's engineer, and promptly furnishing such other information as County DOH may reasonably request from time to time.

Exception: [For the following WWTPs, the County reserves the right to take additional time for review provided that the County notifies the City, in writing, within 15 days of receipt of submission of the date on which the review will be completed, which date shall be no more than 45 days after the date of said notice letter. Plan deemed approved if no response received within such extended time frame.]

[name plants - by size? age?]

8. East of Hudson Water Quality Investment Funds. ~~County covenants to spend its existing EOH Water Quality Investment Funds on qualified projects as per MOA, before requesting any funding from City for future diversion projects.~~

The County acknowledges that, except as expressly provided in the New York City Watershed Memorandum of Agreement (MOA), Paragraph 140(l), the City is not obligated to contribute any funding towards any proposed diversion project. The City has indicated to the County that it does not intend to contribute funding, other than to the extent required (if any) under MOA Paragraph 140(l), towards any other diversion project (i.e., other than the Project) before the County spends its EOH Water Quality Investment Funds. The County may present a further diversion project or projects to the City for its consideration at any time, but nothing contained herein shall constitute (or be deemed to constitute) any representation, commitment or agreement by the City that it will provide any funding for such project or projects.

9. Regulatory Upgrades. Consistent with MOA Paragraph 141(f), the City is relieved of spending any additional funds towards the upgrading of the Yorktown Heights, Riverwoods and Random Farms WWTPs in situ, under the City's Regulatory Upgrade Program, and all work directed towards such upgrading shall immediately cease.

10. Regulatory Concurrence. County is to take responsibility of securing conceptual approval of the Project from NYSDEC, NYSDOH, and EPA. Conceptual approval to be secured by ~~12/15/2000~~ 1/31/01 in order to move forward.

11. Intermunicipal Agreement. No legal obligations shall arise between the City and the County with respect to the Project, except upon execution of an Intermunicipal Agreement by the City and the County, embodying the above terms, and in form and substance satisfactory to each.

termsh2.wpd



**Department of
Environmental
Protection**

59-17 Junction Boulevard
Corona, New York
11368-5107

**Joel A. Miele Sr., P.E.
Commissioner**

Tel (718)595-6565
Fax (718)595-3525
jmiele@nysnet.net

To: Joseph J. Lhota
Deputy Mayor

From: Joel A. Miele Sr., P.E.
Commissioner

Date: January 12, 2001

Re: Turbidity Rates and Chemical Additions to the Water
Supply

Due to heavy rains and attendant runoff in the watershed during December 2000, water quality has shown an increase in turbidity levels. To avoid violations of state codes and, more importantly, violations of the filtration avoidance requirements, DEP has requested and received, from both NYS Dept. Of Health and NYSDEC, permission to add alum into the Catskill Water Supply. The addition of alum acts as a flocculent and assists in the settling-out process. As of Wednesday, January 10th, the turbidity levels have stabilized. We will continue adding alum until we're convinced that the levels are trending down.

I have attached our letters of request and the the State's approval letters for your information.

cc: Vincent A. LaPadula ✓



www.ci.nyc.ny.us/dep

(718) DEP-HELP



**Department of
Environmental
Protection**

157 Junction Boulevard
Bronx, New York
368-5107

**Joel A. Milele Sr., P.E.
Commissioner**

**Mark D. Hoffer
General Counsel**

**Bureau of Legal
Affairs**

Tel (718) 595-6555
Fax (718) 595-6543
www.ci.nyc.ny.us/dep



January 8, 2001

Via Facsimile and Federal Express

Ms. Margaret Duke
Regional Permit Administrator
New York State Department of Environmental Conservation
Region 3
21 South Putt Corners Road
New Paltz, New York 12561-1696

Re: Alum Treatment of Catskill Water Supply

Dear Ms. Duke:

The New York City Department of Environmental Protection (DEP) requests the approval of the New York State Department of Environmental Conservation (DEC), pursuant to DEC's emergency authorization authority, for a State Pollutant Discharge Elimination System (SPDES) permit to add alum into the Catskill Water Supply, 6 New York Codes, Rules and Regulations (NYCRR) 621.12. For the reason detailed below, DEP proposes the introduction of Alum into the Catskill Water Supply on an emergency basis in order to control significant turbidity levels in this water supply source.

DEP's proposed addition of alum into the Catskill Water Supply will reduce turbidity levels in the Kensico Reservoir, which in turn will prevent a violation of the turbidity levels for an unfiltered source water, as set forth in the federal Surface Water Treatment Rule and the State Sanitary Code. Pursuant to both the Surface Water Treatment Rule and the State Sanitary Code, the turbidity level of a "representative sample of the [system's] source water [taken] immediately prior to the first or only point of disinfection application" cannot exceed 5 nephelometric turbidity units (NTU). The first and only point of disinfection for the Catskill Water Supply is the Lower Effluent Chamber at the Kensico Reservoir, below the Ashokan Reservoir. In addition, an exceedance of the turbidity level is a violation that may result in a fine under the State Sanitary Code, and which will require public notification of the violation. Further, a public water supply system that does not filter may lose filtration avoidance if there are more than two turbidity events during the previous twelve month period or five turbidity events in the last 120 month period. Therefore, the City finds this potential treatment critically important to the protection of our water supply and retention of filtration avoidance for the

Catskill Water Supply.

Over the last several days, turbidity levels from the Ashokan Reservoir have been steadily increasing as a result of an intense rainstorm of December 16-17, 2000. This storm (and subsequent precipitation) has resulted in a surge in the Ashokan Reservoir storage levels and high turbidity readings, particularly within the West Basin of the Reservoir. These high water levels have also made it difficult for DEP to isolate for a prolonged period of time the more highly turbid waters of the West Basin of Ashokan Reservoir, from the less turbid waters of the East Basin, where we are currently drawing water from. Since the storm event, the turbidity levels leaving Ashokan Reservoir into the Catskill Aqueduct (EARCM) have exceeded 20 NTU. DEP water quality monitoring efforts indicate that there is the possibility that Ashokan Reservoir conditions may worsen causing even higher turbidity loading to Kensico Reservoir. In addition, the same storm event has affected Rondout Reservoir and the Delaware Water Supply. Turbidity entering Kensico from the Delaware Supply is currently 2 NTU. The elevated turbidity on both the Catskill and the Delaware Water Supply, coupled with the fact that the Croton System is currently shut down and cannot be used as an alternate supply, means that the turbidity in Kensico will worsen significantly over the next several days. DEP finds that these circumstances require the treatment of the Catskill Water Supply with alum to coagulate and settle the particular/colloidal matter entering the Kensico Reservoir. DEP would add alum at the alum plant in Pleasantville, just above the Upper Effluent Chamber of the Kensico Reservoir.

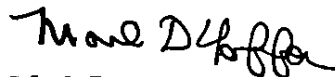
At the present time, turbidity levels of the source water leaving the Kensico Reservoir are above 1.5 NTU. During the time that alum treatment is underway, DEP will comply with the enclosed monitoring and sampling schedule (weather permitting) to insure the integrity of the water supply.

As stated above, DEP submits this application for an emergency SPDES permit to DEC pursuant to 6 NYCRR Part 621.12(b)(1-3). In accordance with these provisions, accompanying this application, which has set forth the reasons for the emergency permit, DEP submits to you the following: the enclosed monitoring and sampling protocols and a location map of the proposed project.

As detailed above, DEP concludes that the recent storm surge and the resulting high turbidity levels constitute an emergency and requires DEC's immediate attention.

Thank you for your attention to this matter. If you have any questions please contact the undersigned at (718) 595-6555 or Dr. David Lipsky, Deputy Chief, Watershed Operations, Division of Drinking Water Quality Control at (914) 773-4436.

Sincerely,



Mark D. Hoffer

Enclosure
ccw/enc.:



Department of
Environmental
Protection

17 Junction Boulevard
Rensselaer, New York
368-5107

Joseph A. Miele Sr., P.E.
Commissioner

Mark D. Hoffer
General Counsel
Bureau of Legal
Affairs

tel (718) 595-6555
fax (718) 595-6543
www.ci.nyc.ny.us/dep

January 8, 2001

Via Facsimile and Federal Express

Mr. James Covey, P.E.
Bureau of Public Water Supply Protection
New York State Department of Health
Flanigan Square
547 River Street, Room 400, 4th Floor
Troy, New York 12180-2216

Re: Alum Treatment of Catskill Water Supply

Dear Mr. Covey:

Pursuant to section 5-1.23(a) of Title 10 of the New York Codes, Rules and Regulations, the New York City Department of Environmental Protection (DEP) requests the approval of the New York State Department of Health (DOH) for the temporary alteration of its treatment process of the Catskill Water Supply. For the reasons detailed in the attached letter to the New York State Department of Environmental Conservation (DEC), DEP requests DOH's immediate consideration of this proposal.

Thank you for your attention to this matter. If you have any questions please contact the undersigned at (718) 595-6555 or Dr. David Lipsky, Deputy Chief, Watershed Operations, Division of Drinking Water Quality Control at (914) 773-4436.

Sincerely,

Mark D. Hoffer

Enclosures
cc w/enc.:
Sandra Allen, NYSDEC
Michael A. Principe, NYCDEP
David Lipsky, NYCDEP
Steven Schindler, NYCDEP





STATE OF NEW YORK DEPARTMENT OF HEALTH

Flanigan Square, 547 River Street, Troy, New York 12180-2216

Stonia C. Novello, M.D., M.P.H., Dr.P.H.
Commissioner

Dennis P. Whalen
Executive Deputy Commissioner

January 9, 2001

Mr. Mark D. Hoffer, Esq.
General Counsel
Bureau of Legal Affairs
New York City Department of Environmental Protection
59-17 Junction Boulevard
Corona, NY 11368-5107

RE: Alum and sodium hydroxide treatment of Catskill System

Dear Mr. Hoffer:

We have received and reviewed your January 8, 2001 request for approval to add alum and sodium hydroxide to Catskill system water at the Pleasantville Alum Facility prior to it entering Kensico Reservoir. The purpose of the addition of alum and sodium hydroxide is to reduce the level of turbidity in water currently being delivered from the Ashokan Reservoir and thereby prevent a violation of the State and Federal raw water turbidity requirements for an unfiltered surface water source as set forth in the federal Surface Water Treatment Rule (SWTR) (See 40 CFR 141.71) and the New York State Sanitary Code in 10 NYCRR Section 5-1.30 (c) (2). Such a violation could result in an imminent condition which can be responsible for causing illness and thus could constitute a public health hazard as defined in 10 NYCRR Section 5-1.1 (ar).

Both the SWTR and the State Sanitary Code specify for a filtration avoidance system, such as the Catskill system, that raw water turbidity immediately prior to the first or only point of disinfection cannot exceed 5 nephelometric units (NTU). The first point of disinfection for New York City's Catskill System is the Lower Effluent Chamber at Kensico Reservoir. An exceedance of this turbidity value is a violation under the State Sanitary Code and could result in the loss of a system's filtration avoidance if there are more than two turbidity "events" during the previous twelve month period or five events during the previous 120 month period. In addition, disinfection must also be sufficient to ensure at least 99.9 percent inactivation of *Giardia lamblia* cysts and 99.99 percent inactivation of viruses.

The turbidity requirement in both the SWTR and State Sanitary Code is a key provision intended to protect against adverse health effects from exposure to pathogens in drinking water. These requirements are designed to decrease the risk from waterborne microbial pathogens by limiting levels of particulate material in drinking water. Excess turbidity interferes with disinfection and can provide a shelter for pathogens by reducing their exposure to attack by disinfectants. Evidence exists that controlling turbidity is a competent safeguard against pathogens in drinking water. The operational changes to control the release of the high levels of turbid water in the Ashokan Reservoir West Basin and the flow reductions from the Ashokan Reservoir East Basin have not been sufficient in reducing the overall turbidity load from the Catskill system into Kensico Reservoir.

While the raw water turbidity leaving Kensico Reservoir has not yet exceeded the 5 NTU regulatory limitation, without the addition of alum and sodium hydroxide, such an exceedance is imminent. In the City's After Action Report on the application of alum and sodium hydroxide in 1996 the City demonstrated that the addition of alum and sodium hydroxide was able to control turbidity in the Catskill water system and limit its impact on turbidity levels in Kensico Reservoir, such that at no time did the Kensico effluent points exceed the SWTR 5 NTU limit. The addition of alum and sodium hydroxide is the only known feasible alternative readily available to the City at this time.

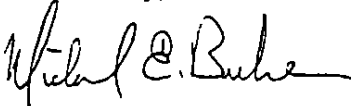
A public health hazard is defined in Department regulations as "an existing or imminent condition which can be responsible for or cause illness, injury or death and for which immediate corrective or remedial action is required"(10 NYCRR Section 5-1.1 (ar)). Disinfection which is inadequate to destroy harmful microorganisms or to maintain a specific chlorine residual is one example of a public health hazard. (See 10 NYCRR Section 5-1.1 (ar) (5)). The addition of alum and sodium hydroxide would be an "immediate corrective or remedial action" that has been demonstrated to reduce turbidity levels in the Kensico Reservoir.

Therefore, given the high turbidity levels in water entering Kensico Reservoir and the potential imminent development of a public health hazard, we approve your request to add alum and sodium hydroxide as outlined in the January 8, 2001 protocol attached to your approval request with the following additional conditions:

1. the City must first obtain approval from the New York State Department of Environmental Conservation (NYSDEC);
2. the City must notify this office before starting the alum and sodium hydroxide application;
3. the City must notify this office of the proposed alum and sodium hydroxide dosage and any changes in dosage, and receive approval of such changes before commencing the feeding or altering of alum and sodium hydroxide;
4. the City keypoint and limnological monitoring protocol must be implemented as proposed in the attachment to Mr. Hoffer's January 8, 2001 letter to Ms. Duke of NYSDEC Region 3 subject to the following provisions:

- A. Limnological monitoring will be performed at sites 3.1, 4, 4.1, 4.2 and 5 on days 1, 2, 3, 5, 7 and 9 and then three times per week as proposed in the attachments to Mr. Hoffer's January 8, 2001 letter to Ms. Duke of NYSDEC. Any changes in alum and sodium hydroxide dose or treatment regime (e.g. increase in alum and sodium hydroxide dose) due to increases in turbidity should result in increased monitoring (i.e. revert to daily sampling until stable turbidity removals are achieved). The City must make every effort to sample these sites, regardless of ice cover conditions.
- B. The sediment traps deployed at Sites 5, 4.2, 4.1 and 4 during the addition of alum and sodium hydroxide to the Catskill System must be collected every week.
- C. Pathogen samples (*Giardia* spp. and *Cryptosporidium* spp.) must be collected daily at the two Kensico effluent keypoint locations (DEL18 & CATLEFF) throughout the duration of the alum and sodium hydroxide application, unless a reduction is authorized by this Office;
5. keypoint and Limnological monitoring results are to be submitted to this Office as the data become available. Pathogen data are to be transmitted within one week from the sample date;
6. the City must demonstrate that every effort is being made to reduce unnecessary or excessive water use within the City's distribution system;
7. the City must accelerate the repair/remediation efforts currently underway in the Southern portion of the New Croton Aqueduct. Every possible effort should be made to expeditiously get the Croton system back on line;
8. the City must maximize the use of the Delaware and Croton systems during this alum and sodium hydroxide treatment event; and
9. the DEP must notify this office when the alum and sodium hydroxide operation is terminated and prepare and submit an After Action Report within 60 days of the end of the alum and sodium hydroxide operation.

Sincerely,



Michael E. Burke, P.E.

Director

Bureau of Public Water Supply Protection

cc: Mr. Tramontano
Mr. Wakeman/Burhans
Mr. Covey
Dr. Sokol
Ms. Johnson/Mr. Philip
Mr. Abrams, DLA
Ms. Allen, NYSDEC
Mr. N.G. Kaul, NYSDEC
Ms. Duke, NYSDEC
Dr. Mojica, NYCDOH
Mr. Luke, NYCDOH
Mr. Gratz, USEPA
Dr. Principe, NYCDEP
Dr. Lipsky, NYCDEP
Mr. Sakala, Westchester County

EURCUCatAlum.doc

Post-it* Fax Note	7671	Date	1/9/01	# of pages	3
To	Mark Hoffer		From	P. Duke	
Co./Dept.			Co.		
Phone #			Phone #		
Fax #	718/595-6543		Fax #		

**New York State Department of Environment
Division of Environmental Permits, Region 3**
21 South Platt Corners Road, New Paltz, New York
Phone: (845) 256-3000 • FAX: (845) 255-3042
Website: www.dec.state.ny.us

John P. Cahill
Commissioner

January 9, 2001

Mark Hoffer, General Counsel
Bureau of Legal Affairs
New York City Department of Environmental Protection
59-17 Junction Boulevard
Corona, New York 11368

RE: Emergency SPDES Permit for Addition of Alum and Sodium Hydroxide to the Catskill and Delaware Aqueduct Systems
Towns of Mount Pleasant, North Castle and Harrison, Westchester County
DEC Permit No. 3-9903-00023/00006

EMERGENCY AUTHORIZATION

Dear Mr. Hoffer:

Based on your letter of January 8, 2001 (including proposed monitoring protocols), the NYS Department of Environmental Conservation (DEC) has determined that an emergency exists, as defined in Section 70-0105.6 of the Environmental Conservation Law (ECL). Pursuant to Section 70-0116 of the ECL and 6 NYCRR Part 621.12, DEC makes the following findings:

1. Turbidity levels in the Ashokan Reservoir have increased as a result of severe wet weather precipitation events, particularly an event that occurred on December 16-17, 2000. These natural wet weather occurrences have in turn caused increased turbidity in the Kensico Reservoir. The Lower Effluent Chamber at the Kensico Reservoir is the first and only point of disinfection for the Catskill water supply, which serves as the potable water supply for millions of New Yorkers.
2. The Federal Surface Water Treatment Rule (SWTR) and the New York State Department of Health Sanitary Code provide that for an unfiltered surface water system, the raw water turbidity immediately prior to the first or only point of disinfection cannot exceed 5 nephelometric units (NTU). 40 C.F.R. § 141.71(c)(2)(i); 10 NYCRR § 5-1.30(c)(2). The turbidity requirement in both the SWTR and the New York State Sanitary code is a key provision intended to protect against the adverse health effect of exposure to pathogens in drinking water. Excess turbidity hampers disinfection by providing a shelter for pathogens by reducing their exposure to attack by disinfectants.
3. The New York State Sanitary Code defines a *public health hazard* as "an existing or imminent condition which can be responsible for or cause illness, injury, or death and for which immediate corrective or remedial action is required." 10 NYCRR § 5-1.1(ar). Disinfection which is

Mr. Mark Hoffer

January 9, 2001

Page 2

inadequate to destroy harmful microorganisms or to maintain a specific chlorine residual is a specific public health hazard under 10 NYCRR Part 5-1.1(ar)(5)

4. The proposed use of alum treatment would be a corrective or remedial action as those terms are used in 10 NYCRR Part 5-1. Alum treatment has been demonstrated to reduce turbidity levels in reservoirs, such as the Kensico Reservoir. If this corrective or remedial action through the use of alum treatment is not utilized, the health of millions of New Yorkers could be placed in jeopardy.
5. The New York State Department of Health, in a letter signed by Mike Burke P.E., dated January 9, 2001, approved New York City Department of Environmental Protection's (NYC DEP) request for alum and sodium hydroxide treatment "given the high turbidity levels in water entering the Kensico Reservoir and the potential imminent development of a public health hazard."

Therefore, DEC hereby authorizes NYC DEP to introduce alum and sodium hydroxide into its Catskill Water Supply, in accordance with the terms and Monitoring Protocols as set forth in the January 8, 2001, NYC DEP emergency authorization request. In addition, NYC DEP shall comply with the following conditions:

1. The NYC DEP shall comply with the nine (9) conditions in the January 9, 2001 approval letter (sent directly to you) from the New York State Department of Health (NYSDOH), including all notification, monitoring and sampling requirements.
2. The NYC DEP shall notify the Westchester County Health Department before each introduction of alum and sodium hydroxide. Actions taken pursuant to this grant of emergency authorization must be carried out in a manner that will cause the least change, modification or adverse impact to life, health, property or natural resources.
3. Within thirty days, NYC DEP shall respond in writing to DEC's comments raised in the January 10, 2000 letter from Orest Lewinter to NYC DEP Joseph Ketas regarding the alum application in the chemical addition DEIS. In addition, within thirty days, NYC DEP shall submit to DEC a schedule to undertake a conceptual design and evaluation to assess the viability of constructing turbidity curtains and/or alternative methods of confinement and containment of alum floc settlement. DEC expects NYC DEP to consider a broad range of alternative mitigation measures that could be employed to address the resultant alum-floc settlement.

Pursuant to ECL Section 70-0116.2, DEC may issue an emergency authorization for a term not to exceed 30 days and, at the written request of the applicant, may renew it for one additional term not to exceed 30 more days. This emergency action must be concluded within this time period. Accordingly, we grant this emergency authorization through February 8, 2001. If circumstances warrant an extension of this emergency authorization, please submit a written request to me prior to that date. Finally, NYC DEP understands that violation of any provision of ECL Section 70-0116(7), including those conditions listed above, may be enforced by DEC pursuant to Article 71 of the ECL.

Mr. Mark Hoffer
January 9, 2001
Page 3

If you have any questions regarding this matter, please contact Scott Ballard of my staff at (845) 256-3051 or me at (845) 256-3069. Thank you.

Very truly yours,

Margaret E. Duke

Margaret E. Duke
Regional Permit Administrator
Region 3

RSB/II

cc: M. Moran, Regional Director
S. Allen (611)
M. Altieri (638)
NG Kaul (3500)
R. Cronin (3506)
S. Stoner (3502)
C. Manfredi/J. Marcogliese, Tarrytown
D. Cordisco, Division of Legal Affairs
W. Elliot, Inland Fisheries
J. Isaacs, BOH
O. Lewinter (1750)
S. Ballard
USEPA, Region II
J. Covey, NYSDOH
WCDOH
Supervisor, Town of Mount Pleasant
Supervisor, Town of North Castle
Supervisor, Town of Harrison

DEPUTY MAYOR FOR OPERATIONS

DATE 01-13-01

TO

SCOTT CANTONE

COPY

☒ La Padula
☐ Carpinello
☐ Cantone
☐ Mascialino
☐ Collins
☐ Covino
☐ Stein
☐ Millman
☐ Piscitelli
☐ Filler
☐ Anson

☐ Harding
☐ Coles
☐ Washington
☐ Carbonetti
☐ Young
☐ Barsky
☐ Mindel
☐ Hess
☐ Levy

X SUMOWICE

FROM

Joseph J. Lhota

- ☐ For your review and comments
- ☐ For your information and/or files
- ☐ Call me to discuss (212-788-3137)
- ☐ Set-up meeting to discuss (212-788-3134)
- ☐ Reply directly with copy to Deputy Mayor
- ☐ Prepare draft reply for Mayor's signature
- ☐ Prepare draft reply for Deputy Mayor's signature

Scott - I am OK with this.
Please review memo +
mark-up attached
letter for my signature -
Joe

File
JEP



**Department of
Environmental
Protection**

**Joel A. Miele Sr., P.E.
Commissioner**

Tel (718)595-6565
Fax (718)595-3525
jmiele@nysnet.net

MEMORANDUM

To: Deputy Mayor Joseph Lhota
From: Commissioner Joel A. Miele Sr., P.E.
Subject: Concrete Industry Board
Date: January 10, 2001

I am writing to request your approval to sit on the Board of Directors of the Concrete Industry Board, Inc. I am enclosing some background materials on the Board for your review.

DEP is a dues paying member of the Concrete Industry Board. Since this can be seen as DEP having business dealings with the Board, in accordance with the Conflicts of Interest provisions of the City Charter (Chapter 68), a waiver from your office is required in order for me to sit on the Board of Directors.

The Concrete Industry Board is a not-for-profit organization which was formed for the purpose of improving and disseminating knowledge concerning the use and application of concrete in construction. In furtherance of that purpose, the Board (among other things) promotes technical education, certification of field personnel working with concrete, establishment of quality control standards for the testing and production of concrete, and the preparation of technical manuals.

DEP is a heavy user of concrete in its capital construction program. Most of the major structures we build or renovate (such as sewage treatment plants, dams, spillways, and other such facilities) rely on concrete. In point of fact, some of the structures we are responsible for use concrete in unique and highly specialized ways (e.g., as lining for the Third Water Tunnel). I believe that by serving on the Board of Directors of the Concrete Industry Board, I will be advancing the purposes and interests of the City in the following ways:

- 1) I will be able to share our experience in working with concrete as a construction material and in turn be able to learn from the experience of other members;
- 2) I will be able to disseminate information learned from the Board to appropriate members of DEP engineering and field staff; and
- 3) I will be able to encourage appropriate DEP staff to become involved in, contribute to, and learn from the technical work done by the Board in developing and refining standards and practices for



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(718) DEP-HELP

Deputy Mayor Joseph Lhota

Page 2

January 10, 2001

the production, testing and application of concrete.

