

**HEMPSTEAD HARBOR PROTECTION COMMITTEE**  
**FINAL MEETING MINUTES**  
**Sea Cliff Village Hall**  
**March 9, 2016**

NOTE: **ACTION ITEMS ARE IN BOLD HIGHLIGHTED UNDERLINED ITALICS.** MOTIONS ARE HIGHLIGHTED IN BLUE

**Attendees:** Tom Powell (Chair – Sea Cliff); Eric Swenson (Executive Director); Abby Kurlender (Roslyn Harbor); Catherine Chester (Sands Point); Dan Fucci (Nassau County); Tab Hauser (Glen Cove); Sean Jordan (Oyster Bay); Peedee Shaw (Roslyn); Kevin Braun (North Hempstead); Carol DiPaolo (Coalition to Save Hempstead Harbor); Jennifer Wilson Pines (representing Nassau County Legislator Delia DeRiggi Whitton); and Frank Piccininni (interested resident and Principal of SMPIL Consulting, Ltd.).

**Call to Order**

The meeting was called to order at approximately 7:05 pm.

**Review and Approval of Draft Minutes of Meeting of January 6<sup>th</sup>**

Catherine Chester moved to approve the minutes of the January 6<sup>th</sup> meeting. Dan Fucci seconded the motion. The Committee unanimously approved them.

**Administrative Matters**

**2016 Member Dues** – Eric reported that the 2016 member dues proposal was circulated to all member municipalities following the January meeting and that he had received no comments or concerns. He also reviewed expenses since that meeting and continues to feel that keeping the dues at the 2015 levels should be sufficient. Dan Fucci moved to approve the 2016 member dues at the same rates as the 2015 member dues. Tom Powell seconded the motion. The Committee unanimously approved them. **Eric will send out invoices for 2016 member dues.**

**2016 Water-Quality Monitoring Program - agreement with Coalition to Save Hempstead Harbor** – Eric explained that due to a change in policy at the National Fish and Wildlife Foundation, grants (such as those that we have received for the water-quality monitoring program) can no longer be made retroactive to the date of application and can only fund activities that follow the award of a grant. In essence, this means that our 2016 grant application, if approved, can fund our 2017 – 2018 monitoring program. As such, we cannot expect such funds for our 2016 - 2017 program. The 2016 Member Dues includes \$65,000.00 for the monitoring program (the same amount as for 2015 – 2016 program). Eric felt that the Committee could afford to shoulder that cost for the 2016 – 2017 program and asked for approval to have the Village of Sea Cliff (on behalf of the Committee) enter into an agreement with the Coalition to Save Hempstead Harbor for an amount not to exceed \$65,000. See the discussion below for details on the proposed program. Tom Powell moved to authorize the Village of Sea Cliff, on behalf of the Committee, to enter into an agreement with the

Coalition to Save Hempstead Harbor to carry out the 2016 – 2017 water-quality monitoring program for an amount not to exceed \$65,000.00. Abby Kurlender seconded the motion. The Committee unanimously approved it. ***Eric will draft an agreement and forward it to the Village of Sea Cliff.***

**L.I. Sound Futures Fund grant application** – Eric reported that the National Fish and Wildlife Foundation will be holding a series of workshops (including one at Huntington Town Hall on March 22<sup>nd</sup>) and a webinar (on April 4<sup>th</sup>) to announce its 2016 Long Island Sound Futures Fund grant program. This is the program that normally funds the Committee’s water monitoring program and Eric and Carol plan to attend both. See the item immediately above for more discussion. In anticipation of being eligible to apply once again for this grant for our water monitoring efforts, Eric asked for approval to submit a grant application. Since the amount we would be eligible to apply for is unknown at this point, no specific dollar amount is requested. Eric pointed out that he would like to apply for up to the maximum permitted for such projects and that due to the aforementioned change in policy, the Committee will know whether and how much it is awarded prior to establishing the 2017 Member Dues level. As such, the grant is not expected to have any negative impact on the Committee’s finances. Abby Kurlender moved to authorize the Village of Sea Cliff, on behalf of the Committee, to apply to the National Fish and Wildlife Foundation for funding for the 2017 - 2018 water-monitoring program for the maximum amount permitted. Peedee Shaw seconded the motion. The Committee unanimously approved it. ***If appropriate, Eric will draft and submit a grant application to the National Fish and Wildlife Foundation for the 2017-2018 water monitoring program for an amount up to the maximum amount permitted.***

