

Bridgewater
Brookfield
New Milford



Newtown
Roxbury
Southbury

Lake Lillinonah Authority

P.O. Box 568, Brookfield, CT 06804

March 12, 2013

The Honorable Mark D. Boughton
City of Danbury, CT
155 Deer Hill Avenue, Danbury CT 06810

Betsey Wingfield
EEP Bureau Chief
Bureau of Water Protection and Land Use
State of CT, Department of Energy and Environmental Protection
79 Elm Street
Hartford, CT 06106-5127
Betsey.wingfield@ct.gov

H. Curtis Spalding
Regional Administrator
United States Environmental Protection Agency
5 Post Office Square, Suite 100
Boston, MA 02109-3912
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FRIENDS
OF THE LAKE

Dear Mayor Boughton, Ms. Wingfield and Mr. Spalding:

The Lake Lillinonah Authority (LLA) and Friends of the Lake (FOTL) have collaborated in writing this letter. This letter is prompted by comments made recently by David Day, the Danbury Public Utilities Superintendent concerning the Danbury Wastewater Treatment Plant (DWTP) to the effect that the license to operate the DWTP will be renewed at the current discharge levels for phosphorus for a five-year term.

Although such a renewal cannot be forthcoming without notice and public hearings, it is a disturbing reflection of the complacency of authorities in Danbury and their assumption that the regulatory authorities at CT DEEP and the EPA will be willing accomplices in their refusal to comply with the legal requirements rightfully imposed on discharges into the impaired waterways of the Limekiln Brook, the Still River and, ultimately, Lake Lillinonah.

There have been too many years of placing this issue on the back burner. The DWTP discharge permit expired in 2008. Since then, the DWTP has been permitted to operate under a voluntary Consent Order that, while requiring a reduction from prior nutrient discharge levels, is not based on scientific evidence regarding the discharge levels that will address and remediate the impairment of the receiving water bodies. The theory of the Consent Order was to give Danbury, the owner of the DWTP, time to commission a study regarding the means to achieve appropriate discharge levels. That was five years ago. A study was in fact commissioned, at great expense. The ink was not dry on that study when Danbury's mayor and City Council determined that they would reject the recommendations contained therein, reject the EPA regulations that would further reduce the allowable phosphorus discharge, and hire lobbyists and public relations experts in order to further evade and delay compliance with its legal obligations. (See attached letter and Resolution from Mayor Boughton to the Danbury City Council). In short, they decided to invest in political pressure rather than in protecting the environment.

So far, Danbury's strategy is working. In fact, based on Mr. Day's out-of-school comments, Danbury's city officials believe that their investment in lobbyists and public relations experts has purchased another five-year window of doing nothing. Undoubtedly, this will be followed, in another five years, with more evasion and stall tactics.

It is time for those responsible for protecting the environment by prohibiting excessive nutrient discharges to stand up and recognize that the unending delays in addressing this issue have become a means to maintain a virtually permanent status quo. As the British politician William Gladstone recognized a century ago, "justice delayed is justice denied." Children who have played along the shores of Lake Lillinonah literally have grown into adulthood while this issue has been studied to death and effective action deferred.

We respectfully demand a plan of action by the EPA and the CT DEEP to bring the DWTP into compliance with the Clean Water Act. We stand ready to act as partners in an effort that brings to bear the resources of grass roots stakeholders to define and implement a meaningful plan of action that begins today - not five years, ten years, or more, into the future.

The following facts are offered in support of our request:

- 1) The knowledge that the DWTP phosphorus discharge negatively impacts the Still River and Lake Lillinonah dates back to at least 1979 with the Jones and Lee "Evaluation of the Impact of Phosphorus Removal at the Danbury, Connecticut Sewage Treatment Plant on Water Quality in Lake Lillinonah," which concluded that "...chemical treatment for phosphorus removal at Danbury ... could result in a significant improvement in water quality in this lake (Lillinonah)."¹

¹ Evaluation of the Impact of Phosphorus Removal at the Danbury, Connecticut Sewage Treatment Plant on Water Quality in Lake Lillinonah by R. Anne Jones and G. Fred Lee, Environmental Engineering, Colorado State University, Fort Collins, CO, 1979, p. 33

