

New York State Department of Environmental Conservation
Office of the Regional Director
Region 3 – Hudson Valley Catskills
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Joe Martens
Commissioner

November 18, 2014

Jeremy Wilber, Supervisor
Town of Woodstock
45 Comeau Drive
Woodstock, New York 12498

Re: Proposed Niagara Water Bottling Facility (605 Boices Lane)
Town of Ulster, Ulster County

Dear Supervisor Wilber:

Thank you for your recent correspondence regarding your concerns associated with the environmental review of the proposed Niagara Water Bottling Facility. As you are aware, the New York Department of Environmental Conservation (NYSDEC) provided comments regarding this proposal to the Town of Ulster Planning Board through our State Environmental Quality Review Act (SEQR) Lead Agency Coordination response letter dated October 24, 2014 (attached). In that letter, the NYSDEC identified its jurisdiction establishing DEC as an involved agency pursuant to 6 NYCRR Part 617 (i.e., SEQR). I would like to assure you that as an “involved agency”, the NYSDEC will play an active role with respect to the environment review conducted for this proposal via the SEQR process and through the review of applications submitted by the project sponsor for the NYSDEC permits identified.

The NYSDEC’s decision not to seek lead agency status for this project is based upon its limited jurisdiction. The facility is proposed to be constructed on a parcel of land located totally within the Town of Ulster and would include the extension of existing municipal water and sanitary sewer services to the project site. The NYSDEC’s jurisdiction is likely to be limited, including a potential modification to the Town of Ulster’s State Pollution Discharge Elimination System (SPDES) Permit, the City of Kingston’s Water Withdrawal Permit, and a potential Protection of Waters Permit for a new proposed wastewater outfall from the Town of Ulster’s wastewater treatment plant. Potential impacts appear to be chiefly local in nature, with effects on noise, traffic, water supply, and community character. Projects like this are best assessed by local governments, especially given New York’s strong home-rule traditions. Through their comprehensive authority for site plan review, local agencies can require development-wide alternatives, or mitigation for project-wide impacts.

In your October 28, 2014 letter, you express concern with agencies outside the Town of Woodstock (Town) safeguarding the interests of the Woodstock watershed and ask the question as to what entity the Town can rely on to ensure all the potential impacts of the project are addressed. As lead agency, it will be the responsibility of the Town of Ulster to ensure that all identified impacts are addressed through the SEQR process. As an involved agency, it will also be the NYSDEC's responsibility to ensure a hard look of all identified potential impacts are addressed through the SEQR process. In that October 28 letter you request that the NYSDEC support the Town of Woodstock in being considered as an "involved agency" and not as an "interested party" for this action under SEQR. This is not a determination that the NYSDEC can make, but rather is one defined by the statute. An involved agency is an agency that will ultimately make a discretionary decision to fund, approve or directly undertake an action. Without such discretionary authority an agency cannot be considered an involved agency. It is also important to note that the SEQR statute (Article 8 of the NYS Environmental Conservation Law) did not provide the NYSDEC, or any other agency, with administrative or enforcement authority to review SEQR implementation or decisions by other agencies. DEC is charged with administration of SEQR, including promulgation of statewide regulations and model assessment forms pertaining to SEQR, but cannot force another agency to comply with SEQR. Therefore, actual oversight and enforcement of SEQR falls to interested citizens and groups.

As an interested agency, the Town of Woodstock will have the opportunity for input into the decision making process to ensure that the interests of the Woodstock watershed are safeguarded. As required under the SEQR regulations, this proposed project will require a determination of significance, and therefore you should communicate your environmental concerns and questions directly to the lead agency. If a positive determination of significance (positive declaration) is made, you will have the opportunity to participate in the SEQR process by contributing relevant scoping topics, either through written communication to the lead agency or at public scoping sessions; submitting written comments during the draft Environmental Impact Study (DEIS) comment period; and commenting on a DEIS at public hearings.

As my Regional Permit Administrator, Dan Whitehead, discussed with you on your November 4, 2014 telephone call, the NYSDEC is currently gathering information concerning the proposed sale of water associated with this project, will review the existing permits and any changes in the regulations since the issuance of the permit. A modification to the existing Water Withdrawal Permit will subsequently be required if the proposal causes change or amendment to any permit condition that is currently in force. As part of our hard look, the NYSDEC will determine if the project sponsor's preferred alternative will cause such a change to the existing water supply permit. If a modification to the Water Withdrawal Permit is necessary, the NYSDEC must then determine if the proposal meets permit issuance standards.

Thank you for your interest in protecting the natural resources of this region. Working together, state and local agencies can achieve a project that balances the needs of the economy while conserving the unique ecological resources and benefits of Catskills and the Mid-Hudson Valley. As an involved agency with discretionary jurisdiction and permitting authority, I assure you that

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NYSDEC will continue to be actively engaged as the environmental review of this project as it moves forward.

Sincerely,

A handwritten signature in black ink that reads "M. Brand". The signature is written in a cursive, slightly slanted style.

Martin D. Brand
Regional Director

cc: Dan Whitehead