**New York American Water grant opportunity** – Eric mentioned that the New York American Water company is offering grant of up to \$10,000 for local source water and watershed protection projects. If awarded, projects must be completed between May 1<sup>st</sup> and November 30<sup>th</sup> and applications are due on April 1<sup>st</sup>. Eric suggested that this grant could help with our 2016 water monitoring program. Eric asked for the authority to apply for such funding. Tom Powell moved to authorize the Village of Sea Cliff, on behalf of the Committee, to apply to New York American Water for funding of up to \$10,000 under its 2016 grant program. Catherine Chester seconded the motion. The Committee unanimously approved it. ***If appropriate, Eric will draft and submit a grant application to New York American Water under its 2016 grant program for an amount up to \$10,000.***

**Town of North Hempstead EcoFest Volunteers** – Eric stated that he had heard that the Town of North Hempstead’s annual EcoFest event at Clark Botanic Gardens will be a one day event this year – on Sunday May 15<sup>th</sup>. Since he will be out of town on that day, in order to commit to a booth, the Committee will need one or more volunteers (preferably at least two). ***Peedee Shaw volunteered. Kevin Braun and Catherine Chester will also check their schedules and if free, will also volunteer. Eric will keep them advised and get them the appropriate materials prior to the event.***

## Proposed Changes to Phase II MS4 Permits

Eric stated that there are a number of significant and potentially significant changes in the works for the MS4 Phase II Stormwater permits that each member municipality must comply with. He had previously e-mailed summaries of these to all of those on the Committee's Phase II list. These include the following:

- New Bi-Annual Report for TMDL Progress
- Next DEC General Permit
- EPA's Proposed Revisions to MS4 Regulations

Details can be found on the attached summaries.

## Nitrogen, Nitrogen, Nitrogen

Eric also noted that there has been a lot of activity with respect to nitrogen inputs into Long Island's bays and harbors. These include a series of well-attended hearings conducted by the NYS DEC and the Long Island Regional Planning Council on the conceptual draft scope for the Long Island Nitrogen Action Plan (LINAP). Eric testified at the February 3<sup>rd</sup> hearing. The ultimate outcome of the LINAP is expected to be nitrogen reduction targets for each water body. While similar to a TMDL, these are expected to be voluntary. Nevertheless, since the burden will largely fall on municipalities, Eric stressed the need for them to be based on actual data wherever possible and for close coordination with local municipalities, such as through the Protection Committees. A copy of his testimony is attached.

He also reported that The Nature Conservancy has just released its nitrogen modeling study of the north shore embayments (including Hempstead Harbor) along with a press release. A copy of the study can be found here: <http://www.conservationgateway.org/ConservationPractices/Marine/HabitatProtectionandRestoration/Pages/Nitrogen-Load-Modeling-Long-Island,-New-York.aspx>

Finally, he noted that the US EPA has also recently released an "EPA Nitrogen Strategy for Long Island Sound". This is an outcome of settlement negotiations resulting from a citizen suit filed by Save the Sound against EPA Regions I and II and as a result, the organization has suspended its pursuit of the lawsuit so that it can study the proposal. Initial reactions from the group were favorable. The EPA is looking to have a public meeting, possibly in April to provide details. ***Eric will provide details as they become available.***

## 2016 Water Monitoring Program

**Procedural Changes in L.I. Sound Futures Fund Grant Process** – as previously mentioned, grants can no longer be retroactive to the date of application. Since applications are generally made around May and awards announced around October, in practical terms, an application made in 2016 would not be able to be applied until the 2017 -2018 monitoring season.

**Proposed Changes to Annual Report** – Carol DiPaolo asked municipal members if they would have any objection to having the annual report only available as PDFs and posted on the Committee's website rather than also producing printed narratives. This would save on program costs. If necessary, members could print

out the narrative (2014's consisted of 70 pages - *note: this is somewhat more than was mentioned at the meeting*). No one objected. Two or three copies of the full report (several hundred pages) would still be printed (one for the Committee, one for Carol, and if necessary, one for the grant provider). In addition, she and the Committee have been exploring the idea of preparing an Executive Summary which would be a condensed and thus more readable summary of the report for those who do not have the time to read the 70 or so pages. Also, some of *the less* relevant charts *may be deleted*. She *has* received a cost *estimate* of *about* \$3,000 from Fuss & O'Neill to produce the Executive Summary. Absent grant funding to cover this (such as the possible New York American Water grant), she recommends that we hold off on this at the current time.

