

November 1, 2007

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, 2007 *Jamaica Bay Watershed Protection Plan* (Plan). We submit these comments pursuant to the agreement between the Advisory Committee, DEP, and the New York City Council, by which such comments were to be provided by November 1, 2007 and DEP would provide a written response to the comments by December 1, 2007.

As you well know, Jamaica Bay's resources are in jeopardy. Poor water quality is a continuing problem for the bay. Nitrogen from New York City's wastewater treatment plants is the leading pollutant, and may be spurring marsh loss. Natural areas around the bay, already too few in number and limited in size, continue to be lost to development. Marsh loss of Jamaica Bay's signature salt marsh islands has been accelerating and, at the current rate, the islands will vanish much sooner than the 2024 date previously predicted.

We must act as soon as possible to reverse the bay's decline. In the Advisory Committee's final recommendations concerning the Plan, which we provided on June 1, 2007, the Committee 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 its final recommendations, the Committee also stressed that it was critical that the Plan include a comprehensive implementation plan (DEP's March 1, 2007 draft Plan had not included one). Pursuant to the authorizing law, this implementation plan must include specific goals, schedules for implementing each component of the Plan and for achieving Plan goals, and a method for monitoring progress.¹

The Advisory Committee commends the dedication of the agency staff working on this project. DEP's Plan comprehensively catalogues the bay's resources and its problems, and proposes a considered suite of initiatives. In the Committee's view, there would be significant benefits for the bay *if* these initiatives were fully developed and implemented in a timely fashion.

¹ 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."

The Committee is very concerned; however, that DEP's work product remains more a set of proposals than an actual plan. The milestones, goals, and a program for monitoring progress, all of which are legally-required elements of the Plan, are not in this document. Specific performance goals – expressed in measurable and quantitative terms – for both individual actions and the Plan overall are missing. In the Committee's view, such goals are critical and need to be developed. Goals provide a shared understanding of objectives, a ruler against which to measure progress and manage adaptively, and a means of accountability.

Further, DEP's Plan still lacks implementation details for its individual actions. Of the total 93 Plan implementation strategies, approximately a third do not have start dates and close to 70 percent do not have completion dates; of the proposals we understand to have been developed solely or primarily for purposes of this effort (i.e., not pre-existing or city-wide projects), almost 40 percent do not have start dates, and nearly 75 percent do not have completion dates.²

Compounding the problem is that most of the new initiatives call first for pilot projects or other types of studies. While the Committee generally supports the pilots and studies, obviously they alone will not save the bay.³ Timetables for completion of the pilot projects – and, most significantly, for expanding these particular initiatives so that they will result in meaningful improvements to the bay – are critical. While funding is ultimately critical to achieving timetables, the Committee believes that timetables developed according to the bay's needs, as well as a coherent overall effort, are important tools to obtaining funding in the first place.⁴

To try to advance the DEP's Plan development to the next stage, the Advisory Committee recommends the following:

- First, as an [attachment](#) to this letter, the Committee has provided a list of those new proposals in the DEP document that we believe to be the highest priority for action together with timetables for their implementation. These timetables are based on the critical need to address the bay's water quality and ecological problems. Jamaica Bay's resources are in danger of being lost forever; these projects should move ahead as soon as possible to help save the bay.
- Second, the Committee recommends that, in the next six months, the DEP develop detailed interim and final goals that the success of individual actions, and the effort in general, can be measured

² For these purposes, a "new" initiative is one that appeared (in the Committee's best judgment, based on the information in DEP's Plan) to have been primarily developed as part of this effort, rather than being a pre-existing program or commitment, and apply to the bay specifically. For purposes of prioritizing, the Committee believed it important to determine new "asks" in this manner. But this categorization is not intended to understate the importance to Jamaica Bay of many of the pre-existing or broader-based efforts described in the document. Many, including but not limited to CSO abatement projects (several of these have been underway for years), are critical to improving the bay's water quality and ecological integrity.

³ Many of the pilot projects concern BMPs. The Committee continues to strongly recommend that, as an immediate step, city agencies should immediately incorporate available BMP technology, which is extensive, into the design of city and city-financed projects occurring in the Jamaica Bay watershed/sewershed, with the goal of maximizing the use of on-site retention and infiltration techniques to reduce off-site discharge of stormwater. The lead agency on a project should be required to consult with DEP's Bureau of Environmental Planning and Assessment, and to describe its compliance with this directive in any CEQR/SEQR (City Environmental Quality Review/State Environmental Quality Review) documentation.

⁴ In addition, estimated new costs are not provided for all the implementation strategies. When the costs are provided, it is often unclear whether or not funding has already been secured. It is more difficult to make a case for these much needed steps without clear funding figures.

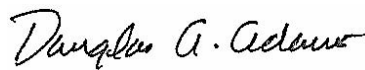
against. We also strongly recommend that these goals be vetted publicly, and revised according to comments received.

- Third, concerning the problem of nitrogen pollution into the bay specifically, the Committee believes that DEP's proposal to use supplemental carbon addition is unlikely to be enough by itself to restore the health of the bay. Accordingly, given the magnitude of the nitrogen problem and the time it will take to develop a next phase of improvements to further reduce nitrogen loadings, the Committee recommends certain additional actions. DEP should immediately conduct modeling to determine the difference between total nitrogen (TN) loadings under the Advisory Committee's recommendation (~18-20,000 lbs/day in 2015)⁵ and projected 2015 TN loadings under DEP proposal, as well as performance per the dissolved oxygen water quality standard and other metrics (such as chlorophyll a).⁶ Assuming that this proposal leaves a shortfall in performance for the 2015 milestone, which we believe it will, a plan for plant improvements or other nitrogen reduction measures to address the shortfall should be developed within 12 months,⁷ for expedient implementation, overlapping if necessary with the currently-proposed round of upgrades.

We do not have time to waste. A great deal of effort has been put into this document, but we all need to commit to taking DEP's Plan from a strong draft to a robust schedule of actions that will save Jamaica Bay, along with the ecosystem services it provides – the wetlands as a nursery for the fish we catch, the marshes as home to the birds we watch, and the shoreline and flooding protection the marshes provide for the homes and businesses surrounding the bay. We look forward to DEP's response to our comments, and more importantly, to working with DEP, the other agencies, and the public to protect this unique resource. Funding and implementation are, of course, ultimately what will make the work and ambition reflected on the page meaningful. As we are certain you agree, it is particularly urgent now that the state and federal levels of government become fully engaged in this mission as New York City will need their help in putting together and implementing this effort. The Plan must be seen as the beginning, not the end, of a forceful effort to revive the bay.



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



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Committee Co-Chair

⁵ We note that this level of loadings is also approximately consistent with what at least the Plan estimates to be the bay's maximum TN assimilative capacity, although the assumptions of this estimate are not known. The Committee has also heard lower estimates for the bay's assimilative capacity.

⁶ In the document, DEP does not provide a TN loadings level for its proposal. It is the Committee's understanding that DEP predicts that loadings would be in the range of 25-27,000 lbs/day, although the assumptions for these estimates are not known. When a loadings level is ultimately determined, the Committee recommends that it be applied as an interim limit for purposes of the DEP's current proposal, effective no later than 2012.

⁷ DEP should also provide to the public the assumptions used in the modeling of its proposal. In particular, DEP should explain any changes in methodology that explain the more optimistic modeling results presented in its Plan, as compared to those presented in the DEP's October, 2006 "Comprehensive Jamaica Bay Report," which had asserted that more extensive plant upgrades would be necessary to achieve the nitrogen reduction performance projected in the Plan.