



Croton Watershed Clean Water Coalition



Issue 42

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PEACH LAKE SEWER PROCESS – LEAD AGENCY DESIGNATION, SEQRA, ADVERSE IMPACTS, DESIGN, FUNDING, PETITION

By Suzannah Glidden

CWCWC expresses its great appreciation for the second generous unrestricted grant from President George Rowe, Jr. of The Ambrose Monell Foundation to continue our water protection work.

Peach Lake's densely populated residences will be sewered and a wastewater treatment plant (WWTP) constructed to replace failing septic systems which are polluting the lake. North Salem declared its Intent to be Lead Agency of North Salem piping, pumps, laterals; Southeast declared their Intent to be Lead Agency of Vail Grove's share of piping, pumps, laterals plus WWTP with each town having a Coordinated Review. An Environmental Assessment Form (EAF) Part 1, draft Parts 2-3 with small to moderate impacts rather than expected large impacts, and Final Map, Plan & Report (MPR) were also submitted for public and involved agency review. Comments were received by Westchester County, NYC Department of Environmental Protection and NYS Department of Conservation. Peach Lake residents began in December 2007 to sign petitions for formation of sewer district based on yearly cost of \$800 for which additional funding is needed besides \$10,000,000 from Westchester County East of Hudson funds. Approximately \$22 million is the current proposed total price.



Suzannah Glidden

CWSRF financing. In NYCDEP's response comments, they also cite the Municipal Services Agreement with Southeast that indicates North Salem will assume Lead Agency status with regard to construction of proposed WWTP and sewage collection system. After negotiations with Southeast, Town Board of the Town of North Salem has determined its intent to act as Lead Agency for both the Town of North Salem and Town of Southeast for the purpose of reviewing the Peach Lake Sewer District application for compliance with the State Environmental Quality Review Act.

Growth factor, sizing of WWTP

Since the variance NYCDEP will grant for construction of the wastewater treatment plant mandates that no new homes will be allowed to connect to the system, Westchester does not think it appropriate to consider the inclusion in Environmental Assessment Form of a 20-year growth factor in sizing the WWTP and determining the SPDES permit. They also think it appropriate in sizing the plant to use 2.8 as the average household size in calculations (the 2000 Census figure) rather than the proposed 3.5 persons per household. The present proposed size more than doubles the current flow and has raised concern.

Lead Agency designation

In Westchester County's response comments to the towns' Intent to be Lead Agency, they state that the project components in both towns are interdependent and would best be addressed in a single coordinated review with one town serving as lead agency or both towns serving as co-lead agencies. They cite the Municipal Services Agreement with Southeast that indicates a single coordinated review with North Salem acting as Lead Agency will be conducted for qualification for

DEP also states that since EAF (Appendix H) indicates maximum potential development has been reached, WWTP should be sized for existing population without the approximately 30% population growth in 20 years. Sizing of flow must be limited to servicing the area identified as the source of contamination. DEP also wants clarification of commercial

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PEACH LAKE *(cont'd from page 1)*

WWTP sized for existing population without 30% population growth in 20 years.

properties with some needing to be sewerred and others do not. Any future documents must show that future expansion, modification or addition to existing residential and commercial structures

which may result in an increase in wastewater flow will not be permitted. The 2004 Stearns & Wheler wastewater study indicated current daily average water flow at 80,000 gpd and the design of the new WWTP daily average flow would be 100,000 gpd. However, the present MPR indicates 210,000 gpd.

Groundwater impact

DEP cites the proposed 210,000 gpd annual average flow is more than twice current amount of water being pumped from existing groundwater wells. "It may be prudent to assess if the additional pumping would impact groundwater levels and if the wells have the capacity to produce significantly more water. In addition, there will be significant removal of a recharge source from the local groundwater regime once residences are connected to the WWTP and the existing septic systems are taken off-line. The SEQRA review should evaluate the significance of potential impacts of the reduced groundwater recharge in terms of quantity." Two other impacts affecting area water sufficiency are nearby Durkin Water Company extracting unknown quantities of water from the aquifer and moving through approval process the big development of 65 condominium units, Salem Hunt. Both should be factored into a groundwater review.

