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September 20, 2007

Honorable Rose Gill Hearn
NYC Department of Investigation Commissioner
80 Maiden Lane
New York New York 10038

Dear Commissioner Hearn:

This is in response to our meeting on August 14, 2007 concerning the Croton Water Treatment Plant and the New York City Department of Environmental Protection (DEP).

The process of choosing Van Cortlandt Park for the site of the Croton Water Treatment Plant (CWTP) was seriously flawed. Instead of sound analysis and reasoning, it appears that there was intent by the New York City Department of Environmental Protection (DEP) to unduly influence the process of site selection.

The DEP made (I) inaccurate, if not false claims about costs, (II) bad engineering decisions that have permanently harmed the environment and may have jeopardized the entire water supply system, and (III) questionable statements and actions, including inaccurate promises about jobs for Bronxites.

The impact of constructing an underground industrial plant in a public park is irreparable. The decision process that sited the CWTP in Van Cortlandt Park raises serious concerns over the possibility of criminal actions. Moreover, the fact that former DEP Commissioner Christopher O. Ward announced his resignation one day after the project was approved by the City Council and then became a chief advocate for the construction industry within a few days after it was legally permissible surely raises conflict of interest concerns.

It may well be that your team is already reviewing this information. Since it has been almost three years of construction with skyrocketing costs, the public has a right to a progress report on your findings, if any.

Attached please find documents and/or footnoted links which describe the series of decisions outlined herein. This is just a sample of what could be gathered by the public; there is more information available.

I. FALSE CLAIMS ABOUT COSTS:

Throughout the site selection process, DEP Commissioner Ward insisted in official hearings and media interviews that building the plant in Van Cortlandt Park would be significantly cheaper than the alternative in Westchester. However, contract bids have been astronomical and what the DEP had estimated at \$1.3 billion could now cost taxpayers more than \$3 billion. Certainly, inflation and higher construction costs do not explain the difference.

Perhaps as disturbing, is that the DEP has continued to mislead the public about the cost of the project. In April 2007, NYC Independent Budget Office accounting showed that project costs would be \$2.6 billion (and that did not include the extra \$200 million for the new bidder),¹ but the DEP was claiming a \$2.1 billion cost.² In fact, at a July 20, 2007 meeting in my Assembly District Office, current DEP Commissioner Emily Lloyd continued to underestimate the project costs by hundreds of millions of dollars.³

This disturbing pattern of distortion of the facts concerning the true cost of the project continued in a New York Times interview on August 11, 2007,⁴ when First Deputy DEP Commissioner Steve Lawitts told the reporter that “the plant's 2003 projected cost of \$992 million had been determined without calculating for inflation, which would have put the cost at

¹ WM-11: Capital Commitments for Construction of Croton Filtration Plant and Ancillary Work, Source: IBO; Executive 2008 Capital Commitment Plan (April 2007). (Attachment A)

² See copies of the DEP handout from the May 15, 2007 meeting of the Facilities Monitoring Committee at: <http://www.bceq.net/files/Handouts%20FMC%20051707.pdf> (Attachment B)

³ Copy of handout Commissioner Lloyd presented at the July 20, 2007 meeting. (Attachment C)

⁴ New York Times, August 11, 2007 U.S. Fines the City \$30,000 a Day Over Delay in Water Filtration Project, By TIMOTHY WILLIAMS (Attachment D)

\$1.7 billion in 2007 dollars.” But in fact, inflation was included in the original budgeting.⁵ Why does the DEP continue to mislead the public?

There is also evidence that the DEP artificially inflated the original FEIS cost of building the plant at the Westchester alternative. As reported by the Riverdale Press,⁶ DEP calculations included \$31 million for mitigation funding they claimed they had negotiated. However, this was a complete fabrication, as reported in the editorial. “Not so” said the Supervisors of Mount Pleasant and Greenburgh.