As the list of Agency Directors at Large sets forth, representatives from the Port Authority of New York and New Jersey, the NYC School Construction Authority, the NYC Department of Buildings and the Metropolitan Transit Authority presently sit on the Board.

I understand that if I were to serve as a member of the Board of Directors, I may not be paid for such service, I must recuse myself from any involvement in any business dealings between the Concrete Industry Board and the City, I must serve as a member of the Board only at times when I am not required to perform my official duties for the City, and I may not use City equipment, supplies or letterhead in connection with such service.

Upon reviewing the enclosed materials, I would be grateful if you would sign the waiver letter I have drafted on your behalf and return to me for my files, to ensure compliance with the Conflict of Interest laws of the City of New York.

Thank you very much for your consideration, and please do not hesitate to call if you have any questions.

January 10, 2001

Joel A. Miele Sr., P.E.
Commissioner
New York City Department of Environmental Protection
59-17 Junction Boulevard, 19th Floor
Corona, New York 11368

Re: The Concrete Industry Board

Dear Commissioner Miele:

I am writing in response to your request for authorization to serve on the Board of Directors of the Concrete Industry Board, Inc.

The Concrete Industry Board is a not-for-profit Trade Association of concrete producers which researches technical issues, establishes standards, and sets forth strengths and weaknesses with regard to the production of concrete. Since DEP is a dues-paying member of the Concrete Industry Board, this can may be seen as the Board engaging in business dealings with DEP.

I have reviewed the materials you provided on the Board and find that your participation as a Member of the Board of Directors would be beneficial to the purposes and interests of the City of New York. As DEP is one of the City's biggest users of concrete, your sitting on the Board of Directors would enable you to represent agency concerns, as well as gain more knowledge about the concrete industry.

In accordance with the Section 2604(c)(6)(b) of the City Charter, please allow this letter to serve as my approval of your becoming a Member of the Board of Directors of the Concrete Industry Board. I have been advised that as a Board Member, you may not take part in any of the organization's business dealings with the City; may not be paid for the volunteer work; must not perform the volunteer work on City time and may not use City personnel, letterhead, equipment, supplies or resources.

Best wishes for a happy and healthy holiday season.

Very truly yours,

Joseph J. Lhota
Deputy Mayor for Operations

c: Gaffoglio, Hoffer, Resnick, Zoltanetzky

PRIVILEGED AND CONFIDENTIAL

DRAFT - 1/10/2001

PAYMENT AGREEMENT, dated as of _____, 2001, by and among THE NEW YORK CITY WATER BOARD, a public benefit corporation with its principal offices at 59-17 Junction Boulevard, 8th Floor, Corona, New York 11368 (the "Water Board"), the STATE OF NEW YORK (the "State"), acting by and through the New York State Department of Mental Hygiene, with its principal office at 44 Holland Avenue, Albany, New York 12229 ("DMH"), and the DORMITORY AUTHORITY OF THE STATE OF NEW YORK, a public authority with its principal office at 515 Broadway, Albany, New York 12207 (the "Authority").

RECITALS

WHEREAS, pursuant to certain financing transactions, the Authority holds title to the real property shown as Block __, Lot __ on the Tax Map of the Borough of the Bronx, City of New York, together with the improvements thereon, commonly referred to as the Bronx Psychiatric Center (such real property, together with the improvements thereon, being hereinafter referred to as the "Center Property"); and

WHEREAS, pursuant to such financing transactions, the State leases the center Property from the Authority, and DMH operates a mental health center thereon; and

WHEREAS, the Authority is desirous of selling to _____ [name] (the "Developer"), for private development, a portion of the Center Property, consisting of approximately 20 acres of real property, together with the improvements thereon, at the northern end of the Center Property, all as more particularly described in Exhibit A attached hereto (such portion being hereinafter referred to as the "Development Parcel"); and

WHEREAS, the Water Board is responsible for setting, and collecting, rents, fees and other charges for the use of the New York City water and wastewater systems; and

WHEREAS, the closing of the sale and conveyance of the Development Parcel, to a third party, has been delayed because of issues concerning open water and sewer charges with respect to the Center Property; and

WHEREAS, the parties are desirous of resolving such issues, so as to allow such closing to proceed expeditiously;

AGREEMENTS

NOW, THEREFORE, in consideration of the covenants herein contained, the parties hereto agree as follows:

1. Acknowledgment of Open Water and Sewer Charges. (a) The parties agree that the water and sewer charges set out in Exhibit B attached hereto, totaling \$ _____ and in respect of water and sewer service provided to the Center Property up through and including _____ [date], are due and owing to the Water Board (such charges being hereinafter referred to as the "Open Charges").

(b) The Authority agrees to pay the Open Charges to the Water Board, in full, by not later than _____ (the "Due Date"). No interest shall accrue on such Open Charges if paid in full by the Due Date. If, for any reason, the full amount of the Open Charges is not paid by the Due Date, interest shall accrue on the unpaid balance thereof at the rate of nine percent (9%) per annum.

(c) If the Open Charges are not paid in full by the Due Date, the Water Board may pursue any right or remedy available to it, at law or in equity, to collect the unpaid balance of the Open Charges plus all interest due thereon, including enforcing any right of lien against the Remaining Property (as hereinafter defined).

2. Release of Lien: Subdivision of Center Property. In consideration of the agreements by the Authority contained herein, and to facilitate the sale of the Development Parcel, the Water Board hereby

(i) consents to the subdivision of the Center Property, so as to create a separate tax lot for the Development Parcel; and

(ii) releases and relinquishes any right of lien it may have with respect to unpaid water and sewer charges, under _____ [cite statute], with respect to the Development Parcel. It is agreed that the Water Board retains its right of lien under _____ for any unpaid water and sewer charges with respect to the balance of the Center Property (the Center property less the Development Parcel) (the "Remaining Property").

3. Future Billings for Water and Sewer Service. (a) From and after the date of this Agreement, all water and sewer charges for the Center Property shall be computed on a metered basis, utilizing the Water Board's then applicable meter rate, based on readings of the following meters:

<u>Meter #</u>	<u>Serving</u>
[numbers ¹]	[identify what it serves]

¹ Or, in lieu of numbers, use some other means to identify which meters we are talking about, and clarify that the provision continues to govern if a meter is replaced or relocated, or if new lines are laid with new meters.

Interest shall be payable on any such water and sewer charges which are not paid in full when due, at the rates and in the manner prescribed by the Water Board.

(b) The Water Board, on a date to be mutually arranged between the Water Board and DMH, shall inspect the four (4) meters located at _____, to determine if they are functioning properly. If they are not functioning properly, the Water Board agrees to replace them with appropriate meters, as determined by the Water Board, at no charge to the Authority or DMH. The Authority and DMH will grant access to the Water Board for such purpose, as required, at mutually agreeable times.

(c) In recognition of the Water Board's agreement to release its right of lien on the Development Parcel, the Authority agrees that any charges for water and sewer service with respect to the Center Property, including the Development Parcel, from and after _____ (end date of last bill issued) up to the date of closing of the Authority's sale of the Development Parcel to the Developer, shall constitute charges owing by the Authority to the Water Board, and shall be added to the next regular billing for water and sewer service to the Authority. From and after the such date of closing, water and sewer charges with respect to the Development Parcel shall be billed to the Developer; water and sewer charges with respect to the Remaining Property shall be billed to the Authority.

(d) All future billings for water and sewer service to the Authority shall be directed to the following address:

[add address]

4. Future Sales of Property. (a) The Authority agrees to provide the Water Board with at least 30 days' prior written notice of any future intended sale or transfer of any portion of the Center Property, including any transfer to an agency of the State.

5. Failure to Close on Sale of Development Parcel. If the Authority does not close on the sale of the Development Parcel, to the Developer, by _____, this Agreement shall thereupon become null and void, as if it had never been executed.

6. Miscellaneous. (a) This Agreement may not be amended or assigned except by written instrument signed by all parties. This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings, written or oral, with respect to such subject matter.

(b) This Agreement is governed and shall be construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, as of the date first above written.

01/17/01 WED 13:58 FAX 2122735121

DASNY-OPPORTUNITY PROGRA

007

NEW YORK CITY WATER BOARD

STATE OF NEW YORK, acting by and
through the New York State Department
of Mental Health

By _____
Title:

By _____
Title:

DORMITORY AUTHORITY OF THE STATE
OF NEW YORK

By _____
Title:

bxpsych.wpd

01/17/01 WED 13:58 FAX 2122735121

DASNY-OPPORTUNITY PROGRA

0008

EXHIBIT A

Description of Development Parcel

EXHIBIT B

Schedule of Open Charges

	<u>Principal</u>	<u>Interest</u>
1. Hersey Compound Meter #56306863 (Serving Building # 9 and northern end of Center)	\$ 525,477.92	\$1,761,859.59
2. 2" line; Meter # N31544733 (Serving ballfield area)	\$ 10,279.12	\$ 3,419.16
3. Frontage Charges for 5 flat-rate accounts (Structures in central portion of Center)	\$ 93,242.74	\$ 217,225.17

Public Safety - Critical Infrastructure

Memorandum of Understanding

This Memorandum of Understanding (hereinafter referred to as "MOU") is made this day of January , 2001 (the effective date), by and between the People of the State of New York acting by and through the Office of Mental Health ("OMH"), located at 44 Holland Avenue, Albany, New York 12229, and Hutch Realty Partners LLC ("Hutch"), a New York Limited Liability Corporation, having an official place of business at 1000 Main Street, New Rochelle, New York 10801.

Whereas, Hutch has entered into a contract with the Empire State Development Corporation (ESDC) to buy a parcel of land at the State facility commonly known as Bronx Psychiatric Center and the former Bronx Developmental Center; the parcel is more particularly described in a survey attached here as Appendix A;

Whereas, the public offering of this parcel and the contract between ESDC and Hutch reserves the right of the State to reserve necessary easements of any kind for the continued use of the State's property adjacent to the Sale property.

Whereas, the public offering of this parcel provided for access across State lands to the Sale parcel, and the parties are desirous of entering into an agreement to provide for the granting of easements to Hutch for utility installation and transmission, as well as for egress and ingress to the Sales parcel.

Whereas, OMH will continue to operate a psychiatric hospital, abutting the land to be purchased by Hutch.

Whereas, OMH and Hutch will each occupy a portion of the former campus that contains an integrated infrastructure of utilities and roads and other amenities that will continue to require maintenance and improvement.

Therefore, OMH and Hutch mutually agree as follows:

1. Access Road: The parties agree that Hutch will be granted an easement from Waters Place to the Sales parcel boundary, such easement more particularly described as easement A in Appendix A, subject to the terms herein. This access road shall be non-exclusive, and shall be shared by OMH and Hutch. However, any utilities placed within this easement by Hutch shall be exclusively under the control of Hutch.

Insurance: As a condition of this easement, Hutch agrees to obtain and maintain at the expense of Hutch, commercial general liability insurance with a combined single limit for bodily injury, personal injury and property damage of at least \$2,000,000 per occurrence and in the aggregate. The limit may be provided through a combination of primary and umbrella/excess liability policies. The coverage shall provide and encompass at least the following: (a) independent contractors; (b) blanket written

contractual liability covering all indemnity agreements in favor of New York State and the Dormitory Authority, including all indemnity obligations contained in this agreement; (c) commercial general liability coverage written on an occurrence form; (d) waiver of subrogation; (e) endorsement naming the State of New York (the State) and the Dormitory Authority of the State of New York (the Authority) as additional insureds; and (f) endorsement for each policy stating that the coverage afforded the State and the Dormitory Authority is primary and is primary to any other insurance maintained by the State or the Authority. Any other insurance maintained by the State or Authority shall be excess of and shall not contribute with the insurance of Hutch, regardless of the "other insurance" clause in any policy of insurance of the State or the Authority. A copy of each policy of insurance used to satisfy the requirements of this provision shall be furnished to the AUTHORITY and the STATE within thirty days of execution of this agreement by Hutch and OMH. Each policy (or replacements thereof) shall be maintained in force as long as this agreement is in force, shall be issued by an insurance company or insurance companies licensed by the State of New York, and shall provide that no policy cancellation, non-renewal or material modification shall be effective except upon thirty (30) days prior written notice by certified mail to the AUTHORITY and the STATE. The AUTHORITY shall be furnished a Certificate of Insurance prior to or simultaneously with execution of this agreement by Hutch and the Certificate of Insurance shall constitute a warranty by Hutch that the insurance required by this section is in effect.

Hutch covenants and agrees to require all contractors who work for Hutch at the premises to obtain commercial general liability insurance identical to that required from Hutch and to furnish the OMH a Certificate of Insurance evidencing such insurance prior to the commencement of any operations at the premises. OMH may require additional provisions or coverage in such insurance if, in the discretion of OMH or the AUTHORITY, additional provisions or coverage is useful to secure the interests of OMH or the AUTHORITY, provided, however, that such provisions are customarily included in liability insurance policies maintained by owners of comparable properties.

Maintenance: From the date title to the Sales parcel is transferred to Hutch, OMH will discontinue maintenance of the Easement A roadway and roadway maintenance will be the responsibility of Hutch, at their sole expense, for as long as the State owns Bronx PC building 23 and other lands for which access is required across this access road. Such maintenance and improvements shall be in the discretion of Hutch, but shall be in compliance with applicable government codes and standards. Hutch may provide for other maintenance and improvement projects in areas adjacent to the access road, with the consent of OMH, which consent shall not be unreasonably withheld.

Signage: The parties agree that Hutch shall be allowed to erect signage within the easement number one or immediately adjacent thereof. The size of such signage shall be subject to the prior written approval of OMH, and shall not be denied if New York City issues a permit authorizing such signage.

Temporary and Emergency Access: OMH agrees that Hutch and their agents and invitees may gain access to the Sales parcel thru easement b in times of emergency or

during the time that the easement A roadway is being improved and is therefore unusable. Hutch and OMH agree to consult each other concerning the traffic plan for easement b roadway during periods when easement A roadway is unusable.

North Access easement: The parties agree that Hutch shall be granted an access easement around the northern portion of remainder parcel No 2, as shown on appendix A attached. The parties agree that no roadway will be constructed on this easement without the prior written approval of OMH, after consultation with any Little League organizations permitted to utilize such remainder parcel No. 2.

Access to Baseball fields to the North: The parties agree that there shall be a mode of access to the baseball fields on remainder parcel 2 at all day light hours.

Motor Vehicle Access around Bronx PC Building 23: The parties agree that Hutch may allow motor vehicles to enter the Bronx PC building 23 premises in order to gain access to the loading dock to the former Bronx Developmental Center. This will be allowed only during normal business hours, and the premises will be locked at all other times. The parties also agree that such access across the building 23 premises is subordinate to the parking needs of BPC, as long as reasonable access to the BDC loading dock is permitted.

Utilities:

OMH Utilities: OMH shall maintain the utility installations within the reserved easements more particularly described as easement reservations number 1-3 on appendix A, and shall make all repairs thereto that may be reasonably necessary for the continued operation and maintenance of the utility installations.

Hutch Utilities: Hutch agrees to provide OMH with plans for utilities to be installed in easement parcels.

Provision of Utility Services by OMH to Hutch: The parties acknowledge that OMRDD will be in occupancy in the former Bronx Developmental Center (BDC) for a period of time after closing and that, thereafter, there may be need for provision of utility services by OMH to Hutch. The following terms apply:

Electric Service: At the request of Hutch, OMH will provide Hutch with electrical service for the earlier of one year from the date that OMRDD vacates BDC or two years from the property title closing, at the same method of rate of reimbursement that OMRDD provides to OMH presently. The maximum capacity of electrical service will be limited to the amount presently provided.

Sanitary Sewer Systems: At the request of Hutch, OMH will provide sanitary sewer system service for the present BDC sewer system for the earlier of one year from the date that OMRDD vacates BDC or two years from the property title

closing, at a rate of reimbursement to be agreed between the parties that is based on a prorata share of expenses of operating the sanitary sewer system.

Heat: At the request of Hutch, heat will be provided until March 31, 2002. If Hutch requests such heat service after OMRDD vacates BDC, Hutch agrees to reimburse OMH for such heating costs at the same method of rate of reimbursement that OMRDD provides to OMH presently.

Water: No water shall be provided to Hutch after the property title closing.

Assignment: No party shall assign or transfer its interests in or obligations under this Agreement to any other person or entity without prior notification of the other party.

Closing: This Agreement shall survive closing of the title to the Sales Parcel.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

New York State Office of Mental Health

By: _____
Title:

Hutch Realty Partners LLC

By: _____
Title:

Acknowledgements



DEC-21-2000 15:38 FROM DEP LEGAL

TO 912127883127

P.02/04

THE CITY OF NEW YORK DEPARTMENT OF ENVIRONMENTAL PROTECTION
JOEL A. MIELE SR., P.E., Commissioner

Mark D. Hoffer
General Counsel

Bureau of
Legal Affairs

PHONE (718) 595-6555
FAX (718) 595-6543
www.ci.nyc.ny.us/dep

MEMORANDUM

TO: Marlene Hochstadt
FROM: Mark D. Hoffer 
DATE: 12/21/2000
RE: Proposed New Hire - Heather Belovin

I enclose herewith a signed DEP-2 form, requesting approval of the hiring of Heather Belovin as an Agency Attorney-III, at an initial salary of \$65,000 per annum.

Heather previously worked for my Bureau, until she left approximately 2 months ago to take a position with the Department of Youth and Community Services. She has indicated a desire to return to DEP, provided she is "held harmless" in terms of a salary increase she had been promised at Youth Services. In this regard, Heather was promised an increase to \$65,000 per annum after the anniversary of her last raise (I am advised that the anniversary date would be January 10, 2001).

Accordingly, the enclosed DEP-2 reflects a promotion to Attorney-III (her last position with DEP was as an Attorney-II), at a salary of \$65,000 per annum.

I discussed this new hire (in actuality, a re-hire) with Commissioner Miele, and Charles Sturcken. They agree with me that if it can be accomplished, it would be far preferable to hire an experienced attorney who is familiar with DEP staff and practices, rather than hiring an "unknown".

Upon her re-hiring, Heather would again work as a watershed attorney under the supervision of Sandra Jackson. During her prior tenure at DEP, Heather demonstrated that she was a competent and dedicated attorney, fully capable of handling this work and representing the agency's best interests. I have no reason to believe that her performance in the future will be

S9-17 Junction Boulevard, 19th Floor, Corona, New York 11368-5107



DEC-21-2000 15:38 FROM DEP LEGAL

TO 912127883127

P.03/04

- anything less than satisfactory. From a headcount standpoint, Heather would be backfilling her own line.¹

I respectfully request that every effort be made to move this action to OMB, and to ensure that OMB acts on this action in an expeditious manner.

As always, I appreciate your assistance and please do not hesitate to call me if you have any questions.

MDH:mdh
BELOVIN.WPD
Enc.

cc: Commissioner Miele
Diana Chapin

¹ I have two other pending actions at present: Elizabeth Rogak - new hire as a backfill for Laura Barzilai; and Melissa Siegel - new hire as backfill for Alessandra Sumowicz.

DEC-21-2000 15:38 FROM DEP LEGAL

TO 912127893127

P.04/04

**THE CITY OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL PROTECTION
REQUESTED PERSONNEL ACTION**

Date Req.: ___/___/___		Bureau: LEGAL AFFAIRS		Division:		Control No.:	
CURRENT DATA				CHANGED DATA			
Name: BELOVIN HEATHER							
(Last) (First) (M.I.)							
Address: 402 85th STREET, APT. 6F							
City: BROOKLYN State NY Zip 11209							
Title/Level: AGENCY ATTY III Title Code: 30087							
Effective Entry Date: ___/___/___							
Social Security No.: [REDACTED]				Salary: \$65,000.00			
Provisional: XX		C/S: ___		List No.: ___		Provisional: ___	
Non-Comp.: ___		Other: ___		Non-Comp.: ___		Other: ___	
						List No.: ___	
TYPE OF ACTION							
☐ New Appointment		☐ C/S - No/Cost		☐ LWOP		☐ Reassignment	
☐ Promotion		☐ Merit		☐ Demotion		☐ Differential	
☐ Title Change		☐ Reinstatement		☐ Termination		☐ Dist/Budget Code Change	
☐ Title Change No/Cost		☐ Retirement		☐ Disciplinary		☐ Other	
☐ Level Change		☐ Transfer		☐ Resignation			
Backfill For: HEATHER BELOVIN							
Funding Source: TL IFA							
Specify Type: DOI Background Investigation Req.: ☐ YES ☐ NO							
Effective Date of Action: ___/___/___							
Work Location: 5011		Payroll Dist. No.: 0002					
Budget Line: 1445		☒ (D) Pay Cycle ☐ (A) Bi-Weekly ☐ Weekly					
City Service: ☒ Yes ☐ No Prior Agency: _____ From: _____ To: _____							
Date of Birth: 0 8 / 0 3 / 6 9				City Start Date: 0 4 / 1 3 / 9 8			
Agency Start Date: ___/___/___				C/S Start Date: ___/___/___			
Processing		☐ Male ☒ Female		Highest Ed. Level		JD	
Sex		WHITE		Pension No.		_____	
Ethnicity		☐ Yes ☒ No		Health Ins.		_____	
Veteran Status				Blood Program		_____	
Medical Req.				I.D. Program		_____	
COMPLETE FOR NON-MANAGERIAL SEPARATIONS							
Day Worked: ___/___/___				Last Day to be Paid: ___/___/___			
Balance: H ___ M ___		C/T Balance: H ___ M ___		S/L Balance: H ___ M ___			
Remarks: _____							
Tested By: Marie D. Hoff 12/21/00				Approved By: _____			
Signature				Signature			
Payroll Effective Date: ___/___/___				Processed By: _____			

2

2B. DUTIES AND RESPONSIBILITIES OF DIRECTOR/DEPUTY COMMISSIONER

Principally responsible for managing all activities related to the use and sale of water from the New York City water supply system and the enforcement of all rules and regulations governing such use and sale.

The Director is directly responsible for managing all activities of over 600 Bureau employees located at seven locations throughout all five boroughs of New York City, and is indirectly responsible for the activities performed by about 300 personnel employed by private meter installation and repair contractors, as well as support engineering consulting services working for the City. ~~The Director serves as Executive Director of the N.Y.C. Water Board, which is a public body created by the State Legislature in 1984. The Board is responsible for the supervision of personnel providing support services to the N.Y.C. Water Board. The Director holds a policy-making position, which encompasses interfacing with the First Deputy Commissioner, DEP Commissioner, and top City government officials, including the Office of Management and Budget, Comptroller's Office, Department of Personnel, Department of Finance and Law Department.~~

Principally responsible for managing the billing and collection of \$1.3 billion in annual water and sewer charges; the implementation of the City's \$300 million Universal Metering Program \$300 million fixtures retrofit program; meter reading and repair operations of our 800,000 water-sewer accounts and oversees enforcement activities regarding the departments water use rules and regulations. This includes at present supervision of 54 contracts worth over \$115 million to repair, replace or install approximately 80,000 water meters per year throughout the five boroughs of New York City. The implementation of a new Customer Information System (CIS), which includes the responsibility of billings and collections (formally done by the Department of Finance), a modern customer call center and a vigorous dunning and payment tracking system.

~~The Executive Director of the N.Y.C. Water Board, which is a public body created by the State Legislature in 1984, the main responsibilities are: establishing, setting and revising water and sewer rates and charges and for the collection of revenues derived from users of the water and sewer system; as well as supervising the operation of outstanding N.Y.C. Municipal Finance Authority debt and the City's cost of operating and maintaining the system.~~

Oversees the Bureau's Inspection and Engineering programs to control excessive water demand and detect and eliminate excessive flows into the City's sewage treatment plants. This includes supervision of the following technical programs:

- a) design efforts for promulgating new mechanical/system devices via regulation to reduce water consumption, e.g.:
 - 1) upgrading design requirements of recirculating refrigerator systems and air cooling systems;
 - 2) specifying greywater applications;
 - 3) specification promulgation of ultra-low-flow water fixtures and other innovative water conservation fixtures;

2B. DUTIES AND RESPONSIBILITIES OF DIRECTOR - Continued

- b) Aggressive implementation of major conservation programs:
 - 1) commercial/industrial water audits;
 - 2) retrofitting of all newly installed toilets;
 - 3) compliance with Federal and State consent orders.
- c) engineering studies relating to well-water usage, reinjection processes and steam system design.

Responsible for oversight of the Bureau's new Billing and Collection Operations Division. This Division's work includes: revenue analysis, including rate modelling, the billing and collecting of approximately \$850+ thousand accounts which will annually generate 3.5 million bills; analysis of billings and collections, analysis of dunning strategies; dunning delinquent charges through formal standardized procedures; installment agreements with late-paying customers; and a modern call center which will greatly enhance customer complaint resolution support, to remove inaccurate charges and ensure that customers clearly understand what they owe; upstate billing and collection of all upstate accounts receiving New York City water (currently \$5 million in annual billings).