**Inter-Municipal Assistance with Monitoring and Changes to the Program** – Eric mentioned that he was approached by the Town of Oyster Bay with regard to their assistance with the 2016-2017 monitoring program and asked if one or more other municipalities could assist this year. Eric reached out to both North Hempstead and Glen Cove (who also maintain harbor patrols in Hempstead Harbor) and both have agreed to assist with the 25 week program. Each Town will provide a boat and operator for 10 weeks and Glen Cove will assist for 5 weeks. In addition, the Town of Oyster Bay expects that it will no longer be operating its laboratory in Old Bethpage beginning in June and therefore will no longer be able to provide laboratory services for nitrate and nitrite analysis. Carol stated that this could be accomplished by purchasing a Hach kit with models priced from \$1,500 to \$4,000. She also recommended that as a cost-savings measure, we could eliminate the winter monitoring at the two Scudder's Pond outfalls. She feels that there is sufficient post-construction data to show what appears to be a positive trend of reduced bacteria. On the other hand, she would continue monitoring the Powerhouse Drain outfall during the winter where she continues to find extremely high bacteria levels.

**Coordination with Other Monitoring Efforts** – Carol mentioned that both she and Eric will be attending a meeting on March 11<sup>th</sup> in Port Jefferson with other monitoring groups around Long Island Sound to discuss coordinating efforts. This may result in further changes to our monitoring program and as such, the shape and breadth of our monitoring efforts are still somewhat in flux.

### **Long Island Sound Study Citizen's Advisory Committee (CAC)**

**Watersheds and Embayments Workgroup** – Eric mentioned that with the adoption of a new 20 year plan for Long Island Sound (the "Comprehensive Conservation and Management Plan" or "CCMP"), the Long Island Sound Study has reorganized its workgroups, one of which is the Watersheds and Embayments Workgroup, which Eric has volunteered for. These workgroups are expected to meet four times a year, usually by conference call. Its first meeting was held on February 17<sup>th</sup> while Eric was away. Nevertheless, comprehensive meeting minutes were circulated and the workgroup appears to have a lot on its agenda.

**Water Quality Monitoring Workgroup** – another of the workgroups is the Water Quality Monitoring Workgroup which Carol DiPaolo has volunteered to serve on. It has met once and an in-person meeting is expected in May or June [*note that at the March 10<sup>th</sup> Long Island Sound Study CAC meeting, it was stated that the decision still needed to be made as to whether embayment monitoring will be included in the scope of this workgroup. This is despite the fact that the Long Island Sound Study has made embayment monitoring one of its top priorities*].

**L.I. Sound Research RFP issued** – the Long Island Sound Study is preparing a Request For Proposals for research projects on Long Island Sound and is asking for anyone with specific ideas for research projects to send them to Jim Ammerman. Eric can provide contact information, if desired.

**Citizens Advisory Committee meeting** – the next meeting of the CAC will take place on March 10<sup>th</sup> in New York City. Eric, Carol and Jennifer Wilson Pines will attend.

### **Scudder's Pond**

Eric reported that Allied Biological has a new name (Solitude Lake Management) and plans to perform the cutting and removal of the dead Phragmites culls on March 10<sup>th</sup> and 11<sup>th</sup>.

### **Alewife Monitoring**

Eric mentioned that he, Tom Powell, Catherine Chester, Carol DiPaolo and Erin Reilley attended the alewife (river herring) monitoring training session held at North Hempstead Town Hall on March 3<sup>rd</sup> and found it very informative. Alewives, once very prevalent in this area, have seen drastically reduced populations due to the creation of hundreds of dams on Long Island over the past two hundred years (they need to spawn in fresh water rivers and streams). Nevertheless, they are starting to make a comeback and they have never really been monitored on the north shore of Nassau west of Mill Neck Creek. A number of possible monitoring locations were identified and procedures discussed. The time of the year to monitor is over the next month or so. **If anyone is interested in participating in the monitoring, please contact Eric.**

### **C.E.S.S.P.O.O.L. Project Update**

**Meeting with Suffolk County officials** – Eric noted that the Protection Committees and Friends of the Bay will be meeting on March 18<sup>th</sup> with Suffolk County officials to be brought up to date on that county's efforts at dealing with onsite septic systems.

**Follow-up meeting with Nassau County officials** – Eric also noted that on March 21<sup>st</sup>, the protection committees will hold a follow-up meeting with Nassau County officials on developing a county action plan for the dealing with septic issues on the north shore.

**Newsday Letter to the Editor and Editorial** – Eric also noted that after much discussion with Newsday, the paper published a Letter to the Editor from the protection committees on January 14<sup>th</sup> urging a focus on septic issues on the north shore of Nassau County. It seems to have had some effect as their March 3<sup>rd</sup> editorial calls for action to address north shore septic issues, among other things.

**Roll Out of Public Education Campaign** –Finally, Eric noted that the C.E.S.S.P.O.O.L. Project’s public education campaign is undergoing extensive re-writing of the various materials and it is uncertain as to whether the Earth Day roll out will be feasible.