II. BAD ENGINEERING DECISIONS

Throughout the Final Supplemental Environmental Impact Statement (FSEIS) process the DEP ought to have presented complete and consistent information about the project and its impacts, including a list of permits required. They did not. Instead, especially when it came to the issue of groundwater infiltration, the FSEIS was hard to follow. This was because either the DEP didn't fully recognize the seriousness of the problem, or was an attempt to de-emphasize it.

For example, a statement was made of the impact of groundwater infiltration at the excavation and tunneling for each of the sites under Water Resources [sections 5-15 (Eastview),⁷ 6-15 (Mosholu)⁸ and 7-15 (Harlem River).⁹]. While there is no mention in these sections of a such a significant groundwater impact at Mosholu, it is described in the Hazardous Materials Section 6-13 (Mosholu).¹⁰ Here they claim the groundwater quantity will be so large a problem that the building might (among other options) have to be connected by rock anchors to the

⁵ See. Attached table, SUMMARY OF COST ESTIMATES, page 81, Table 7 footnote 4, in the FSEIS Executive Summary at <http://www.nyc.gov/html/dep/pdf/croton/execsumm.pdf> states: “Costs are based on 2.75% inflation, 6.4% interest, and 30-year life cycle. All costs are from Conceptual Designs. Estimates of amenities and mitigation costs are included. Baseline NCA rehabilitation is not included.” (Attachment E)

⁶ “The \$31 Million Question, Opinions, Editorial Comment,” **The Riverdale Press**, July 22, 2004, p. A14, (Attachment F)

⁷ See FSEIS at <http://www.nyc.gov/html/dep/pdf/croton/5-15waterresources.pdf>

⁸ See FSEIS at <http://www.nyc.gov/html/dep/pdf/croton/6-15waterresources.pdf>

⁹ See FSEIS at <http://www.nyc.gov/html/dep/pdf/croton/7-15waterresources.pdf>

¹⁰ See pages 66-7 in the FSEIS at <http://www.nyc.gov/html/dep/pdf/croton/6-13hazmat.pdf>

bedrock to resist buoyant forces; that is, it may float! So then why wasn't this listed as an impact earlier in the EIS process, and then studied appropriately?

Nonetheless, as you can see from the comments below, the community was correctly concerned about groundwater issues and repeatedly asked the DEP about continuous groundwater infiltration into the construction site while it was being excavated, as the plant is being built, and after construction and the plant is operating.

In the "Response to DSEIS Comments" on page 48 under Water Resources, you will find Item # 823 from the Friends of Van Cortlandt Park (FVCP) and the Friends of Jerome Park Reservoir (FJPR).¹¹

823 Comment: *The 1999 FEIS states that during construction of the WTP at Mosholu, the water collected at the excavated areas would be pumped to the combined sewer on Jerome Avenue. There is no mention of this in the SDEIS, therefore the assumption is that this statement holds true. A SPDES permit is required for this type of discharge. Where is the documentation from the NYS DEC that this will be permitted?*

Response: *The 1999 FEIS and the 2003 Draft SEIS both describe an infiltration gallery and trench that would infiltrate some of the stormwater back to groundwater in order to avoid impacts to the hydrology that controls the water level in a nearby wetland. The list of permits does indicate the need for a SPDES permit for discharges during construction. This list has been amended to include a federal infiltration permit and state SPDES review. A Draft Stormwater Pollution Prevention Plan (SWPPP) prepared in accordance with SPDES will be attached to the Final SEIS as an appendix.*

It is clear from the above statement and their statement in Hazardous Materials section of the FSEIS that the DEP was aware of the significance of the problem. Although there is no State Pollutant Discharge Elimination System (SPDES) permit on the list of permits, in the body of the EIS the DEP insisted they would get the permit. However, by not including it in the list of required permits, it left decision-makers in the dark about the severity of the issue.

In the following comment, the DEP simply states that groundwater is a common issue in construction, and never really answered the question. (Review the documents on the DEP home page which lists the full 2004 FSEIS.¹²) Moreover, the DEP did not gauge the entire

¹¹ This is from the list at the back of the FSEIS entitled: Author-Comment Cross Reference, where on page 5 comment number 821-901 is Speaker Number 172 or the FVCP and FJPR.