Oversees the management of automated operations. This unit operates the mainframe computer systems supporting the Universal Metering Program, and the frontage and metered billing systems which generated 1.2 million billings per year and ~~will~~ yield over \$1 billion in revenue in FY92. This computer support group consists of approximately 20 systems analysts, computer programmers and computer production personnel.

Oversees the management of the new \$17 million Customer Information System, which will provide the City with a new computerized account processing system with the latest state-of-the-art enhancements in billing, meter maintenance and control and water usage management information. The system will improve customer service and be more responsive to the Bureau's needs for more data to better manage operations and analyze water usage.

Provides technical advisory services to the Department of Energy and Telecommunications pursuant to the Mayor's directive of September 10, 1990 requiring DEP to assist Enertel in implementing energy cost-savings and conservation progress. Includes engineering and business analysis of Demand Side Management applications of utilities to the public service commission.

Oversees the management of Automatic Meter Reading (AMR) telemetering systems with a view towards full implementation Citywide in the very near future. Directs the evaluation of the three different technologies available and the gathering of preliminary cost analysis information with a view towards enhancing DEP efforts aimed at leak detection.

Besides managing metering, billing rate planning and conservation operations, coordinates these programs with other consent decree and conservation programs in the Department. Also, to promote public understanding and support of the Agency's mission

responsibilities, regularly speaks at public meetings. The Director also maintains liaisons with elected legislators and their staff to address their constituent referrals for services and information.

Directs the preparation of the Bureau's Expense, Revenue, and Capital Budgets; consults with the First Deputy Commissioner on work performance of the personnel of the Bureau; ensures that the Bureau adheres to the City's labor relations and grievance procedures.

Acts as advisor to the First Deputy Commissioner and Commissioner on broad policy matters pertaining to achieving the Bureau's goals and making sure that needed resources (budgetary, personnel, etc.) are provided.

FEB-13-2001 16:03

MAYOR'S OFC of ENV. COORD

1 212 788 2941 P.01/07

Mayor's Office of Environmental Coordination
Director, Alessandra Sumowicz
100 Gold Street, 2nd Floor
New York, NY 10038
Tel. 212-788-2924, Fax 212-788-2941

Fax

To:

Gina Fina - 8-3127
Vinny LaPadula - 8-3127

From:

AlessandraTel. 212-788- 2937

Date:

2/13/01

Pages (including cover sheet):

7

Comments:

☐ Urgent☒ For your review☐ Reply ASAP☐ Please comment☐ Per your request

Re: NYPA -
DEP Response
Letter

As per our conversation - please advise as
to whether DEP can send out the
attached DRAFT letter to NYPA.

Thank,
Alessandra

If there are any problems with this transmission, kindly call 212-788-2924.

This facsimile transmission may contain confidential or privileged information which is intended only for use by the individual entity to which the transmission is addressed. If you are not the intended recipient, you are hereby notified that any disclosure, dissemination, copying, or distribution of this transmission is strictly prohibited. If you have received this transmission in error, please notify us by telephone immediately so that we can arrange for the return of documents to us, at no cost to you.

FEB-13-2001 16:04

MAYOR'S OFC of ENV. COORD

1 212 788 2941 P.02/07



59-17 Junction Boulevard • 19th Floor • Corona, NY 11368
(718) 595-6555 • Fax: (718) 595-6543
legal@nysnet.net

FAX TRANSMITTAL

To: *Alessandra Simonini*
Phone #: *212-788-2937*
Fax #: *788-2941*
Pages: including cover sheet

From: Judah Prero
Phone #: (718) 595-6607
Date: *Feb 13, 2001*
Re: *NYPA*

☐ Urgent ☒ For your review ☐ Reply ASAP ☒ Please comment ☐ FYI ☒ Per your request

Message:

*Enclosed is ① the letter from
is requesting they file permits ② their letter
stating they don't need to file w/ the city +
③ the draft letter telling them they're
off base.*

Call if you have questions. - Judah

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FEB-13-2001 16:04

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1 212 788 2941 P.03/07



FAX (914) 287 3244

**Department of
Environmental
Protection**

59-17 Junction Boulevard
Corona, New York
11368-5107

**Joel A. Miele Sr., P.E.
Commissioner**

**Robert C. Avaltroni
Deputy Commissioner**

Bureau of
Environmental Compliance
Tel (718) 595-4418
Fax (718) 595-4422

January 12, 2001

**William V. Slade
Director, Environmental Division
New York Power Authority
123 Main Street
White Plains, New York 10601**

Re: Natural Gas Turbine Generators

Dear Mr. Slade:

The New York Power Authority (NYPA) has proposed the installation of ten natural gas turbine generators, nine of which will be located within the City of New York. I am writing to advise NYPA that, based upon the description of those generators set forth in the Negative Declaration issued by NYPA on November 20, 2000, that NYPA must obtain permits for such facilities under the New York City Air Pollution Control Code, Section 24-101 et. seq. of the New York City Administrative Code, prior to their installation and operation. To date, no application for such permits has been submitted.

If you require further information or permit application forms, please do not hesitate to call me at (718) 595-4543.

Sincerely,

**Michael Gilson
Assistant Commissioner**

cc: John Ferguson
NYSDEC



(718) 595-4418

FEB-13-2001 16:04

WANE PLAINS, New York 10001
914 551.6200

MAYOR'S OFC of ENV. COORD

1 212 788 2941 P.04/07



January 24, 2001

Michael Gilsenan
Assistant Commissioner
New York City Department of Environmental Protection
59-17 Junction Blvd.
Corona, New York 11368

**SUBJECT: New York Power Authority
In-City Generation Project**

Dear Commissioner Gilsenan:

I am responding to your January 12, 2001 letter, in which you request the New York Power Authority (NYPA) to apply for permits under the New York City Air Pollution Control Code, Section 24-101 et seq. of the New York City Administrative Code, for its natural gas turbine generators being installed as part of NYPA's In-City Generation Project. Because NYPA is a political subdivision of New York State, it is not subject to such local permitting requirements in carrying out its governmental functions -- in this case assuring adequate electric power in New York City in order to avoid the kind of power shortages currently being experienced in California.

Nonetheless, I wish to assure you that the 10 natural gas turbines to be installed at six sites in New York City as part of NYPA's In-City Generation Project will meet or exceed all New York City environmental standards. NYPA has committed to installing state-of-the-art environmental controls and to burning natural gas in each turbine. The emissions of nitrogen oxide will not exceed 2.5 parts per million (far less than the Code's emission limit for combustion units of 100 ppm), and particulate and sulfur dioxide emissions will also be far below the Code's performance standards.

On January 12, 2001, the New York State Department of Environmental Conservation issued final permits for five of the six In-City sites. These permits include specific limitations for nitrogen oxides and carbon monoxide and specify that each turbine shall use only natural gas

FEB-13-2001 16:05

MAYOR'S OFC of ENV. COORD

1 212 788 2941 P.05/07

Mr. Michael Gilsenan
January 24, 2001
Page Two

as fuel. (A draft permit with similar limits for the sixth site in Staten Island is still undergoing the public comment process.) You can therefore be confident that, in carrying out its In-City Generation Project, NYPA will comply with enforceable limitations in State-issued permits that meet or exceed the environmental standards under the City's Code.

If you have any questions, please call me at 914-681-6405.

Very truly yours,



William V. Slade
Director
Environmental Division

1003725-1

FEB-16-2001 15:38

MAYOR'S OFC of ENV. COORD

1 212 788 2941 P.02/02

② DEP

Sumowicz, Alessandra

From: Sturcken, Charles [CHARLESS@DEP1LAN.CI.NYC.NY.US]
 Sent: Friday, February 16, 2001 3:17 PM
 To: asumowicz@CITYHALL.NYC.GOV
 Subject: RE: Issues - Please address ASAP

1) we made contact with Sherilyn James. She informs us that she accepted a position with HRA.

← FYI

2) The Croton Spillway Bridge - the consulting engineering firm has done their analysis and has said that based upon their data the bridge should remain closed. On Monday, the engineering firm, the contractor and DEP will meet to discuss repair options; that entails modifying the original repair contract proposed and moving ahead with the reconstruction of the bridge which will mean a longer shutdown; or making immediate repairs to fix the problem of the bridge support shifts and opening up the roadway in @ two weeks, deferring til later the longer term fix in a staggered closure scenario. A better time frame will be decided on Monday.

← Once they get more info I will have them do a formal memo.

3) I have put in a call to the Chief of Staff's office on the third item.

From: ASUMOWICZ
 To: CHARLESS; "Sturcken, Charles" <charless@dep1lan.ci.nyc.ny.us>
 Subject: Issues - Please address ASAP
 Date: Friday, February 16, 2001 9:44AM

Received: from MAYOREXS02.NYCNET by SSWCDCSA.CI.NYC.NY.US
 (Soft*Switch Central 4.4.4.2);
 16 Feb 2001 09:44:53 EST

Received: by mayorexs02.nycnet with Internet Mail Service (5.5.2650.21)
 id <1525S6CJ>; Fri, 16 Feb 2001 09:48:29 -0500

Message-ID: <5CD363636690D4119E100008C71684EB5AD251@mayorexs02.nycnet>

From: "Sumowicz, Alessandra" <asumowicz@cityhall.nyc.gov>

To: "Sturcken, Charles" <charless@dep1lan.ci.nyc.ny.us>

Subject: Issues - Please address ASAP

Date: Fri, 16 Feb 2001 09:46:25 -0500

Return-Receipt-To: "Sumowicz, Alessandra" <asumowicz@cityhall.nyc.gov>

MIME-Version: 1.0

X-Mailer: Internet Mail Service (5.5.2650.21)

Content-Type: text/plain;
 charset="iso-8859-1"

1) Where are we with Cheralyn James?

2) You mentioned that you were expecting some analysis back on the Croton Bridge today. Joe wants a short memo on some general perimeters - what does the analysis show, what are the next steps, what is a general time-frame? I understand that you cannot give a definite date as to when the bridge will be up and running, but some generic ideas are needed. Please put something together for today.

3) FYI - You may want to re-think holding up Ed Carey's paperwork, as that direction did come from Vinny - food for thought!

MEMORANDUM FROM

Ⓡ DEP

ALESSANDRA SUMOWICZ
Director
Mayor's Office of Environmental Coordination
(212) 788- 2937 • (212) 788-2941 (fax)

2/16/01

Joe:

As per your request -

Enclosed please find a copy of the
amicus brief NYCOMM filed in
the Coston case.

Also enclosed is a memo put together
by DEP, at my request, to seek
support from other groups. A copy of the
Fed. Dist. Ct. opinion is attached to said
memo. Unfortunately, only NYCOMM wrote
a brief!

Please advise if you need anything
further.

Alessandra

C: Vinay LaPadula

DEP

Fax: 718-595-3557

Feb 16 2001 12:31

P.02

02-13-2001 16:43

P.02/04

**U.S. Department of Justice***United States Attorney
Eastern District of New York**One Pierrepont Plaza
Brooklyn, New York 11201**Mailing Address: 147 Pierrepont Street
Brooklyn, New York 11201*

February 15, 2001

BY TELEFAX AND FEDERAL EXPRESS

Inga Van Eysden
Assistant Corporation Counsel
New York City Law Department
100 Church Street
New York, New York 10007-2601

Re: United States and State of New York v. City of
New York and New York City Department of
Environmental Protection, Civil Action No. CV-97-
2154 (Gershon, J.) (Gold, M.J.)

Dear Ms. Van Eysden:

As you know, on February 8, 2001, the New York State Court of Appeals issued a decision holding that the construction of the water treatment facility at the site selected by the City, Moshulu Golf Course in Van Cortlandt Park, requires state legislative approval. In accordance with Paragraph VI.A.14 of the Consent Decree, the City was required to request state legislation and home rule message from the City Council by July 31, 1999. In accordance with Paragraph VI.A.15, the City was required to obtain state legislation by February 1, 2000. The City did not seek or obtain such legislative approval. As we advised the city in our letter to Ms. Kath and you dated August 19, 1999, a determination that state legislation was required for construction of the water treatment facility at the Van Cortlandt Park site renders the City in violation of Paragraphs VI.A.14 and VI.A.15 of the Consent Decree and requires payment of stipulated penalties as set forth in the Consent Decree. This letter constitutes a demand for payment of stipulated penalties in accordance with Paragraph XII. of the Consent Decree.

Stipulated penalties for violation of Paragraph VI.A.14 began to accrue on July 31, 1999. In accordance with Paragraph XII.B.2 of the Consent Decree, the total amount now due and owing for violation of Paragraph VI.A.14 is \$2,650,000. Stipulated penalties continue to accrue at the rate of \$5,000 per day for

DEP

Fax: 718-595-3557

Feb 16 2001 12:31

P.03

02-15-2001 16:44

P.03/04

2

each day the City remains in violation of this milestone.

Stipulated penalties for violation of Paragraph VI.A.15 began to accrue on February 1, 2000. In accordance with Paragraph XII.B.2 of the Consent Decree, the total amount now due and owing for violation of Paragraph VI.A.15 is \$1,725,000. Stipulated penalties continue to accrue at the rate of \$5,000 per day for each day the City remains in violation of this milestone.

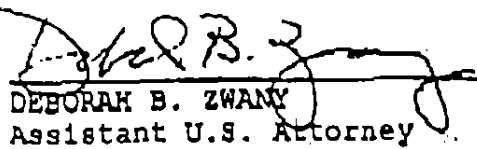
This Consent Decree was entered into by the parties for the express and important purpose of ensuring that construction of filtration facilities for the protection of the public health and safety of the public water supply would be completed in the most expeditious manner possible. To that end, it is imperative that the City take all steps necessary to maintain the schedule for construction of the water treatment facility. Accordingly, the United States requests that the City provide a detailed schedule of proposed milestones to recoup time lost as a result of the City's default for review by the plaintiffs. Included in such schedule, the City should address the amount of time necessary to seek and obtain state legislative approval for the selected site and to commence the site selection process anew. Please provide a response to this request within 10 days from the date of this letter.

In addition, as we discussed, the United States would like to meet with the City as soon as possible. The United States is available to meet with you during the week of February 26th. Please call me to arrange a meeting time.

Very truly yours,

LORETTA E. LYNCH
United States Attorney

By:


DEBORAH B. ZWANY
Assistant U.S. Attorney
(718) 254-6010

DEP

Fax:718-595-3557

Feb 16 2001 12:32

P.04

02-15-2001 18:44

3

cc: Mark Hoffer
New York City Department of
Environmental Protection

Gordon Johnson
Norman Spiegel
New York State Attorney
General's Office

DEP

Fax: 718-595-3557

Feb 16 2001 12:31

P.01



THE CITY OF NEW YORK DEPARTMENT OF ENVIRONMENTAL PROTECTION
JOEL A. MIELE, SR., P.E. Commissioner

PHONE (718) 595-6568
FAX (718) 595-3525

CHARLES G. STURCKEN, Esq.
Chief of Staff
Special Counsel

FAX COVER SHEET

To Fax No:

212 - 788 - 2941

Deliver To:

Alessandra Sumowicz

From:

Charles Sturcken

Of Pages:
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4

Questions or Problems
Contact:

Carmen

Telephone No:

Comments:

745

59-17 Junction Boulevard, 19th Floor, Corona, New York 11368-5107





**Department of
Environmental
Protection**

59-17 Junction Boulevard
Corona, New York
11368-5107

**Joel A. Miele Sr., P.E.
Commissioner**

**Mark D. Hoffer
General Counsel**

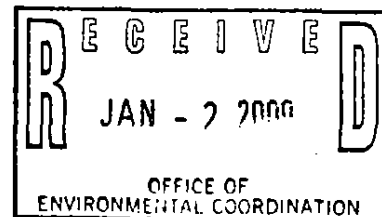
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Affairs**

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Fax (718) 595-6543
www.ci.nyc.ny.us/dep

MEMORANDUM

PRIVILEGED AND CONFIDENTIAL

TO: Commissioner Miele
FDC D. Chapin
C. Sturcken
R. Gaffoglio
J. Ketas
R. Levine



FROM: Mark D. Hoffer *MDH*

DATE: 12/27/2000

RE: Croton Alienation Lawsuit

I am pleased to advise that the New York Conference of Mayors did in fact file an amicus brief on the side of the City in the pending referral of the Croton alienation issue to the New York Court of Appeals (oral argument scheduled for 1/3/2001). A copy is enclosed for your reference.

MDH:mdh
NYCOM.WPD
Enc.

cc w/enc.: A. Sumowicz



www.nyc.gov/dep

(718) DEP-3333

Facsimile Transmission



ENVIRONMENTAL LAW DIVISION
NEW YORK CITY LAW DEPARTMENT
100 Church Street, Room 3-124
New York, NY 10007



Ph.: (212) 788-0864

Fax: (212) 788-1619

From: Inge Van Eyden, Senior Counsel

Date: 12/27/00

Subject: _____

Pages: (inc. cover page)

To: MARK HOFFER

Fax No.: _____

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• Comments:

TO BE SUBMITTED

**COURT OF APPEALS
STATE OF NEW YORK**

Friends of Van Cortlandt Park, Parks Council, Inc., Norwood
Community Action, Lina Burger, and Fay Muir,

Plaintiffs-Appellants,

State of New York,

Intervenor-Appellant,

United States of America,

Plaintiff,

Barbara DeBuono, M.D., as Commissioner of the New
York State Department of Health,

Intervenor,

-against-

City of New York, New York City Department of Environmental
Protection, New York City Planning Commission, New York City
Council, New York City Department of Parks and Recreation,
Rudolph W. Giuliani, Joel A. Miele, Sr. and Henry Stern, and
New York City Department of Citywide Administrative Services,

Defendants-Appellees.

United States Court of Appeals for the Second Circuit No. 167

**PROPOSED BRIEF AMICUS CURIAE OF THE NEW YORK STATE
CONFERENCE OF MAYORS AND MUNICIPAL OFFICIALS**

Submitted by:

ANDREW BRICK, ESQ.
New York State Conference of
Mayors and Municipal Officials
119 Washington Avenue
Albany, New York 12210
Tel: (518) 463-1185

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**COURT OF APPEALS
STATE OF NEW YORK**

Friends of Van Cortlandt Park, Parks Council, Inc., Norwood
Community Action, Lina Burger, and Fay Muir,

Plaintiffs-Appellants,

State of New York,

Intervenor-Appellant,

United States of America,

Plaintiff,

Barbara DeBuono, M.D., as Commissioner of the New
York State Department of Health,

Intervenor,

-against-

City of New York, New York City Department of Environmental
Protection, New York City Planning Commission, New York City
Council, New York City Department of Parks and Recreation,
Rudolph W. Giuliani, Joel A. Miele, Sr. and Henry Stern, and
New York City Department of Citywide Administrative Services,

Defendants-Appellees.

PRELIMINARY STATEMENT

The New York State Conference of Mayors and Municipal Officials respectfully submits this memorandum of law amicus curiae in support of the Defendant-Appellee City of New York which requests that the Court answer in the negative the question certified to it from the 2nd Circuit Court of Appeals, namely, "Does any aspect of the proposed WTP require state legislative approval?"

INTEREST OF THE AMICUS

The New York State Conference of Mayors and Municipal Officials (NYCOM) is a not-for-profit voluntary membership association consisting of 566 of the State's 616 cities and villages, thereby representing the overwhelming majority of such municipalities.

A determination of whether state legislative approval is required prior to municipal construction of public works infrastructure underneath parkland will impact all municipalities in New York State. Constructing and maintaining public works infrastructure to efficiently provide critical services such as water, sewer, drainage, lighting, and telecommunications is an essential function of municipalities. A determination that state legislative approval is necessary before a municipality can install public works appurtenances underneath parkland would unduly restrict and delay the ability of local governments to efficiently provide crucial municipal services and would unnecessarily interject the state legislature into purely localized decision making processes related to the efficient and effective delivery of services.

STATEMENT OF FACTS

The Conference of Mayors adopts the statement of facts presented by the City of New York in its brief.

ARGUMENT I

A MUNICIPALITY'S USE OF LAND BENEATH ITS PARKS FOR THE INSTALLATION OF ITS OWN PUBLIC WORKS FACILITIES DOES NOT REQUIRE APPROVAL FROM THE STATE LEGISLATURE

A park is a pleasure ground set apart for recreation of the public, to promote its health and enjoyment. Williams v. Gallatin, 229 N.Y. 248, 253, 128 N.E. 121, 122 (1920). Municipal lands dedicated for park purposes enjoy a preferred status in New York state law. In New York state, areas of land dedicated as parks are impressed with a public trust and their use for other than park purposes requires the direct and specific

approval of the State Legislature, plainly conferred. Ackerman v. Steisel, 104 A.D.2d 940, 480 N.Y.S.2d 556 (2d Dep't 1984), *affirmed*, 66 N.Y.2d 833, 498 N.Y.S.2d 364 (1985). This common law doctrine against alienation of parkland (the "Public Trust Doctrine"), however, has never been extended to include a prohibition on using land underneath parks for non-park public works purposes.

A. The Common Law Doctrine Against Alienation Of Parkland Does Not Apply To Lands Beneath the Surface of a Park

The fact patterns of cases construing the Public Trust Doctrine have consistently involved the surface area of lands dedicated to park purposes. See, Williams v. Gallatin, 229 N.Y. 248, 128 N.E. 121 (1920) (Lease of building located in park); Miller v. City of New York, 15 N.Y.2d 34, 235 N.Y.S.2d 78 (1964) (Lease of park property for golf driving range); 795 Fifth Ave. Corp. v. City of New York, 15 N.Y.2d 221, 257 N.Y.S.2d 921 (1965) (Construction of cafe and restaurant on park property); Ackerman v. Steisel, 66 N.Y.2d 833, 498 N.Y.S.2d 364 (1985) (Use of park property for parking and storage of municipal vehicles); Stephenson v. County of Monroe, 43 A.D.2d 897, 351 N.Y.S.2d 232 (4th Dep't 1974) (Use of park property as landfill for future conversion to ski slope); In re Central Parkway, 140 Misc. 727, 251 N.Y.S. 577 (Sup. Ct., Schenectady Cty. 1931) (detachment of land from park for use as highway). Indeed, even the specific words utilized by various courts have limited the issue to matters solely pertaining to impacts or intrusions upon the surface area of a park. See, Williams, 229 N.Y. at 253 (No objects without park purposes should be permitted to encroach upon parklands) (emphasis supplied); Ackerman, 104 A.D.2d at 941 (Temporary encroachments upon parkland not exempt from the Public Trust Doctrine) (emphasis supplied). Because the Public Trust Doctrine does not extend to include areas beneath the surface of a park, municipal use of such subterranean areas for installation of public works facilities cannot be construed to require approval from the State Legislature. In fact, the District Court below stated that:

"(t)he AG acknowledges that there is no case law which requires the city to obtain approval of the State Legislature before the city can install its own infrastructure beneath its parkland. It is not disputed that underneath City parkland are many non-park facilities that benefit the public generally and do not serve just the parkland above, including water tunnels, sewer facilities and public utility lines." (District Court Opinion at A773).

While the District Court's statement is limited to New York City, the assertion that municipal infrastructure exists beneath parks is arguably applicable to the majority of municipalities in New York state. Any such use of land beneath parks for public works infrastructure in no way circumvents or diminishes the public policies underlying the Public Trust Doctrine. All citizens retain the ability to utilize parklands for their recreation and enjoyment despite the existence of public works facilities beneath the surface.

B. NY General City Law §20(2) Is Inapplicable In The Instant Action

The Public Trust Doctrine is codified in NY General City Law §20(2) which states that every city is empowered "to acquire real and personal property within the limits of the city, for any public or municipal purpose, and to sell and convey the same, but the rights of a city in and to its waterfront, ferries, bridges, wharf property, land under water, public landings, wharves, docks, streets, avenues, parks, and all public places, are hereby declared to be inalienable." N.Y. Gen. City §20(2) (McKinney's 1989). When the plain language of a statute is precise and unambiguous, it is determinative. Washington Post Co. v. NYS Insurance Dept., 61 N.Y.2d 557, 565, 475 N.Y.S.2d 263, 265 (1984). A reading of the precise and unambiguous language of NY General City Law §20(2) clearly reveals that what is inalienable are the rights of a city in and to its various types of property. NY General City Law §20(2) (McKinney's 1989). Absent a diminishment of a city's rights in and to a particular parcel, NY General City Law §20(2) does not apply. No interest in the parkland at issue in this case is being transferred. The rights of New York City in and to Mosholu park are not in any way being altered in the instant action; the property will remain under the complete possession, control

and ownership of the city. Therefore, any reliance by the parties upon General City Law §20(2) is misplaced.