### **Sewer Feasibility Study Update**

Eric reported that the County’s consultant D & B Engineers are actively working on the plan and that their subconsultant (3G / CPL) has asked for some pathogen data going back to 1995. Eric stated that he only had data going back to 2001 and forwarded the request to **Carol in the event that she could assist**. Jennifer Wilson Pines stated that the County has earmarked \$4 million in its 2016 capital budget to facilitate the connection of the Sea Cliff Business District sewer line. A bond would still need to be floated to provide the funds.

### **Joint Protection Committee Meeting**

Eric stated that the three protection committees have met by conference call and have compiled a proposed agenda for a joint meeting which is proposed to be held at the Manhasset Public Library on May 11<sup>th</sup> from 7:00 to 9:00 pm. The Setauket Harbor Task Force and Peconic Estuary Protection Committee will be invited. The agenda, subject to change and acceptance by speakers, would include an overview of Suffolk County’s septic initiatives; a presentation by The Nature Conservancy on their nitrogen modeling of the north shore bays; an update from each protection committee; and a showing of the stormwater video produced by the Nassau County Soil and Water Conservation District.

### **Nassau County Soil & Water Conservation District**

**Tree, plant and seed pack sale to municipalities** – Eric reminded members that the Nassau County Soil and Water Conservation District is offering to purchase for municipalities at a reduced cost. The trees and shrubs are bare root seedlings. If any municipality is interested in purchasing any trees, shrubs or seed packets, let Corey Humphrey know at (516) 364-5860 or [nassauswcd@optonline.net](mailto:nassauswcd@optonline.net).

**Stormwater video and brochure rollout** – The District has also completed the production of a professional video on stormwater and will be making the rounds to interested groups to show the 30 minute version. *If any municipality is interested contact Corey Humphrey at (516) 364-5860 or [nassauswcd@optonline.net](mailto:nassauswcd@optonline.net).*

**Raingarden and workshops at Cedarmere** - The raingarden at Cedarmere will be installed in either the Fall of 2016 or the Spring of 2017. The grant will also include a workshop for the public to provide training on how to design and construct raingardens.

**Long Island Envirothon** - Finally, the Long Island Envirothon this year will be held on April 20<sup>th</sup> at the USDAN Center in Wheatley Heights. The Envirothon picked up a major corporate sponsor this year – Covanta Energy. The organizers are still looking for people to serve as judges if anyone is interested.

### **Friends of Cedarmere**

**Recent improvements** – Tom Powell noted that a number of improvements have been accomplished in recent months and that the Friends are in the process of cleaning out the historic mill which could be used for meetings. The building can seat up to 40 persons but has no bathroom facilities. A series of art classes are expected to begin in April.

**Pond Pulls for 2016** – Eric noted that with the help of the Nassau County Soil and Water Conservation District and Nassau County DPW, pond pulls have been scheduled for June 11<sup>th</sup> and September 10<sup>th</sup> (10 am to noon both days). Volunteers are needed.

**A Walk in the Woods** – Eric also noted that on the evening of June 2<sup>nd</sup> at 6:00 pm, he and the North Shore Land Alliance will lead an historic hike at Cedarmere that will include a tour of the gardens, possible tours inside the Mill and the house, and a hike across the street up to the Dewey Cottage which was built by Bryant. It is likely a hike that Mr. Bryant surely made many times.

### **Municipal Updates**

**Glen Cove** – nothing to report.

**Nassau County** – nothing to report.

**Sands Point** – nothing to report.

**Roslyn Harbor** – nothing to report.

**Sea Cliff** – nothing to report.

**Roslyn** – Peedee Shaw reported that in conjunction with the development along Lumber Road, a series of hydrodynamic separators (“vortex units”) is being installed. These will capture sediment and the pollutants that attach to them before they can be discharged into the harbor (as was the case in the past). She also reported on a new dog park that the Village created along Skillman Street. A pass and code are required in order to enter.

**Oyster Bay** – Sean Jordan noted that the Town is preparing for its annual dune grass planting at Tobay Beach and will need volunteers.

**North Hempstead** – Kevin Braun noted that Harbormaster and Public Safety Commissioner Andy DeMartin has resigned in order to run for the New York State Assembly seat being vacated by Michelle Schimmel. He also reported that an Eagle Scout candidate is working along the harbor trail building benches.

