

October 28, 2008

Speaker Christine Quinn
New York City Council
City Hall
New York, New York 10007

Commissioner Emily Lloyd
New York City Department of Environmental Protection
59-17 Junction Boulevard
Flushing, New York 11373

Dear Speaker Quinn and Commissioner Lloyd:

On behalf of the Jamaica Bay Watershed Protection Plan Advisory Committee (Advisory Committee or Committee), we respectfully submit the following comments on the New York City Department of Environmental Protection (DEP)'s October 1, 2008 *Jamaica Bay Watershed Protection Plan Update* (Update).¹ City law requires the DEP to develop and implement a "Jamaica Bay Watershed Protection Plan" (Plan) in order to improve the water quality and ecological integrity of Jamaica Bay (Bay). As you know, the Bay is a tremendously important ecologic and social resource, providing critical nursery and breeding habitat for fish and other wildlife (nearly twenty percent of North America's different bird species visit annually), flood protection for homes and businesses in and around the Bay, and, at more than 25,000 acres, the City's largest public open space as well as the only unit in the National Park Service reachable by subway. These same resources are also, however, gravely threatened by poor water quality and the loss of natural areas, including the accelerating loss of the Bay's signature marsh islands which, at the current rate, will vanish much sooner than the previously predicted 2024 date.

The Advisory Committee has reviewed the Update and assessed the Plan's progress with two primary questions in mind: (1) has the DEP completed its October 2007 version of the Plan (October 2007 Plan)?; and (2) has the DEP made adequate progress in implementing the specific activities and strategies listed in the October 2007 Plan? The Committee believes that these are the key criteria to apply in assessing the Plan's progress at this juncture for the following reasons. First, the October 2007 Plan lacked critical components required by law, namely performance goals, implementation schedules, and monitoring programs, and, as the Committee has stressed several times to the DEP, we continue to believe these components are critical to the Plan's ultimate success. Second, the October 2007 Plan did include a number of promising strategies and programs and the Committee considered it important to assess progress on these. Generally, the Committee believes that these criteria account for, and strike a balance between, our appreciation of the inherent technical and administrative difficulties of developing and getting off the ground a plan of this nature over the course of just a few years, and, on the other hand, the need and justifiable expectations for rapid progress in addressing Jamaica Bay's problems. At this early stage, the Committee was looking less

¹ The same law, Local Law 71 of 2005, established the Advisory Committee to advise and make recommendations to DEP on the Plan. Committee members are Doug Adamo, National Park Service; Manny Caughman, Community Activist; Len Houston, U.S. Army Corps of Engineers; Dan Mundy, Jamaica Bay Eco Watchers; Brad Sewell, Natural Resources Defense Council; Larry Swanson, Marine Sciences Research Center at Stony Brook University; and Christopher Zeppie, Port Authority of New York and New Jersey.

for progress on “in the water” actions and more for progress in finalizing the building blocks for rapid action further down the line, such as completion of a Plan with all the essential elements for future success.

Judged against these criteria, the Advisory Committee believes that Plan progress has been inadequate. The October 2007 Plan still lacks the goals and implementation process required by the law and required, by definition, of *any* plan (*i.e.*, by definition, a plan is a detailed program developed for accomplishing one or more specific objectives). And, while there has been progress in implementing certain activities and projects listed in the October 2007 Plan – a testimonial to the skill and commitment of the several DEP staff working on this project – many of the key listed activities and projects are already behind schedule; the Committee was particularly disappointed at DEP’s backtracking on addressing the Bay’s horrendous nitrogen pollution problem. Most generally stated, the Committee looked at what it believed to be key indicia of both current and future Plan success and found essentially the status quo: no complete Plan and no indication generally of a long-term commitment by the DEP and the City to achieving the overall purpose of the Plan – improved water quality and ecological integrity in Jamaica Bay.

Completion of the Plan

By statute, the Plan must include specific goals for water quality and ecological improvements to result from the Plan, schedules for implementing each component of the Plan and for achieving its goals, and a method for monitoring progress.² The October 2007 Plan did not include these components. Rather, it set out proposed activities without tying them to performance goals and laying out guidelines, and did not include a meaningful plan for monitoring these activities.

The Update has not corrected this problem. We remain without a Plan that complies with the applicable legal requirements and contains all the necessary components, meaning a plan with goals, a way of achieving those goals, and a means of knowing whether we are, in fact, succeeding. The Committee continues to believe that it is essential that the DEP complete the Plan. Among other things, having specific goals, schedules, milestones, and monitoring of performance will provide the DEP, the public, other agencies, and the Committee, with neutral and transparent metrics with which to adjudge the Plan’s potential for success initially and then the Plan’s actual success as it is implemented over time.