Variances required

As involved agency stemming from review and approval authority pursuant to Rules and Regulations of Watershed Agreement), DEP notes that Croton Watershed East Branch Reservoir into which Peach Lake treated effluent will discharge is phosphorus impaired, requires approved stormwater pollution prevention plan (SWPPP), approval of a variance for WWTP in a phosphorus restricted basin, approval of a variance to discharge into a NYSDEC-regulated wetland BR-24, a variance to construct new

impervious surfaces within 100 feet of a watercourse or wetland, and DEP granting a variance for treatment capacity of proposed WWTP.

Phosphorus

DEP notes that as East Branch already exceeds total maximum daily load for phosphorus, the phosphorus effluent limit should be 0.1 mg/l for 210,000 gpd rather than the proposed 0.5 mg/l to successfully avoid an increase phosphorus load downstream.

Wetlands and stream impacts, stormwater

Given the fine-grained soils listed as Paxton & Woodbridge, DEP states that stormwater management must follow strict limits of disturbance at the WWTP site to minimize sediment migration and avoid impairment of NYS freshwater wetland BR-24 and 100 foot adjacent area. One of the commercial facilities to connect to the sewer was formerly a gas station. Excavation activities may contain soils contaminated with inadequately treated septic effluent, fuel oil or other contaminants. Potential for excavation of contaminated soils within context of SEQRA environmental review should be fully evaluated. SEQRA materials should also address the possibility that dewatering of excavations will involve contaminated water.

Proposed crossings of a stream and other watercourses by sewer line and associated impacts must be fully identified in SEQRA documentation. The proposed outlet for WWTP is a watercourse within a NYSDEC regulated wetland and requires seeking a variance. Construction and continual discharge of treated effluent into the wetlands must be evaluated during the SEQRA environmental review. Clarification is needed how close to wetlands the WWTP will be located because of the 100-ft limiting distances.

NYSDEC also requests clarification on submitted plans of whether sanitary discharge from WWTP will be directed towards protected NYS Freshwater Wetland BR-24 (Class I) or Peach Lake Brook, Class C. A district boundary may lie within another Freshwater Wetland L-4 (Class II). Permits for disturbances within the 2 wetlands and their respective 100-ft adjacent areas are required and documentation showing that such disturbances have no possible alternatives

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PEACH LAKE *(cont'd from page 2)*

available to avoid these areas. Furthermore, a proper permittee must be in place before they issue a SPDES permit.

DEP is concerned that construction on slopes 15% or greater in shallow groundwater soils has potential for severe erosion and sedimentation hazards. Adverse impacts must be clearly defined and methods to avoid or mitigate these impacts provided.

Construction on slopes 15% or greater in shallow groundwater soils has potential for severe erosion and sedimentation hazards.

Additional adverse environmental impacts must be identified and addressed of groundwater seeps in shallow trenches. Site disturbance will last through at least one wet season and freeze-thaw cycle during which open works are more susceptible to

degradation. Methods to avoid or mitigate the impacts also must be addressed during SEQRA review.

DEC states that since Peach Lake project appears to disturb greater than 1 acre of land, a copy of SWPPP must be provided to them. They encourage coordination of design of WWTP with NYCDEP who are likely to also participate in review of SWPPP and who were copied on DEC's proposal and concerns.

Sludge

DEP requests the volume of sludge to be trucked off-site from WWTP should be indicated, how often liquid sludge will be transported from WWTP, and the receiving facility and its capacity. It is not clear that the sludge material will be dewatered onsite as at large WWTPs. If not, the liquid will be transported over local roads. This issue needs clarification.

Dredging

CWCWC notes that the MPR includes dredging and removal of sediment from north end of lake and removal of fallen trees, vegetation and sediment from Peach Brook. Further documentation should contain amount of dredged material from lake, and where and how it will be dewatered in such a way as to not recontaminate the lake.