¹² http://www.nyc.gov/html/dep/html/environmental_reviews/crotoneis.shtml

groundwater problem from the initial siting debate. They ignored the warnings of Architect Jim Morgan,¹³ and evaded the issue when it came up in media interviews,¹⁴ when simple photographs of the area reveal that it is marshy wetland (See cover photo). Under Engineering Considerations on page 39 Item #196 numbers 288-90, and 903 is Jim Morgan (Author-Comment page 2 and 5), 534 is Bernie Goldray, 609 is Sonia Geisner, and one unknown (927).

288 et al Comments: *Construction at the Mosholu Site is not technically feasible due to ground water infiltration in to the excavation. Building at Eastview (at ground level) would not have this problem. Any water proofing would require constant maintenance and ultimately might fail. This is not the case at the Eastview Site. In addition, the ground water recharge rate may have been seriously under estimated. The action flow rate may be up to twenty times more than that presented. See: 6.15.3.2.1 and 3.15.3.2.2 and 6.20*

Response: *Groundwater infiltration in an excavation is a common issue on construction sites and one that is easily managed. Generally, the water is pumped out. A slurry wall is often installed to permanently keep water out. See 6.15.3.1.2*

Clearly, the DEP ignored what was to ultimately be a devastating problem! Almost three years later, in a report obtained by a FOIL request,¹⁵ the DEP acknowledged that they were dumping more than 1.196 million gallons of groundwater each day into the city's combined sewer system, exceeding the existing permit limits. Again, the DEP proceeded to mislead the public by telling

¹³ Copy of letter Jim Morgan sent to the DEP. In fact, Jim Morgan's letter is disturbing to read and should have raised flags concerning the cost of the Mosholu site. (Attachment G)

¹⁴ Transcript from Bronx Talk 3-31-03: Chris Ward is CW. Moderator Gary Axelbank is GA:
GA: What's the difference between constructing a plant underground, which would mean all the excavation and the blasting, and constructing a complex building above ground? Aren't there concerns about water levels and other things once you go that deep, as well as the entire process of excavating all that much more dirt? Doesn't that complicate the process and make it much more expensive and detrimental to the community?

CW: It doesn't make it more expensive. The plant built in Mosholu would be about \$400 million cheaper than it would be in Westchester over the lifecycle of the project. Each one of the issues that you raise is a concern (either in) Westchester (or) Mosholu. Can those issues be addressed? Are they manageable? Do they need to be mitigated? What are the pros and cons of each one of these sites? That's the very reason we conducted the SEIS and an earlier EIS was created. No construction project comes without impact. Are those impacts acceptable, mitigatable? Can you build that project in a way which is manageable for the City of New York?

¹⁵ Freedom of Information Request to the NYS Department of Health excerpts from the Monthly Monitoring Report No. 32 from May 2007, page 8-9 (Attachment I)

the Riverdale Press that they did not have appropriate permits,¹⁶ but telling the Daily News that they did.¹⁷

Finally, the DEP promised the New York City Council that they would plug up the water infiltrating and monitor the groundwater levels to protect a nearby wetland,¹⁸ but there has been no discussion about it at the Facilities Monitoring Committee and there's been no indication that they are prepared to do this.

Delaware Tunnel Leak

The Delaware Tunnel, one of the most critical parts of the system, is in danger of breaking.¹⁹ While the Tunnel has been leaking for some time, fixing it is a complicated and difficult problem. Why, when faced with the opportunity to make a decision to lessen the risks, was another course of action chosen? The Eastview Kensico City Tunnel (KCT) alternative offered just such an opportunity to the DEP, but they chose otherwise. It was evident from an article in the New York Observer that the DEP and the Mayor knew of the benefits of the Kensico City Tunnel, but perhaps best explained by an irrational desire to build the plant in the Bronx which would not require the KCT, they chose otherwise.²⁰