### Other Items

**Proposed Hempstead Harbor Boat Tour** – Tab Hauser proposed that the Committee hold a boat tour for elected officials this summer, along the lines of what the Manhasset Bay Protection Committee does every year. Eric stated that the Committee had done one many years ago and that it was well received. The Committee concurred and ***Eric will find out costs and report back to the Committee at the April meeting.***

### Announcements, Reports, Reminders, & Upcoming Events

The following upcoming events were announced:

March 11<sup>th</sup> – Embayment Monitoring Meeting (Port Jefferson)

March 15<sup>th</sup> – Raingarden workshop with Rusty Schmidt (7:00 pm at the Northport Library)

March 19<sup>th</sup> - Invasives Pull at Garvies Point Museum and Preserve (Multiflora Rose) (10:00 am – 2:00 pm)

March 22<sup>nd</sup> – Canada Goose Egg Oiling Training Session (10:00 am - location TBD)

March 22<sup>nd</sup> – L.I. Sound Futures Fund Grant Workshop (Huntington Town Hall 1:00 – 3:00)

March 23<sup>rd</sup> – DEC Public Hearing on Doxey Site & Captain’s Cove (7:00 pm – Glen Cove City Hall)

April 4<sup>th</sup> – L.I. Sound Futures Fund Grant Webinar (2:00 – 3:30)

April 16<sup>th</sup> – HHPC Booth at Port Regatta at N. Hempstead Beach Park (9:00 am)

April 16<sup>th</sup> - Invasives Pull at Garvies Point Museum and Preserve (Garlic Mustard) (10:00 am – 2:00 pm)

April 20<sup>th</sup> – Long Island Envirothon – USDAN Center, Wheatley Heights

May 15<sup>th</sup> – Town of North Hempstead EcoFest [NEED VOLUNTEER]

May 21<sup>st</sup> - Invasives Pull at Garvies Point Museum and Preserve (Japanese Knotweed) (10:00 am – 2:00 pm)

June 2<sup>nd</sup> – a Walk in the Woods at Cedarmere (6:00 pm)

June 5<sup>th</sup> – HarborFest – Town Dock, Port Washington

June 11<sup>th</sup> – Pond Pull at Cedarmere (10:00 am to 12:00 non)



June 11<sup>th</sup> - Invasives Pull at Garvies Point Museum and Preserve (Mile-a-Minute) (10:00 am – 2:00 pm)

The meeting adjourned about 9:15 pm.

**NEXT MEETING:** April 6<sup>th</sup> at Sea Cliff Village Hall

## **SUMMARY OF NYS DEC MEETINGS ON PROPOSED CHANGES TO MS4 STORMWATER PERMITS**

February 29<sup>th</sup> and March 1<sup>st</sup>, 2016

Prepared by Eric Swenson  
Executive Director, Hempstead Harbor Protection Committee

*NOTE: Thank you to George Hoffman (Setauket Harbor Task Force) and Veronica King (Peconic Estuary Protection Committee) for supplying their comments on the Suffolk County meeting. They are incorporated into this summary.*

### **WHAT THE MEETING COVERED:**

- An explanation and comments on the new Semi Annual report required of some MS4s who are subject to TMDLs for pathogens and nitrogen.
- An announcement of the DEC's upcoming TMDL Implementation Plan (draft expected this Spring)
- A discussion on the DEC's process for drafting the next MS4 permit (draft due November 1, 2016)
- An explanation of the EPA's current steps toward new regulations that will affect MS4 permits nationally
- DEC interest in promoting water quality monitoring

### **OVERVIEW OF THE MEETINGS:**

These meetings were the result of a request made by the Hempstead Harbor, Manhasset Bay, Oyster Bay / Cold Spring Harbor, and Peconic Estuary Protection Committees along with Friends of the Bay and the Setauket Harbor Task Force. Each meeting was attended by about 30 persons. The meetings were conducted by DEC Albany Staff from the Division of Water including Carol Lamb-LaFay, Koon Tang, and Steve McCague.

### **NEW SEMI-ANNUAL REPORTING:**

A lawsuit brought by the Natural Resources Defense Council (NRDC) against the DEC resulted in the need for a means to measure the incremental progress in meeting TMDL reductions. Because of requirements in NYS's regulations (6 NYCRR Part 750), annual reporting is not sufficient, hence the new semi-annual reports. Rather than imposing a schedule of required numerical reductions, the DEC prefers to focus on source controls (public education, stricter local laws with enforcement, etc.). Not all MS4s that are subject to TMDLs (in our case the pathogen TMDL), will be required to submit the Semi-Annual reports. Over the past three years, DEC's Steve McTague has been reviewing data supplied by each municipality to determine how much of each waterbody's overall TMDL reduction is attributable to that municipality. In many cases, municipalities have already met that proportional reduction and will not be required to do the Semi-Annual reporting. The details for each municipality will be released in the upcoming draft TMDL Implementation Plan expected this Spring (see next section).

