

US EPA ARCHIVE DOCUMENT



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VIA TELECOPIER &  
REGULAR MAIL

August 15, 2005

Walter Mugdan, Esq.  
Director, Division of Environmental  
Planning & Protection  
United States Environmental Protection Agency  
290 Broadway  
New York, New York 10007

Re: United States Environmental Protection Agency (USEPA)/  
City of New York (City) / New York City Department of  
Environmental Protection (NYCDEP) / Proposed  
Modification of Filtration Avoidance Determination (FAD)  
for the City's Catskill and Delaware Water Supplies /  
Ultraviolet Light Disinfection Facility

Dear Mr. Mugdan:

I am writing to you in connection with NYCDEP's request to modify the November 2002 FAD for the City's Catskill and Delaware water supplies. The November 2002 FAD now requires NYCDEP to design and construct an ultraviolet light (UV) disinfection facility for those supplies and commence operation of the UV facility by August 31, 2009. Because of certain circumstances, including a shift in siting to City-owned property at Eastview (in the Towns of Mount Pleasant and Greenburgh, New York), and a desire to conduct full-scale bio-assay validation of the proposed UV disinfection process, NYCDEP had previously requested that USEPA modify the FAD milestone for commencement of operation of the UV facility to November 2010.

USEPA and NYCDEP staffs have had several meetings and discussions concerning whether a modification of the FAD milestone is appropriate and, if so, on what terms and conditions. The purpose of this letter is to confirm certain representations previously made by NYCDEP staff and to present USEPA with what we hope is an acceptable proposal for modifying the FAD to accommodate NYCDEP's request, while at the same time providing USEPA with assurance that NYCDEP is serious about advancing the UV project and taking the necessary actions to continue to protect water quality until the UV facility is completed.

The following paragraphs spell out the components of our proposal and the reasons therefor.



## I. Modified Schedule/Interim Milestones

NYCDEP proposes that the November 2002 FAD (Section 7) be modified to reflect the following new schedule of milestones for the design and construction of the UV facility (\*):

<u>Action</u>	<u>Milestone</u>
Advertise UV structures contract (CAT 210-G)	3/06(**)
Complete Excavation for UV Building	1/08(**)
Enclose UV Building	7/09(**)
Commence operation of 1 <sup>st</sup> quadrant of UV disinfection capability	8/10
Commence operation of 2 <sup>nd</sup> quadrant of UV disinfection capability	9/10
Commence operation of full UV facility	11/10

(\*) – The foregoing schedule is contingent on the issuance of three permits by other governmental agencies by not later than September 15, 2005: (i) a building permit from the Town of Mount Pleasant; (ii) a Section 401 permit from the New York State Department of Environmental Conservation (NYSDEC), and (iii) a Section 404 permit from the United States Army Corps of Engineers (ACOF). The application for the building permit has not yet been officially submitted but it has been pre-reviewed by the Town. The applications for the other permits have been submitted. Although we have had ongoing discussions with these agencies, we cannot control when they will issue their respective permits, and any delay beyond September 15, 2005 will directly impact when construction activities can commence, and will require a modification of the schedule. NYCDEP requests that any such delay beyond September 15, 2005 be treated as a force majeure event and that the modified FAD provide for an adjustment to the milestone dates consistent with the delay by any of these agencies beyond September 15, 2005 in issuing their respective permits.

(\*\*) = New interim milestones.

Explanation: The proposed schedule reflects the additional time sought by NYCDEP on account of the change in site to Eastview and the need to conduct full-scale bio-assay validation. In addition, it recognizes that construction of the facility can be phased and that portions of the plant's UV disinfection capability can be brought on line sooner than the completion date for the entire facility. USEPA has stressed that any modified FAD schedule must be based on such a

phased approach.

Finally, the revised schedule adds (as requested by USEPA) three new interim milestones, intended to allow USEPA to more closely monitor our progress. These interim milestones each reflect a significant construction-related task and are spaced so as to give USEPA a means of tracking the project as it proceeds towards completion.

