



May 7, 2021

StormWater Coalition of Albany County
112 State Street, Room 720
Albany, NY 12207

VIA EMAIL swcoalition@albanycounty.com

RE: Town of Colonie Annual Report 2020-2021

Dear Coalition Members:

SAVE Colonie: a Partnership for Planning (hereinafter "SAVE") and its members have been participating in and monitoring the development review process in the Town of Colonie for the past several years. SAVE's members regularly attend meetings of the Town Board, Planning Board and Zoning Board of Appeals. We were an active participant in the Town's 2019 Comprehensive Plan update process. For more information regarding SAVE and our efforts, please visit our webpage at <https://www.savecolonie.com>.

Last year, SAVE submitted two sets of timely comments on the Town of Colonie's Stormwater Annual Report 2019/2020, c/o of the Albany County Stormwater Coalition website. We copied Supervisor Mahan and NYSDEC Region 4 Director Kenneth Goertz. We were advised by the Albany Stormwater Coalition Coordinator that there was no obligation for the Town to reply to our comments or include them in the final 2019-2020 annual report, filed with NYSDEC, as these comments were received *after* the completion of the annual reporting period. Further inquiries were made to John Dzialo, head of the Town of Colonie's Stormwater program, about the status of the Town's responses.

We never received an official acknowledgement of these comments or a response.

During the 2020/2021 annual reporting period, the Town continued its rapid pace of major development project reviews. The Governor's COVID Pandemic Executive Orders impacted how local governments interfaced with the public during this time: Town offices were closed to the public or only limited access was provided, and most town employees worked from home. Public meetings were held virtually, which compounded the difficulty Town residents already had with participating in the development and stormwater water review process. The same public access and participation concerns that SAVE highlighted during the 2019/2020 reporting period persisted in the 2020/2021 reporting period.

In January 2021, Town administration issued a RFP to sell one of the Town's long-time raw drinking water supply sources-the Stony Creek Reservoir. This decision would leave Latham Water District users with access to the Mohawk River and 5 wells located along the Mohawk as

our only primary raw water supply. This is problematic from many perspectives.

The Town's stormwater watershed map demonstrates that there is an extensive system of tributaries throughout the Town, all of which eventually flow to the Mohawk River. What happens upstream also clearly has implications and consequences for all "waters" that flow to the Mohawk River. If there is not proper planning and stormwater management at the source for these discharges, how can the integrity of the Mohawk River be protected as a vital and soon-to-be the only primary raw drinking water supply for the Town of Colonie? The published Coalition Waterbody Inventory/Priority Waterbody list reveals several unassessed watersheds within the Town, including but not limited to Vly Road, Delphus Kill and New Loudon Road Watersheds. What are the plans of the Albany County Stormwater coalition and the Town of Colonie to assess these unassessed watersheds and protect the Mohawk?

The NYSDEC Division of Water and the Mohawk River Basin program are developing a plan to restore the Mohawk River and the tributaries that flow into it to reduce pollution and keep the Mohawk and its watershed healthy for fish and people. A final plan is scheduled to be released in 2022. The plan will calculate a total maximum daily load (TMDL) for the Mohawk River watershed in the Town of Colonie. We understand that the Town's Pure Waters Department is already aware of the ongoing initiative. To what extent have there been any communications from the Albany County Stormwater Coalition and the Town's Stormwater office to NYSDEC regarding the anticipated TMDL for the Mohawk river and watershed? What steps are being taken to review current municipal stormwater plans in anticipation of the establishment of a TMDL for the Mohawk River watershed?

The Town of Colonie's 2020-2021 draft report now includes what purports to be the Town's responses to SAVE's two 2019/2020 annual report comments (See pages 263-294 <https://stormwateralbanycounty.org/stormwater-coalition/annual-report/>). However, many of SAVE's May 15, 2020 comments were not responded to, and there are NO responses to SAVE's June 19, 2020 comment. We request that the Town include complete responses to all of SAVE's May 15, 2020 comments and provide responses to SAVE's June 19, 2020 comments. We have also set forth questions below to be included as part of the public comments for the 2020/2021 annual reporting period.

Overall, the Town's responses are missing clarification about the Town's implementation and enforcement of the MS-4 Stormwater program, especially in the areas of public participation, public access to project related stormwater pollution prevention plans, the land use review process, and the Town's administration and enforcement of the 2019/2020 MS-4 program. SAVE's 2019/2020 comments remain relevant and appropriate for the 2020/2021 annual reporting period, as well.

Our comments and concerns:

1. A Dedicated Webpage

Why does the Town of Colonie still not have a dedicated stormwater program management webpage? The Town's draft response stated the status quo is acceptable. Please follow the link for the Town's "dedicated stormwater page". <https://www.colonie.org/departments/highway>. A comparison of Colonie's and other Coalition members' websites shows that the Town of Colonie could certainly do better.