While previous cases have found impermissible alienation of parkland even in the absence of a conveyance of a city's rights in the property, such cases are not based upon NY General City Law §20(2). Rather, they are based upon the common law Public Trust Doctrine which, as noted above, has not been extended to lands beneath the surface of a park. In Ackerman, it was determined that use of park property for municipal purposes not related to the park constituted impermissible alienation. The decision of the court is expressly based upon the Public Trust Doctrine. 104 A.D. at 941. The same is true in Stephenson. 43 A.D.2d at 897. In neither case is General City Law §20(2) even referenced in the court's decision. In In re Central Parkway, the Schenectady County Supreme Court found that detaching property from a park for conversion into a highway constituted improper alienation. The court, however, based its decision squarely on the Public Trust Doctrine by stating "(t)he municipality holds the property in trust for the use of the public, and cannot use or permit its use for purposes other than those for which it was dedicated or acquired or appropriated. In re Central Parkway 140 Misc.2d at 729. The court did discuss NY General City Law §20(2) but only as it relates to NY General City Law §20(7). The court held that the discontinuance language contained in NY General City Law §20(7) does not apply to parklands and that the sale or conveyance of parks is governed solely by General City Law §20(2). 140 Misc. at 729. The court's discussion of NY General City Law §20(2) was unrelated to its holding that the Public Trust Doctrine prohibits the transfer of parkland to another municipal use. Id.

Because neither the Public Trust Doctrine nor NY General City Law §20(2) apply when a municipality undertakes to install public works facilities beneath parklands, prior approval from the State Legislature need not be obtained.

ARGUMENT II**SOUND PUBLIC POLICY CONSIDERATIONS SUPPORT THE DISTRICT COURT'S DETERMINATION THAT CONSTRUCTION OF THE WTP DOES NOT REQUIRE APPROVAL FROM THE STATE LEGISLATURE.**

A number of important yet divergent public policy considerations buttress the decision of the District Court that the WTP does not require approval by the State Legislature.

A. Providing An Adequate Water Supply Is An Essential Function For Which A Municipality Must Be Conferred All Necessary Authority.

The Supreme Court of the United States has determined that "(t)he providing of a sufficient water supply for the inhabitants of a great and growing city is one of the highest functions of municipal government."

Provident Institution for Savings v. Jersey City, 113 U.S. 506, 516 (1885). The Supreme Court has also declared that:

"No higher police duty rests upon municipal authority than that of furnishing an ample supply of pure and wholesome water for public and domestic uses. The preservation of the health of the community is best obtained by the discharge of this duty, to say nothing of the preservation of property from fire, so constant an attendant upon crowded conditions of municipal life...(t)he wants of the public must, under all conditions, be supplied." City of Columbus v. Mercantile Trust and Deposit Co., 218 U.S. 645, 658 (1910).

In construing whether the City of New York's provision of water constituted a governmental function, the Court concluded that the acquisition and distribution of a supply of water for the needs of a modern city involve the exercise of essential governmental functions and that "without such a supply, public schools, public sewers so necessary to preserve health, fire departments, street sprinkling and cleaning, public buildings, *parks*, playgrounds, and public baths could not exist. Brush v. Comm. of Internal Revenue, 300 U.S. 352, 370 (1937) *reversed on other grounds*, 306 U.S. 466 (1939) (emphasis supplied). The Court further declared that "the health and comfort of the city's population of 7,000,000 souls, and in some degree their

very existence, are dependent upon the adequate supply of pure and wholesome water. 300 U.S. at 371.

While these decisions are a number of years old, it is no less true today that "(a) city without water would be a desolate place." Dunbar v. City of New York, 251 U.S. 516, 518 (1920).

New York courts also view the construction and extension of New York City's waterworks system as a function necessary for the preservation of public health and safety and of benefit to the general public.

Jamaica Water Supply v. City of New York, 280 A.D. 834, 114 N.Y.S.2d 79 2d Dep't 1952), *affirmed*, 304 N.Y. 917 (1953); Town of Hempstead v. Village of Rockville Centre, 67 Misc.2d 123, 323 N.Y.S.2d 872 (Sup. Ct., Nassau Cty. 1971); Parsons Constr. Corp. v. City of New York, 163 Misc.932, 298 N.Y.S. 276 (NY City Ct. 1937).

A municipality must be conferred necessary and reasonable authority to perform the essential governmental function of operating and maintaining a system of water supply to meet the needs of its residents. Extension of the Public Trust Doctrine to include lands beneath parks would unfairly burden local governments in their efforts to maintain water supply systems and other critical services such as sewer lines or drainage systems by making it more difficult to install new pipes and conduits or repair existing ones. A local government would be forced to embark upon costly detours around parkland or seek prior state approval. Either alternative would result in greater costs and unjustified delays which could unreasonably place at risk the health, safety and welfare of residents. As such, an extension of the Public Trust Doctrine so as to prohibit the installation of public works appurtenances underneath parks would unreasonably inhibit municipal ability to provide essential services to its residents.

**B. A Local Government Is Far Better Suited To Determine And Address
Its Public Works Infrastructure Needs Than Is The State Legislature**

Any extension of the Public Trust Doctrine to include land beneath parks would act to usurp local home

rule authority by substituting state judgment for that of local officials. Affording all respect due to the State Legislature, a local government is far better suited to determine its own public works infrastructure needs. A local determination that the public interest is best served by construction of a pipe or conduit that traverses beneath a park should not require review by the State Legislature. State veto power of this nature would severely undermine a local government's ability to meet the essential needs of its residents. The sheer magnitude of the project involved in this case must not obscure the fact that what is really at issue is whether a municipality will be required to petition the State Legislature every time it seeks to install a water or sewer pipe beneath parkland. By finding that such state approval is not required, the District Court has correctly balanced the rights of the public to the free use of parklands with the municipal responsibility to provide essential services.

CONCLUSION

A municipality can utilize sub-surface areas beneath its parks for the construction of public works appurtenances without approval from the State Legislature and such authority is supported by sound public policy.

DATED: Albany, New York
December 19, 2000

Respectfully Submitted,



Andrew Brick
Counsel

New York State Conference of
Mayors and Municipal Officials
119 Washington Ave
Albany, N.Y. 12210
(518) 463-1185

STATE OF NEW YORK)
COUNTY OF ALBANY) ss.:

Fern Westervelt, being duly sworn, deposes and says:

I am not a party to this action, am over 18 years old and reside at P.O. Box 4, Rowe Road, Feura Bush, New York.

On December 19, 2000 I served three copies of the annexed proposed brief amicus curiae, enclosed in a properly addressed wrapper by dispatching the same overnight delivery service, Federal Express. Said papers were deposited into the custody of the overnight delivery service prior to the latest time designated by the overnight service for overnight delivery addressed to the last known address of the addressees below:

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Attorney General of the
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Sworn to before me this 19th day of
December, 2000


Notary Public

DONNA M.C. GILIBERTO
Notary Public, State of New York
No. 4839823
Qualified in Albany County
Commission Expires February 28, 2002

MEMORANDUM

To:

From:

Re: Underground Use of Parkland

Date: November , 2000

The City of New York is currently litigating two issues of major importance to all municipalities throughout the state which have mapped parkland within their local jurisdiction. The two issues, which will be argued before the New York State Court of Appeals on January 3, 2001 are:

1) Is State legislative approval required for the City to place a water treatment plant underneath Van Cortlandt Park (a mapped park) and

2) Is State legislative approval required before the City may withdraw from parkland use the amount of parkland that will be interfered with by construction of the proposed WTP for the time currently estimated to construct the WTP and restore the parkland to park use?

For the reasons set forth below, the City urges you to file an amicus brief supporting the City's position that both questions should be answered in the negative.

Background

The City is required, pursuant to a federal court consent decree, to design, build, and operate a water treatment facility (WTP) to treat drinking water from its Croton watershed. The City proposed, and obtained local legislative land use approval to construct this facility underneath Van Cortlandt Park. Following completion of construction of the WTP (construction is to last six years), the portion of the park that had been disturbed during construction (23 acres of a acre park) will be restored as usable parkland. (In point of fact, the park will be enhanced through improvements to be made as part of the restoration).

The State of New York (which is also a party to the federal court consent decree) and various citizen groups brought an action alleging that the disruption of the park during construction as well as the ultimate placement of the WTP beneath the park constituted alienation of parkland for which state legislative approval was required. The City argued that under state law neither action constituted alienation because the construction would be for a defined and reasonable period, the plant would be completely underground, and the park would be fully restored (and in certain respects improved with new facilities) once construction was

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complete. In a carefully reasoned opinion (copy attached), the Federal District Court agreed with the City; an appeal to the U.S. Court of Appeals for the Second Circuit was taken. The Second Circuit, after initially accepting briefs on the issue and scheduling oral argument, has recently certified both of the above-listed questions to the New York State Court of Appeals.

The Importance of This Case Warrants Your Support

The City of New York, along with all other municipalities, treasures the importance of its parks. The land beneath parks can serve as valuable property that can be used for placement of important public works, without depriving the public of an equally important recreational resource. In New York City, for example, roads, subway tunnels, shaft sites, as well as water, sewer and cable lines run underneath parks. We understand that many other New York State Municipalities have sited similar facilities under parkland or contemplate such projects in the future. Requiring state legislative approval for placing such facilities underneath parks would subject important projects to an unwieldy, time consuming and unpredictable political process. Where a project is carefully designed so that parkland, upon construction, is restored to its former park use, the City does not believe that the State Constitution requires state legislative approval to proceed. Moreover, the argument that mere disruption of park use during construction of a project amounts to alienation of parkland, would (in its broadest reading) suggest that nothing could ever be built in, on or under a park without State legislative approval. Therefore, we respectfully urge you to join the City in briefing the Court of Appeals on why both certified questions should be answered in the negative, and the serious consequences of an affirmative ruling.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

STATE OF NEW YORK and BARBARA
DEBUONO, M.D., as COMMISSIONER OF THE
NEW YORK DEPARTMENT OF HEALTH,
Plaintiffs-Intervenors,

v.

CITY OF NEW YORK and NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL
PROTECTION,
Defendants.

NORWOOD COMMUNITY ACTION,
LINA BURGER, and FAY MUIR,
Plaintiffs,

v.

DEPARTMENT OF ENVIRONMENTAL
PROTECTION, DEPARTMENT OF CITYWIDE
ADMINISTRATIVE SERVICES, CITY PLANNING
COMMISSION, and CITY OF NEW YORK,
Defendants.

FRIENDS OF VAN CORTLANDT PARK
and THE PARKS COUNCIL, INC.,
Plaintiffs,

v.

CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL PROTECTION,
NEW YORK CITY PLANNING COMMISSION,
NEW YORK CITY COUNCIL, NEW YORK CITY
DEPARTMENT OF PARKS & RECREATION,
RUDOLPH W. GIULIANI, JOEL A. MIELE, SR.,
and HENRY STERN,
Defendants.

OPINION
AND ORDER

97 CV 2154 (NG) (SMG)

99 CV 6224 (NG) (SMG)

99 CV 7399 (NG) (SMG)

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GERSHON, United States District Judge:

On November 24, 1998, I approved a Consent Decree resolving claims brought by the United States, acting on behalf of the Environmental Protection Agency ("EPA"), and the State of New York against the City of New York to require the City to provide filtration and disinfection treatment for its Croton Water Supply System. *United States v. City of New York*, 30 F. Supp. 2d 325 (E.D.N.Y. 1998). The Consent Decree enforces compliance by the City with federal and state requirements that it filter and disinfect the water, requirements with which the City had previously failed to comply despite its agreement to do so.

The Consent Decree establishes detailed "milestones" that the City must satisfy in order to fulfill its obligation to plan, design, construct and operate a Water Treatment Plant ("WTP") at a site selected by the City after its completion of an environmental review. The Consent Decree requires the parties to attempt to resolve disputes arising under it, and the court retains jurisdiction to determine unresolved disputes. The Consent Decree further requires the City to diligently seek removal to this court and to defend against any action which might delay performance of any of the milestones.

The actions presently before me, which were argued together, arise out of the City's selection of the Mosholu Golf Course site in Van Cortlandt Park in the Bronx as the location for construction and operation of the WTP. The City's plan calls for the plant to be built under a golf driving range presently on the site. The driving range will be demolished during construction and then rebuilt after the gradient of the parkland is altered to accommodate the WTP, under the City's plan. In 97 CV 2154, the action which was resolved by the Consent Decree, the State of New York, through its Attorney General ("AG"), seeks relief under the dispute resolution provision of the Consent Decree, claiming

that both the WTP itself, and the disruption entailed for its construction, involve alienation of parkland and that, as a result, the City is required to seek the approval of the State Legislature for the proposed project. Since the City has not sought such approval, the AG asserts that the City has failed to meet its milestone obligations to request and obtain State legislative approval by specific dates that have now passed. The City disputes the AG's contention that State legislative approval is required to undertake the project as it has been designed.

The other two actions, 99 CV 6224 ("Norwood") and 99 CV 7399 ("Friends"), were instituted by community groups and concerned citizens as proceedings in New York State Supreme Court, Bronx County, under Article 78 of the New York CPLR and for declaratory and injunctive relief, seeking to annul the City's selection of the Mosholu Golf Course site for construction of the WTP. Without objection, the City has removed both actions to this Court pursuant to the Consent Decree. The plaintiffs in both Norwood and Friends, like the AG, argue that the City was required to obtain State legislative approval for construction of the WTP at the chosen site. Friends also argues that an amendment of the New York City Zoning Resolution was required before the City could lawfully undertake this project in a park. Friends further argues that the approvals of the project by the responsible City agencies were invalid because the City failed to adequately address and resolve the issues of need for legislative approval and a zoning amendment, and because the City's environmental review failed to give adequate consideration to preservation of the Clubhouse of the Mosholu Golf Course, which, under the City's plan, will be demolished during excavation of the WTP site, and replaced by a replica when construction is completed. The City has moved for summary judgment in Norwood and Friends, and the plaintiffs in Friends have cross-moved for partial summary judgment on the park alienation and zoning amendment issues.

All parties agree that there are no disputes of material fact and no need for discovery on the issues of whether State legislative approval or amendment of the Zoning Resolution are required, which present questions of law, and Friends identifies only a narrow area of possible factual dispute in the remainder of its claims. For the reasons that follow, the State's application under the Consent Decree is denied, the City's motions for summary judgment in Norwood and Friends are granted, and the cross-motion by plaintiffs in Friends for partial summary judgment is denied.

BACKGROUND

The background of the Croton Water Supply System, the statutory and regulatory requirements, federal and state, applicable to ensuring a safe drinking water supply, the events leading up to the action by the United States and the State to enforce compliance with the requirement of filtration of the Croton Watershed, and the salient terms of the Consent Decree, are described in my prior opinions approving the Consent Decree, 30 F. Supp. 2d 325 (E.D.N.Y. 1998), and denying certain motions to intervene, 179 F.R.D. 373 (E.D.N.Y. 1998), and the opinion of the Second Circuit affirming denial of intervention, 198 F.3d 360 (2d Cir. 1999). It is therefore necessary only to summarize some of these facts in this opinion.

The Safe Drinking Water Act ("SDWA"), 42 U.S.C. §300g-1 *et seq.*, and the Surface Water Treatment Rule ("SWTR") promulgated by the EPA thereunder, 40 C.F.R. §§ 141.70-75, effectively mandated filtration of public water systems using surface water, with limited exceptions. In 1992, the State Sanitary Code ("SSC") was amended to comply with the federal requirements.

The Croton Watershed is one of three principal areas supplying drinking water to the City and

surrounding communities; the others, the Delaware and Catskill Watersheds, are located in more remote and less developed regions than Croton. The Catskill and Delaware Watersheds so far have been permitted to avoid filtration. The Croton Watershed has an area of 375 square miles, primarily in Westchester, Dutchess and Putnam Counties of New York State. It normally supplies approximately ten percent of the City's water requirements, but can provide approximately thirty percent during a drought.

In 1991, a City report concluded that filtration treatment of water from the Croton Watershed would eventually be required to ensure its safety. In 1992, the City entered into a stipulation with the New York State Department of Health pursuant to which the City acknowledged that it was required by federal and state law to build a filtration plant for the waters of the Croton Watershed. On January 13, 1993, the EPA issued a determination requiring the City to filter and disinfect water from the Croton Watershed. When the City failed to comply with the 1992 stipulation or the 1993 EPA ruling, the United States commenced an action in this Court in 1997, joined by the State and the State Department of Health as intervenors, to compel compliance with federal and state laws and regulations governing public water systems with respect to the Croton Watershed. The parties entered into settlement discussions under the supervision of Magistrate Judge Steven M. Gold, resulting in the proposed Consent Decree which I approved without modification after allowing for public comment on the proposed settlement and carefully considering the comments received.

The Consent Decree provides injunctive relief requiring the City to finish the planning, designing, construction and operation of the WTP at a site selected by the City after completing its environmental review. Under state and local law, any environmental review must comply with the requirements of the State Environmental Quality Review Act ("SEQRA"), N.Y. Environmental

Conservation Law §§ 8-0101 *et seq.*, the State regulations thereunder, 6 N.Y.C.R.R. §§ 617.1 *et seq.*, and the City's rules adopted in furtherance of that Act, the City Environmental Quality Review ("CEQR"), 62 R.C.N.Y. §§ 5-01 *et seq.* & 43 R.C.N.Y. §§ 6-01 *et seq.* The "milestones" agreed to in the Consent Decree prescribe particular steps the City is required to take by specified dates through completion of construction of the WTP by September 1, 2006, and commencement of its operation by March 1, 2007. The City agreed to commence performance of the milestones in the Consent Decree before its approval by the court, and the City did so. The City identified eight potential sites for the WTP, issued a preliminary report evaluating the advantages and disadvantages of each, and publicized its content for public comment and public hearings. Three of these sites, including the site eventually chosen, are located in Van Cortlandt Park. The City had to compile a list of necessary permits and approvals for all sites under consideration by September 1, 1998, and the City's list did not include approval of the State Legislature for any of the parkland sites. Other milestones required the City to request State legislation and a home rule message from the City Council by July 31, 1999, "in the event that use of the selected site for the WTP requires state legislation," and to obtain that legislation "if necessary" by February 1, 2000. The City must pay substantial stipulated penalties if it fails to comply with the milestones, including escalating per day penalties, in addition to the civil penalty it agreed to for past failure to comply with federal requirements.

In December, 1998, the City announced its selection of Mosholu Golf Course as the preferred site, completed a Draft Environmental Impact Statement ("DEIS"), and began a process of public comment, public hearings and review, pursuant to the procedures mandated by SEQRA and CEQR and the City's Uniform Land Use Review Procedure ("ULURP"), N.Y.C. Charter § 197-c. A Final Environmental Impact Statement ("FEIS") was completed in May 1999. Numerous critical comments

were received during the review process, including assertions by the private plaintiffs in these actions and others that the proposed project required State legislative approval and amendment of the City Zoning Resolution. No comments were received during public hearings from representatives of any agency of the State, including the AG, although attorneys in the AG's office informally advised City attorneys of their view that State legislation was required, a position rejected by the City Corporation Counsel.

This review process culminated in approval by the City Planning Commission on June 1, 1999 of the Mosholu Golf Course site for the WTP, and approval by the City Council of the City Planning Commission decision on July 21, 1999. The City Council determined that the FEIS satisfied the requirements imposed by law for environmental review, that the project minimized adverse environmental effects to the maximum extent practicable, and that, after consideration of the relevant environmental issues, land use implications and other policy issues, the project should be approved. The City Council modified the City Planning Commission decision by providing approximately \$20 million for preservation, restoration and improvement of the site of the project and its immediate vicinity, and for improvements elsewhere in Van Cortlandt Park.

On July 30, 1999, the AG's office sent a letter to the City stating that construction of the WTP at the Mosholu Golf Course site, as approved by the City Council, required State legislation, and that, therefore, the City had to request State legislation and a home rule message from the City Council by the following day in order to satisfy the applicable milestone of the Consent Decree. The City rejected the AG's interpretation of the legal requirements. The AG's Office has nevertheless advised the court by letter, in response to my inquiry, that "the Attorney General would strongly support state legislation" approving the Mosholu Golf Course site. The letter states that the site is identified in the

FEIS as the most appropriate one for the project, that it "has been selected by the New York City Council and the Mayor after their review" of the FEIS and completion of the ULURP procedure, and that the "Attorney General does not disagree with that judgment."

The selected site is located in the southeast corner of Van Cortlandt Park, occupied by a golf driving range and adjacent to the golf course itself. The golf course will be closed during construction, and the existing golf clubhouse, roads and parking area will be demolished during construction and rebuilt, as will the driving range. The driving range site will be excavated and the WTP constructed below finished grade and substantially below existing grade, although in places the finished grade will be between approximately 5 and 35 feet higher than existing grade. Upon completion of construction, the roof of the plant is to be covered with soil and restored to allow its resumed use as a golf driving range. In order to accommodate the existing sloping nature of the site, the facades of the building housing the WTP will be constructed as bermed and landscaped embankments. Air intakes for the WTP will be located adjacent to the driving range through louvers concealed in the berms around the perimeter of the building, and exhaust stacks will be integrated into the supports for the golf ball netting on the sides of the driving range and the driving range structures. The WTP includes a raw water pumping station, finished water pumping station, and treated water reservoir, all housed in the building. Underground tunnels connecting the facility with the New Croton Aqueduct and the existing water distribution system for the City also will be constructed.

The construction site will cover approximately 28 acres of the 74 acre golf course. Van Cortlandt Park itself covers 1,146 acres and, together with other areas of open space in the vicinity, make the area strikingly bucolic for a densely populated part of the City. According to the FEIS, the temporary loss of active open space during construction will decrease the total open space ratio from

26 to 23 acres per thousand residents. This compares to the recommended ratio of 2.5 acres per thousand residents specified in the CEQR as a goal. Friends concedes that this temporary reduction in the open space ratio during construction is not significant. (Friends' Response to City's Local Rule 56.1 Statement ¶ 29). The FEIS estimates that 268 trees will be removed during construction. The City plans a reforestation program, but the rebuilt driving range will be replanted with grass only because of the plant underneath. The construction project will be a substantial one, with the use of heavy equipment and vehicular traffic that would be expected in an undertaking of that scale. The City is required to complete construction within 5½ years of its commencement under the applicable milestones.

DISCUSSION

A. The Park Alienation Issue

The AG, Friends and Norwood contend that parkland in the State may not be diverted to any uses that are not recreational or otherwise consistent with the public use and enjoyment of a park, in the absence of specific approval by the State Legislature.¹ They rely upon the common law doctrine against alienation of parkland, and upon Sections 20(2) and 20(7) of the General City Law, which provide that the "rights of a city in and to its . . . parks, and all other public places, are hereby declared to be inalienable," with exceptions allowing a city to sell and convey property upon "discontinuance"

¹The issue of parkland alienation is properly raised by plaintiffs in Norwood and Friends. The State's interest in the issue is direct and immediate and, therefore, the AG has been permitted to participate in the litigation without the court's resolving the question, initially raised by the court and since addressed by the parties, whether the AG is properly before the court under the dispute resolution provisions of the Consent Decree or in another capacity.

of public use or where authorized by another law, exceptions that, they contend, do not apply in this case.³ The AG and the private plaintiffs further argue that the requirement of State legislative approval applies even to an underground facility located under parkland. They also argue that the scale and duration of the construction project alone, and the consequent disruption of park use while the plant is being built, require State legislative sanction, even if the court were to find that the City can build and operate an underground facility under parkland without the authorization of the State Legislature.

The City contends that construction of the WTP does not entail alienation of parkland requiring State legislative approval (1) because there will be no conveyance of parkland to another entity, public or private, and (2) because the plant, upon completion, will be located underground and the parkland available for public use after restoration will remain essentially undiminished. The City further contends that the temporary disruption of the public use of parkland occasioned by the construction of a project that is otherwise permissible can be approved by the City, without the need for State legislation or the approval of a State agency. For the reasons that follow, I agree with the City.

The leading New York Court of Appeals decision on park alienation is *Williams v. Gallatin*, 229 N.Y. 248 (1920), which held that, once land has been dedicated to use as a park, it cannot be diverted for uses other than recreation, in whole or in part, temporarily or permanently, even for another public purpose, without legislative approval. *Williams* invalidated the proposed lease of the Arsenal Building in Central Park to the Safety Institute of America, a non-profit, quasi-public

³The AG, unlike the private plaintiffs, recognizes an exception to the requirement of legislation, which he derives from other laws relating to water supply projects, but only, according to the AG, if the project has been formally approved by the responsible State agency, the Department of Environmental Conservation ("DEC"). The City did not seek DEC's formal approval for installation of the WTP on the Mosholu Golf Course site.

organization, for exhibits and instruction on safety devices. *Williams* involved "alienation" of public land in its traditional sense of a conveyance to a private entity, but its sweeping language has been construed also to prohibit "alienation" by allowing any use of parkland for non-recreational purposes whether by the municipality or another entity, public or private. Although *Williams* speaks eloquently of the need to preserve parkland, the decision does not resolve the question presented here. The Court stated, for example: "no objects, however worthy, . . . which have no connection with park purposes should be permitted to encroach upon it without legislative authority plainly conferred," *id.* at 253; a public park should "not be turned over by the commissioner of parks to other uses," *id.* at 254; and a park "must be kept free from intrusion of every kind which would interfere in any degree with its complete use for this end," *id.* (emphasis supplied). These quotations do not speak to whether an underground plant is an encroachment or an intrusion on parkland, whether the City's allowance of an underground use to supply essential municipal services can be equated with allowing a park to be "turned over" for other uses, or whether alienation from park use exists when the surface of the park will be restored to the same uses that existed before construction of an underground project to supply essential public services. These critical distinctions from *Williams* require a different result where, as here, the City will not surrender any of its land to another entity, and the public will have undiminished use of the surface of the park as soon as construction of the WTP and landscape restoration is completed.

