



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUL 11 2012

Draft Consent Order Comments
NYSDEC
Division of Water
Bureau of Water Resource Management
625 Broadway
Albany, New York 12233

Re: NYSDEC Draft Consent Order and Ashokan Reservoir Interim Protocol -
USEPA Region 2 Comments

Dear Sir or Madam:

The U.S. Environmental Protection Agency (EPA) has reviewed the draft consent order and Ashokan Reservoir interim protocol that were prepared by the New York State Department of Environmental Conservation (NYSDEC). This letter provides EPA's comments on the NYSDEC proposals.

EPA, NYSDEC, and the New York State Department of Health (NYSDOH) have been engaged in Catskill turbidity control issues for a number of years, and the Filtration Avoidance Determination has required New York City to evaluate various control alternatives that would reduce turbidity levels entering the Catskill Aqueduct and minimize the use of aluminum sulfate (alum), which settles in Kensico Reservoir. In November of 2010, the regulators approved New York City's turbidity control plan, which includes development of a linked water quality/water quantity model; Catskill Aqueduct improvements to facilitate low flow operations; construction of the Shaft 4 connection, which allows diversion of Delaware system water into the Catskill Aqueduct; and use of the Ashokan release channel to allow diversion of flow to the lower Esopus Creek.

After the approval of the turbidity control plan, historic floods caused adverse turbidity conditions in the Catskill region and resulted in prolonged use of the Ashokan release channel and turbid conditions in the lower Esopus Creek. These severe weather conditions, which may occur with more frequency, have caused EPA to reconsider its position regarding the use of the release channel, and we are recommending that NYSDEC revise the interim protocol to eliminate the provision for operational releases, pending completion of the planned environmental review, which will provide for a complete evaluation of environmental conditions in the lower Esopus Creek. Flood mitigation releases, which provide both turbidity control and flood control benefits, and community releases would remain in the interim protocol.

Overall, Catskill turbidity control remains a challenge, and it is important to continue to work on this issue. EPA supports NYSDEC's efforts to require completion of an environmental review to evaluate conditions in the lower Esopus while also addressing alum use that impacts Kensico Reservoir. We also support the provisions in the draft consent order that require a new round of alternatives analysis, and we

recommend that Section VI 4 be strengthened to include a reopening of New York City's engineering analysis, conducted under Phase 3 of the Catskill Turbidity Control Study, to include this new round of structural and engineering alternatives. Further, we recommend that the order require the City to complete a survey of turbidity/sediment control initiatives both domestically and internationally as part of the alternatives analysis.

EPA strongly supports the consent order provisions for stream management activities in both the upper and lower Esopus basins, which will improve stream function and reduce excessive erosion.

EPA also recommends that a schedule for the Shaft 4 connection be included in the consent order. As noted above, this project will allow diversion of Delaware system water into the Catskill Aqueduct, which should improve the quality of drinking water in Kensico Reservoir, reduce or eliminate the need for alum treatment in the Catskill Aqueduct, and reduce the need for prolonged discharges of turbid water through the Ashokan release channel. New York City has committed to complete the Shaft 4 project, and a completion date of March 31, 2015, is expected to be included in the upcoming Filtration Avoidance Determination revisions. Inclusion of this milestone in the consent order would complement the Filtration Avoidance Determination and would enhance the enforceability of this project schedule.

EPA recently wrote to NYSDEC recommending that the lower Esopus Creek be identified as an impaired waterbody on the 2012 Clean Water Act §303(d) list. The proposed consent order is not sufficient to support a "Category 4b" designation because it does not contain required control measures expected to result in attainment of water quality standards. Therefore, EPA further recommends that the proposed environmental review contain the necessary information about the lower Esopus Creek to inform future regulatory decisions and assist NYSDEC in ensuring attainment of water quality standards in accordance with the Clean Water Act.

Thank you for the opportunity to comment on this proposal. Any questions may be directed to Mr. Philip Sweeney, Director, NYC Watershed Oversight Program, at (212) 637-3780.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Gratz", with a stylized flourish at the end.

Jeff Gratz, Deputy Director
Clean Water Division