

New York State Department of Environmental Conservation

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Denise M. Sheehan
Commissioner

May 4, 2006

Mr. Walter E. Mugdan, Director
Division of Environmental Planning and Protection
US Environmental Protection Agency Region 2
290 Broadway
New York, New York 10007-1866

Mr. Gary Gulezian, Director
Great Lakes National Program Office
United States Environmental Protection Agency
77 West Jackson Boulevard (G-9J)
Chicago, Illinois 60604

Dear Mr. Mugdan and Mr. Gulezian:

Re: Oswego River Area of Concern Stage 3 - Final Delisting Document:
Letter Requesting the Federal Government to Proceed with Formal Delisting

The New York State Department of Environmental Conservation (NYSDEC) in consultation with the Oswego River Remedial Action Plan (RAP) Remedial Advisory Committee has prepared the final Stage 3 delisting document for the Oswego River Area of Concern (AOC). This document and its accompanying RAP implementation process have fulfilled the requirements of Annex 2, Section 4 of the Great Lakes Water Quality Agreement (GLWQA) for the Oswego River RAP. This letter requests that the United States Environmental Protection Agency (USEPA) proceed with the necessary steps to delist the AOC.

Considerable document review, comment response, and team collaboration have been conducted since the original May 2002, draft Stage 3 delisting proposal was prepared. A formal public comment period recently ended January 27, 2006, with no additional comments being received. The Oswego River RAP Stage 3 delisting document was designed specifically to focus on and resolve each of the 14 "RAP Use Impairment Indicators" under the GLWQA. The data and strategies accomplish this for each indicator. The Appendices provide background information over the last 15 years and include the slides from the presentation used in public meetings. The Stage 3 document is posted on the NYSDEC's website listed below and is also available in an electronic file that has been shared and reviewed with EPA and the International Joint Commission (IJC). In the June 7, 2005, letter to USEPA, the IJC states that the Stage 3

document addresses the resolution of the 14 Beneficial Use Indicators as listed in the GLWQA and verifies this has been achieved to the maximum extent practicable.

In the process of evaluating each of the 14 possible Beneficial Use Impairments, the Oswego River Remedial Advisory Committee developed restoration criteria and endpoints. Four indicators were identified as impaired: 1) fish consumption restrictions (e.g. PCBs in lake trout); 2) degraded fish habitat (due to de-watering below the Varick power dam); 3) degraded fish populations; and (4) eutrophication and algae (in limited areas of the lower harbor and locks).

Beneficial results have been attained by conducting public participation, investigative studies, and workshop efforts, and by applying delisting guidance. Pollution reduction activities called for in the RAP, including, remediation of hazardous waste sites, control of point and nonpoint water discharges, reduction of nutrients and stormwater runoff, implementation of watershed best management and pollution prevention practices, and carrying out local agency river corridor enhancement actions, have resulted in improvements to water quality, sediment, and additional environmental conditions that contribute to fulfilling the endpoints and delisting criteria for the AOC.

This Oswego River RAP Stage 3 document is consistent with USEPA Delisting Principles and Guidance in demonstrating resolution of the impairments. In accordance with this guidance, the fish consumption advisory within the AOC remains as part of the Lake Ontario advisory because the source of the advisory is outside of the AOC. Due to improvements in water quality the fish consumption impairment has been improved; however, it will continue to be addressed more appropriately by the Lake Ontario Lakewide Management Plan that responds to the lakewide fish consumption impairments. The fish habitat and population recovery impairments are being addressed by the new United States Federal Energy Regulatory Commission's Oswego River power dam license that commits to providing enhanced run-of-river flow throughout the year, thereby increasing the amount of suitable habitat for spawning and rearing within the AOC. Concurrently, water quality, stream flow, and water mixing improvements have significantly reduced eutrophication and algae characteristics enabling natural algae and weed growth to be managed as nuisance conditions and no longer a beneficial use impairment.

There is a true success story behind the preparation of the Stage 3 delisting for the Oswego River AOC. Historically, the Oswego River watershed was a significant source of contamination. We have achieved a water quality change from an image of garbage, sewage and pollution to becoming a focus of the waterfront community. By representing stakeholder interests, the RAP Remedial Advisory Committee (RAC) has accomplished the community's recognition of the importance of this area as a natural resource and thereby encouraged others to act responsibly to restore and to protect the environment and the beneficial uses of the waters. The RAC stakeholders have identified, influenced, and observed the implementation of many supportive activities in the Oswego watershed. For example, the City of Oswego has revitalized the river shoreline and downtown area, the Port Authority has made many aesthetic and pollution control improvements, recreational boating and sport fishing interests have grown, upstream hazardous waste site remediation has addressed downstream impacts, and water access and water quality have improved tremendously.

Other activities contributing to recovery of the AOC include a number of investigative studies and report review activities initiated and accomplished by the RAC. Academic research supported by a number of Great Lakes funding mechanisms has contributed to improved problem definition and remedial measures. Significant reductions in nutrients, suspended solids and floatables from the Oswego River drainage basin have resulted in enhanced water quality in the AOC. Recreational interests have been protected and improved by the AOC designation and responsible agencies' oversight.

