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VIA FEDEX AND EMAIL DWQ_PAS@dep.nj.gov

Susan Rosenwinkel, Acting Manager
New Jersey Department of Environmental Protection
Division of Water Quality
Bureau of Surface Water Permitting
Mail Code 401-02B
P.O. Box 420
401 East State Street
Trenton, NJ 08625-0029

RE: Application of New Jersey Transit Corporation
Discharge to Surface Water Permit – Category B4B
Bay Head Rail Yard Substation Project
126 Twilight Road; Block 4, Lot 1; Block 17 Lots 1 and 2
Borough of Bay Head, Ocean County

Dear Ms. Rosenwinkel:

Please accept the following comments on behalf of the Borough of Bay Head (“Borough”) in regard to an application filed by the New Jersey Transit Corporation (“NJ Transit”) seeking a Discharge to Surface Water Permit under Category B4B (General Groundwater Petroleum Product Cleanup) pursuant to the Clean Water Act and the New Jersey Pollutant Discharge Elimination System (“NJPDES”) program. Attachment A (NJ Transit Application). NJ Transit seeks this permit in order to dewater an excavation proposed as part of the construction of a new electrical substation at the NJ Transit Rail Yard in Bay Head, New Jersey.

It appears that the application was filed by Arecon, Ltd., a contractor for NJ Transit. As a preliminary matter, please be advised that, although a letter from Arecon to the Borough notifying the Borough of this application was dated March 26, 2020, it was not received by the Borough Public Works Department until April 20, 2020. Attachment B. By letter of April 23, 2020, Jean Cipriani, Borough Attorney for the Borough of Bay Head, advised Susan Rosenwinkel of the Division of Water Quality that the 30-day comment period extended until May 20, 2020 because the Borough did not receive the application until April 20, 2020. Attachment C. In any event, by Executive Order 136 and NJDEP Administrative Order 2020-06, Governor Murphy and NJDEP extended the applicable public comment periods.

To construct its new electrical substation on this property, which is located on the shores of Twilight Lake, NJ Transit needs to dewater the excavation required for the foundation for that substation. The water retrieved from the excavation is contaminated with a wide variety of pollutants, resulting from many decades of irresponsible operational practices at the Rail Yard. NJ Transit proposes to discharge 50,000 to 100,000 gallons per day of this contaminated groundwater through a treatment system and then into Twilight Lake.

NJ Transit seeks a Request for Authorization under General Permit B4B, General Groundwater Petroleum Product Cleanup Permit NJPDES No. 010279. This General Permit allows the “discharge of remediated groundwater resulting from petroleum product contamination to surface waters of the State.” Groundwater removed as a part of this project must be treated to Surface Water Quality Standards (NJAC 7:9B-1) before it can be discharged to surface water. In the application, NJ Transit acknowledges that the groundwater proposed to be treated and discharged under this permit has been contaminated by “historic discharges associated with above ground diesel fuel storage area and diesel fuel storage tank cars”. To obtain the permit, NJ Transit needs to prove that the treatment system will effectively treat the discharge so that excessive or harmful concentrations of contaminants are not discharged to Twilight Lake.

To understand the basis for the Borough’s concerns about this application, it is important to make the Department aware of the history of contamination on this property and NJ Transit’s lack of diligent effort to address that contamination.

A diesel fuel-related rail yard has operated on this property for over one hundred years. NJ Transit has operated that yard since 1982. For decades, diesel locomotives were fueled by pulling a tanker car on a siding, so that it was parallel to the locomotive and then extending a hose from the tanker car to the locomotive and delivering fuel. This careless practice resulted in innumerable spills and discharges and the accumulation of substantial soil and groundwater contamination on the property, including feet of free product. Approximately twenty years ago, when NJ Transit was pressed by NJDEP, the Borough and environmental groups and private citizens to finally clean up the site, NJ Transit responded by proposing to construct a giant fueling station to prevent future discharges. The Borough, environmental groups and private citizens opposed that project, and the dispute was resolved by an Agreement entered into by the Borough and NJ Transit dated September 2, 2003, in which NJ Transit committed to promptly investigate and remediate the contamination and to keep the Borough informed regarding the progress of the remediation efforts. Attachment D.

In the subsequent seventeen years, NJ Transit has apparently undertaken some remediation, but it is clear that the site is far from remediated. NJ Transit has not been forthcoming with information about the scope or results of this work. After learning of the substation project, NJ Transit held a public information meeting in the Borough of Bay Head on February 13, 2020. At that meeting, NJ Transit advised that a preliminary assessment had been prepared and that a site investigation report was being prepared. They also advised that they had removed soil, that monitoring wells have been installed and sampled, and that a free product recovery system had been operating for ten years. Attachment E.