Indeed, the Committee is uncertain as to how the DEP will be able to comply with the legal requirement to review and revise the Plan as necessary (and no less frequently than every two years) to achieve its goals – as things now stand, there are no Plan goals to achieve, no monitoring program by which to determine whether such goals, if they existed, were being achieved, and no project-related construction or performance milestones that could be revised to improve success in achieving the Plan goals (if they existed).³ The incomplete nature of October 2007 Plan also complicates the

² Local Law 71 requires that the Plan contain “specific goals related to restoring and maintaining the water quality and ecological integrity of Jamaica bay” and “a schedule, including interim and final milestones, for implementing the measures and achieving the specific goals included in such plan and methods of monitoring progress towards achieving such milestones and goals.”

³ As we have previously noted to DEP, with so many of the October 2007 Plan’s key strategies calling for only pilot projects and studies, the missing Plan components and the implications thereof could hardly be more apparent. While the Committee understands and is supportive of the need for many of these pilot studies, when will such initial steps be completed and what will happen next, when, and according to what decision-making criteria and with what public involvement?

task of assessing whether, and how best, to improve it. With a plan like this, determining whether and what improvements are necessary as an initial matter entails knowing both what the resource needs and what the specific components of the plan and the plan overall are projected to accomplish towards meeting these needs.

In our November 1, 2007 response to the October 2007 Plan, the Committee requested, among other things, that within six months the DEP develop and publicly vet detailed interim and final goals so that the Plan's success could be adequately evaluated. We again request that the DEP undertake such a process, as well as to develop the other missing Plan elements.

Implementation of the Plan

The Advisory Committee's final recommendations for the Plan, which we provided on June 1, 2007, set out the following five priority measures for short-term implementation over the next several years: (1) an aggressive Jamaica Bay nitrogen control strategy, (2) a comprehensive stormwater "best management practices" (BMPs) program throughout the Jamaica Bay watershed/sewershed, (3) a habitat protection and restoration program targeting the Bay's peripheral tidal wetlands and upland buffer areas, including their immediate protection from development, (4) an expansion of efforts to restore the Bay's interior saltmarshes, and (5) a comprehensive science program for the Bay. In an effort to move forward on projects the Committee determined to be the most important elements of the October 2007 Plan, the Advisory Committee in November 2007 provided the DEP with a list of the October 2007 Plan's new proposals⁴ that it considered the highest priority for action, based on the above-mentioned five priority measures. Attachment A of this letter reports on the status of these key implementation measures.

Based on the Update, the Committee is pleased to note that it appears that some progress has been made in several of these priority measures. For example, components of the program to implement BMPs, which overlap with the City's efforts pursuant to Local Law 5 and the PlaNYC initiative, are substantially underway.⁵ Of the 33 implementation strategies the Committee recommended to the DEP to fast-track, two have been completed, six are partially completed, and four are on schedule. For the remaining 21 key projects (more than 60% of the total key projects), the status of seven is unclear, eleven are delayed, and another three projects are missing from the Update. The Advisory Committee recommended that all 33 of these projects move forward in 2008 to help protect the Bay.

While we applaud the DEP's successes, we are concerned by the delays and particularly by the apparently missing projects. It is possible that some projects are further along than the Update reveals – of the 78 implementation strategies mentioned in the update chart (which, of course, does not take into account "missing" strategies) less than 25% (only 19) are discussed in additional detail in the Update's narrative. The names of the implementation strategies have occasionally changed, and, in a few instances, what was described in the October 2007 Plan as a management strategy or current program is now listed as an implementation strategy. In an effort to clarify the status of

⁴ "New" proposals are ones that – based on the information available to the Committee – were developed as a part of the Plan's development, as opposed to pre-existing programs or commitments; most also apply to Jamaica Bay specifically. This categorization is not intended as a reflection on the importance of many of the Bay's important ongoing projects or other broader-based efforts.

⁵ There are, however, a significant number of inconsistencies in the timelines, description of funding availability, and the specific nature of the efforts in the October 2007 Plan and the recently released draft Sustainable Stormwater Management Plan required by Local Law 5.

various activities, the Committee has recreated the Update's table and supplemented it with additional details from the October 2007 Plan in red text; this is provided as Attachment B.