Blasting

Extensive blasting of 6000 cubic yards of rock outcroppings common throughout the area will pose another large impact but is presently acknowledged in EAF only as a small to moderate impact. The adverse effects of blasting on residential homes and on old community water systems must also be addressed during the SEQRA review along with avoidance or mitigation methods. At a minimum, the blasting procedure should follow the town of North Salem's blasting code.

Road repaving, septic tank abandonment, contingency fund

The MPR contains no line item for repaving roads which is important to include rather than patching as the roads in some communities were recently repaved at homeowner expense.

Roads repaving and septic tank abandonment costs included in project cost.

DEP commented that documentation should be shown that addresses how the several hundred septic tanks will be abandoned and how any contamination resulting from improperly treated sewage will be handled. Residents comment that septic abandonment cost should be included in project cost rather than borne as an additional expense by homeowners.

Instead of the expected 25% contingency for cost overruns, only 15% has been factored into MPR. Given the historical overruns of public

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PEACH LAKE *(cont'd from page 3)*

works projects, it is hoped that this project will be realistically costed out in the design process, sufficient additional funding secured to move it forward, and construction carefully supervised to avoid overruns that will threaten the 15% contingency or cancel the project midway.

Adverse impacts and mitigation

DEP has listed potential impacts and reminds North Salem that SEQRA requires the lead agency to identify and take a hard look at potential adverse impacts. In making the SEQRA determination, a reasoned elaboration also must be made which includes assessment of the likelihood and significance of each potential impact, what possible measure could eliminate or mitigate them, and a description of information relied upon for conclusions.

Given the several critical, large potential environmental impacts contained in this project, it may be insufficient to have an expanded EAF as proposed rather than a full SEQRA review with a Draft Environmental Impact Statement to give sufficient review process to the project's large impacts.

Project engineer

An agreement will be signed with Stearns & Wheler, LLC for services as North Salem's engineering consultants for the Peach Lake Sewer District.

Funding

Westchester County is drafting legislation to go to the Board of Legislators end of January to vote on the release of \$10 million from East of

Hudson funds which have already been allocated. This money will fund the expense of soft costs for the engineering design and related studies of the project with remainder going towards construction project. When design is complete and all costs of project in a real bid package are known, additional funding will be sought.

Petition to form sewer district

Circulation of Petitions for signatures to form a sewer district based on a letter from Supervisor Globerman at a cost of \$800 per household a year commenced in December 2007. A previous March deadline set by state Environmental Facilities Corp for low-interest construction loan financing was reported in a recent Journal News article to be pushed back to June. This amount of extra time will probably allow for revamping SEQRA documents, engineering the design and ascertaining exact costs, and securing additional funding. In Westchester County response comments, they state they understand North Salem will proceed with a petition to create the local sewer district in the event that no additional funding sources for implementation become available. It is hoped by residents that additional funds will be secured to keep cost to \$800 as State Comptroller guidelines require.

If a revised MPR and the design of the project increase its costs and/or if no additional funding is secured to keep cost to homeowner at \$800 a year, a new petition will be formulated based on the increased figure and circulated for signatures. Stay tuned!

If you'd prefer receiving an electronic version of the bi-monthly newsletter, please send your email address to crotonwshed@aol.com.

LEGAL UPDATE

By James Bacon, Esq.

CWCWC continues to bring court challenges against projects that will damage the Croton Watershed. An update of the most pressing cases follows:

Meadows at Deans Corners – Town of Southeast

Originally, the developer completed the SEQRA

process in 1990 with a DEIS and FEIS and then completed a SEIS in 1991 for a 139-unit subdivision on 310 acres disturbing 109 acres of land on Deans Corners Road in the Town of Southeast. Years went by, regulations changed and the developer added 11 detention ponds and reduced the subdivision to 104 units and

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Legal Update *(cont'd from page 4)*

receiving preliminary approval from the Town in 1998.