The AG acknowledges that the City has gone to "great lengths" and displayed "some ingenuity" in minimizing the impact of the plant on the park. The facilities comprising the project will be located underground. Although the parties quibble over the significance of the distinction between being below "finished" grade versus "current" or "existing" grade, the fact remains that the park will

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be restored to its existing use as a golf driving range, that the golf course and associated structures will be restored or rebuilt, and that the area available for public use for recreational purposes after the project is completed will remain undiminished.

That changes to the existing grade will occur in some areas to accommodate the plant is immaterial. As the City points out without contradiction, no authority requires a municipality to seek State legislative approval to make changes to the gradient of parkland; in fact, the Moshulu Golf Course and driving range were created in approximately 1914 by altering the natural landscape. Moreover, neither *Williams* nor any other authority drawn to the court's attention prohibits underground use of parkland for non-recreational purposes related to a municipality's need to deliver essential services to its residents, as is the case here, without legislative approval, where that use will not interfere with the recreational use of the surface. (See pp.14-16 *infra*). Since the parkland available for public use will not be reduced, this underground use of parkland may be approved by the City without the need for ratification by the State Legislature.

Nor is State legislative approval a precondition to the temporary disruption of parkland necessarily occasioned by the construction of a project that is properly undertaken without specific legislation. On the contrary, in *Wigand v. City of New York*, N.Y.L.J., Sept. 25, 1967, p. 21, col. 5 (Sup. Ct., Richmond Co.), the court upheld the City's authority to construct two underground water storage tanks at Silver Lake Park on Staten Island, without State legislative approval, that were needed to meet anticipated needs of a growing population. As in this case, the Parks Department collaborated with the municipal water authorities (the predecessor of the City Department of Environmental Protection ("DEP")) and approved the specifics of the project, including restoration and beautification of the surface, to ensure preservation of the landscape for appropriate park use after completion of

construction, which was estimated to take 30 months. The storage tanks would be below the finished surface, but, as with the Mosholu Golf Course project, the grade would be changed to incorporate a "well designed building" built into the slope and "virtually hidden by the surrounding landscaping." The roof of the building would be made into a patio with benches for the public.

Wigand rejected the argument that the temporary disruption of parkland necessarily occasioned by the construction project violated the park alienation doctrine or barred the City from carrying out this vital project. The court also rejected the argument that the underground use of the land implicated the prohibition against "encroachment upon the use of park lands and a diminution of the use of the said lands." The court further pointed out that the Parks Department and the Board of Water Supply had cooperated "in the installation of numerous tunnels and shafts in the various parks for a period of more than 50 years."

The court specifically framed the issue it decided as whether the project was "compatible with public park purposes," and found that it was. As in the present case, the project was approved by the appropriate City agencies and its legislative body (the Board of Estimate at the time), not by the State Legislature. The AG's attempt to distinguish *Wigand* by claiming that it rested on the approval of the Silver Lake Park project by the State Water Resources Commission (which the AG claims provides an exception to the requirement of legislative approval) is misplaced, since the opinion does not indicate that the State agency considered the parkland alienation issue or that the court relied upon its concurrence for anything other than, as the opinion states, evidence that the project "is a matter of state concern."³ In this case, too, the AG has informed the court that the State (i.e., its executive branch

³ The requirement of formal state agency approval of a water project in N.Y.C. Admin. Code § 5-426, relied upon by the AG, which requirement is triggered when condemnation procedures are needed for water supply projects, does not apply to the WTP. Because the City already owns the land, no acquisition of land is required.

through its authorized spokesperson, the AG), approves of the project and believes it should be built at the site chosen by the City. See pp. 7-8 *supra*. And the State, as a party to the prior litigation and the Consent Decree, sought and obtained the City's commitment to construction of the WTP as necessary to ensure the safety of the Croton water supply. See also *Welter v. Moses*, 86 N.Y.S.2d 110 (Sup. Ct., N.Y. Co. 1941), *aff'd without opinion*, 265 A.D. 993 (1st Dep't), *app. dismissed*, 290 N.Y. 761 (1943) (upholding the general authority of the Parks Commissioner to close a public park during construction of a vital municipal project).

In this case, as in *Wigand*, no alienation of parkland will occur, in either sense in which the term has been used in New York cases that protect parkland. The land will remain in the City's ownership, possession and control during and after construction, so there will be no transfer of an interest in land to another entity. And, since there will be no diminution of parkland available for public use after the plant is built, underground use of the parkland is not an alienation in the sense of diversion of parkland for non-park purposes.

No other authority of which the court is aware requires State legislative approval for an underground project to meet essential municipal needs under circumstances comparable to those presented here. State decisions which disallowed the use of parkland for non-park purposes, or "temporary" alienation of parkland without State legislative approval, many of which relied upon an interpretation of New York General City Law §§ 20(2) and 20(7) that sharply restricted municipal home rule, as well as upon the common law prohibition of alienation of parkland, arose in entirely different contexts.⁴ In each of these cases, the challenged action involved either a transfer of parkland

⁴Given my conclusion that construction and operation of the WTP will not constitute alienation of parkland within the meaning of established State law, I do not address the current vitality of cases that have construed General City Law §§ 20(2) and 20(7) to deprive municipalities of the power to discontinue parkland without approval of the State Legislature. It also is

to a private entity, or use of above-ground parkland for non-recreation purposes that were inconsistent with the land's dedication to use as a park, thereby limiting the public's use or enjoyment of parkland or a portion of it. See, e.g., *Miller v. City of New York*, 15 N.Y.2d 34 (1964) (lease to private entity to develop parkland for golf driving range disallowed as beyond Parks Commissioner's authority); *Matter of Ellington Constr. Corp. v. Zoning Bd.*, 152 A.D.2d 365 (2d Dep't 1989), *aff'd on other grounds*, 77 N.Y.2d 114 (1990) (conveyance of parkland to private developer required approval of State legislature); *Ackerman v. Steisel*, 104 A.D.2d 940 (2d Dep't 1984), *aff'd on opinion below*, 66 N.Y.2d 833 (1985) (supposed "temporary" allowance, for periods of 25 and 14 years at time of litigation, by Parks Commissioner for storage of trucks and equipment above ground by Highway and Sanitation Departments in Cunningham Park in Queens, declared unlawful); *Stephenson v. County of Monroe*, 43 A.D.2d 897 (4th Dep't 1974) (sanitary landfill in park enjoined despite vague "speculation" that the mountain of garbage would eventually be made into a ski slope); *American Dock Co. v. City of New York*, 174 Misc. 813 (Sup. Ct., N.Y. Co. 1940), *aff'd without opinion*, 261 A.D. 1063 (1st Dep't), *aff'd without opinion*, 286 N.Y. 658 (1941) (lease of wharf area to private entity to operate a

unnecessary to consider whether any already existing enactments give the City power to discontinue use of parkland for a water supply project, for the provision of vital municipal services more generally, or for other purposes as determined by the City, even if the General City Law provisions are as restrictive as the AG argues. The AG acknowledges that state laws of general application may authorize discontinuance of parkland for public purposes and that such laws obviate a city's obtaining State legislative approval for each particular project. See *Grayson v. Town of Huntington*, 160 A.D.2d 835 (2d Dep't), *lv. denied*, 76 N.Y.2d 714 (1990), and *Village Green Realty Corp. v. Glen Cove Community Dev. Agency*, 95 A.D.2d 259 (2d Dep't 1983), which upheld alienation of parkland property, for low-income housing or other urban renewal projects, without the specific approval of the State legislature for either use. The courts did so on the basis of general authorizations for use of city property for such purposes in Public Housing Law §123 and General Municipal Law §503-a(4), respectively. See also *Sierra Club v. Board of Educ.*, 127 A.D.2d 1007 (4th Dep't), *lv. denied*, 70 N.Y.2d 612 (1987) (construing provision of Buffalo City Charter, notwithstanding N.Y. Gen. City L. § 20(2), to allow city to use part of its parkland for a public school or other non-park public purposes).

foreign trade zone invalidated); *Matter of Central Parkway*, 140 Misc. 727 (Sup. Ct., Schenectady Co. 1931) (local ordinance that allowed a strip of parkland to be detached to build a parkway invalidated in the absence of State legislative approval); *Tompkins v. Pallas*, 47 Misc. 309 (Sup. Ct., N.Y. Co. 1905) (Parks Commissioner lacked authority to allow advertisements to be placed on a temporary fence that had been properly erected for safety purposes in Bryant Park during construction of library).

This case does not present an issue as to the power of the City's Parks Commissioner to lease parkland to a private commercial entity, as in *Miller*. No interest in parkland is conveyed by the WTP project. Nor does this case present an issue, such as in *Ackerman* or *Stephenson*, where characterizations of the non-park use as "temporary" were subterfuges. The temporary disruption of parkland, even for the relatively lengthy period to be involved here, for construction of an otherwise permissible public project is not prohibited by the doctrine against alienation of parkland where the temporary disruption is not a subterfuge for a diversion of parkland for non-park use. Interference with public use of parkland will be limited to the time necessary for construction of the WTP and restoration of the surface. Moreover, even during the height of construction, large areas of parkland and other open space will remain, with all of the rest of Van Cortlandt Park and other local areas of greenery available for use by residents and the general public. And the City Council, in approving the project, directed that approximately \$20 million be transferred to the Parks Department to ameliorate the effects of the construction and to preserve, restore and improve the site of the project, its immediate vicinity, and Van Cortlandt Park generally.

The AG acknowledges that there is no case law which requires the City to obtain approval of the State Legislature before the City can install its own infrastructure beneath its parkland. It is not disputed that underneath City parkland are many non-park facilities that benefit the City generally and

do not serve just the parkland above, including water tunnels, sewer facilities and public utility lines. Nor is it disputed that many of these projects could not have been built or maintained without temporary disruption of the park surface for construction and upkeep.³ New York State law relating to alienation

³On oral argument, questions arose as to whether these projects had in fact been approved by the State Legislature and as to the significance of past practices. I afforded the parties an opportunity to submit supplemental affidavits and briefs directed to this issue. The AG and the private plaintiffs argue that State legislative approval has often been obtained for infrastructure projects, and the AG argues further that, even if some projects were not authorized by State legislation, these instances do not estop the State from enforcing compliance with legal requirements. Their supplemental submissions cite many examples where the State Legislature enacted legislation authorizing conveyance of parkland or easements in parkland for such projects, but these examples involve circumstances that are not comparable to the WTP project. Notably, the examples of State legislative approval furnished by the AG and the private plaintiffs involve in most instances the conveyance of interests in parkland from a government entity to either a different government entity (e.g., from a town to a county or to a sewer district) or to private entities, which is classic alienation of parkland. A typical example cited by the AG is L. 1980, c. 390, authorizing the City of Peekskill to convey a permanent easement on parkland to Westchester County for construction and maintenance of a sewer. Such examples do not establish that State legislative approval is required where no interest is conveyed to a separate government entity. Indeed, the Legislature also approves the conveyance of parkland from one government entity to another for its continued use as parkland, as with Peekskill's conveyance of parkland to the County in a law, L. 1980, c. 389, immediately preceding enactment of the law relied upon by the AG.

Other instances cited entail discontinuance of the use of parkland or a portion of the surface of it, unlike here, where the City will fully restore the surface to its use as parkland. See L. 1988, c. 371 (authorizing Town of Greenburgh to construct and operate an underground water pipeline and at-grade pumping station); L. 1998, c. 497 (expansion of West 72nd Street subway station; authorizes conveyance of City parkland to Metropolitan Transportation Authority); L. 1980, c. 396 (City of Dunkirk authorized to engage in exploration and development of natural gas fields on parkland). The parties' references to certain laws authorizing construction of rail and subway lines are unhelpful. The railroad and subway companies were privately owned when the 1875 and 1891 laws cited by the AG were enacted. The 1875 law expressly prohibited use of parkland for railway routes, L. 1875, c.606, § 4, and limited the authority of the railway commissioners to permit use of parkland to facilitate construction. *Id.* § 26, ¶5. Subsequent laws modified this prohibition in limited respects so as to allow construction of subway lines and certain stations under parkland, L. 1891, c. 4, § 4, or to allow a railway line to use or acquire interests in parkland. L. 1909, c. 558. Later State legislation eased restrictions on use of City parkland for railway projects. See N.Y. Rapid Transit L. § 50 (f). No State statute cited by the parties imposes similar prohibitions or restrictions on the use of land underneath parks for water supply projects, and the WTP will not be privately owned.

The compilation of statutes by the AG and the private plaintiffs is more striking for the paucity of State legislation relating either to underground use of parkland in New York City for

of parkland does not require approval by the State Legislature of every City infrastructure project underneath parkland, and State legislative approval is not required for the WTP project, which will not diminish the parkland available for public use when construction is completed.

B. Zoning Amendment

Friends argues that an amendment of the City Zoning Resolution is required for construction and operation of the WTP at the Moshulu Golf Course site. Parkland is not included in any zoning district. Section 11-13 of the Zoning Resolution provides that, when a public park is "sold, transferred, exchanged, or in any other manner relinquished from the control of the Commissioner of Parks and Recreation," no use will be permitted on the "former public park or portion thereof" until an amendment designating a zoning district has been adopted. The amendment requirement is inapplicable here.

The WTP does not create a "former public park or portion thereof" that would give rise to the need for a zoning amendment. When the project is completed, the area of parkland available for public use will remain substantially the same as it is now, and no portion of parkland will be placed beyond the control of the Parks Commissioner during or after construction of the WTP. No portion of Van Cortlandt Park will become a residence, commercial or manufacturing district — the three general categories of zoning districts under Section 11-12 of the Zoning Resolution — that must be designated as such on a zoning map.

Moreover, the City Planning Commission, the agency responsible for all zoning matters

City-owned infrastructure or to temporary interference with parkland for construction of projects under parkland to supply essential services to the residents of the City. The historical record of legislative enactments, to the extent it has been presented to the court and is argued to be a reliable reflection of legal requirements, does not support the AG's position. If anything, the historical record supports the view that, despite the well-established doctrine against alienation of parkland, no State legislative approval is required for the WTP.

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including amendments, was aware of Friends' argument, which was made before it, and did not deem a zoning amendment to be necessary. The City Council approved the Planning Commission decision. Thus, the entities responsible for land use matters, the City Planning Commission and the City Council, carefully reviewed and considered all relevant factors based on a comprehensive Environmental Impact Statement and approved the project only after allowing extensive opportunities for public comment and holding public hearings. There is no basis under the City Zoning Resolution for rejecting their decision, made after a full airing of the issues raised here, that the WTP should be built at the site selected.

C. SEQRA Issues

1. Treatment of Legislation and Amendment Issues

Insofar as Friends claims that the SEQRA review was inadequate because the City failed to state that approval of the State Legislature and amendment of the Zoning Resolution were required, my determination that the City was correct as to these issues is dispositive. Insofar as Friends asserts that the City should have revealed that attorneys for the State disagreed with the City attorneys, I decline to invalidate the approval process for failure to set forth the views of others whom I have concluded were mistaken. In any event, SEQRA review is not the place for resolution of such issues. *See WEOK Broadcasting Corp. v. Planning Bd.*, 79 N.Y.2d 373, 382 (1992) (alleged non-compliance with local zoning laws not a valid basis for rejecting application under SEQRA).

Moreover, the responsible City entities, including DEP, the City Planning Commission and the City Council were cognizant of the arguments that legislative approval and a zoning amendment were necessary. Among other things, Friends had advanced its positions in a letter to the City Planning Commission, and 34 members of the State Assembly sent a letter to the Mayor and Council Speaker

maintaining that the project required approval of the State Legislature. The dissenting Commissioner on the Planning Commission addressed both the alienation and rezoning issues and attached supporting materials on those subjects and others as exhibits to the dissent. The City Planning Commission specifically addressed the zoning issue, finding that the Zoning Resolution did not apply to this parkland site.

In light of these conclusions, there is no reason to order discovery, as requested by Friends, as to conversations by City attorneys with various individuals concerning the merits of the State legislation issue.

2. Moshulu Golf Course Clubhouse

Friends' sole challenge to the substance of the SEQRA review arises from the City's decision to demolish the clubhouse that is located on the site and to build a replica after construction of the WTP. There is no merit to this challenge. Not only did the City satisfy its obligation to carefully examine this issue, it raised the issue on its own; indeed, the only expression of concern for the clubhouse during the entire process of review and approval emanated from the City DRP as the agency which prepared the FEIS. None of the many persons and entities, public or private, including Friends, who appeared at the hearings or made written submissions objected to demolition of the clubhouse before this Article 78 proceeding was brought. Friends' belated discovery of the issue is properly considered against it. *Jackson v. New York State Urban Dev. Corp.*, 67 N.Y.2d 400, 427 (1986) ("[P]etitioner's silence cannot be overlooked in determining whether the agency's failure to discuss an issue in the FEIS was reasonable. The EIS process is designed as a cooperative venture, the intent being that an agency have the benefit of public comment before issuing a FEIS and approving a project; permitting a party to raise

a new issue after issuance of the FEIS or approval of the action has the potential for turning cooperation into ambush").

The FEIS prepared in this matter is a comprehensive document which amply satisfies the City's obligation to explore and evaluate all potential adverse impacts. It examines all relevant areas of environmental concern, including impact on the surrounding neighborhood, aesthetics, open space, traffic, pollution, noise, effect on growth, infrastructure, historic and archeological resources, and other areas of environmental, economic or social concern. The City also satisfied its duty to attempt to mitigate to the extent feasible any adverse impacts that were identified. The City carefully considered alternative sites and comprehensively articulated the advantages and disadvantages of each and the reasons for the selection of the Mosholu Golf Course site. Friends does not and could not seriously suggest that the City was required to forego construction of the WTP in order to save the clubhouse, and Friends does not suggest that the City could have excavated the site and constructed the plant without removing the clubhouse. Nor does Friends offer any evidence to show that the clubhouse was of such historical, aesthetic or archeological interest that the City should have taken extraordinary measures to preserve it by dismantling and relocating or reconstructing it, as Friends now argues.

The City met its obligations under SEQRA by identifying destruction of the clubhouse as an adverse impact, disclosing relevant information available to it relating to the clubhouse, considering the alternatives to alleviate adverse impact, and deciding that preservation of a photographic record, from which a replica will be built, was the most practicable alternative. Friends' challenge to the adequacy of the City's examination of the matter during the environmental review process is equally without merit. The steps taken included: examination of primary and secondary literature and maps in regional archives and libraries; interviews with long-term residents and local historians and archeologists;

inspection of the site and assessment by an architectural historian; and examination of records and consultation with the City's Landmarks Preservation Commission, the State Office of Parks, Recreation and Historic Preservation, and the State Museum Education Department. Friends offers no evidence to support its speculation that, notwithstanding these measures taken by the City, the clubhouse might have been suitable for inclusion in the National Register or other landmark designation.

As with review of other agency determinations under Article 78, a SEQRA decision should be upheld unless it was "made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion." C.P.L.R. §7803(3); see *Chemical Specialties Mfrs. Ass'n v. Jorling*, 85 N.Y.2d 382, 396-97 (1995). In reviewing a SEQRA determination, the court must examine whether the agency reasonably satisfied its obligations under SEQRA to identify areas of potential concern, take a "hard look" at those areas, and give a reasoned explanation for the choices, but it is not the function of the court to second-guess agency determinations or to substitute its judgment for that of the responsible public officials who discharged their obligation to evaluate the matter and consider the reasonableness of alternative courses to mitigate the impact. *Jackson*, 67 N.Y.2d at 414-17; *Neville v. Koch*, 79 N.Y.2d 416, 424-25 (1992). The City discharged its obligations under SEQRA in a serious and reasonable manner, and its determination must be upheld.

3. Adequacy of Record

In a footnote, Friends claims that the City did not satisfy its obligation in an Article 78 proceeding to file a complete record of the proceedings being reviewed, because the City did not include transcripts of the hearings and proceedings before the City Planning Commission and the City Council. This argument is meritless.

The requirement in C.P.L.R. §7804(e) of filing a "certified transcript of the record of the proceedings under consideration" does not require that the kind of documents at issue here, minutes of public hearings held for informational purposes, and the internal deliberations of public entities, be recorded and furnished to the court in transcript form. A hearing transcript is necessary to review adjudicative proceedings, but it is not required to review decisions in administrative or quasi-legislative proceedings that were conducted to consider proposed actions of public agencies. Compare *Petty v. Sullivan*, 131 A.D.2d 762 (2d Dep't 1987) (minutes of disciplinary proceeding required), with *Save the Pine Bush, Inc. v. Planning Bd.*, 83 A.D.2d 741 (3d Dep't 1981) (public hearings held by environmental quality review board, planning board and common council in approving construction project and zoning amendment properly characterized as "informational" hearings which are part of administrative or legislative proceedings that are not subject to "substantial evidence" review under C.P.L.R. § 7803(4)).

The record before the court, which includes the FEIS and all of the reports and decisions of the Planning Commission and the City Council, contains all documents necessary to resolve Friends' challenges. Moreover, there is no suggestion that the omitted transcripts --- portions of which have been submitted by Friends on this motion --- contain information pertinent to the specific issues raised by Friends in its SEQRA challenge, i.e., demolition of the clubhouse or the legal arguments concerning the need for State legislation and a zoning amendment, that is not otherwise contained in the record.

CONCLUSION

The application of the State, through its Attorney General, for relief pursuant to the dispute resolution provision of the Consent Decree in 97 CV 2154 is denied, and the application is dismissed. Summary judgment is granted to the City in Norwood, 99 CV 6224, and Friends, 99 CV 7399, dismissing the petitions, and the cross-motion of Friends for partial summary judgment is denied. The Clerk of Court is directed to enter judgments in accordance with this Opinion and Order.

SO ORDERED.

NINA GERSHON
United States District Judge

Dated: Brooklyn, New York
May 12, 2000



**Department of
Environmental
Protection**

59-17 Junction Boulevard
Corona, New York
11368-5107

**Joel A. Miele Sr., P.E.
Commissioner**

MEMORANDUM

TO: Joseph J. Lhota
Deputy Mayor

FROM: Joel A. Miele Sr., P.E.
Commissioner

DATE: February 5, 2001

SUBJ.: Deputy Commissioner Positions

There are currently three (3) vacant Deputy Commissioner positions within the Department of Environmental Protection. Upon careful review, I have decided to appoint Elizabeth Collins as Deputy Commissioner, Bureau of Customer Services; Michael Principe as Deputy Commissioner, Bureau of Water Supply; and Alfonso Lopez as Deputy Commissioner, Bureau of Wastewater Treatment.

The following is a brief overview of each candidate.

Elizabeth Collins

Ms. Collins has been employed by the City of New York since 1990, working for several Mayoral Agencies including the Department of Parks and Recreation, New York City Council and the Office of Management and Budget. She is currently employed by the Mayor's Office as a policy advisor. Ms. Collins holds a M.P.A from Baruch College and a B.A from Bernard College.

Michael Principe

Mr. Principe has been employed by the Department of Environmental Protection since October 1981, serving in positions that have continually increased in scope and responsibility. He started with the City as an Assistant Chemist, progressing to an Associate Chemist and then a City Research Scientist. In 1989, he became an Administrative Director of Laboratories. Mr. Principe holds a Ph.D. and a M.Phil. in Biology from CUNY Graduate School and University Center, a M.S. in Environmental Science from CUNY College of Environmental Science & Forestry, and a B.S. in Natural Resources from Cornell University. He has also published many articles, pamphlets and handbooks for DEP and other affiliates. Mr. Principe served as the former Deputy Commissioner's deputy and has a well established record with environmental groups and water quality experts. He is also familiar with local communities and their representatives.



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(718) DEP-HELP

Deputy Commissioner Positions
February 5, 2001
Page 2

Alfonso Lopez

Mr. Lopez has been employed by the Department of Environmental Protection since April 1973, serving in positions that have continually increased in scope and responsibility. He started with the City as a Junior Civil Engineer, progressing to a Civil Engineer then becoming an Administrative Engineer in 1981. Mr. Lopez holds a B.S. in Civil Engineering from New York University, a NYS Professional Engineer's (P.E.) License and a NYS Grade I Sewage Treatment Plant Operator License. He currently is in charge of the City's fourteen (14) wastewater plants and served as the former Deputy Commissioner's chief deputy. Mr. Lopez is also a member of the Water Pollution Control Federation, has co-authored several technical papers in the field of Water Pollution Control and has presented these papers on State and national levels. He has also received praise from Law Department personnel whom he has worked with on consent orders and other regulatory matters.

In closing, I believe that these individuals are the best qualified to serve in the capacity of Deputy Commissioner in the above noted Bureaus and I am requesting your assistance in obtaining an expeditious approval of their personnel actions.

