



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
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SEP 20 2019

Honorable Vincent Sapienza, P.E.
Commissioner
New York City Department of Environmental Protection
59-17 Junction Blvd.
Flushing, NY 11373

Re: Gowanus Canal Superfund Site, Brooklyn, New York

Dear Commissioner Sapienza:

I am writing to you in response to the City's proposal to modify the remedy set forth in the Environmental Protection Agency's (EPA's) 2013 Record of Decision (ROD) for the Gowanus Canal Superfund Site. Specifically, the City has requested that EPA substitute the requirement for two Combined Sewer Overflow (CSO) retention tanks holding eight and four million gallons, respectively, for a 16 million-gallon CSO tunnel running beneath the upper Canal.

Over the past year, the City and EPA have engaged in a series of meetings and exchanges of information regarding this complex technical proposal. I am grateful for the time and effort devoted by you and your staff, including your technical team and their consultants at Hazen & Sawyer and Brown & Caldwell, in developing and sharing the detailed tunnel proposal information with EPA.

As you know, I clearly directed my staff to review the City's tunnel proposal in a fully objective and unbiased manner, with the goal of ensuring that the Gowanus community whom we all serve will receive the full benefit of our joint efforts.

When concerns of such magnitude are being weighed, I feel personally responsible for ensuring that every possible consideration is analyzed before we move forward. As a result, our review of the merits of the tunnel proposal has taken some months. In addition to the many exchanges with the City, my staff has worked closely with our own consultants at Jacobs Engineering Group, Inc., who your team has recognized for their international expertise in tunnel construction. We have also conferred with EPA Headquarters staff and senior management.

Following our most recent meeting at EPA's offices on June 25th, I personally reviewed at great length the materials the City submitted and discussed with others at EPA their analysis of the City's tunnel proposal, including the potential risks and rewards related to the overall effort to clean up the Canal. The result of this review has led to our determination that the technical record does not support changing the current remedy approach from CSO retention tanks to a CSO tunnel.

With such a complicated remedy, there are many potential consequences to the project which flow from altering the technology and timing. I want to highlight a few of the Agency's most significant concerns which are bases for our decision to maintain the CSO approach selected in the ROD.

- The City's request for the tunnel remedy change largely relies on possible future flood control, resiliency, and infrastructure benefits that are outside of EPA's Comprehensive Environmental Response, Compensation and Liability Act or Clean Water Act (CWA) federal jurisdiction. This effectively limits EPA's basis for exercising federal authority to change the ROD. While EPA understands the importance of these issues to the local community and supports efforts to address them, EPA believes that there are other potentially viable options for the City to address its infrastructure needs outside of the Superfund remedy process. With that said, please know that we would be pleased to help you explore these options outside of the Superfund engagement.
- EPA selected a remedy in the ROD that is fully protective. There is no new information associated with the tunnel proposal that would support changing the remedy to require additional marginal risk reduction. This is also true for the findings in the City's 2015 CWA Long-Term Control Plan. On the other hand, delays to the remedy that, as discussed below, would be caused by shifting to a tunnel, would result in much longer continued human health and environmental exposures that have been determined in the ROD to be unacceptable. Moreover, there may be other unforeseen complications that could arise from deploying the tunnel technology. The information provided by the City acknowledges that there are many major, even potentially catastrophic construction risks associated with the tunnel construction.
- For Superfund remedy evaluation purposes, the cost difference for the CSO portion of the remedy cannot be compared to the increased costs of the City's voluntary additions to the CSO retention tanks. Rather, the tunnel-related increases should be weighed against EPA's original CSO-related remedy selection in the ROD.
- Regardless whether such a remedy change is evaluated in an Explanation of Significant Differences or a ROD amendment, EPA believes that the remedy evaluation and change process would take at least two years. For this and other reasons, EPA believes that delays in the Canal dredging would result from a change to a tunnel approach. Such delays would effectively increase the duration of the risks to human health and environment before the Canal sediments are fully addressed. I would note that the dredging is also closely tied to the pace of redevelopment and the pending neighborhood rezoning.
- There are significant cost impacts to the dredging portion of the ROD that the City technical information has not factored into the tunnel proposal. These include the cost of post-remedy-implementation "maintenance" dredging and treating, transporting, and disposing of the additional CSO solids that would be released into the Canal for an additional period of time before a tunnel came on line. There are also potential impacts to the cap design and construction. There is significant concern regarding who would bear responsibility for these added costs. Handling additional dredged material also poses a separate set of neighborhood impacts that the tunnel proposal has not addressed.
- In light of many considerations, including the ones identified above, EPA believes that the tunnel, as proposed, would likely be screened out of any focused feasibility study.

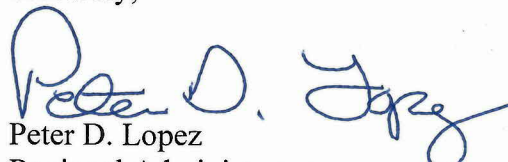
EPA's current assessment with respect to the contemplated rezoning is that the existing requirement for the 12 million-gallon CSO retention tank volume is adequate, in combination with other appropriate control measures, for the ROD remedy to remain protective. I have instructed my staff to continue EPA's review and coordination efforts about the rezoning with the City through the City's rezoning Environmental Impact Statement and our remedial design processes. EPA is amenable to discussing a potential expansion of the volume of the two CSO retention tanks if the City believes that should be considered in relation to its rezoning proposal.

Please know that EPA fully supports the City's efforts to improve its stormwater and waste handling infrastructure to address the flooding and resiliency needs of the Gowanus community. There are a variety of potential measures, including sewer, tank, separate tunnel or micro-tunnels, which may address those needs beyond the jurisdiction of the Superfund program. Building on EPA's recent coordination with the U.S. Army Corps of Engineers' proposed Canal flood gate, I have instructed the Region's Water Division to explore other avenues to work with the City on resiliency.

The careful consideration given to the City's tunnel proposal has resulted in a significant devotion of resources by both EPA and the City. One impact of this level of effort has been a shift in focus from components of the ROD, in particular the OH-007 CSO retention tank. In light of the urgent pace of the redevelopment and rezoning, I have tasked my staff with looking at adaptive management strategies to keep the overall cleanup on track as we move forward together. I know that you and your capable staff will devote the same creativity to the contracting, design and construction efforts for both CSO tanks that have been applied to expedite the CSO tunnel evaluation.

In terms of advising the community of this decision, we plan to concentrate our outreach to advising them that we have cooperatively reviewed the City's proposal and focus on the many steps occurring as we move ahead with the selected remedy. We look forward to our continued, close collaboration as we work to bring the benefits of this critical work to the Gowanus community.

Sincerely,


Peter D. Lopez
Regional Administrator