

Authorizing the County Attorney To Commence An Article 78 Proceeding To Challenge The New York State Department Of Environmental Conservation's Continued Delay In Entering Into A Consent Order With The New York City Department Of Environmental Protection Regarding Polluted Releases Into The Esopus Creek

Referred to: The Environmental, Energy and Technology Committee (Chairman Belfiglio and Legislators Bartels, Lopez, Wawro, and Wishnick)

Legislator Robert Aiello and Co-Sponsor Legislator Craig Lopez offer the following:

WHEREAS, an Article 78 proceeding may be commenced when an Agency is acting arbitrarily and capriciously; and

WHEREAS, the New York State Department of Environmental Conservation (NYSDEC) brought a lawsuit against the New York City Department of Environmental Protection (NYCDEP) over two and half years ago to address the NYCDEP's polluted releases in the Esopus Creek; and

WHEREAS, in 2012, the Federal Environmental Protection Agency (EPA) determined the Lower Esopus to be an impaired waterway due to an exceedance of the water quality standard for turbidity which imposed a legal obligation on the NYSDEC to take action to redress turbidity levels in the Creek; and

WHEREAS, these unnaturally turbid releases continue unabated and in reckless disregard for the Clean Water Act, Wetlands Protection Act, Water Quality Standards, and SEQRA; and

WHEREAS, such releases to the lower Esopus Creek have significant impacts on the environment, are injurious to properties along it, deprive residents of the use of a significant recreational resource and impact businesses that rely on the lower Esopus Creek as part of their success; and

WHEREAS, despite repeated requests, the NYSDEC and NYCDEP continue their discussions and negotiations in seclusion without proper public notification or participation in contempt of Ulster County Resolution No. 171 of 2012; and

WHEREAS, a proposed 18-month environmental study was publicly and overwhelmingly criticized as unnecessary and harmful to the communities through the continuation of illegal turbid water releases to which the study would be evaluating; and

Resolution No. 241 September 24, 2013

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WHEREAS, draft versions of the NYCDEP's Filtration Avoidance Document (FAD) acknowledged the NYCDEP's use of the waste channel had harmful consequences for the 32-mile Lower Esopus Creek; and

WHEREAS, the NYSDEC has ignored the EPA requirement to address the turbidity levels in the Creek; and

WHEREAS, the Ulster County communities of the Lower Esopus need this ongoing environmental hazard resolved for their health, safety and welfare; and

WHEREAS, there appears to be no immediate resolution forthcoming and no will of either Agency to come to resolution to satisfy the blatant violations of Federal and State Laws; now, therefore, be it

RESOLVED, that the County Attorney is authorized to commence an Article 78 proceeding and/or such other proceeding as the County Attorney deems appropriate, to challenge the New York State Department of Environmental Conservation's continued delay in entering into a Consent Order with the New York City Department of Environmental Protection regarding ~~polluted~~ releases into the Esopus Creek and/or its complete disregard of the EPA's requirement that it address the turbidity levels in the Esopus Creek, and/or such other and further relief as the County Attorney deems appropriate in relation to the quality of water in the Esopus Creek,

and moves its adoption.

ADOPTED BY THE FOLLOWING VOTE:

AYES: 21 NOES: 0
(Absent: Legislators Briggs and Donaldson)
(Legislator John Parete arrived at 7:16 PM)

Passed Committee: Environmental, Energy and Technology as amended on
September 12, 2013