If I can provide any additional information, please do not hesitate to call me.

c: A. Carbonetti
 { V. LaPadula }
 D. Chapin
 C. Sturcken
 File

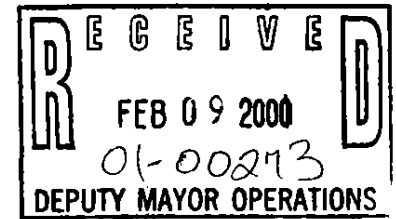


The City of New York
Department of Environmental Protection

59-17 Junction Boulevard
 Corona, New York
 11368-5107

Joel A. Miele Sr., P.E.
Commissioner

February 5, 2001



The Honorable Adam L. Barsky
 Director
 Office of Management and Budget
 75 Park Place - 6th Floor
 New York, New York 10007

Dear Mr. Barsky:

I am writing to request a meeting to discuss proposals to resolve Personal Service budget shortfalls and headcount constraints that are now severely limiting the Department of Environmental Protection's ability to hire staff critical to meeting our mandates.

DEP has an authorized headcount of 5998 (286 City-funded; 4889 Water and Sewer expense funded; and 823 IFA positions funded by Water Authority bonds). The Agency averages 440 vacancies (15 City-funded; 275 Water & Sewer expense funded; and 150 IFA positions). Even with such a large "vacancy cushion" our PS budget faces annual deficits. Each fiscal year millions in OTPS funds must be transferred to the PS budget to offset PS shortfalls. \$9.9 million was transferred from the OTPS budget to the PS budget in FY 2000. At Adoption, both OMB and DEP projected an FY 2001 PS deficit of \$16 million if the Agency reached full headcount.

In the last four Executive Budgets, OMB approved and funded headcount enhancements, but then required the Agency to reallocate existing vacancies to offset those "new" positions (with the exception of the Environmental Police and the Right-to-Know program). From FY 1998 through FY 2001 the Agency has reallocated vacancies to offset 216 "enhancements". This resource reallocation strategy has become counterproductive: vacancies which we are unable to fill due to budget constraints are shuffled from one critical area to another.

We have found ourselves in an untenable situation: The Personal Service budget cannot fully support DEP's expenditures and OMB is therefore approving new hires and promotions on practically a case-by-case basis. The Agency had 496 vacancies in December 2000 and 550 in January 2001, but had over 300 new hires and an equal number of promotions languishing in the pipeline. When approved, these new hires would virtually eliminate all Water and Sewer funded expense vacancies. Due to the inability to fill critical positions, overtime expenditures are escalating, further exacerbating the PS problem. Further, we continue to face new mandates (e.g., the upstate hazardous materials cleanup) requiring additional staff, as opposed to reallocating staff from one critical area to another.



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Both our OMB Task Force and DEP budget staff have agreed that baseline corrective actions are needed to alleviate PS budget and headcount pressures. In the January Plan OMB approved a DEP self-funding proposal to transfer \$7 million of baseline OTPS funding to the PS budget. I believe that additional corrective actions must be taken as part of the Executive Budget process and to that end I propose the following:

(1) **Address the remainder of the Personal Service budget shortfall** - I believe the enormity of the shortfall and its current and potential impacts on critical operations dictate resolution of the problem in its entirety. This can be accomplished through additional OTPS to PS funding switches, as a recognized new need or some combination of both. We have presented a plan to our Task Force that would establish and enforce new internal PS budget controls to prevent the occurrence of future shortfalls. That plan is dependent upon the receipt by each unit of appropriation of adequate baseline PS funding.

(2) **Provide headcount "relief"** - I understand that headcount increases present a serious issue for the City. Unfortunately, DEP faces increased mandates in many critical areas and can no longer reallocate vacancies to meet those mandates. Most of the programs approved in the FY 2001 Executive Budget have not been implemented because the associated headcount increases (totaling 51) were not provided. In the FY 2002 Executive process, we will request restoration of that headcount and an additional 100 enhancement positions. To reduce the impact of such a headcount increase, we propose an IFA to Expense headcount and funding switch. On a monthly basis DEP averages 125 IFA vacancies out of an authorized headcount of 823. The high vacancy rate is due to the difficulty in recruiting engineering positions and, as a result, the Agency has become more reliant upon consultant contracts. We therefore believe that at least half of the IFA vacancies can be switched to the expense budget without any impact on our capital plan.

(3) **Process personnel actions in a more expeditious manner** - Resolution of PS budget and headcount issues are the first two important steps toward ensuring the Agency continues to meet its mandates, maximize customer service, achieve revenue targets and preserve its excellent bond rating. We must also be able to hire and promote staff in a more timely fashion.

I will be calling in the near future to schedule a meeting with you and your staff to address these pressing budget issues. I look forward to meeting with you.

Sincerely,

Joel A. Miele Sr., P.E.

c: Deputy Mayor Joseph Lhota

T.HOOK OPS&ENG BUS&P Fax:9147410348

Feb 14 '01 10:30

P.03

P.0027003

**PARTNERS**

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 ANNE M. SWANSON, P.E.

Mr. Michael Principe
 Acting Deputy Commissioner/Director
 NYCDEP
 Bureau of Water Supply
 Capital System Planning Division
 465 Columbus Ave, 3rd Floor
 Valhalla, NY 10595

Re: Reconstruction of 12 Upstate Bridges
 Lower Croton System
 Contract CRO-256
 New Croton Dam Spillway Bridge
 BIN 2-26551-0

February 13, 2001

Dear Mr. Principe:

We received a letter from McNamee Construction to NYCDEP/Baker Engineers dated February 8, 2001 in which they state that in the fall of 2000 they detected 2 inches of additional movement at the base of the arches of the New Croton Dam Spillway Bridge. They offer no specific measurement data and apparently did not alert NYCDEP until now of this condition. All references in their February 8 letter are to an inspection report, which was prepared by our office in 1994.

We recommend the bridge be closed to traffic by NYCDEP immediately until further notice and detour routes implemented pending a full investigation. Notification shall be made to the school district and emergency services using the bridge as well as the Town of Cortlandt. McNamee Construction shall provide inspector access to the base of the arch within 24 hours and the inspector shall make accurate measurements. Our office will meet the inspector at the site. If additional movement has occurred, then the bridge should remain closed pending further analysis. If the bridge has not moved, then it may be reopened under the same 10-ton weight restrictions that are now present. It should be noted that special provisions are currently in place to allow specific emergency vehicles and busses to pass over the bridge one vehicle at a time and at reduced speeds.

Connecticut • Florida • Maryland • Michigan • New Jersey • New York • Virginia

Feb 14 2001 12:08 P.02

Fax: 718-595-3525

DEP

T.HOOK OPS&ENG BUS&P Fax:9147410348
FEB. -13' 01 (TUE) 15:19

Feb 14 '01 10:31

P.04

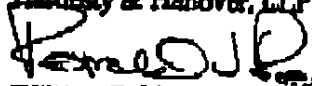
P.0007003

HARDESTY & HANOVER, LLP

There is much work that must be done before jacking of the arch base back into position including welding full-length stiffeners on the arches. Work must proceed quickly under any scenario to make the repairs as quickly as possible.

Very truly yours,

Hardesty & Hanover, LLP


William E. Nyman, PE

cc: Rutkowski, Ramaglia, Cox, Busse, Barquet EOH, Cholewicka, Borsykowski, Svoloda,
DiRuggiero

FEB 14 2001 12:09 P.03

Fax:718-595-3525

DEP

1. HOOK UPS/ENG BUS/GRP Fax: 9147410348
 FEB-9-2001 12:44 FROM: MCNAMEE 1 914 243 5912

Feb 14 '01 10:31 P.05
 TO: 7422277 *Hot K* P.1/6



CONSTRUCTION CORP.

February 8, 2001

Rocco DiRuggiero, Resident Engineer
 NYCDEP/Barker Engineers
 1122 Croton Dam Road
 Yorktown, NY 10598

RE: Reconstruction of New Croton Dam Spillway Bridge,
 Oats House Bridge "B", Kisco River Bridge "D" and
 Replacement of Mills Road Bridge; Serial No. - 133

Gentlemen:

Reference is made to the attached contract drawing No. A-3, **EXISTING ARCH RIB BASE DISPLACEMENTS** and **TABLE 1**, which denote the dimensions that the existing bearings have been displaced with a statement that **"ALL DISPLACEMENTS BASED ON THE 1994 INSPECTION"** and that **"ALL DISPLACEMENTS SHALL BE FIELD VERIFIED PRIOR TO FABRICATION OF JACKING FRAMES"**

Reference is further made to Hardesty & Hanover's January 1997, **BRIDGE RECONSTRUCTION PROJECT REPORT, NEW CROTON DAM SPILLWAY BRIDGE, TOWN OF CORTLANDT, WESTCHESTER COUNTY**, specifically page 10-23, attached, in which their photos show that the existing bearing has shifted up the skewback resulting in a massive loss of bearing surface where the arches are bearing on no more than ten percent of the designed bearing surface. The entire load of these arches appear to be resting on a mere inch of the edge of the existing bearing surface.

McNamee Construction Corporation's field inspection of this bridge, in the fall of 2000, revealed that these skewbacks have continued to move since the 1994 inspection, reflected in contract drawing A-3, approximately an additional two inches which is dangerously close to being completely off the designed bearing surface.

McNamee Construction Corporation's field observations of the actual vehicular traffic using this bridge indicates that the New York City Department of Environmental Protection (NYCDEP) is allowing overweight vehicles to use this inadequate bridge presently posted for a maximum of ten (10) ton of gross vehicle weight. These overweight vehicles include overweight school buses from the Croton Harmon School District, medium and heavy duty trucks, commercial vans, utility equipment, local fire apparatus and road maintenance equipment.

This situation is further documented in the January 1997 bridge reconstruction report pages 7-2 and 7-4, which are attached, and document that vehicles in excess of three hundred percent (300%) of the posted value are allowed use of this bridge by the NYCDEP. This report also

T.HOOK OPS8ENG BMSORP Fax:9147410348
FEB-9-2001 12:45 FROM:MCNAMEE 1 914 243 5912

Feb 14 '01 10:31 P.06

TO:74220277

P12'6



CONSTRUCTION CORP.

February 8, 2001

Rocco DiRuggiero, Resident Engineer
NYCDEP/Barker Engineers
1123 Croton Dam Road
Yonkown, NY 10598

documents two small separate detour routes of which one is three (3) miles and the alternate is eight (8) miles.

A recently televised HBO program about the construction industry and Croton Reservoir system has inspired several phone calls from the news media to McNamee Construction Corporation inquiring about the bridge's use and existing condition. We have differed all comments to the news media and will continue to do so to prevent this situation from coming into the public spot light.

However, McNamee Construction Corporation herein formally request that the NYCDEP immediately post police officers, around the clock, at either side of the bridge to prevent any further damage to the bridge, or possible the traveling public, due to these overweight vehicles use of the bridge.

If police guards are not feasible than we request that the NYCDEP completely close the bridge to traffic to allow our contract work to go forward. Upon completion of the contract work, as designed, the bridge will have a much higher load capacity allowing use by the majority of the traveling vehicles.

Please review and advise.

Very Truly Yours,
McNamee Construction Corporation

Jeffrey L. Sherwin
Project Manager

CC: M. Svoboda, J. Ramaglia, G. Cox, J. Busse, N. Cholewka, M. Borsyknwaky,



THE CITY OF NEW YORK DEPARTMENT OF ENVIRONMENTAL PROTECTION
JOEL A. MIELE, SR., P.E. Commissioner

PHONE (718) 595-6568
FAX (718) 595-3525

CHARLES G. STURCKEN, Esq.
Chief of Staff
Special Counsel

Handwritten signatures and initials

FAX COVER SHEET

To Fax No:

212-788-3127

Deliver To:

V. LaPadula

From:

C. Sturcken

Of Pages:
(Including Cover Sheet)

5

Questions or Problems
Contact:

Carter

Telephone No:

6468

Comments:

59-17 Junction Boulevard, 19th Floor, Corona, New York 11368-5107





**Department of
Environmental
Protection**

59-17 Junction Boulevard
Corona, New York
11368-5107

Joel A. Miele Sr., P.E.
Commissioner

Diana Chapin, Ph.D.
First Deputy
Commissioner

Tel. (718) 595-6576
Fax (718) 595-3557
Dchapin@nyc.gov



DEP FAX COVER SHEET



TO FAX # 212-788-3127

DELIVER TO: Vincent LaPadula

FROM: DIANA CHAPIN

OF PAGES
(Including Cover Sheet) 6

**QUESTIONS OR PROBLEMS
CONTACT:** Melle

TELEPHONE # 718-595-6576

COMMENTS:

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February 28, 2001

The Honorable Joseph J. Lhota
Deputy Mayor for Operations
City of New York
100 Church Street - 20th Floor
New York, New York 10007

Dear Deputy Mayor Lhota:

I met with Adam Barsky and his staff this afternoon to discuss the Department of Environmental Protection's Personal Service budget shortfalls and headcount constraints. These issues were detailed in my February 5th letter to Adam (copy attached).

OMB and DEP budget staff agree that the Agency has a FY2001 PS deficit of \$16 million at Adoption should it be at full headcount. In the FY2002 January Plan, OMB approved a DEP proposal to transfer \$7 million of baseline OTPS to the PS budget. While this provides some breathing room, we believe the remainder of our existing PS shortfalls and some of our headcount needs must be addressed at this time due to:

- The magnitude of the remaining shortfall
- Our inability to hire/promote critical staff in those areas which remain underfunded
- Our inability to fully implement new or expand existing critical programs

At the meeting we requested approval of the following proposals:

- Use recurring OTPS surpluses to self-fund the PS shortfall. We would transfer \$10 million (\$8.7 million from recurring sludge disposal contract surpluses and \$1.3 million from other recurring surpluses). This would cover \$7.4 million of the remaining PS shortfall and \$2.6 million to effectuate the proposal below.
- A headcount increase of 51 positions (with an associated \$2.6 million increase in PS expense funding) to restore the headcount that was approved in the FY01 Executive Budget, as you and I discussed.

We believe the abovementioned proposals will resolve most of our existing PS budget and headcount problems, providing the Department with renewed ability to effectively fulfill its mandates.

Mar 1 2001 12:59 P.02

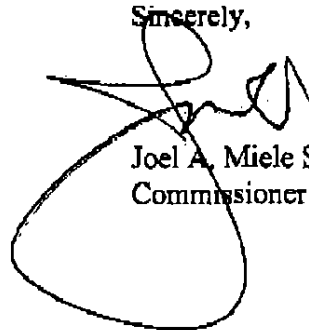
Fax: 718-595-3557

DEP

Adam agreed to consider our proposals. However, concerns continued to be raised by Adam's staff that we need to retain the sludge money for contingencies. It is our view that this is not necessary given: (1) the last four years' track record on expenditure needs for these contracts; (2) the fact that we have multiple vendors and can switch back and forth between them to achieve lower costs; and, (3) surpluses that continue in the Water Board's overall budget (over \$100 million this year and last). I am hopeful a decision can be reached in an expeditious fashion as it will impact the Agency's FY2002 New Needs submission and the rate consultant's model.

I would greatly appreciate your assistance in bringing these issues to closure.

Sincerely,

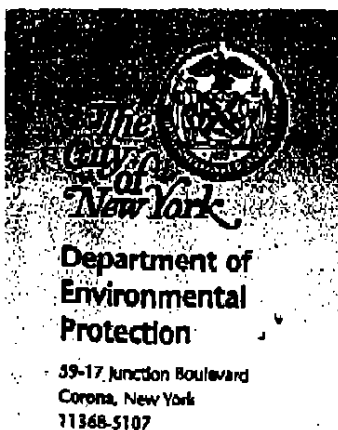


Joel A. Miele Sr., P.E.
Commissioner

JAM:ngm
Attachment

bxc: Vincent LaPadula

Alessandra Sumowicz



Joel A. Miele Sr., P.E.
Commissioner

February 5, 2001

The Honorable Adam L. Barsky
Director
Office of Management and Budget
75 Park Place - 6th Floor
New York, New York 10007

Dear Mr. Barsky:

I am writing to request a meeting to discuss proposals to resolve Personal Service budget shortfalls and headcount constraints that are now severely limiting the Department of Environmental Protection's ability to hire staff critical to meeting our mandates.

DEP has an authorized headcount of 5998 (286 City-funded; 4889 Water and Sewer expense funded; and 823 IFA positions funded by Water Authority bonds). The Agency averages 440 vacancies (15 City-funded; 275 Water & Sewer expense funded; and 150 IFA positions). Even with such a large "vacancy cushion" our PS budget faces annual deficits. Each fiscal year millions in OTPS funds must be transferred to the PS budget to offset PS shortfalls. \$9.9 million was transferred from the OTPS budget to the PS budget in FY 2000. At Adoption, both OMB and DEP projected an FY 2001 PS deficit of \$16 million if the Agency reached full headcount.

In the last four Executive Budgets, OMB approved and funded headcount enhancements, but then required the Agency to reallocate existing vacancies to offset those "new" positions (with the exception of the Environmental Police and the Right-to-Know program). From FY 1998 through FY 2001 the Agency has reallocated vacancies to offset 216 "enhancements". This resource reallocation strategy has become counterproductive: vacancies which we are unable to fill due to budget constraints are shuffled from one critical area to another.

We have found ourselves in an untenable situation: The Personal Service budget cannot fully support DEP's expenditures and OMB is therefore approving new hires and promotions on practically a case-by-case basis. The Agency had 496 vacancies in December 2000 and 550 in January 2001, but had over 300 new hires and an equal number of promotions languishing in the pipeline. When approved, these new hires would virtually eliminate all Water and Sewer funded expense vacancies. Due to the inability to fill critical positions, overtime expenditures are escalating, further exacerbating the PS problem. Further, we continue to face new mandates (e.g., the upstate hazardous materials cleanup) requiring additional staff, as opposed to reallocating staff from one critical area to another.



Both our OMB Task Force and DEP budget staff have agreed that baseline corrective actions are needed to alleviate PS budget and headcount pressures. In the January Plan OMB approved a DEP self-funding proposal to transfer \$7 million of baseline OTPS funding to the PS budget. I believe that additional corrective actions must be taken as part of the Executive Budget process and to that end I propose the following:

(1) **Address the remainder of the Personal Service budget shortfall** - I believe the enormity of the shortfall and its current and potential impacts on critical operations dictate resolution of the problem in its entirety. This can be accomplished through additional OTPS to PS funding switches, as a recognized new need or some combination of both. We have presented a plan to our Task Force that would establish and enforce new internal PS budget controls to prevent the occurrence of future shortfalls. That plan is dependent upon the receipt by each unit of appropriation of adequate baseline PS funding.

(2) **Provide headcount "relief"** - I understand that headcount increases present a serious issue for the City. Unfortunately, DEP faces increased mandates in many critical areas and can no longer reallocate vacancies to meet those mandates. Most of the programs approved in the FY 2001 Executive Budget have not been implemented because the associated headcount increases (totaling 51) were not provided. In the FY 2002 Executive process, we will request restoration of that headcount and an additional 100 enhancement positions. To reduce the impact of such a headcount increase, we propose an IFA to Expense headcount and funding switch. On a monthly basis DEP averages 125 IFA vacancies out of an authorized headcount of 823. The high vacancy rate is due to the difficulty in recruiting engineering positions and, as a result, the Agency has become more reliant upon consultant contracts. We therefore believe that at least half of the IFA vacancies can be switched to the expense budget without any impact on our capital plan.

(3) **Process personnel actions in a more expeditious manner** - Resolution of PS budget and headcount issues are the first two important steps toward ensuring the Agency continues to meet its mandates, maximize customer service, achieve revenue targets and preserve its excellent bond rating. We must also be able to hire and promote staff in a more timely fashion.

I will be calling in the near future to schedule a meeting with you and your staff to address these pressing budget issues. I look forward to meeting with you.

Sincerely,

Joel A. Miele Sr., P.E.

c: Deputy Mayor Joseph Lhota

MAR-02-2001 17:28

MAYOR'S OFC of ENV. COORD

1 212 788 2941

P.02/02



Department of
Environmental
Protection

117, Madison Boulevard
Corona, New York
11368-5107

Joel A. Miele Sr., P.E.
Commissioner

Tel (718) 595-6565
Fax (718) 595-3525
miele@nysed.net



www.nyc.gov/dep

17(8) DEP-HELP

2 DEP OTC

TO: Deputy Mayor Lhotz
FROM: Joel A. Miele Sr., P.E.
DATE: March 1, 2001
RE: New Croton Dam Spillway Bridge

I would like to update you on the status of the closure of the New Croton Dam Spillway Bridge and provide recommendations on our next steps. The Bridge remains closed to all traffic. When the recent movement of the Bridge span supports was discovered, DEP was already prepared to proceed with a repair of the Bridge. Thus DEP has both design and construction consultants currently under contract. The design contractor has recommended a short-term repair and the long-term replacement of the span. I am moving on the following actions:

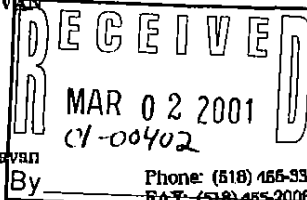
- 1) Have the existing design contractor, Hardesty and Hanover, complete designs for the short-term repair. The repair would be completed either by McNamee, the current construction contractor, or via emergency bids if McNamee declines to undertake the work. The repair would cost about \$200,000 if done by McNamee; if an emergency contract is necessary the cost could be significantly higher. The work would take approximately two months, after which time the Bridge would be re-opened with a 10-ton limit (the weight limit of the Bridge prior to its closing).
- 2) Direct Hardesty and Hanover to design a new Bridge span via change order to their existing contract. Approximate cost of design is \$450,000.
- 3) Construct a new Bridge span under a new contract. Hardesty and Hanover has recommended that a construction contractor be on board by the end of 2002. Cost of the replacement is expected to be \$3 million. Construction will take 18 months and require re-closing the Bridge for approximately six months.

The other outstanding issue pertains to detouring vehicular traffic around the bridge. We have consulted with the Towns of Cortlandt, New Castle, and Ossining, the towns affected with respect to agreeing on a detour for vehicles exceeding the weight limit of the pertinent roads. Because of ongoing repairs to the Cortlandt road, the detour has been temporarily lengthened. When Cortlandt completes road repairs next week, we will shorten the truck detour as much as possible.

03/01/01 THU 15:39 FAX 518 455 2008

SEN. PADAVAN

001

**New York State
Senate**Senator Frank Padavan
Room 505
State Capitol
Albany, New York 12247Phone: (518) 455-3331
FAX: (518) 455-2008
e-mail: Padavan@Senate.State.NY.US

Vum
Can you handle
directly. This.
Joe

Memorandum

To: Joe Lhota, Deputy Mayor
From: John Googas, Jr. [signature]
Date: March 1, 2001
Subject: Creedmoor Water & Sewer Bill

Attached for your review is a copy of a memo I received today from Marc Ganz of the NYS Dormitory Authority. Marc has been in contact with the School Construction Authority and NYC DEP regarding payment due for water and sewer charges owed by Creedmoor State Psychiatric Hospital.

You will note, the negotiated \$1.35 million was agreed to to resolve all outstanding liens for the Psychiatric Hospital. Marc received a memo from Besty Collins of DEP indicating the \$1.35 million will now only be used for the liens against the parcels that will be transferred from the state to the NYC Board of Education for the purpose of constructing the 3 school campus.

As I am sure you are aware this project has experienced several delays and I would appreciate your looking into the matter to see that the original amount of \$1.35 million be made as **PAYMENT IN FULL** for the hospital so that the land conveyance may take place quickly. Please let me hear from you at your earliest convenience.

4018

03/01/01 THU 15:39 FAX 518 455 2008
03/01/01 14:57 518 257 3457

SEN. PADAVAN
DASNY RISE MGMT

002
004

Ganz, Marc

From: Ganz, Marc
Sent: Thursday, March 01, 2001 8:19 AM
To: 'markh@dep1lan.nycnet.ci.nyc.ny.us'; 'betsyc@dep1lan.nycnet.ci.nyc.ny.us'
Subject: Creedmoor Psychiatric Center water bills
Contacts: Mark Hoffer

On behalf of the New York State Office of Mental Health, we hereby offer a \$1.35 million payment at the real property closing with the New York City School Construction Authority in consideration of release of all liens, claims, demands and judgments for payment from New York City and instrumentalities of New York City for the following water/sewer accounts or corresponding prior Borough Block/Lot accounts associated with the Creedmoor Psychiatric Center campus through January 3, 2001:

Account #00006-83871-001
Account #30006-83869-001
Account #40006-83867-001
Account #50006-93295-001
Account #90006-83866-001

Please provide me with your approval of this proposal, as well as a draft agreement to effectuate the release.
Thank you.

03/01/01 THU 15:39 FAX 518 455 2008
03/01/01 14:56 518 257 3467

SEN. PADAVAN
DASNY RISK MGMT

003
002

Ganz, Marc

From: Ganz, Marc
Sent: Thursday, March 01, 2001 2:53 PM
To: 'Collins, Betsy'
Subject: RE: Creedmoor Psychiatric Center water b

To make this clear, we offered 1.35 million to settle Creedmoor as a whole. I forwarded your note to my clients and will respond accordingly.