The first Semi-Annual report will be due this December and will cover the period of March to September, 2016. The draft report form will be modified based on comments received at these two meetings. While there may be other changes, they have agreed to revisit the questions that pertain to onsite wastewater treatment systems (OWTS – a/k/a cesspools and septic systems). Many felt that the requested information was too broad and should be limited to those systems which are known or suspected to be failing and discharging to the MS4 system (most failing systems discharge to groundwater which is not under the jurisdiction of the MS4 permit).

### **TMDL IMPLEMENTATION PLAN:**

As mentioned above, the DEC has been looking at each waterbody that is subject to a TMDL (there are 27 with pathogen TMDLs including Hempstead Harbor) and trying to determine what share of the overall reduction each MS4 will be responsible for. They have calculated pollutant load reductions by taking into account such things as the number of outfalls in the sewershed, the amount of impervious surfaces, areas where stormwater is handled without entering the MS4 system (such as a big box store parking lot where all stormwater is retained onsite), etc. The information they are basing it on is that which has been supplied by the MS4s as part of their Retrofit Plans, field visits, and discussions with MS4s and their consultants. At this point, they have narrowed down to 21 (from over 50), the number of MS4s who will need to submit the Semi-Annual Reports. The draft plan will address each MS4 individually and is expected to be released this Spring.

### **NEXT DEC MS4 PERMIT:**

The current MS4 general permit will be in effect until April 30, 2017. The DEC is working on changes to this permit and is required to have a draft out by November 1, 2016. If they meet this deadline and receive sufficient comments, they will be permitted to extend the termination date of the current permit. In the past, when they have issued drafts, the overwhelming amount of comments came from environmental groups and not from MS4s. It is important that they hear from MS4s (note the protection committees have always provided comments). It is unclear as to whether the new EPA rulemaking will impact this next permit as the timelines of the two processes is not entirely clear. If the new DEC permit goes into effect before the EPA is through with their process, any changes required by EPA (which could be substantial) would then be incorporated into the following DEC permit (e.g. two permits from now). Note that EPA was sued by another environmental group which claimed that the permit process does not allow enough public participation.

### **PROPOSED EPA MS4 REGULATIONS:**

Each State that issues MS4 general permits must adhere to the requirements set forth by the federal EPA. From time to time, the EPA issues new regulations and is in the process of doing so right now. Draft revisions have been released and comments are due by March 21<sup>st</sup>. More information on the EPA's proposal can be found on the LI Ph II ListServe at [https://groups.yahoo.com/neo/groups/Phase\\_II\\_LI/conversations/messages/1685](https://groups.yahoo.com/neo/groups/Phase_II_LI/conversations/messages/1685)

### **WATER QUALITY MONITORING:**

The DEC also expressed interest in facilitating increased ambient water quality monitoring, possibly as an alternative to installing costly retrofits. They would like to see it done on an inter-municipal basis, especially with respect to pathogens. However, they do not appear to have a ready source of funds and to do so would require such funding on an on-going basis. I believe that they are hoping that municipalities will ante up for this. They suggested that there may be funding available through the L.I. Nitrogen Action Plan but it is unlikely that they will be able to fund anything other than nitrogen monitoring. DEC will likely convene a separate meeting to discuss this.

### **SPECIAL NOTE REGARDING HEMPSTEAD HARBOR:**

Hempstead Harbor is somewhat unique when it comes to which standards apply. Normally when the state determines that a water body is impaired, it goes onto the state's "303(d)" list for one or more pollutants. In the case of Hempstead Harbor, the harbor was divided into the northern harbor, the southern harbor and Glen Cove Creek. Being on the "303(d)" list triggers a process whereupon at some point, a "TMDL" is developed which dictates how much of the pollutant needs to be reduced to achieve water quality standards. Until such time, municipalities are required to ensure

that there is no net increase in the discharge. When the pathogen TMDL was developed, it included only the northern half of the harbor and Glen Cove Creek. However, according to DEC, the TMDL took the position that the lower harbor is hydraulically linked to the upper harbor and therefore the TMDL requirements apply to all municipalities around the entire harbor. At the same time, the lower harbor has remained on the "303(d)" list and is proposed to remain there on the 2016 list, which means that a TMDL will ultimately be developed for the lower harbor. This does not make sense as the municipalities along the lower harbor would then be required to meet two likely different sets of requirements for restoring pathogens to acceptable levels. Other harbors in the area were treated differently.

Another anomaly confronts us. Around the same time that the upper harbor was included in the pathogen TMDL (which requires a 95% reduction in pathogens), a large portion of that same area was determined by DEC to meet the standards for shellfishing (primarily pathogen standards). If that is the case, credit should be given for such a large portion of the waterbody having met standards, which should reduce the amount of efforts required by the municipalities.