"The Observer has learned that the Bloomberg administration has decided to build a new \$2.5 billion, 16-mile-long underground aqueduct from the upstate reservoir system to the city. The Mayor made the decision, which has not been publicly announced,

¹⁶ ***Foes say filter plant is soaking taxpayers: DEP chooses new filter contractor***, By Manny Grossman, Riverdale Press, August 20, 2007, "In responding to questions by The Press, Mike Saucier, a spokesman for the city agency, confirmed that the amount of groundwater workers have encountered is more than was expected and that DEP does not have the necessary permits to discharge that amount of groundwater." <http://riverdalepress.com/atf.php?sid=526>

¹⁷ ***Oh - that million gallons! City defends runoff dumped into sewers daily at controversial water plant project***, BY DORIAN BLOCK, DAILY NEWS STAFF WRITER, New York Daily News, August 29, 2007: "And yesterday, the city said it has received a permit to pump out close to double that amount." http://www.nydailynews.com/boroughs/bronx/2007/08/29/2007-08-29_oh_that_million_gallons.html

¹⁸ NYC Council report, September 28, 2004, Committee on State and Federal Legislation, last page (next to the last paragraph at: <http://webdocs.nycouncil.info/attachments/62940.htm> (Attachment H)

¹⁹ NYC Council report, 2000, Committee on the Environment, (Attachment J) <http://webdocs.nycouncil.info/attachments/51839.htm?CFID=1127446&CFTOKEN=42743907>

²⁰ Why an Aqueduct? Despite Fiscal Crisis, Bloomberg Decides to Spend \$2.5 Billion On 16-Mile Plan to Bring Water to City By Greg Sargent, NY Observer, March 10, 2003: (Attachment K)

several weeks ago, and Christopher Ward, the commissioner of the city's Department of Environmental Protection, is expected to reveal key details at a City Council hearing on March 6. The new aqueduct is to be named the Kensico Aqueduct." "We've committed the money for this project," Mr. Ward told The Observer. "It's going to happen."

Dependability Study, 2005²¹

The Department's proposed plan to close the tunnel that supplies the thirsty city with 550 million gallons of water per day (MGD) in order to repair it is risky. The "most immediate dependability problem" is the Roundout-West Branch Tunnel Leak Repair.²² In the 2005 Dependability Study, there is a list entitled: "*Assure Dependability of Remaining System: Major Projects Committed to Implementation.*" At the top of the list is the CWTP, and at the bottom, is the Kensico City Tunnel (KCT).²³ It is clear that the Department's order of priorities should have included both – which was an available option when choosing a site for the CWTP (the Eastview Kensico City Tunnel). Instead, the Department was focused solely on getting a plant built in the Bronx without regard to other more urgent priorities like the leaks in the city's primary source for water and against better engineering judgments.

State Comptroller Audit, 2007

The New York State Comptroller Thomas DiNapoli's August 15, 2007 audit raises serious concerns for the DEP's emergency response plan for the leak in the Delaware Aqueduct.²⁴ In fact, the current plan does not address an emergency response, but rather is based on a gamble that the leak will not do more harm.²⁵ Despite the urgency of the situation, the Department will wait until 2011 to close down the Delaware Aqueduct and supplement the City water supply with two Croton System upstate pumping stations, Hudson River water and the in-

²¹ NYC DEP, NYC Water Supply Dependability Study, the Future of Engineering and Water Quality into the Next Century, ppkurtz.pdf, page 3. "The Dependability Objectives as defined as the ability of the system to meet water supply demands when any component is out of service for an extended period of time."