-----Original Message-----

From: Collins, Betsy [mailto:BETSYC@DEPILAN.CI.NYC.NY.US]
Sent: Thursday, March 01, 2001 10:08 AM
To: mganz@DASNY.ORG
Cc: "ORALD"; "MARKH"; "JAYH"
Subject: RE: Creedmoor Psychiatric Center water b

Mark: As we discussed, our offer of \$1.35 million was for the release of the lien on Block and Lot 7870/0060 (account # 400006-83867-001), which we understood to be the parcel necessary for the closing of the School Construction Authority project. Below is a listing of all of Creedmoor's accounts if you wish to discuss the property as a whole. Please also note, as we discussed, that these charges are through January 3, 2001 and we will look for an acknowledgment at closing that there is an amount due and owing from January 3, 2001 to the closing date. We estimate these amounts to be approximately \$72,000 and 15,000 for account numbers 400006-83867-001 and 900006-83866-001, respectively. We are ready to continue discussions at your earliest convenience. Thanks. Betsy

[[1-2-3 Worksheet : 2758 in WINMAIL.DAT]]

From: MGAZ
To: MARKH; BETSYC; *betsyc@depilan.nycnet.ci.nyc.ny.us;
*markh@depilan.nycnet.ci.nyc.ny.us
Subject: Creedmoor Psychiatric Center water bill
Date: Thursday, March 01, 2001 8:17AM

Received: from VWALL.NYC.GOV by SSWCDCSA.CI.NYC.NY.US
(Soft-Switch Central 4.4.4.2);
01 Mar 2001 08:17:42 EST

Received: from vwall.nyc.gov (localhost [127.0.0.1])
by vwall.nyc.gov (8.9.3+Sun/8.9.3) with ESMTD id IAA18585;
Thu, 1 Mar 2001 08:18:43 -0500 (EST)

Received: from dasny.org (mail-relay.dasny.org.11.161.IN-ADDR.ARPA
[161.11.129.101] (may be forged))
by vwall.nyc.gov (8.9.3+Sun/8.9.3) with ESMTD id IAA18581;
Thu, 1 Mar 2001 08:18:42 -0500 (EST)

Received: from mail.dasny.org ([10.66.112.42]) by dasny.org with

V. La Padula

March 7, 2001

Honorable Kenneth K. Fisher
Council Member, 33rd District Brooklyn
The Council of the City of New York
16 Court Street, Room 1009
Brooklyn, New York 11241

Dear Councilman Fisher:

Deputy Mayor Lhota has asked that I respond to your letter of February 1, 2001, which directed attention to a flooding problem at the northwest corner of Atlantic and Third Avenues, Brooklyn.

As your letter stated, the Department of Transportation was awaiting the completion of water main construction work to resolve the drainage and grading problems at this intersection. We, too, were awaiting the completion of the work, as there were planned improvements to the drainage system.

In response to your letter, Department of Environmental Protection forces revisited the location with the interest of providing a temporary fix to the flooding problem in mind. On February 28, we discovered that the catch basin connection to the sewer had been broken and blocked by the installation of a utility conduit which passed through the connection. DEP forces completed the replacement of this broken connection on February 28, 2001, and final improvements to this intersection will be performed under the ongoing DDC project.

Thank you for bringing this matter to our attention.

Very truly yours,

**Original
Signed By**

Joel A. Miele Sr., P.E.
Commissioner

bxc: D. Chapin, C. Ruiz, D. Greeley, R. DiMeglio, F. Feighery, Deputy Mayor Lhota, Vincent LaPadula

DSG:cb

C:\Kenneth Fisher.wpd



**Department of
Environmental
Protection**

59-17 Junction Boulevard
Corona, New York
11368-5107

**Joel A. Miele Sr., P.E.
Commissioner**

**Mark D. Hoffer
General Counsel
Bureau of Legal
Affairs**

Tel (718) 595-6555
Fax (718) 595-6543
www.ci.nyc.ny.us/dep

FACSIMILE TRANSMISSION

TO: NINNIE LAPADULA

FAX #: 212-788-3127

FROM: Mark D. Hoffer

TELEPHONE #: (718) 595-6528

FAX #: (718) 595-6543

DATE: 3/16/01

TOTAL PAGES (including this cover page): 6

Comments:

F.Y.T.

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MAR-16-2001 14:45 FROM DEP LEGAL

TO 91212788312?

P.02/06

VINNIE:

In case you don't have these already, I've been collecting info. on Erin Crotty (new DEC Commissioner) as per the Deputy Mayor's request. Here are copies of the DEC press release (I just got it), plus the Times and Newsday articles.

MARK HOFFER

3/16/01

STATE OF NEW YORK
EXECUTIVE CHAMBER
GEORGE E. PATAKI, GOVERNOR

Press Office
518-474-8418
212-681-4640
<http://www.state.ny.us>

FOR RELEASE:
IMMEDIATE, Monday
March 5, 2001

GOVERNOR PATAKI NOMINATES ERIN CROTTY FOR DEC COMMISSIONER
Former DEC Deputy Commissioner and Plug Power Executive to Succeed Cahill

Governor George E. Pataki today nominated Erin M. Crotty to be commissioner of the State Department of Environmental Conservation (DEC), succeeding John P. Cahill who has left the top post at the agency to become the Governor's senior policy advisor.

"As Commissioner of the State Department of Environmental Conservation for the past four years, John Cahill has been an exceptional leader and instrumental to the success of many of our most critical environmental initiatives," Governor Pataki said. "His thoughtful leadership, professionalism and dedication to preserving our rich natural heritage has positioned New York as a national leader in environmental protection.

"I am confident that Erin Crotty's extensive experience and her demonstrated commitment to the environment and natural resources will build on John's impressive record," the Governor said. "Erin's skills and vision will effectively lead DEC into the future, enabling us to continue New York's unprecedented environmental and economic resurgence."

Since October 1999, Crotty has been director of State and Local Government Relations for Plug Power of Latham. Plug Power is a leading designer and developer of on-site, electricity generation systems utilizing fuel cell technology for residential applications.

Prior to joining Plug Power, Crotty served two years as Deputy Commissioner for Water Quality and Environmental Remediation at DEC, where she was responsible for overseeing the State's programs to clean up contaminated properties, implementation of the \$1.75 billion Clean Water/Clean Air Bond Act and all activities impacting New York's water quality. As Deputy Commissioner, Crotty is credited with crafting the legislation proposed by Governor Pataki to reform and refinance the State Superfund program.

Prior to 1997, Crotty also served as Governor Pataki's director of Special Environmental Projects, where she was involved in the negotiation and development of the historic New York City Watershed Agreement and implementation of the 1996 Clean Water/Clean Air Bond Act. Before joining the Pataki administration, Crotty held the position of policy analyst for the New York State Senate Commission on Toxic Substances and Hazardous Wastes.

- more -

Paul Elston, New York League of Conservation Voters said, "I have had the opportunity to work with Erin Crotty extensively on the Superfund Workgroup. I know her to be very smart, knowledgeable, tough and dedicated to good environmental and public policy. In a difficult discussion on Superfund, she demonstrated a strong and unbending commitment to public health and the environment, and a sense of balance and practicality with respect to economic and business interests. I think that she is an excellent choice by the Governor and I look forward to working with her."

David J. Miller, Executive Director, National Audubon Society of New York State said, "Governor Pataki has chosen well in Erin Crotty as the new Commissioner of the DEC. Audubon has had the pleasure of working with her on issues ranging from the Clean Water Bond Act to the restoration of Long Island Sound. Erin is a proven conservation leader and we look forward to working with her again."

Aaron Mair, Board President, Arbor Hill Environmental Justice Corporation said, "Governor Pataki's selection of Erin Crotty exemplifies his consistent leadership and commitment to building consensus and protecting the environment for all New Yorkers. We fully support and endorse the selection of Erin for this important post."

Crotty earned her bachelor's degree from Russell Sage College in 1988 and master's in Urban and Environmental Studies from Rensselaer Polytechnic Institute in 1992.

Crotty's nomination is subject to confirmation by the Senate. Gavin J. Donohue, the Executive Deputy Commissioner at DEC, has been named as Acting Commissioner in the interim. The Commissioner of Environmental Conservation's annual salary is \$136,000.

###

8

Pataki Names an Environmental Conservation Commissioner

By JAMES C. MCKINLEY JR.

ALBANY, March 5 — Gov. George Pataki today named a former deputy commissioner who helped devise his policy on toxic waste cleanup to head the State Department of Environmental Conservation.

If confirmed by the Senate, the former official, Erin M. Crotty, will take over the department in two weeks, succeeding John P. Cahill. She would be the first woman to hold the job. Mr. Cahill, who headed the department for four years, was promoted last month to become a senior policy adviser to the governor.

Ms. Crotty is now a lobbyist for Plug Power, a joint venture near Albany that is trying to develop methods of using fossil fuels or hydrogen to produce electricity through a chemical reaction, rather than through combustion.

Mr. Pataki, who sees himself as a committed environmentalist, expressed confidence that Ms. Crotty has the expertise to be a fine commissioner. She was his first choice, he said, once he decided to bring Mr. Cahill into his inner circle of advisers.

"The first person I thought of was this person, but we didn't know if we would be able to entice her back into public service," he said.

Reactions to Ms. Crotty's nomination were mixed among environmentalists and lawmakers. Ms. Crotty headed a group that developed Mr. Pataki's policy on state Superfund sites, which favors weakening clean-up standards for sites that will used by industry in the future. That policy has drawn fire from some environmentalists and Democratic lawmakers who favor keeping stricter standards.

"The administration has again passed over the environmental community and gone to industry for the head to lead this department," said Assemblyman Richard L. Bradsky, a Westchester County Democrat who heads the Assembly's Environmental Conservation Committee. "She's the person who ran the attempt to weaken Superfund and to reduce

Promoting an ex-deputy who helped devise the policy on toxic waste cleanup.

business responsibility to clean up its own mess."

Some environmentalists, however, praised Ms. Crotty's grasp of the issues and said she was not a rigid ideologue.

"I didn't like what came out of the governor's Superfund working group, but I think Erin Crotty is one of a handful of people that really understand the issues," said Val Washington, the executive director of Environmental Advocates, a lobbying group. "I see her as someone who can continue to work on it."

Ms. Crotty, who is 34 and grew up in Troy, N.Y., said that she agreed with the governor on most issues.

"The priorities of mine are the priorities of the governor," she said. "My job is to implement them."

Before joining Plug Power in October 1999, Ms. Crotty served for two years as a deputy state environmental commissioner in charge of cleaning up contaminated sites and ensuring water quality.

Ms. Crotty first joined the administration as an aide to the governor's counsel, Michael Fungberg, in 1995.

She played an important role in negotiating a historic agreement between New York City and upstate communities that protects the city's watersheds without resorting to litigation. The agreement includes development restrictions around the reservoirs.

Before Mr. Pataki's election in 1994, Ms. Crotty worked as a policy analyst for the New York State Senate Commission on Toxic Substances and Hazardous Wastes.

The Republican-controlled Senate must vote on Ms. Crotty's nomination, but aides to the majority leader, Joseph L. Bruno, said they did not foresee much opposition.

Among the first issues Ms. Crotty will have to deal with are a proposal to develop industrial wastelands in the cities, the federal government's plan to dredge contaminated soil from the Hudson River and questions surrounding the emergency use of diesel generators to provide power this summer, environmentalists said.

After the governor announced her nomination at a news conference today, she said her parents were naturalists and anglers. They had moved in her, she said, a deep commitment to protecting the environment from a young age.

"This is one of those life-changing moments," she said, as she took the podium in front of the cameras.

NYTimes 3.6.01

Insider Is Pataki's Pick For State Post

Crotty tapped to lead environmental agency

By Errol A. Cockfield Jr.

ALBANY BUREAU

Albany — Gov. George Pataki yesterday chose Erin Crotty, an Albany insider who helped him craft controversial proposed revisions to the state's hazardous waste clean-up program, to lead the Department of Environmental Conservation.

Crotty's nomination, which is expected to be confirmed by the state Senate, was met with enthusiasm from some community groups who lauded her negotiating skills and environmental sensitivity.

Others noted that Crotty is a Pataki loyalist and an architect of his proposal to encourage the redevelopment of abandoned and polluted industrial sites by making the cleanup standards more flexible.

That proposal is included in Pataki's most important piece of environmental legislation this session, which also seeks to rejuvenate the Superfund program.

During a press conference yesterday, Pataki said he was pleased his administration could entice Crotty to return to public service after a 15-month stint as director of government relations for Plug Power, an Albany-area designer of electricity generation systems. The company employs several former high-ranking officials of the Pataki administration.

"We thought long and hard but knew that we had someone who had the experience," Pataki said.

Crotty, 34, of Brunswick, is a former DEC deputy commissioner who helped implement Pataki's \$1.75 billion Clean Water & Clean Air Act of 1996. She has been praised for her role in brokering the New York City Watershed Agreement to improve the quality of the city's drinking water.

She would replace John Cahill, who left the \$136,000-a-year commissioner post last month to become Pataki's senior policy adviser.

At the DEC, Crotty was in charge of a task force that devised a series of Superfund proposals that are stridently opposed by most of New York's environmental activists.

"She headed the group that came up with a bill that we really don't like. On the other hand, she showed real openness in reaching out to us," said Val Washington, executive director of Environmental Advocates in Albany.

Another veteran Albany environmental activist, who asked not to be named, described Crotty as "entirely affable" but said "she does have a reputation for being much more economically minded than environment-minded... The bottom line is, she's a smart choice for the governor."

Crotty praised Pataki's policies yesterday and said returning to the administration would be a privilege. "It's an honor to work for a governor who has protected more than 300,000 acres of open space," she said.

Staff writer Dan Fagin contributed to this story.

Newsday
3.6.01

DEP FAX COVER SHEET

*File
DEP*



Department of
Environmental
Protection

59-17 Junction Boulevard
Corona, New York
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Joel A. Miele Sr., P.E.
Commissioner

Diana Chapin, Ph.D.
First Deputy
Commissioner

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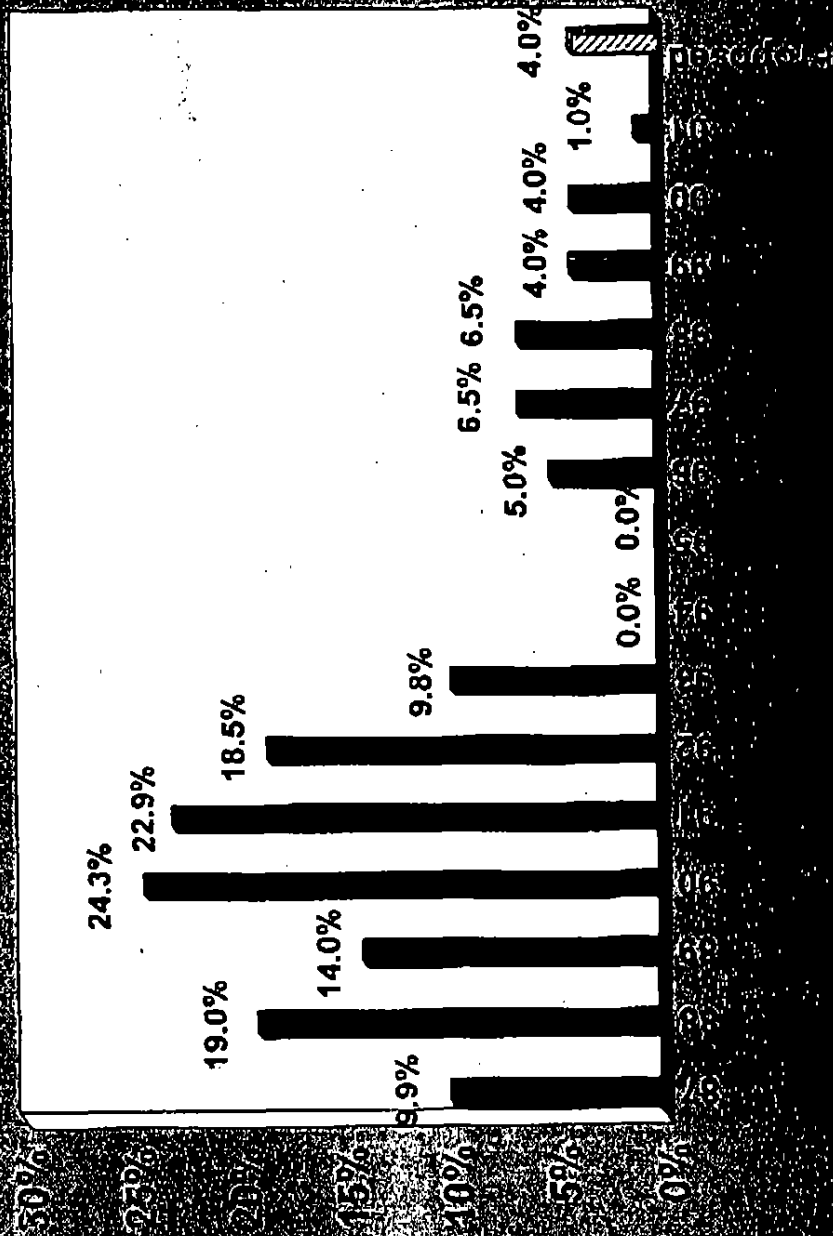
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Display Board

Water and Wastewater Rate History



Prepared by DEP
 3/28/01
 3/28/01 is prepared

Display Board

FY2002 Water/Sewer Rates Best and Worst Case Assumptions

CB= Collective Bargaining; NN= New Needs; CI= Collection Improvements

Best Case Scenarios

	2001	2002	2003	2004	2005	2006	Pct. Change
2.5%CB, \$22 NN, CI, 3% in '02	1.0%	3.0%	7.0%	8.0%	8.0%	7.5%	39.6%
2.5%CB, \$22 NN, CI, 4% in '02							
2.5%CB, \$22 NN, CI, 5% in '02	1.0%	5.0%	6.0%	6.0%	7.0%	9.7%	39.9%

Worst Case Scenarios

3%CB, \$35 NN, No CI, 3% in '02	1.0%	3.0%	11.0%	11.0%	9.2%	6.2%	48.6%
3%CB, \$35 NN, No CI, 4% in '02							
3%CB, \$35 NN, No CI, 5% in '02	1.0%	5.0%	9.0%	9.7%	9.8%	6.8%	48.7%

Note: the higher 2006 rate in the 5% option is necessary to "catch-up" because of the lower increases in 2004 and 2005

Display Board

FY2002 Rate Considerations

- FY2001 Increase was 1%
- Current financing documents indicate a 4% rate increase for FY2002; last year at this time FY2002 was projected at 5.4%
- Because of DEP's large mandate driven capital program, future debt service requirements continues to push rates sharply higher in later years
- The smaller the increase imposed this year, the larger the required increases in later years
- The average annual rate increase during this Administration has been 3.8%; the average during the prior administration was 12.5% and the average from 1986-1994 was 14.5%
- FY2001 YTD Revenues are on plan; the base forecast assumes that collection efficiency will increase 1%/yr FY02-FY04, and 0.5%/yr in FY05 and 06
- Collection efficiency improvements depend on OMB approval for DEP self funding an approximate \$8 million Agency wide PS shortfall with OTPS funds currently in a sludge holding code
- Additional new needs amounting to \$27 million have been identified; a reasonable expectation is DEP will receive \$22 million
- The current baseline assumes 2.5%/yr inflation for collective bargaining
- Alternative assumptions:
 - 2.5% or 3% on collective bargaining
 - \$22-\$35 million in new needs
 - 1% collection improvement or no collection improvement

Recommendation

- At least a 4% increase should be imposed
- A 3% increase would provide less margin of safety and flexibility against potential financial risks related to: a higher CB settlement, possible shortfall in meeting collection efficiency target, unforeseen costs (Croton)
- A 5% increase would have to be explained as a departure from the published number. It does not significantly improve the out-year rate profile and its primary merit is to provide insurance against financial risks that are possible, but not all of which are probable.
- **DEP recommends a 4% increase.** This is consistent with the current published projection and with the policy of maintaining the lowest rate possible while continuing a stable rate pattern in future years. It also helps keep pace with the 7% increase in cost of service while providing a reasonable draw down on the accumulated surplus

Handout

Schedule for Water Board Rate Adoption

March 30, 2001 Water Board Meeting to Approve Public Notice of __%

Scheduled Rate Hearings

April 23, 2001 Bronx, Queens
 April 24, 2001 Brooklyn, Staten Island
 April 25, 2001 Manhattan

May 3, 2001 Water Board Meeting to Adopt FY02 Rates

May 2001 Flat-Rate Bills are Mailed Over the Several Weeks Following Rate Adoption

July 1, 2001 Fiscal Year 2002 Rates Become Effective

*Handout***Projected Water/Sewer Cash Flows**

Assuming: CB 2.5%, \$22 New Needs, 4% in FY02

\$ In '000's

	2001	2002	2003	2004	2005	2006	Pct. Change
First Resolution Debt Service	\$496,806	\$533,196	\$598,724	\$715,928	\$852,940	\$959,118	93.1%
Subordinated Obligations	21,188	74,246	123,835	146,642	183,819	248,321	1072.0%
Net Debt Service							
O&M Expense	679,419	715,492	734,206	752,468	748,166	759,454	11.8%
Rental	157,178	128,441	117,120	139,022	164,353	184,445	17.3%
Pay-as-you-go Capital	40,000	40,000	20,000	0	0	0	
Total Revenue Requirements	\$1,394,591	\$1,491,375	\$1,593,885	\$1,754,060	\$1,949,278	\$2,151,338	54.3%
Surplus	\$111,350	\$82,544	\$88,210	\$83,843	\$46,932	\$17,370	

Handout**Alternative Collective Bargaining and New Needs Assumptions**

CB= Collective Bargaining; NN = New Needs

Collection Improvement Scenarios						
	2001	2002	2003	2004	2005	Pct. Change
2.5%CB, \$22 NN, 3% in '02	1.0%	3.0%	7.0%	8.0%	8.0%	39.6%
2.5%CB, \$22 NN, 5% in '02	1.0%	5.0%	6.0%	6.0%	7.0%	39.9%
2.5%CB, \$35 NN, 4% in '02	1.0%	4.0%	6.7%	8.2%	8.2%	40.5%
2.5%CB, \$35 NN, 5% in '02	1.0%	5.0%	6.0%	7.6%	7.5%	40.7%
3%CB, \$22 NN, 3% in '02	1.0%	3.0%	7.0%	8.5%	8.6%	40.3%
3%CB, \$22 NN, 4% in '02	1.0%	4.0%	6.0%	8.0%	8.7%	40.4%
3%CB, \$22 NN, 5% in '02	1.0%	5.0%	6.0%	6.0%	8.7%	40.7%
3%CB, \$35 NN, 3% in '02	1.0%	3.0%	8.3%	8.5%	8.5%	41.3%
3%CB, \$35 NN, 4% in '02	1.0%	4.0%	7.0%	8.5%	8.4%	41.3%
3%CB, \$35 NN, 5% in '02	1.0%	5.0%	6.5%	7.5%	7.9%	41.5%

No Collection Improvement Scenarios						
	2001	2002	2003	2004	2005	Pct. Change
2.5%CB, \$22 NN, 4% in '02	1.0%	4.0%	8.7%	9.5%	9.5%	46.9%
2.5%CB, \$22 NN, 5% in '02	1.0%	5.0%	8.2%	8.6%	8.8%	47.0%
2.5%CB, \$35 NN, 4% in '02	1.0%	4.0%	9.0%	10.5%	10.5%	47.5%
2.5%CB, \$35 NN, 5% in '02	1.0%	5.0%	8.2%	9.9%	10.0%	47.9%
3%CB, \$22 NN, 4% in '02	1.0%	4.0%	8.9%	9.9%	9.9%	47.6%
3%CB, \$22 NN, 5% in '02	1.0%	5.0%	8.0%	9.4%	9.6%	47.6%
3%CB, \$35 NN, 3% in '02	1.0%	3.0%	11.0%	11.0%	9.2%	48.6%
3%CB, \$35 NN, 4% in '02	1.0%	4.0%	9.5%	10.5%	10.7%	48.4%
3%CB, \$35 NN, 5% in '02	1.0%	5.0%	9.0%	9.7%	9.8%	48.7%



**Department of
Environmental
Protection**

59-17 Junction Boulevard
Corona, New York
11368-5107

**Joel A. Miele Sr., P.E.
Commissioner**

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**DIRECTOR, CITY LEGISLATIVE
AFFAIRS**

To: Joshua D. Filler
Director
Mayor's Office of Legislative Affairs

From: Joel A. Miele Sr., P.E.
Commissioner

Date: July 2, 2001

Subject: Section 312a of the City Charter, First Required Submission

On June 8, 2001, the Department of Environmental Protection issued a sealed competitive bid for the procurement of water meter reading citywide. Pursuant to Section 312a of the City Charter, the Department of Environmental Protection has assembled the following for you to provide the Comptroller:

- A sample cover letter to Comptroller Hevesi to be sent with your signature affixed;
- A description of the proposed scope of work;
- An analysis describing the costs and benefits of performing such service with DEP employees; and
- All supporting documentation.