*IF ANYONE WOULD LIKE FURTHER DETAILS OR TO DISCUSS THE ABOVE, PLEASE FEEL FREE TO CONTACT ME AT (516) 677-5921.*

**SUMMARY OF EPA'S  
PROPOSED CHANGES TO THE PHASE II MS4 GENERAL PERMIT PROCESS**

*Prepared by Eric Swenson, Executive Director of the Hempstead Harbor Protection Committee  
Version dated March 4, 2016*

**BACKGROUND**

A federal court decision ruled that EPA was not properly regulating the MS4 general permit process because:

- The process did not allow for adequate public notice and the opportunity to request a public hearing before issuing a permit; and
- The EPA failed to require the permitting authority (such as NYS DEC) to review the Best Management Practices (BMPs) to be used at a particular MS4 to ensure that the permittee reduces discharged pollutants to the “maximum extent practicable (MEP)”.

**EPA'S PROPOSED RESPONSE**

The EPA has proposed to change the regulations governing the way in which MS4s obtain general permit. They have proposed the following 3 options:

- “The Traditional General Permit Approach” - this would require the permitting authority (e.g. NYS DEC) to establish within the general permit all requirements that the MS4s must meet to reduce pollutant discharges to the maximum extent practicable. This would be subject to public notice and comment and an opportunity to request a hearing.
- “The Procedural Approach” – this would add procedural requirements to the existing rule that would require the MS4 to inform the permitting authority (e.g. NYS DEC) in its Notice of Intent (NOI) of the BMPs that it proposes to use. The public would then have the opportunity to comment on the BMPs and request a hearing and the permitting authority would have the power to request changes to the BMPs before the MS4 can discharge under the general permit.
- “The State Choice Approach” - this is a hybrid of the above two. This would allow the permitting authority (e.g. NYS DEC) to choose between the above two or implement a combination of the two before issuing a general permit.

**TIMELINE AND COMMENTS**

The EPA published its notice of the proposed changes in the Federal Register on January 6, 2016. Comments can be submitted electronically up until March 21, 2016. Submit comments identified by Docket ID No. EPA-HQ-OW-2015-0671, to the Federal eRulemaking Portal: <http://www.regulations.gov>. No date has been set for these regulations to go into effect.

**RESOURCES FOR ADDITIONAL INFORMATION**

<http://www.epa.gov/npdes/npdes-stormwater-proposed-ms4-general-permit-remand-rule>

**TESTIMONY OF ERIC SWENSON**  
**EXECUTIVE DIRECTOR, HEMPSTEAD HARBOR PROTECTION COMMITTEE**  
on the  
**CONCEPTUAL DRAFT SCOPE FOR THE LONG ISLAND NITROGEN ACTION PLAN**

February 3, 2016  
Hofstra University

Good Afternoon. My name is Eric Swenson and I am the Executive Director of the Hempstead Harbor Protection Committee. We are an inter-municipal committee comprised of the 9 local governments that surround Hempstead Harbor on the north shore of Nassau County and have been working together for the past twenty years to improve water quality in our harbor.

At the outset, I would like to state that we are pleased with the approach taken so far. The draft scope appears comprehensive, sets forth a logical approach, and there has been a good attempt at involving all stakeholders in this process.

It appears from the draft scope that a key element in the plan will be the development of nitrogen loading targets for each sub-watershed and that Long Island municipalities will ultimately bear much of the responsibility for achieving those targets. It is thus critical that the concerns, suggestions, resources and inherent limitations of local governments be given the utmost consideration in the development of any actions required of them. As Long Island's oldest inter-municipal effort aimed at improving water quality, our Committee stands ready and willing to assist in this effort.

Our Committee has had 20 years of experience in preparing and carrying out water quality improvement plans and we have had our share of successes and setbacks. Our largest success came in 2011 when 2,500 acres of our harbor was re-opened to shellfishing after 45 years of closure. This was the first major waterbody to be reopened in New York State in decades and the harbor has since become the state's second-largest producer of hard clams with an annual value to the local economy of \$1.3 million.