Following the public information meeting, counsel for the Borough requested copies of the preliminary assessment, site investigation report and any documents explaining the status of the remedial work. NJ Transit has not provided the Borough with any of this information. The Borough also filed Open Public Record Act (“OPRA”) requests with NJDEP to learn more about the site investigation and remediation. As you are surely aware, NJDEP is not responding to OPRA requests at this time.

NJ Transit’s application for this B4B permit, (Attachment A), provides sampling data from one well. The application does not indicate when the sample was taken, where the well is located, or why data from that well should be considered representative of the quality of the groundwater to be sent to the treatment system and discharged.

NJ Transit briefly describes an existing groundwater treatment system on the site, which appears to consist principally of a stormwater infiltration basin and an oil/water separator. NJ Transit should include a) a more detailed description of that system; b) calculations of volume discharged from it to Twilight Lake; c) results of sampling of groundwater before it enters that system, and d) samples of the concentrations of surface water discharge to the Lake after it passes through the system. NJ Transit should report on the condition of the existing system. How old is it? What condition is it in? Is the separator efficiently collecting oil at this time? None of this information is presently available.

NJ Transit also should be required to provide more detail on the proposed treatment system, which appears to consist only of adding a frac tank or sediment collection system to the existing system. NJ Transit should describe how this system will treat each of the parameters identified in the lab results provided, especially for those compounds with existing concentrations above ground water quality standards. NJ Transit should also discuss whether there will be odor impacts associated with the treatment system.

Furthermore, the proposed system retains an existing sedimentation basin, also referred to as an Infiltration Percolation Lagoon. NJ Transit should explain why this component should be included, because, based on the information provided, it would appear to result in the percolation of contaminated groundwater back into the ground.

Therefore, NJ Transit is asking the Department to issue a permit to discharge large volumes of contaminated water to Twilight Lake, without giving any information to the Department or the public that they could use to evaluate the concentrations of contamination in the water to be removed from the excavation, the likely efficacy of the treatment system in removing those contaminants and the potential effect on the Twilight Lake ecosystem from discharging these large volumes on a daily basis for an extended period of time. Clearly, NJ Transit has not met its burden under the applicable regulations and the criteria for the B4B General Permit.

In addition, the application is deficient for a number of more specific reasons, as follows:

1. As explained above, the application includes undated sampling results from MW-8. In a

number of cases, the value derived from the sample exceeds the GWQC but not the FW2 or SC/SE surface water standards. However, in one instance, for 2378 TCDD (dioxin), the measured concentration of 10 ug/L exceeds both groundwater and surface water standards by several orders of magnitude. If this data is correct, it raises a serious public health and ecological issue. NJ Transit surely must address this issue.

2. It is unclear why the sampling results include the notation “U” for every parameter, meaning “Not Detected,” when in many instances the concentration was clearly in a range detectable by standard equipment.
3. NJDEP should require NJ Transit to conduct a detailed analysis of the quality of the waters of Twilight Lake before a permit decision is made. If a permit is issued, NJ Transit should conduct quarterly sampling and provide a report on same to NJDEP and the Borough.
4. A full lab analysis for all PCB congeners using Standard Method 1668A should be performed on the groundwater to be treated and discharged, given the frequency with which rail facilities are associated with PCB impacts. None of the proposed treatment systems will capture PCBs or any other dissolved compounds, including 2378 TCDD.

Finally, the Department should hold a public hearing on this B4B application, pursuant to N.J.A.C. 7:14A-15.11(b). There is considerable public interest and concern regarding the substation project. Over one hundred people attended the public information meeting held by NJ Transit in Bay Head on February 13, 2020. The Borough, Save Barnegat Bay and a concerned citizen recently filed suit against NJ Transit seeking to halt project construction due to numerous procedural and substantive violations of law and obtained an Order to Show Cause stopping construction until the issues can be briefed and argued. Oral argument is scheduled for June 5, 2020. Attachment F.

The issues raised with respect to this permit are also very important, involving the discharge of up to 100,000 gallons per day of contaminated groundwater into Twilight Lake, an ecological gem that functions as the northern headwater of Barnegat Bay. A public hearing is compelled here by the potential impact of that discharge, the lack of disclosure of critical information to NJDEP and the Borough about the dewatering treatment system and likely concentrations of the discharge, and NJ Transit’s ongoing failure to inform the Borough about the status of long-delayed completion of the remediation of this site, which triggers the need for this permit in the first place.

The Borough respectfully requests a public hearing. If NJDEP chooses not to grant that request, then we submit that the significant potential impacts of this dewatering discharge, and the sparse record relied upon by NJ Transit, require permit denial.

Very truly yours,

/s/ William C. Sullivan, Jr.

WILLIAM C. SULLIVAN, Jr.
Special Counsel to the Borough of Bay Head

cc: Robert Hall (robert.hall@dep.nj.gov)
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