2. Town of Colonie's administration of the MS-4 program as it pertains to the timing of SWPPP review and SWPPP conformance approvals.

The Town's response indicated that conditional final approvals do not preclude the public's right to comment on the SWPPP plans. In 2021, Town Planning staff created a dedicated project plan section of the Planning and Economic Development Department website. However, project-specific Stormwater Pollution Prevention Plans do not appear on this webpage, and no link is provided to a project's stormwater plans, or a mechanism for public comments or inquiries. We are seeking further confirmation that the Town's final SWPPP reviews continue to occur post final Planning Board decisions. This is very concerning, since the Town's land use law requires the Town Planning Board to evaluate storm water as part of site plan and subdivision plan approvals.

3. Equivalency with NYSSPDES General Permit for StormWater Discharges from Construction Activities.

The Town's response does not address our comment. The Town's response stated "the design and location of infrastructure is an internal administrative process performed by professional engineers within the Public Works Department to ensure that design and implementation conforms and complements existing infrastructure. The engineering and design of town infrastructure does not involve the Planning board's approval. Any issuance of 'conditional final approvals' is an acceptable stormwater review practice." Is this correct? Does this comply with the law?

4. Minimum Control Measures for Construction Site Control

We were seeking confirmation that the Town's land use law precludes the alteration of a site while a project review is pending. The Town's response indicated that "projects that fall below the one-acre threshold do not require grading permits irrespective of any potential planning or zoning initiatives." Does the MS-4 program authorize sites to be disturbed before final SWPPPs are approved?

5. MCM 5 Post-Construction Stormwater Management Green Infrastructure Practices

SAVE questioned whether the Town is implementing these principles and green infrastructure measures or if the Town finds it necessary to make further land use law amendments to do so. No response was provided.

6. Third Party SWPPP Certification

The Town provided no response. We requested that the NYSDEC review the two Town Designated Engineers' consulting agreements to confirm whether these firms are properly certified to conduct stormwater management reviews. The Coalition's 2021 evaluation indicated that this requirement was "partially satisfied." We are aware that Mr. Dzialo retired in 2020 from his position as stormwater coordinator. The Town's website has not been updated to reflect his retirement. We note that the Coalition website lists Adam Wands as the Town stormwater coordinator. We need clarification of whether the stormwater reviews will be performed by a certified, qualified person or entity.

7. Open Space Preservation Program

There was no response to SAVE's comment regarding the status of the Town's open space preservation program. Town officials have checked the box and certified that there is an open space preservation program on the MS4 Municipal Compliance Certification (MCC) form for the 2020/2021 and 2019/2020 annual reporting year and prior reporting years. What is the status of

this program? A recent FOIL request produced no documentation other than a map showing open space land in public ownership.

8. SWPPP Enforcement/Compliance

There was no response to SAVE's concerns regarding the effectiveness of the Town's stormwater enforcement program. The June 15, 2020 comments sought project specific enforcement information.

For this years' annual reporting period, we have copied Ethan Sullivan, the NYSDEC MS4 Permit Coordinator. We made this decision only after we patiently waited for almost a year for the Town's response. We believe that the Albany County Stormwater Coalition should provide any comments received as part of the annual stormwater report comment period so that NYSDEC can be contemporaneously informed about the public's concerns. The Coalition's decision to delay notification until this 2020/2021 annual reporting period is unacceptable. The Town's deliberate delay in responding is also unacceptable, not only from a "good government" perspective but most importantly as a MS4 permitted entity. The Town is not only responsible for ensuring that its local zoning and building code is administered properly but now the Town, as a permitted MS4, is legally obligated to ensure that the State and Federal stormwater pollution prevention program is compliant with all State and Federal laws.

Thank you for your consideration of all our comments. We look forward to the Town of Colonie and the Stormwater Coalition's detailed responses to all of our questions and comments. We also hope that the NYSDEC MS-4 program coordinator will conduct an independent review of the Town of Colonie Stormwater program to ensure that the Town's participation in the MS-4 program complies with all federal and state regulatory requirements.

Please send written responses and any correspondence via savecolonietrees@gmail.com.

Sincerely,
Wendy Allen
Lisa Barron
Aimee McKane
Susan Quine Laurilliard
Susan Weber
Paula Weiss

For SAVE Colonie, A Partnership for Planning

cc: Paula Mahan,, Supervisor Town of Colonie
Tony Lisi Acting Director, Region 4 NYSDEC
Ethan Sullivan NYSDEC MS-4 Permit Coordinator
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