I point out this example, not to toot our own horns, but to point out an irony that we need to be cautious of. At the exact same time that years of water quality monitoring by the NYS DEC and by us and the Coalition to Save Hempstead Harbor demonstrated that these waters met the highest possible water quality standard for pathogens and that they could be re-opened to shellfish harvesting, Batelle Laboratories, under contract with the EPA, performed modeling to determine pathogen reduction targets for 27 water bodies on Long Island, including virtually the same area of Hempstead Harbor that was ultimately re-opened. Because they did not reach out to us or incorporate our 15 years' worth of data, they based their results on an overly-conservative model and concluded that pathogens in Hempstead Harbor need to be reduced by 95% to achieve acceptable levels. With these requirements now incorporated into their municipal stormwater permit requirements, our municipal members are now faced with the need to achieve nearly impossible and arguably unnecessary targets for pathogen

reduction. To add fuel to the fire, we still do not know whether the pathogens we need to reduce are of human, pet or wildlife origin. Achieving the near-impossible without good data regarding sources can lead to a waste of taxpayer resources as well as a diminished ability to address other water quality needs.

For this reason, we must take every precaution to make sure that any nitrogen reduction targets are based on good science, have achievable and workable goals, and have funding sources identified and available to assist in meeting those goals.

Over the past year, we have worked with The Nature Conservancy on performing nitrogen loading modeling for Nassau's north shore embayments and have much more confidence in their results than we did with the pathogen modeling. They outreached to us and we worked together to identify and refine the data that went into their model.

The groundwater flow monitoring now underway by USGS will further help define how and when these loads are reaching our embayments.

The big unknowns, however, are:

- how much nitrogen in our harbors is flowing from other sources beyond our control (like the East River), and



- what happens to the nitrogen once it is in the water column.

If nitrogen reduction targets are developed without these factored in, we run the risk of going down the wrong path and spending great effort and resources without solving the problem.

At the same time, the parameters used to measure nitrogen should be uniform and consistent with other monitoring programs. Currently the Long Island Sound Study is undertaking efforts to establish more uniformity and consistency among and between water monitoring programs around Long Island Sound. One of the issues that needs to be resolved is how to measure nitrogen. Some measure Total Nitrogen. Others measure Dissolved Inorganic Nitrogen. These efforts should be coordinated as much as possible so that the nitrogen trends can be seen as part of a bigger picture.

Speaking of the Long Island Sound Study, I note that even though you have identified 5 entities that make up your Project Management Team and 91 others that will serve on the Working Group, they are not mentioned as members of the team. Since the Long Island Sound Study is the inter-municipal entity charged with improving water quality in Long Island Sound and its embayments, I believe they should be part of this process. I also note that they have recently completed a new 20 year plan for the Sound and have made water quality in embayments as

one of their top priorities. I also note that neither the EPA or the Long Island Commission on Aquifer Protection was listed.

We are pleased to see that the draft scope will address the potential for new sewer hookups in the un-sewered areas and will consider both traditional sewerage and alternative technologies such as cluster decentralized systems and alternative treatment.

We would like you to be aware that Nassau County is currently in the midst of conducting such a study for the eastern watershed of Hempstead Harbor as well as for a couple small parcels on the Port Washington peninsula. We strongly urge that the current study either be expanded to include all of the un-sewered areas of Nassau County or that a similar study be undertaken. It is important that the results be detailed enough to enable decisions to be made as to whether to pursue funding for final design and hookups in priority areas.

We would also like to point out that the Village of Sea Cliff has recently installed sewer piping along its downtown business district but at present, due to the lack of funding, the line has not been run to connect it to the nearby Glen Cove Wastewater Treatment plant. Since it is a downhill run, no pumping station is needed – only funds. This is a more than “shovel-ready” project and assisting in procuring the small amount of funding that would be needed would be a big step in helping reduce nitrogen in this area.

The draft scope also needs to address the issues surrounding the existing septic systems and cesspools which, even under the most optimistic of scenarios, will be handling a great percentage of our wastewater for many years to come.

These issues include:

- providing incentives for homeowners to maintain their systems
- collecting data to ascertain which areas have high rates of failing systems
- discontinuing the practice in some areas of permitting in-kind replacement of a failing cesspool without installing a septic tank
- requiring professional training and certification of septic companies
- prohibiting the filing of deeds at County Clerk's offices without showing the type and location of septic systems; and
- requiring any new systems use shallow leaching fields rather than deep leaching pools.

Finally, it goes without saying that the availability of funding is a pre-requisite for success.

However, the funding sources identified in the draft scope are the traditional competitive grants and revolving loans that currently exist. In many cases, these are not the best fit and the success of this plan may well require the pursuit of new and alternative sources of funding.

For example, there needs to be a dedicated and permanent source of funds for water quality

monitoring. At present, these programs are typically subject to competitive grants and to gauge progress, monitoring needs to be conducted year after year. We would suggest that the team consider options such as:

- exempting water quality infrastructure improvements from municipal tax caps
- creating a dedicated fund through small assessments on water bills or a small increase in sales taxes; and/or
- pushing for a state-wide Clean Water Bond Act.

Thank you for the opportunity to provide this input. We look forward to working with you.