After finally receiving final approval in 2002, CWCWC, Riverkeeper and the Concerned Residents of Southeast (CRSE), sued claiming the Planning Board had failed to take a hard look at the project's impacts under SEQRA due to all of the regulatory changes. The Supreme Court agreed and overturned the approval in a February 2003 ruling. The developer rebounded quickly and the Planning Board re-approved the project in April 2003 claiming it had taken a "hard look" under SEQRA. CWCWC, et al, sued again this time losing at the Supreme Court level.

CWCWC, et al, appealed and won in August 2006 with the Appellate Court stating a SEIS was necessary due to the extreme changes in the regulatory context of the project.

Then, in 2007, having obtained permission from the State's highest Court, the Court of Appeals, to hear the matter, the developer prevailed with the Court reversing the CWCWC, et al Appellate victory.

The Court resolved issues of fact against CWCWC, et al, (contrary to the New York Constitution) and held that the project did not need a supplemental environmental impact statement. By so doing, the Court overturned the Appellate Court's determination that a SEIS was necessary. The Court also rejected the arguments of the New York State Attorney General's Office which had submitted a brief and argued on behalf of CWCWC.

However, under its reading of the fact, the Court did affirm certain fundamental SEQRA arguments made by CWCWC, i.e., that:

"While a lead agency is encouraged to consider the opinions of experts and other agencies, it must exercise its own judgment in determining whether a particular circumstance adversely impacts the environment. Though the SEQRA process and individual agency permitting processes are intertwined, they are two distinct avenues of environmental review. Provided that a lead agency sufficiently considers the environmental concerns addressed by [involved agencies'] particular permits, the lead agency

need not await another agency's permitting decision before exercising its independent judgment on that issue."

In sum, a lead agency cannot simply defer review of substantive environmental impacts to other agencies.

In addition to finding in favor of the developer, the Court also awarded costs which the developer claims to be over \$19,000. CWCWC,

along with the other petitioners, has made a motion to reargue the Court's award of such high costs for a number of reasons. Indeed, CWCWC prevailed at the Appellate level and was not awarded costs. Also a \$19,000 award of costs would send a clear signal that not-for-profit groups seeking to protect the environment may pay dearly for their efforts and would discourage citizen protection efforts state-wide.

Hillcrest Commons – Towns of Carmel/Kent

Hillcrest Commons is a project comprised of several large senior housing complexes to be located on the ridge overlooking the Shoprite Plaza in Carmel just south of the Town of Kent border. The slopes are extreme and much ledgerrock would need to be blasted to accommodate the project and its stormwater management design.

The project received approval in September 2005 and CWCWC sued to overturn the SEQRA findings statement.

CWCWC sued on three grounds; endangered species, stormwater analysis and archaeological impacts. The Court rejected CWCWC's endangered species and stormwater arguments but annulled the SEQRA findings because the Planning Board improperly concluded its SEQRA review before archaeological studies were complete. CWCWC learned in December that the developer and Carmel will not appeal Supreme Court Judge Francis Nicolai's ruling in favor of CWCWC.

CWCWC has not reviewed any revised plans though the Applicant has approached the Town of Kent to gain approval for its access road.

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A \$19,000 award of costs would send a clear signal that not-for-profit groups seeking to protect the environment may pay dearly for their efforts.





Legal Update *(cont'd from page 5)*

Kent Manor – Town of Kent

Kent Manor was approved by the Town of Kent in 1987 as a 313 unit condominium project with a 81,000 gpd (gallons per day) Waste Water Treatment Plant (WWTP) discharging into the headwaters of Palmer Lake within the Croton Falls basin. The project is located on 113 acres on the north side of Nichols Street and includes the construction of a new section of Nichols Street to provide access to Route 52.