The RAC has effectively implemented the application of the body of knowledge, that only an ecosystem approach can accomplish. As a result, the status of each of the Use Impairment Indicators has been resolved and an understanding has been achieved that a significant impairment and/or threat to the AOC environment does not exist. The conclusion is that the lower Oswego River and harbor area no longer warrant the AOC designation.

NYSDEC, USEPA, and other agencies will continue to use the existing suite of environmental law and regulatory oversight to implement, monitor and enforce programs that protect the environment in and around the AOC. The presence of local area environmental groups, concerned citizens, and the agencies' purview provides a vigilance that assures beneficial uses will remain intact and that the riverine system will not revert back to impaired status.

In accordance with the steps identified in USEPA's Delisting Principles and Guidance, an updated timeline is enclosed showing the next steps for delisting. Key to accomplishing the timeline will be USEPA's coordination with the Department of State for delisting readiness. The July 24 or 25, 2006 formal announcement of delisting is achievable and coincides nicely with planned commemoration activities at the Oswego Harborfest that follow. If you have any questions, the NYSDEC, USEPA, and Oswego River RAC contact information is provided.

Sincerely,

(Signed 5/4/06)

Sandra Allen
Director
Division of Water

Enclosures

c: Mario Del Vicario, EPA Region2
Seth Ausubel, EPA Region 2
Barbara Belasco, EPA Region2
Mark Elster, EPA Region 5
Jeff Myers, NYSDEC
Ron Entringer, NYSDEC
Steve Eidt, NYSDEC Region 7
Bob Townsend, NYSDEC

NYSDEC Website:

Stage 3 document - <http://www.dec.state.ny.us/website/dow/oswdlist.html>

Contact Information:

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Oswego AOC Delisting Timeline

Steps per EPA Delisting Principles & Guidelines: <http://www.epa.gov/glnpo/aoc/delist.html>

Step 5: Public Consultation: ✓

December 14, 2005 - January 27, 2006

- NYSDEC public noticed the Oswego Stage 3 Delisting Document via the agency's Environmental Notice Bulletin (ENB) for a 45 day period.
- On Dec. 14, NYSDEC also posted the Oswego Stage 3 Delisting Document on the Agency's website. No comments from the public notice were received.
- A15 page Response Summary from previous agency presentations and public input is already in the Stage 3 document as Appendix G. The Stage 3 is final dated January 2006 .

Step 6: Final Stage 3 to EPA:

January 30, 2006 - April 28, 2006

- The web-posted Stage 3 Delisting Document is updated as final January 2006; however some further revisions will occur to address the planned CSO compliance action by EPA (see fact sheet - CSO requirements not met under the CWA do not affect beneficial uses.
- During February thru May, EPA Region 2 and GLNPO staff are to brief managers in their Regions and Washington HQ as well as staff at the U.S. Department of State - ongoing.
- At the same time NYSDEC will transmit the Final Stage 3 Delisting Document to the EPA Region 2 RA (copy to the GLNPO Manager) with a request that EPA proceed to coordinate formal delisting with the U.S. Department of State.

Step 7: U.S. EPA Transmittal:

May 1 - 30, 2006

- During May, EPA Region 2 and GLNPO are to coordinate the delisting procedures with Judith Ayres, EPA's Office of International Affairs (OIA) along with Pete Christich.
- Coordination is to include appropriate Canadian Federal and Provincial agencies, NYSDEC and GLNPO representatives.
- In cooperation with EPA Region 2 and GLNPO, OIA is to transmit the delisting request to the U.S. Department of State. IJC is to be kept apprised of activities.

Power Dam Compliance Observation:

May 31, 2006

- Observe Minimum Flow achieved under FERC license
- Observe Spawning Season

Step 8: Delisting Readiness:

June 1 - 28, 2006

- All preparations for the announcement of the formal delisting in July, 2006 are to be accomplished during May and June 2006.
- Following confirmation of the restoration of the "Run-of-River" flow at the Varick power dam on May 31, 2006, the U.S. Secretary of State can officially announce the AOC delisting during the month of July (in step 9 below).

Step 9: IJC Transmittal and Final Delisting Preparations:

July 5 - 21, 2006

- Agency announcements of Delisting and formal transmittal of final Stage 3 Delisting Document to the U.S. and Canadian Co-chairs of the IJC by the U.S. Secretary of State. Copies to EPA Region 2, GLNPO, NYSDEC, and appropriate Canadian Federal and Provincial agencies. Coordinate formal announcements including press release in Step 10.

Step 10: Formal Announcement and Commemoration :

July 24-30, 2006

- Formal AOC delisting announcement planned for July 24 or 25 with commemoration activities to follow and coincide with "Harborfest" in Oswego, NY. see Harborfest activities at: <http://www.oswegoharborfest.com/>
The agencies need to secure management interest, attendees, and activities.