

Citizens Campaign for the Environment
Environmental Advocates of New York
New York League of Conservation Voters
NY/NJ Baykeeper
New York Public Interest Research Group
Regional Plan Association
Reinvent Albany
Riverkeeper
Tri-State Transportation Campaign

June 25, 2014

VIA ELECTRONIC MAIL

Commissioner Joe Martens, Chair
New York State Environmental Facilities Corporation
625 Broadway
Albany, New York 12207-2997

**Re: Proposal for New York State Environmental Facilities Corporation
to Loan \$511 Million from the Clean Water State Revolving Fund
to the New York State Thruway Authority for its Tappan Zee Bridge
Construction Project**

Dear Chairman Martens:

Thank you for your letter of June 24, 2014, responding to our own letter of that date. In the continuing hope that you will reject or at least postpone consideration of the referenced plan to fund basic construction and demolition activities associated with the replacement of the Tappan Zee Bridge, making use of Clean Water Act funds designed to help pay for improvements in wastewater treatment infrastructure and restoration of the New York Harbor and Hudson River, we offer the following response.

While your letter argues otherwise, this proposal does not meet the letter or the spirit of the Clean Water Act. The project components simply do not qualify as “implementation of a management program” established under CWA § 320. They do not implement the Harbor Estuary Program Comprehensive Conservation and Management Plan. They are harmful activities that you, in your role as Commissioner of the NYS Department of Environmental Conservation, have directed the NYS Thruway Authority to reduce, mitigate and compensate for. Calling them activities that implement a Plan designed to restore the harbor and Hudson River is simply an unacceptable attempt to re-label harmful activities as beneficial ones.

You claim that this *admittedly unprecedented* proposal to use Clean Water Act funding for basic bridge construction activities is merely “a novel financing” plan that will “*stimulate new thinking*” and “*tap the untapped potential*” of the Clean Water Act state revolving loan fund program. You also cite EPA’s past encouragement of projects such as a brownfields cleanup in Maine to support the notion that basic bridge construction and demolition activities are eligible for Clean Water Act funding. We note that EPA has provided no such support for your current plan, to fund over \$100

million for construction-related dredging and dredge disposal, \$30 million for “armoring” the 12-foot deep dredged trench with stone and gravel, and \$65 million for demolition and removal of the existing Tappan Zee Bridge, in the guise of “novel” thinking about the Clean Water Act.

We cannot understand, either, your insistence that this proposal to fund bridge construction activities will not interfere with future spending on water protection infrastructure and river/harbor habitat. Taking hundreds of millions of dollars out of the state revolving loan system for as much as thirty years absolutely will compromise the availability of funding for projects that truly comply with the letter and spirit of the Clean Water Act funding program.

The Patterns For Progress’ report we cited yesterday, “[Infrastructure Investment: A Widening Gap](#),” makes clear that wastewater treatment infrastructure is probably the biggest challenge facing our communities, in terms of capital investment shortfalls. Your own agency, the New York State Department of Environmental Conservation, has called current and projected shortfalls in wastewater treatment infrastructure a “[crisis](#)” and a “*gathering storm*.”

It’s your job as chair of EFC to assure that the wastewater infrastructure “crisis” your agency acknowledges to exist doesn’t worsen – that the “widening gap” between funding and need does not continue to widen, and to maximize the funds available for such investment, not to divert **more than a half a billion dollars** in such funds to bridge construction and demolition.

As to your argument that a regulation allowing “minor modifications” to the list of projects eligible for clean water act funding is sufficient to justify the addition to that list of a proposal to spend \$511 million for this unprecedented plan: it’s simply not tenable. This is anything but a minor modification and characterizing it as such does not do anything to change that fact.

And, your position that “no one can legitimately question the adequacy of the opportunity for public review and comment on these projects,” because they were the subject of an EIS during the approval process for the bridge itself: it simply does not demonstrate that there was adequate public notice of your new proposal to fund such activities with Clean Water Act monies. To that point, we cite today’s NY Times Editorial, “[The Tappan Zee Bridge Loan](#),” which, not incidentally, refers to your funding plan as a “threat” to the Clean Water Act funding program:

“The vote is unnecessarily rushed.

“Board members should first hear from the public, legislators and the Environmental Protection Agency about whether this makes sense.

“The public has a right to know more about why the new Tappan Zee bridge has suddenly appeared at top of the list.”

Members of the Board of Directors
New York State Environmental Facilities Corporation
June 25, 2014

As we wrote to you yesterday, any suggestion by the Cuomo administration or NYSTA that basic bridge construction expenses can accurately be characterized as fitting within the range of projects suitable for CWSRF funding is insupportable, unprecedented and bad public policy. Instead of seeking to fund transportation construction project activities with CWSRF money, EFC should be trying to figure out exactly how to help needy municipalities around the state to access funds that were intended by Congress and EPA to assist them with water quality infrastructure requirements.

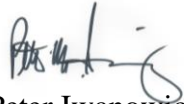
This matter is of the utmost seriousness. New York State is claiming that the “broad mandate and inherent flexibility” of Clean Water Act funding authorizes you to make a loan for basic bridge construction activities that do not meet either the letter or spirit of the Clean Water Act. *The loan you are on the verge of making does not “tap the untapped potential” of the Clean Water Act loan program. It would degrade that program, rob it of half a billion in funds needed to close a widening clean water infrastructure investment gap and stand as a precedent that would further empower the growing opposition in Washington DC to additional Clean Water Act funding.*

For these reasons and those stated in our letter yesterday, we call upon you and the rest of the EFC board to reject the current proposal to provide half a billion dollars in Clean Water Act funding to basic bridge construction activities association with replacement of the Tappan Zee Bridge.

Respectfully yours,

/s/ Adrienne Esposito

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Citizens Campaign for the Environment



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Reinvent Albany



Paul Gallay
Riverkeeper



Veronica Vanterpool
Tri-State Transportation Coalition

cc: (all via email)
A. Cuomo, NYS Governor
C. Schumer, U.S. Senate
K. Gillibrand, U.S. Senate
N. Lowey, U.S. House of Representatives
A. Stewart-Cousins, NYS Senate
D. Carlucci, NYS Senate

Members of the Board of Directors
New York State Environmental Facilities Corporation
June 25, 2014

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E. Jaffee, NYS Assembly
B. de Blasio, NYC Mayor
M. Mark-Viverito, NYC Council Speaker
R. McCarthy, EPA HQ
N. Stoner, EPA HQ
J. Enck, EPA R2
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