A citizen group, PLAN-Kent, sued under SEQRA and lost. The developer sued individuals associated with PLAN-Kent (providing a basis for eventual legislation banning SLAPP suits or Strategic Litigation Against Public Participation). After appealing the loss, PLAN-Kent, the Town and developer signed a settlement agreement where the Town promised not to further oppose the project and the project was scaled down to below 300 units. The developer also agreed to drop its lawsuit which had attacked certain PLAN-Kent individuals. Building permits were issued, portions of the sewage treatment plant, stormwater ponds and foundations were built and a portion of the site's forest was cleared.

The developer suffered financial problems in the 1990s and the project stalled. Then NYCDEP agreed to include the project in NYCDEP's Phosphorus Offset Pilot Program (POPP). Under that 1997 MOA sponsored program, a sewage treatment plant surface water discharge is allowed in Putnam County provided the developer demonstrates that it can achieve a 3:1 phosphorus offset within the project's reservoir basin. The POPP program was scheduled to expire on May 1, 2007 unless NYCDEP extended that time-frame.

In 2005-2006, NYCDEP, decided the developer should complete a SEIS due to all of the regulatory changes that occurred since 1989 (think Meadows). These changes included DEC's remapping of state wetlands which caused the project to be downsized to 273 units and discharging 70,000 gpd. NYCDEP became lead agency as the Town had given up its right

to object to the project. (In fact, the Court ordered the Town to sign the municipal consent required for the POPP). NYCDEP issued its SDEIS which CWCWC and others roundly criticized as being incomplete. NYCDEP then issued a FSEIS which included substantive data and studies that should have been in the SDEIS. Indeed, the scope called for such information to be included, but it was not.

NYCDEP did not extend the POPP and instead played "beat the clock" by issuing findings on April 29, 2007 just days before the before May 1, 2007 POPP expiration.

CWCWC is challenging NYCDEP's completion of the SEQRA process prior to the developer's completion of critical studies concerning phosphorus loadings. In the FEIS, the developer included a study of a phosphorus removal mechanism placed at the Lake Plaza in Mahopac within the Croton Falls watershed in the Town of Carmel.

However, that study showed that more phosphorus was leaving the Lake Plaza site than predicted. Also pre-development phosphorus measurements at the Kent Manor site were skewed as NYCDEP was testing a stream which was overloaded with phosphorus to begin with. CWCWC argued that no "hard look" could be taken in the absence of this information and that the public was deprived of a meaningful SEQRA review by being sandbagged with new information in the FSEIS, a violation of SEQRA.

CWCWC also sued over wetlands and wildlife issues. The matter is now fully submitted to the Putnam County Supreme Court (Judge O'Rourke). Riverkeeper along with David Gordon, Esq. acting on behalf of the Hill and Dale community have also sued based largely upon unexamined impacts to Palmer Lake.

It is likely that a joint decision by Judge O'Rourke will be issued within the next two to three months.

The Croton Watershed Clean Water Coalition strives to protect and improve the waters of New York City's Croton Watershed, a critical component of the water supply for over half the population of New York State. We are an alliance of individuals and groups who believe that safe, clean and affordable drinking water is a basic human right.

Send in your membership and receive membership mailings and a subscription to CWCWC newsletter "Our Water, Our Future." Most importantly, your membership will help you get involved with the preservation of one of our most precious resources, our water.

Croton Watershed Clean Water Coalition Membership Application

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

Email: _____

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|-----------------------------------------------------|-----------|--------------------------------------------------|-----------|
| <input type="checkbox"/> Group/Coalition Membership | \$50/year | <input type="checkbox"/> Students/Seniors | \$10/year |
| <input type="checkbox"/> Family Membership | \$25/year | <input type="checkbox"/> Other | \$ _____ |
| <input type="checkbox"/> Individual Membership | \$20/year | <input type="checkbox"/> Additional Contribution | \$ _____ |
| <input type="checkbox"/> Renewal | | <input type="checkbox"/> New Membership | |

Make checks payable to Croton Watershed Clean Water Coalition, Inc. and mail along with your membership form to:

Treasurer, CWCWC, Inc., PO Box 484, Bedford NY 10506



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