²² Dependability Study, page 13

²³ NYCDEP, Warren Kurtz, PE, Dependability Study, October 20, 2005, p. 21
<http://home2.nyc.gov/html/dep/pdf/conference/ppkurtz.pdf>

²⁴ NY Office of the State Comptroller, August 15, 2007 www.osc.state.ny.us/audits/allaudits/093007/05n7.pdf

²⁵ This is the direct opposite of what is found in the Dependability Study.

city filter plant. Because the Delaware Aqueduct supplies 55% of the city's water supply and the Croton Aqueduct 10%, it is evident that there is not sufficient water to make up the difference that temporarily closing down the Delaware would require. Moreover, a complete collapse would be so devastating to the entire region, 2011 may be too long to wait. Because the DEP has done nothing to protect the Croton watershed (why protect, when your agenda is to build a filter plant?) some of the Croton Water that they are relying on to make up the difference for a Delaware close down, will be unfiltered. It's obvious therefore, that they are building the plant in the wrong place! Had it been built further up north in Westchester, there would have been more redundancy in the system in case of just these sorts of contingencies. Ultimately, the DEP Commissioner insisted that building the plant in the Bronx would provide more flexibility for the system, but that is clearly not true.

With great disdain, the DEP Commissioner dismissed the idea that the Eastview site with the Kensico City Tunnel was a good engineering option. Rather than debate, they criticized and scoffed at reasonable people, local newspapers,²⁶ local media,²⁷ and elected officials²⁸ who suggested it. Copies are attached.

III. QUESTIONABLE STATEMENTS AND ACTIONS

It is startling to note that former DEP Commissioner Christopher Ward, who oversaw the site selection process for the city, abruptly resigned his post the day after the City Council approved the site location and precisely one year later, took a prominent position as head of the General Contractor's Association, which was the chief advocate for the Bronx location. This certainly gives the appearance of a conflict of interest and raises questions as to whether Mr. Ward was serving two masters when he was commissioner.

Commissioner Ward insisted in his public statements that Bronxites would be able to work on the project and in fact, had it marked as one of the benefits of building the plant in the

²⁶ DEP chief disputes case for building plant at Eastview, Letters to the editor, The op-ed page, **The Riverdale Press**, February 26, 2004. (Attachment L)

²⁷ Chris Ward Interview on **BronxTalk PrimeTime**, originally broadcast on Bronxnet's Channel 67, March 31, 2003 (Attachment M)

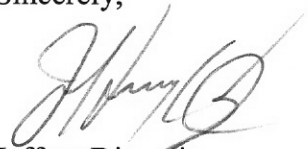
²⁸ **Ward letter to Koppell**, February 18, 2004, (Attachment N)

Bronx.²⁹ Yet, in the *Response to Comments* it is clear that the DEP knew that they had no jurisdiction over who was hired to work at the site,³⁰ when they stated: "... no guarantee that the jobs would go to City workers was assumed."

CONCLUSION

These and other inconsistencies including the fixing of a News 12 poll, a public hearing which union members were permitted to disrupt, deal-making in a political office, the leaking of chlorine gas at the Jerome Park Reservoir, the collapse of water conduits at the Jerome Park Reservoir, and many more concerns warrant a full investigation. When it comes to what is being called the largest construction project in the City's history, it is vital that all questions are answered and every potential irregularity be fully investigated. The people of the City of New York deserve no less.

Sincerely,



Jeffrey Dinowitz
Member of Assembly, 81 AD

Enclosed: Attachments

c: Michael Bloomberg, Mayor of the City of New York
Christine Quinn, New York City Council Speaker
Thomas DiNapoli, New York State Comptroller
Andrew Cuomo, New York State Attorney General

²⁹ Transcript from BronxTalk 3-31-03: Chris Ward is CW

CW: Because then you're going to be spending and transferring city dollars, hard-earned money from New York residents to the County of Westchester that does a lot better than the city. Moreover, when it gets built there, the kind of job opportunities, I don't know if you saw, but there was a very interesting article in the Post awhile ago about Bronx employment and how the unemployment rate is higher in the Bronx than anywhere else in the city. It's through the roof. This is a chance to bring 1.5 billion dollars of economic development opportunities here in the Bronx. And we would make a similar commitment in making sure the job opportunities were linked there. So when you ask what this deal is. There isn't a deal. There are opportunities and people need to discuss what are those opportunities and what are those challenges.

³⁰ Response to Comments, page 116, Comment # 861, 890, 929.
<http://www.nyc.gov/html/dep/pdf/croton/dseiscomments.pdf>