The Advisory Committee is particularly concerned that the DEP has not made progress, and actually appears to have backtracked, on the issue of nitrogen pollution. Four City sewage treatment plants discharge between 35,000 and 40,000 pounds of nitrogen daily into the Bay. According to a study conducted for DEP in 2006, out of eighteen water bodies around the world that were examined, Jamaica Bay had the highest rate of nitrogen loadings by a significant margin (the rate for the Bay was 127 g/m²/year; the next highest rate was for Tokyo Bay (89.1 g/m²/year)).⁶ Numerous studies by the DEP and others show that, as a consequence of the extremely high nitrogen loadings, the Bay is highly eutrophic, subject to prolonged algae blooms, and in chronic violation of the dissolved oxygen water quality standards, as well as also in violation of the newly-set chronic water quality standard for ammonia, which is toxic to marine life.⁷

The Advisory Committee made a significant reduction in nitrogen loadings to the Bay one of its top recommendations to the DEP and targeted it for early action, both because of the problem's significance and because the DEP has the demonstrated capacity to address the problem single-handedly (as shown by the agency's agreement to implement significant upgrades to plants discharging to the Upper East River and Long Island Sound, which will ultimately reduce nitrogen loadings by 58.5% as compared to mid-1990s levels). Previously, the DEP has agreed that significant nitrogen reductions are necessary to protect the Bay's water quality, and in the October 2007 Plan proposed the beneficial step of supplemental carbon addition on an interim basis (*i.e.*, over the next several years) at the two treatment plants most significantly contributing to the Bay's nitrogen pollution problem (the 26th Ward and Jamaica plants). While the Committee noted then, and continues to believe, that this measure would almost certainly not be sufficient by itself, it would have provided meaningful, near-term, and cost-effective nitrogen reductions. Following the release of the October 2007 Plan and months of continued discussion, it also appeared that DEP and the New York State Department of Environmental Conservation (DEC) were also closing in last spring on an agreement for subsequent and more significant upgrades to the plants discharging into the Bay.

DEP and DEC are now, however, apparently no longer as close to a comprehensive agreement on how to address Jamaica Bay's nitrogen pollution problem. And, according to the Update, DEP is not currently planning to move forward with the interim supplemental carbon addition at the 26th Ward and Jamaica treatment plants. This means that the agency has essentially reverted to the proposal on nitrogen it made three years ago that the Advisory Committee has expressed strong objections to, the DEP itself conceded would still result in widespread violations of water quality standards and degraded ecological conditions, and the DEC had rejected as failing to "provid[e] environmentally sound solutions to water quality problems in Jamaica Bay."⁸ The Update cites approvingly to the DEP's *Jamaica Bay: An Integrated Solution* (White Paper), which was submitted to the DEC on June 19, 2008, as the basis for the limited upgrades proposed. In the opinion of several Advisory Committee members who reviewed it in detail, the White Paper, which was not widely circulated to the public, mischaracterized the nature and severity of Jamaica Bay's nitrogen pollution problem and

⁶ Battelle, *Jamaica Bay Ecosystem Study Integrated Report 2006* (March 2007) at 2.

⁷ DEP, *Jamaica Bay Comprehensive Report* (Oct. 2006) at 70-71; DEP, *Jamaica Bay Watershed Protection Plan* (Oct. 1, 2007), Vol. I at 32-35, Vol. II, p. 16 (available at http://home2.nyc.gov/html/dep/html/dep_projects/jamaica_bay.shtml); DEP, White Paper at 25, n.7 & Fig. 5.

⁸ Letter from J. DiMura, DEC to A. Lopez, DEP (Feb. 1, 2007).

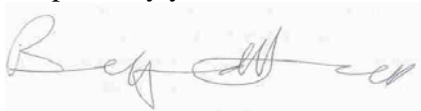
provided a particularly biased discussion of the benefits and costs of various alternative remedial strategies.

The Committee understands that the legal enforcement proceeding by the DEC against the DEP for the long-standing water quality violations in the Bay complicates the DEP's discussion of its nitrogen plan. But the DEP's position on nitrogen has also meant that there has been no actual progress over the last year in moving forward with, including building any necessary public support for, an adequate solution to a very pressing problem for the Bay, a year that included, according to observers, the worst summer for water quality in the Bay in recent memory, with months of persistent algal blooms, brown water, fish die-offs, and pervasive sulfur odors. And, with no current agreement between the DEP and the DEC, the possibilities for immediate progress are unclear.

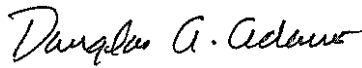
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In conclusion, the Advisory Committee again commends the dedication and expertise of the DEP staff working on this initiative, as well as the staff at the other City, State, and Federal agencies that have joined the DEP in the effort so far. The Committee is, however, concerned about the Plan's future. For the Plan to succeed on the scale necessary for meaningful relief to Jamaica Bay, we believe that the nature of the commitment from DEP and from the City will need to change. At this point in the Plan's development and implementation, this is as much a commitment to the letter and spirit of authorizing legislation as it is to anything else. As always, the Committee stands by to assist in any way that we can.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Brad Sewell", written over a light gray grid background.

Brad Sewell
Jamaica Bay Watershed Protection Plan Advisory Committee Co-Chair

A handwritten signature in black ink, appearing to read "Doug Adamo", written over a light gray grid background.

Doug Adamo
Jamaica Bay Watershed Protection Plan Advisory Committee Co-Chair