- 2) The Limekiln Brook downstream of the DWTP, the Still River, and Lake Lillinonah are listed as impaired.² **The Limekiln Brook upstream of the DWTP is not impaired.**³ These impaired waters negatively impact the lower Housatonic River and the Long Island Sound.
- 3) The CT DEEP has a “Phosphorus Reduction Strategy for Inland Non-Tidal Waters” posted on its website which states that the “EPA has mandated that all New England states establish limitations on phosphorus in all wastewater discharge permits where the potential exists for the discharge to contribute to eutrophication and impair designated uses in downstream waters.”⁴
- 4) The Clean Water Act (CWA) (§ 303(b) (1) (C)) and National Pollutant Discharge Elimination System (NPDES) requires effluent limitations to be developed for pollutants that are sufficient to achieve Water Quality Standards.
- 5) From the Clean Water Act, 33 USC § 1312(a): “Whenever, in the judgment of the Administrator or as identified under section 1314(l) of this title, discharges of pollutants from a point source ... would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters ... effluent limitations ... for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.”
- 6) From the Connecticut General Assembly statute §22a-430(a): “The commissioner shall not issue or renew a permit unless such issuance or renewal is consistent with the provisions of the federal Clean Water Act (33 USC 1251 et seq.).”
- 7) The CT DEEP is not allowed to consider economic and available technology considerations under the CWA when setting water quality-based discharge limits (see *Westborough and Westborough Treatment Plant Board*, 10 EAD 297, 312 (EAB 2002) (citing 33 USC §§ 1311(b) (1) (C)).
- 8) The wastewater treatment plant in Pittsfield, Massachusetts, discharges directly into the Housatonic River. They were issued a renewal permit by the EPA in August, 2008 (U.S. EPA Region 1, NPDES Permit No. MA0101681 (2007)). The permit requires phosphorus discharge to be limited to .1mg/l from April through October, and 1.0 mg/l from November through March. Pittsfield appealed the Final Permit in September, 2008, claiming “the permit contains limits and requirements that are presently unachievable by the City. As such, the City can not accept this Final NPDES permit. It is our sincere desire that the regulatory authorities will work cooperatively with the City to develop a fair and balanced permit that is [sic] can be implemented and will not result in an enormous financial burden to the users of the wastewater system, while continuing to meet the goals of the Clean Water Act.”⁵ The Environmental

² EPA 2010 Waterbody Report for Limekiln Brook-(Impaired: Habitat for Fish, Other Aquatic Life and Wildlife; Recreation); 01 ; Still River (Danbury)-05 (Impaired: Habitat for Fish, Other Aquatic Life and Wildlife; Recreation); Lake Lillinonah (Impaired: Fish Consumption; Recreation) (available at www.iaspub.epa.gov)

³ *Id.* (Location of Impairment: “From Mouth At Confluence With Still River (Just Us Of I84 Crossing), Us [upstream] To Confluence With Danbury Wpcf Outfall Channel (Us [upstream] Of Newtown Road (Route 6) Crossing, Behind Shopping Plaza At Pump Station), Danbury.”)

⁴ http://www.ct.gov/deep/cwp/view.asp?a=2719&q=474130&depNav_GID=1654

⁵ City of Pittsfield, MA, petition to the EPA, NPDES Permit No. MA0101681 (2007)

appeals Board denied the City's petition, and the City of Pittsfield is currently upgrading its wastewater treatment facilities.

- 9) Mayor Boughton's letter (see attached) and the City Council's decision to hire lobbyists and public relations experts rather than to take appropriate action to fulfill the City's obligation to address the problem reflect the City's view that economic and available technology considerations are not merely considerations, but the paramount considerations. See also, Danbury News-Times, "DEEP trouble ahead at Lake Lillinonah" by Robert Miller, April 21, 2012.⁶

Minimum Expectations by the LLA and FOTL

- 1) Effective immediately, lower phosphorus discharged from the DWTP to .3 mg/l, all year. This is obtainable with current equipment.
- 2) Develop a plan that will provide DWTP upgrades as needed to reduce phosphorus to .1 mg/l, year-round, within three years.

We understand the difficulty of the effort required to bring the DWTP into compliance with the CWA. However, compliance is inevitable – so the time to act is now. Those who care for the Limekiln Brook, the Still River, Lake Lillinonah, the Housatonic River and the Long Island Sound have been patient for far too long.

Respectfully Submitted,



Greg Pettriccione, Chairman
Lake Lillinonah Authority



Jeffrey Silverman, Chairman
Friends of the Lake

⁶ Quoting from the referenced article: "We want to look at the science," said David Day, the city's superintendent of public utilities. "We want to be confident we'll be getting value from the improvements." Phosphorus, Day said, is part and parcel of the stuff that gets flushed into sewers and flows to the treatment plant. The plant's daily load is about 750 pounds of phosphorus. The plant releases about 9 million gallons a day of treated effluent into Limekiln Brook. Day said the plant's current permit allows it to release 1 milligram of phosphorus per cubic liter of water. That's about 75 pounds of phosphorus a day that gets into the environment. But working with the (CT) DEEP, he said, the city has reduced that by half during the summer months (sic), when the effluent makes up about 80 percent of the Still River. During those low summer months, that means the city is releasing about 37 pounds of phosphorus a day into the environment. Under the new (CT) DEEP permit, that amount would drop further -- to 0.1 milligram of phosphorus per cubic liter of water. "It would mean we'd be reducing the load to 7.5 pounds of phosphorus a day," Day said. "We'd be removing 98 percent of it." Day said the city is in discussion with the (CT) DEEP about the upgrade. "We want to review the science," he said.