## II. Additional Measures to Protect Water Quality.

NYCDEP proposes to further modify the FAD to incorporate the following conditions, if USEPA approves the modified schedule set out in (I) above:

a. Additional Investment in Community Wastewater Management Program. NYCDEP will contribute an additional \$6 Million to the Community Wastewater Management Program (CWMP) established pursuant to Section 3.3 of the November 2002 FAD. The \$6 Million sum will be applied as follows:

(1) \$4 Million will be reserved, until July 2006, to help offset a funding gap for what appears to be the preferred wastewater solution for Identified Community no. 9 on the MOA List (as hereinafter defined), Boiceville<sup>1</sup> – namely design and construction of a wastewater treatment plant (WWTP).

(2) The balance (\$2 Million) will be utilized to implement a wastewater project in the next highest priority community not otherwise being addressed either under the NIP or under the CWMP. At present, it appears that the likely candidate is Identified Community no. 13 (Ashland). We would be willing to agree to a milestone date of August 31, 2009 for substantial completion of this additional project.

(3) If, by July 2006, it is determined by NYCDEP that any portion of the \$4 Million reserved for Boiceville is not needed to fund a wastewater solution for that community, such portion will be released and applied towards projects in other CWMP communities, in accordance with the MOA List. We would be willing to agree to a milestone date of August 31, 2010 for substantial completion of such other projects.

Explanation: Pursuant to the 1997 Watershed Memorandum of Agreement (MOA), NYCDEP established a New Sewage Treatment Infrastructure Program (NIP) to address wastewater problems in small communities characterized by failing or soon-to-be failing septic systems, where soils/site conditions preclude replacement of the septic systems in situ (Identified

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<sup>1</sup> The community ranking of Boiceville refers to its listing in Paragraph 122 of the New York City Watershed Memorandum of Agreement (MOA), which established a New Sewage Treatment Infrastructure Program (NIP) to address wastewater problems in certain smaller communities characterized by failing or soon-to-be-failing septic systems, described infra.

Communities). A priority list of the Identified Communities (MOA List) is set out in Paragraph 122 of the MOA (MOA List).

NYCDEP originally invested \$75 Million in the NIP, which sum was sufficient to fund block grants for wastewater solutions in Identified Communities nos. 1-5 on the MOA List (Hunter, Fleischmanns, Windham, Andes and Roxbury), plus a portion of the cost of a project for identified Community no. 6 (Phoenicia). In connection with the issuance of the November 2002 FAD, NYCDEP invested certain additional funds (approximately \$21 Million) in the NIP, which were sufficient to fund block grants for wastewater solutions in Identified Communities nos. 6 and 7 (Phoenicia and Prattsville).

At the same time, NYCDEP invested \$10 Million in the CWMP, which was projected as sufficient to implement wastewater solutions (generally septic management districts and/or community septic systems) in five (5) communities drawn from further down on the MOA List. However, a study of Identified Communities 8-22 conducted by the New York State Environmental Facilities Corporation indicated that the appropriate solution for Identified Community no. 9, Boiceville, would appear to be a WWTP, a far more expensive solution than would be the case for a community septic or septic maintenance district. If Boiceville opts to proceed with a WWTP, there would be funding gap. Providing an effective wastewater solution for Boiceville, in addition to its high priority ranking on the MOA List, is viewed by NYCDEP as particularly important for water quality protection because of its proximity to the Ashokan Reservoir.

The CWMP is presently addressing wastewater solutions in Identified Communities nos. 8-12 (Bloomville, Boiceville, Hamden, Delancy and Bovina Center). As requested by USEPA, NYCDEP is prepared to commit to using the new \$6 Million investment to implement at least one (1) additional wastewater solution for a community on the MOA List, in addition to those already being addressed under the NIP or CWMP. At present, it appears this will be Identified Community no. 13 (Ashland).

b. Further Delay in Commencement of Operation of UV Facility.

NYCDEP further proposes that additional investments will be made into the CWMP, in accordance with the following table, if commencement of operation of the UV facility is further delayed as described below.