Thank you for your prompt attention.

c: Stu Erdfarb
James F. Hanley
John Murray
Myrna Ramon
Betsy Collins
Louis Tazzi



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NEW YORK CITY CHARTER

§ 312

HISTORICAL NOTE

Subd. b par 6 amended L.L. 91/1996 § 1, eff. Dec. 2, 1996.
 Subd. b par 6 amended L.L. 61/1991 § 1, eff. July 1, 1991.
 Subd. c amended L.L. 91/1996 § 2, eff. Dec. 2, 1996.

§ 312. **Procurement; general rule and exceptions.** a. Prior to entering into or renewing a contract valued at more than one hundred thousand dollars to provide technical, consultant, or personal services, an agency shall follow the procedure established herein.

1. Prior to issuing an invitation for bids, request for proposals, or other solicitation, the agency shall determine whether such contract will directly result in the displacement of any city employee. If the agency determines that such result would not occur, it shall include a certification to that effect, signed by the agency head, in any invitation for bids, request for proposals, or other solicitation. If the agency determines that such result would occur, the agency shall determine the costs incurred and the benefits derived in performing the service, consistent with the scope and specifications within the solicitation, with city employees, and shall submit such analysis, with all supporting documentation, prior to issuance of any solicitation, to the comptroller.

2. Immediately upon receipt of bids and proposals, the agency shall submit such determination, analysis, and supporting documentation to the council and to the appropriate collective bargaining representatives representing employees who would be affected pursuant to paragraph 1 of subdivision a of this section.

3. Prior to award of a contract, the agency shall perform a comparative analysis of the costs expected to be incurred and the benefits expected to be derived from entering into a contract with the proposed vendor, based on such vendor's best and final offer, and such agency's analysis of the costs incurred and the benefits derived from providing the service with city employees. If the agency head intends to award the contract, he or she shall submit the reasons therefor, together with such analysis, and all supporting documentation, to the comptroller, the council, and the appropriate collective bargaining representatives representing employees who would be affected pursuant to paragraph 1 of paragraph a of this section.

4. The council may, within thirty days after receipt of such reasons, analysis, and supporting documentation hold a hearing on this matter. No contract award shall be made prior to the expiration of this thirty-day period or a council hearing, whichever is sooner.

5. a. All cost and comparative analyses required under this section shall be conducted in accordance with standard methodology of the office of management and budget, and consistent with the rules of the procurement policy board, as both are modified herein, subject to further modification by local law. Such analyses shall include all reasonable costs associated with performing the service using city employees and all reasonable costs associated with performing the service under the proposed contract.

b. Such analyses shall further include, the total number, qualifications, job descriptions, and titles of all personnel to be employed by the vendor under the proposed contract, as well as the nature and cost of salaries and benefits to be provided to such personnel.

c. Such analyses shall further include, but not be limited to, the cost of employee supervision directly related to the provision of the service, ven-

§ 312

CUMULATIVE SUPPLEMENT

for solicitation, contract preparation, contract administration, monitoring and evaluating the contractor, capitalization of equipment over the period such equipment shall be in use, supplies; the cost of providing the equivalent quantity and quality of service by city employees compared to the cost of providing such service by contract, based upon the best and final offer of the proposed vendor, and such other factors as will assist in arriving at full and accurate cost determinations and comparisons.

6. The reasons given to award the contract shall include all factors that have been considered in determining whether contracting for this service is in the best interest of the city, whether or not such reasons are contained within the cost or comparative analyses. Such factors shall include, but not be limited to, the potential for contractor default, the time required to perform the service, and the quality of the service to be delivered.

7. The mayor or his or her designee may prepare and implement a plan of assistance for displaced city employees, which may include, but need not be limited to, training to place such employees in comparable positions within the contracting agency or any other agency. The cost of such assistance plan may be included within the cost of contracting-out in the cost and comparative analyses.

8. For the purpose of this section, "displacement" shall mean any employment action that results in a reduction in the number of funded positions, including but not limited to, those resulting from the layoff; demotion; bumping; involuntary transfer to a new class, title, or location; time-based reductions, or reductions in customary hours of work, wages, or benefits of any city employee.

[Subdivision b]

2. A determination by the head of an agency to use other than competitive sealed bidding except as provided for by sections three hundred fourteen and three hundred sixteen shall be made in writing, stating the reasons why competitive sealed bidding is not practicable or not advantageous and why the method of procurement selected pursuant to section three hundred seventeen is the most competitive alternative that is appropriate under the circumstances. The head of the agency shall include the determination or a summary of the determination in the notice of solicitation, or for an emergency procurement in the notice of award, required to be published pursuant to section three hundred twenty-five of this chapter.

HISTORICAL NOTE

Subd. a added L.L. 35/1994 § 2, eff. Oct. 17, 1994. [See Note]

Subd. b relettered L.L. 35/1994 § 2, eff. Oct. 17, 1994.

(formerly subd. a)

Subd. b par. 2 amended L.L. 3/1997 § 1, eff. Jan. 23, 1997.

Subd. c relettered L.L. 35/1994 § 2, eff. Oct. 17, 1994.

(formerly subd. b)

NOTE

Provisions of L.L. 35/1994 § 1

Section 1. Declaration of Legislative Findings and Intent. The Council finds that in order to ensure sound procurement practice and the delivery of high quality services in the most cost-efficient manner in New York

NEW YORK CITY CHARTER

§ 313

City residents, it is necessary to require agencies to evaluate the costs and benefits of proposed service contracts valued at more than one hundred thousand dollars that result in displacement of a City employee. Sound procurement practice requires an assessment by the agency of the costs and benefits of providing a service in-house prior to any determination to solicit bids or proposals, a determination of the costs and benefits of providing the same service by contracting-out, and a comparison of the two.

This legislation is designed to ensure that a contract is in the best interests of the citizens of the City of New York and its employees. Such legislation is not intended to delay or impede upon the normal contracting process of the City.

§ 313. Competitive sealed bidding.

2. The agency letting the contract may reject all bids if it shall deem it for the interest of the city so to do; if not, it shall, without other consent or approval, award the contract to the lowest responsible bidder, unless the mayor shall determine in writing, justifying the reasons therefor, that it is in the best interest of the city that a bid other than that of the lowest responsible bidder shall be accepted. Such determination shall be published in the City Record. Tie bids are to be decided by the agency letting the contract and the award made. Whenever a contract is awarded to other than the lowest bidder because the lowest bidder is determined by the agency not to be a responsible bidder or because the lowest bid is determined by the agency to not meet the requirements and criteria set forth in the invitation for bids, the agency making such determination and awarding such contract shall immediately notify the lowest bidder of such determination and shall file in the agency contract file a statement in detail of the reasons therefor.

HISTORICAL NOTE

Subd. b par 2 amended L.L. 3/1997 § 2, eff. Jan. 23, 1997.

CASE NOTES

¶ 1. The City sought to bypass the "lowest responsible bidder" rule on contracts involving a combination of public work and utility interference work. The court, however, held that this procedure would be improper. In other words, in the event that the lowest responsible bid on the public portion of the work differed from the lowest responsible bid on the package (city work plus utility work), the City would have to do either of two things: (1) reject all bids and call for resubmission of bids until the lowest bidder on the package project was also the lowest bidder on the public portion of the work; or (2) the Mayor would have to file with the Procurement Policy Board and publish in the City Record an explanation why the City accepted a bid even though another bid contained a lower price on the public portion of the work (the cost of which was borne by taxpayers). *Matter of HMM Associates, Inc. v. Appleton*, 157 Misc.2d 759, 597 N.Y.S.2d 894 (Sup.Ct. New York Co. 1993).

¶ 2. Section 103 of the General Municipal Law provides that municipal contracts must be awarded to the lowest responsible bidder, except as otherwise provided by an act of the state legislature or by a local law adopted prior to September 1, 1953. In *Diamond Asphalt Corp. v. Sander*, 92 N.Y.2d 244, 678 N.Y.S.2d 567 (1998), a low bidder who was not awarded a contract challenged the Mayor's authority to award the contract to anyone other than the lowest bidder. In response, the City argued that City Charter § 313(b)(2) qualified as a local law within the meaning of General Municipal Law Sec. 103. Specifically, the City contended that when the City Charter was revised in 1989 and later approved by the

**NEW YORK CITY
DEPARTMENT OF ENVIRONMENTAL PROTECTION (DEP)
BUREAU OF PUBLIC AFFAIRS - OFFICE OF LEGISLATIVE AFFAIRS**

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S 312-a Please let me know if
there is anything I can do to help



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

JOSHUA D. FILLER
DIRECTOR OF CITY LEGISLATIVE AFFAIRS &
CHIEF OF STAFF TO THE DEPUTY MAYOR FOR OPERATIONS

City Hall, Room 1
(212) 788-3108
FAX: (212) 788-3127

July 9, 2001

Honorable Alan Hevesi
Comptroller
City of New York
One Centre Street
New York, N.Y. 10007

Re: Section 312a of the City Charter
First Required Submission
PIN# 82601CSCWMR1

Dear Comptroller Hevesi:

On June 8, 2001, the Department of Environmental Protection issued a sealed competitive bid for the procurement of water meter reading citywide. The DEP has determined that the contract to be awarded through this solicitation is valued at more than \$100,000 and will not result in the displacement of DEP employees.

Pursuant to Section 312a of the City Charter, I have enclosed a description of the proposed scope of work, an analysis describing the costs and benefits of performing such service with DEP employees, and all supporting documentation.

Thank you.

Sincerely,

Joshua D. Filler
Director

C: Joel A. Miele Sr., P.E., James F. Hanley, Myrna Ramon, John Murray, Betsy Collins

Privatization of Meter Reading Citywide Scope of Work Summary

The New York City Department of Environmental Protection (DEP), Bureau of Customer Services (BCS) intends to seek the services of a second party who is qualified in reading water meters and whose customer service standards are regulated by the State of New York Public Service Commission.

The scope of work for reading meters is for all five boroughs. It is proposed that the contract will cover the three boroughs of Brooklyn, Queens and Manhattan immediately and include the boroughs of the Bronx and Staten Island when their current contracts expire in 2003. The five boroughs have 828,000 customer accounts with 715,000 meters which are read quarterly, and 113,000 un-metered flat rate accounts. Flat rate accounts are not currently read but are scheduled to be converted to metered accounts within the next two years. In addition, there are approximately 20,000 Fire meters which are read once a year and 30,000 I-mon meters which are read twice a year.

The services to be provided include reading meters that are scheduled for regular quarterly billings and some special reading requests for those meters that fail billing system edits or require final readings associated with the sale or refinancing of the property or commercial business. Approximately 90% of the meters in Brooklyn, 95% in Queens and 77% in Manhattan are equipped with remote receptacles. The boroughs of Staten Island and the Bronx have 97% and 92% remote devices, respectively.

Currently, the remote equipped meters are read by a probe device that is connected to a hand held computer. Meter readings are electronically collected and subsequently uploaded to a PC in the borough office. Each night the meter reading data is uploaded to DEP's Customer Information System (CIS) and bills are generated. The handheld computer system comprises Logicon's VersaTerm, VersaProbe and Route Manager software.

It is expected that the meter reading equipment (Logicon, VersaTerm, VersaProbe and PC) will be provided by DEP for use by the vendor. The vendor may propose alternative equipment with approval by DEP, for obtaining readings as long as the file map and upload/download processes of CIS stay intact.

It is also expected that the start of the contract in Brooklyn, Queens and Manhattan will be staggered over a six months period so that each borough operation can be converted at a different time, not to exceed two months apart. The proposed duration of this contract is for three years with an option to renew the service twice for a period of one (1) year each.

The method of procurement will be competitive sealed bidding since the specifications can be sufficiently definite and certain to permit selection based on bid price. Eligible bidders will be limited to utility companies licensed in New York State.

MARKET ANALYSIS				Projected Incremental Cost to Utilities			
	DEPy1	DEPy2	DEPy3	BUG y1	BUG y2	ConEd y1	ConEd y2
1 Accounts	564487	584799	801460	0		935,000	
2 Required Reads/Mo*	188162	194933	267153	0		935,000	
3 Average Daily Reads*	9408	9747	13358	0		46750	
4 Avg Daily Read/Crew*	109	113	125	0		396	
5 # Crews	86	86	107	0		118	
6							
7 Source for hourly wage.....	NYS DEPT.				Con Edison		
8 Hourly Wage	\$14	\$14	\$14			\$17.69	\$17.69
9 Base Salaries*	\$2,647,370	\$2,726,791	\$3,487,589			\$1,846,314	\$1,846,314
10 Fringe @ 26.61%	\$704,465	\$725,599	\$928,047			\$590,820	\$590,820
11 O/T	\$354,908	\$365,555	\$469,809			n/a	n/a
12 Total Labor Cost	\$3,706,743	\$3,817,945	\$4,885,445			\$2,437,134	\$2,437,134
13							
14 Unit Cost Per Read/Labor	\$1.64	\$1.63	\$1.52			\$0.22	\$0.22
15							
16 Project Investment						\$0	\$0
17 Annual Contracted Reads						2339196	3205040
18 Per Read Investment						\$0.00	\$0.00
19 Incremental Cost per read						\$0.22	\$0.22
20 Profit @ 20%						\$0.04	\$0.04
21 subtotal						\$0.26	\$0.26
22 Tax & Surcharge						\$0.01	\$0.01
23							
24 Estimated Total Unit Cost						\$0.27	\$0.27
25							
26							
27 Source for meters reads and costs.....	Annual Reports Filed with NYS Public Service Commission						
28 Total Gas Meters				1207506		1123926	
29 Total Meter Reading Expenses (gas)				\$5,567,618		\$6,292,997	
30 Annual Required Reads				7245036		13487112	
31 Unit Cost per read (Gas)				\$0.77	\$0.77	\$0.47	\$0.47
32 Total Electric Meters						3182977	
33 Total Meter Reading Expenses (Elec)						\$28,668,097	
34 Annual Required Reads						38195724	
35 Unit Cost per read (Elec)						\$0.75	\$0.75
36 Per Read Investment				\$0.00	\$0.00	\$0.00	\$0.00
37 Incremental Cost per read				\$0.77	\$0.77	\$0.61	\$0.61
38 Profit @ 20%				\$0.15	\$0.15	\$0.12	\$0.12
39 subtotal				\$0.92	\$0.92	\$0.73	\$0.73
40 Tax & Surcharge				\$0.04	\$0.04	\$0.03	\$0.03
41 Estimated Unit Cost*				\$0.96	\$0.96	\$0.76	\$0.76
42 Estimated bid price				\$1.25	\$1.25	\$1.00	\$1.00
43							
44 Contracting Price				\$2,923,995	\$4,007,300	\$2,339,196	\$3,205,840
45 Contract Overhead				\$285,834	\$188,818	\$285,834	\$188,818
46 In House Service				\$4,460,400	\$4,622,856	\$4,460,400	\$4,622,856
47 Cost Difference (Net Savings)				(\$1,250,570)	(\$426,738)	(\$1,835,369)	(\$1,228,198)
48							
49							
50							

NOTES:

*Figures are an approximation, may be subject to change.

*Required reads per month = accounts x 4/12.

*Average Daily Reads = required reads per month / 20.

*Average Daily Read per Crew = average daily reads / # of meter readers

*Row 9: the base salaries and O/T include adjusted costs for collective bargaining of 3% for yr1 and beyond.

*Rows 1-5: pertaining to Con Ed were obtained through a phone call with Con Ed

*Row 42: Estimated bid price is based on previous bid price in the Bronx and Staten Island

Cost Analysis Work Sheet

Available Data		Citywide	Details
Direct Costs			
1	Personnel		
2	Salaries	\$2,647,370	Wk frames (12 x 122,178) + Wk (1 x 23,787) + Wk (18 x 528,047) + Wk (3 x 26,427) + Wk (39 x 132,827) + Wk (12 x 837,488) = 3 @ 43,141
3	Fringe 26.61%	\$704,465	26.61% of line 3
4	Overtime	\$354,908	Bk (127,525) + Qn (140,914) + Mhn (86,469) Total OT Earned
5			
6			
7			
8	Equipment		
9	Fleet	\$41,625	18 Cars x 18,500 amortized over 8 yrs Bk (7) Qn (8) Mhn (3)
10	Hand Held Device	\$82,503	90 @ \$2504 + 90 @ \$1817 + 6 @ \$942 + 6 @ \$946 + 22 @ 559
11	Computer Hardware	\$3,060	pc/prnter/lps/controller/modem (1020 x 3)
12	Computer Software	\$1,200	Logicon/Extra (400 x 3)
13			
14	Supplies		
15	Fuel	\$3,938	10 mi /day x 250 days = 2500 mi /yr / 20 mi = 125 gallons 125 x \$1.75 per gal. (1 gal / 20 miles) 18 cars
16	Supplies	\$8,121	86 readers / 268 borough staff = 32% 32% of \$25,377 (Total cost per year) 25,377 = 8459 x 3
17	Uniforms	\$38,562	\$448 40 X 86 Inspectors (Cost is per year)
18			
19			
20	Contracted Services		
21	Fleet Maintenance	\$18,000	\$1000 x Total # of cars
22	Hand Held Device Maint	\$47,220	90 @ \$255 + 3 @ \$440 + 90 @ \$255 Includes VersaTarms, ChargerLinks and VersaProbes
23	Software	\$3,300	
24			
25	Rental Space	\$179,874	Bk \$54,294 + Qns \$53,280 + Mhn \$72,300
26			
27	Telecommunications	\$43,000	86 radios and beepers @ \$2500 per inspector amortized over 5 years
28	Remote Communications		
29			
30	Sub Total	\$4,177,145	
31			
32	Indirect Costs		
33	Personnel		
34	Salaries	\$223,722	14% x 1,109,473 + 32% x 182000 14% = 85/604 (mir rders/exec mgmt @ Central) 32% = 85/268 (mir rders/boro staff mbrs)
35	Fringe @ 26.61%	\$59,532	26.61% of line 34
36	Sub Total	\$283,254	
37			
38			
39			
40	Total Cost	\$4,460,400	Line 30 + Line 36
41			
42	Contract Administration	\$121,712	Pjt mgmt, 60% of (\$63,000 + \$32,000) + 50% of 3 WUI @ \$43,141
43	Fringe @ 26.61%	\$32,387	26.61% of line 42
44	Contract Support Cost	\$29,220	60% of 48,700 (HH support)
45	Data Conversion Cost		
46	Bureau	\$99,705	350 hrs x \$75.00 x 26.61% fringe x 3
47	Analysis, Design, Testing		
48	Bureau		
49	Training	\$2,810	\$26.76 wage/hr x 7 hrs = \$187 x 5 days x 3
50			
51			
52	Total Cost	\$285,834	
53			
54			
55	Estimated Metered Accounts	564,487	Bk 227,477 + Qns 295,735 + Mhn 41,275
56	Frontage Accounts	60,936	Bk 29,925 + Qns 16,730 + Mhn 14,281
57	Annual Required Reads	2,322,867	Bk 934,362 + Qns 1,193,529 + Mhn 194,976 (Includes mtred, lmon & Fire meter accounts)
58			
59			
60			
61			
62	Direct Salaries	\$3,706,743	Direct salaries + Fringe + OT
63	Cost Per Read (Labor)	\$1.60	Line 62/line 57
64	Total Cost Per Read (OTPS+PS)	\$1.92	Line 40/line 57
65			
66	Labor Rate		
67	Direct cost per unit read	\$1.60	Line 62/Line 57
68	Indirect cost per unit read	\$0.12	Line 36/Line 57
69	Total Cost per unit read	\$1.72	Line 67 + Line 68
70			
71			

Cost Analysis Work Sheet

Citywide

Available Data		Year 1*	Year 2	Year 3*	Year 4	Year 5
		April 2001	April 2002	April 2003	April 2004	April 2005
1	Direct Costs					
2	Personnel					
3	Salaries*	\$2,647,370	\$2,726,791	\$3,487,589	\$3,592,216	\$3,699,983
4	Fringe 26.61%	\$704,465	\$725,599	\$928,047	\$955,889	\$984,565
5	Overtime*	\$354,908	\$365,555	\$469,809	\$483,903	\$498,420
6						
7	Equipment					
8	Fleet	\$41,625	\$41,625	\$55,500	\$55,500	\$55,500
9	Hand Held Device	\$82,503	\$82,503	\$108,018	\$108,018	\$108,018
10	Computer Hardware	\$3,060	\$3,060	\$5,100	\$5,100	\$5,100
11	Computer Software	\$1,200	\$1,200	\$2,000	\$2,000	\$2,000
12						
13	Supplies					
14	Fuel	\$3,938	\$3,938	\$5,250	\$5,250	\$5,250
15	Supplies	\$8,121	\$8,121	\$14,803	\$14,803	\$14,803
16	Uniforms	\$38,562	\$38,562	\$47,979	\$47,979	\$47,979
17						
18	Contracted Services					
19	Fleet Maintenance	\$18,000	\$18,000	\$24,000	\$24,000	\$24,000
20	Hand Held Device Maint	\$47,220	\$47,220	\$61,870	\$61,870	\$61,870
21	Software	\$3,300	\$3,300	\$5,500	\$5,500	\$5,500
22						
23	Rental Space*	\$179,874	\$222,630	\$350,774	\$355,043	\$359,160
24						
25	Telecommunications	\$43,000	\$43,000	\$53,500	\$53,500	\$53,500
26	Remote Communications					
27						
28	Sub Total	\$4,177,145	\$4,331,104	\$5,619,739	\$5,770,571	\$5,925,648
29						
30	Indirect Costs					
31	Personnel					
32	Salaries*	\$223,722	\$230,433	\$316,367	\$325,858	\$335,634
33	Fringe @ 26.61%	\$59,532	\$61,318	\$84,185	\$86,711	\$89,312
34	Sub Total	\$283,254	\$291,752	\$400,552	\$412,569	\$424,946
35						
36	Total Cost	\$4,460,400	\$4,622,856	\$6,020,291	\$6,183,140	\$6,350,594
37	Contract Administration*	\$121,712	\$125,363	\$211,874	\$218,230	\$224,777
38	Fringe @ 26.61%	\$32,387	\$33,359	\$56,380	\$58,071	\$59,813
39	Contract Support Cost*	\$29,220	\$30,097	\$51,666	\$53,216	\$54,812
40	Data Conversion Cost*					
41	Bureau	\$99,705		\$70,181		
42	Analysis, Design, Testing					
43	Bureau					
44	Training	\$2,810		\$1,987		
45						
46	Total Cost	\$285,834	\$188,818	\$392,087	\$329,517	\$339,402
47						
48	Estimated Metered Accounts	564,487	584,799	801,460	821,772	821,772
49	Frontage Accounts	60,936	20,312	20,312	20,312	0
50	Annual Required Reads	2,322,867	2,404,115	3,281,020	3,362,268	3,362,268
51						
52	Planned Reads Per Month					
53	Less Estimated Bills					
54	Daily Reads per Person					
55	Direct Salaries	\$3,705,743	\$3,817,945	\$4,885,445	\$5,032,008	\$5,182,969
56	Cost Per Read (Labor)	\$1.60	\$1.59	\$1.49	\$1.50	\$1.54
57	Total Cost Per Read(OTPS+PS)	\$1.92	\$1.92	\$1.83	\$1.84	\$1.89
58						
59	Labor Rate					
60	Direct cost per unit read	\$1.60	\$1.59	\$1.49	\$1.50	\$1.54
61	Indirect cost per unit read	\$0.12	\$0.12	\$0.12	\$0.12	\$0.13
62	Total Cost per unit read	\$1.72	\$1.71	\$1.61	\$1.62	\$1.67
63						
64						
65						

*Year 1 & 2 includes cost for Bklyn, Qns, & Mhn

*Year 3-5 includes cost for all five boroughs

*Direct salaries are adjusted based on a 3% increase each year.

*Overtime is adjusted based on a 3% increase each year.

*Rental Space for Brooklyn in y1 is 16,602 sq. ft. (rentable) @ \$9.91 per sq. ft. Year 2-5 will be 16,628 sq. ft. (rentable) @ \$17.00 per sq. ft. There is no 3% increase.

For Queens and Manhattan there is a 3% increase each year. However, there is no 3% increase in Brooklyn or Staten Island

Rental Space year 3-5 in Staten Island is 9,225 sq. ft. @ \$22.50 per sq. ft. prorated @ 60% (9/15). No adjusted increase

*Indirect salaries are adjusted based on a 3% increase each year.

*Contract administration is adjusted based on a 3% increase each year.

*Contract support cost is adjusted based on a 3% increase each year.

*Data conversion and training cost are only incurred in year 1 for the initial 3 boroughs and in year 3 for the remaining 2 boroughs.

Public Safety - Critical Infrastructure