Cc:

Senator Richard Blumenthal

Governor Dannel P. Malloy

CT DEEP Commissioner Daniel C. Esty

State Representatives

Selectmen

Next Pages:

Attachment 1: Letter from Mayor Boughton to City Council, with Resolution



CITY OF DANBURY

OFFICE OF THE MAYOR
155 DEER HILL AVENUE
DANBURY, CONNECTICUT 06810

MARK D. BOUGHTON
MAYOR

(203) 797-4511
FAX (203) 796-1666
m.boughton@danbury-ct.gov

March 22, 2012

Hon. Members of the City Council
155 Deer Hill Avenue
Danbury, CT 06810

Re: Danbury Wastewater Treatment Plant
Phosphorous Discharge

Dear Council members:

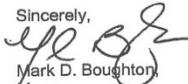
I am asking you to ratify City efforts to challenge federal Environmental Protection Agency and CT Department of Energy and Environmental Protection to mandate a significant and costly upgrade of our Waste Water Treatment Plant to drastically reduce phosphorous levels into the Still and Housatonic Rivers. The attached resolution further explains what is occurring and what we need to do.

Due to the exigencies of our circumstances and the time lines that we have been facing, together with the risks of unbearable financial costs, certain preliminary steps have already been taken to engage a government relations professional and cooperate with other municipalities and officials to examine options to address and challenge these strict requirements. It is my intention and that of the officials of the Public Works Department and others to inform you of these steps and to obtain your authorization for us to combine with others, engage such professional assistance as may be required and to work quickly to address these potential mandates in such ways as are most efficient and effective for Danbury.

While we are optimistic that doing this will provide us with the best and perhaps only chance to overturn these requirements or to obtain reconsideration of them, we are also realistic that some, at least limited measures will likely be required. We are simply attempting to avoid the most onerous demands on our systems and budgets.

Therefore, please adopt the attached resolution, so that we may continue those measures and actions that are ongoing, to deal with this critical issue. I ask that you do not send this to a committee, as any time delay would harm our efforts at the present time. Do not hesitate to contact this office with any questions you may have.

Sincerely,


Mark D. Boughton
Mayor

Attachment

cc: Antonio Iadarola, P.E., Director of Public Works
David St. Hilaire, Director of Finance
Laszlo L. Pinter, Deputy Corporation Counsel
Dan Casagrande, Esquire



RESOLUTION

CITY OF DANBURY, STATE OF CONNECTICUT

_____ A.D. 2012

RESOLVED BY THE CITY COUNCIL OF THE CITY OF DANBURY

WHEREAS, the City of Danbury owns a Wastewater Treatment Plant ("WWTP") that treats and handles wastewater and sewage from Danbury as well as some surrounding communities; and

WHEREAS, phosphorous is a by-product of these operations and is deposited into rivers and streams in miniscule amounts as permitted, and, as is the case with many municipalities that have or operate a WWTP is regulated by the CT Department of Energy and Environmental Protection as well as the federal Environmental Protection Agency ("EPA") and

WHEREAS, the CTDEEP (then the CTDEP) issued a voluntary Consent Order to the City in 2008 to reduce the amount of phosphorous by taking steps and instituting measures including commissioning a phosphorous study to address the DEEP requirements; and

WHEREAS, certain measures have been taken in accordance with such Order: and

WHEREAS, recently the EPA has adopted regulations that further reduce the allowable phosphorous discharge, which regulations would be extremely costly, and in the view of many, unnecessary; and

WHEREAS, full compliance with such mandates would require a WWTP upgrade at substantial cost and expense, resulting in significant outlay to Danbury as well as a number of other users and similarly placed municipalities; and

WHEREAS, the City of Danbury wishes to take certain steps to address or challenge such requirements, including retaining a government relations professional/lobbyist, joining with other affected municipalities to challenge requirements and engaging in discussions and filings in efforts to address the onerous requirements.

NOW, THEREFORE BE IT RESOLVED THAT Mayor Mark D. Boughton and the City Council proceed to engage in such cooperative efforts with other municipalities and officials to examine, challenge, review and participate in any and all efforts to address federal or State consent orders or other requirements regarding WWTC upgrade or expenditure related to phosphorous discharge, and to execute such agreements and documents that facilitate this effort.