<u>Delay</u>	<u>Resulting Additional Investment</u>
If commencement of operation of the 1 <sup>st</sup> quadrant of UV disinfection capability is delayed by more than four (4) months from the milestone date in (1) above (*)	\$10,000 for the 1 <sup>st</sup> month of delay beyond four (4) months; \$20,000 for the 2 <sup>nd</sup> month; and \$30,000 for the 3 <sup>rd</sup> month and each month thereafter

If commencement of operation of the 2<sup>nd</sup> quadrant of UV disinfection capability is delayed by more than four (4) months from the milestone date in (I) above (\*)

\$10,000 for the 1<sup>st</sup> month of delay beyond four (4) months; \$20,000 for the 2<sup>nd</sup> month; and \$30,000 for the 3<sup>rd</sup> month and each month thereafter

If commencement of operation of the full UV facility is delayed by more than four (4) months from the milestone date in (I) above (\*)

\$5,000 for the 1<sup>st</sup> month of delay beyond four (4) months; \$10,000 for the 2<sup>nd</sup> month; and \$15,000 for the 3<sup>rd</sup> month and each month

The foregoing would be in addition to, and not in lieu of, any rights or remedies available to USEPA under law in the event of NYCDEP's failure to adhere to the schedule for completion of the UV facility in accordance with the FAD.

(\*) = As adjusted for the force majeure in the event the Town of Mount Pleasant, NYSDEC and/or USACOE delays issuance of its required permit beyond September 15, 2005.

Explanation: USEPA was clear on its insistence that any modification of the FAD incorporate financial incentives to keep NYCDEP focused on adhering to the agreed-upon milestone dates for completion of the UV facility. Although the above table may seem complicated, the rationale on which it is based is straightforward:

a) USEPA and NYCDEP have worked together successfully for over a decade in structuring and implementing a series of filtration avoidance determinations for the City's Catskill and Delaware supplies. In our view, this success has been based on a true partnership effort and we are proud of what has been accomplished. We are extremely reluctant to jeopardize such a relationship by adopting FAD provisions that are more akin to those found in a consent decree or administrative order. Nonetheless, we recognize USEPA's concerns and attempted to develop provisions that are meaningful but not unduly punitive.

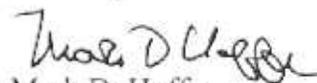
b) Each quadrant of the UV facility can treat approximately 500 million gallons of water per day (the actual amount of flow may vary based on equipment going in and out of service for shakedown; as noted in NYCDEP's prior letter to USEPA dated April 27, 2005, during the start-up period of bringing the first 2 quadrants on line, NYCDEP may need to take equipment out of service for troubleshooting and adjustments, but will maximize the use of all UV equipment that can be safely and effectively operated). Thus, two quadrants can potentially treat almost all of the Catskill/Delaware water needed by the City on a typical day, except during the peak summer period or when the Croton system is unavailable. We therefore treated commencement of operation of the first 2 quadrants as the most crucial milestones, in terms of having UV disinfection capability on line.

c) USEPA indicated that it would insist on financial incentives to guard against further "significant" delay in completing the UV facility. Although our agencies have never discussed a definition of "significant" delay, we note that both USEPA and the New York State Department of Health have emphasized a desire to avoid not having UV disinfection on line for an additional winter season beyond what is already built into the schedule (as we understand it, this is due to concerns about elevated levels of Cryptosporidium in the winter, although we do not believe that the most recent data suggest such a seasonal swing in levels). If either the 1<sup>st</sup> or 2<sup>nd</sup> quadrants were delayed by more than 4 months (that is, beyond 12/10 for the 1<sup>st</sup> quadrant or beyond 1/11 for the 2<sup>nd</sup> quadrant), the amount of Catskill/Delaware water typically consumed by the City would not have the benefit of UV treatment during a winter season. Therefore, delays beyond 4 months on either of the 1<sup>st</sup> or 2<sup>nd</sup> quadrants will trigger the more significant financial consequences (i.e., more significant additional investments in the CWMP to protect water quality).

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We hope you will agree that the foregoing reflects a good faith effort to address your concerns, and a willingness on our part to work with you to bring this matter to closure as soon as possible. My colleagues and I are more than willing to meet with you, at your earliest convenience, to discuss and reach agreement on final terms for the requested FAD modification. Please do not hesitate to call me if you have any questions or if I can be of assistance.

Sincerely,



Mark D. Hoffer

cpaproposal.doc

cc: Commissioner Lloyd  
FDC D. Tweedy  
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