



Sugarhouse Casino Letter re Sewage Disposal Plan

November 26, 2007

Eric Ponert

Sewage Enforcement Officer

Projects Control Section

ARAMARK Tower

1101 Market Street, 2nd Floor

Philadelphia, PA 19107-2994

Dear Mr. Ponert,

The Delaware Riverkeeper Network opposes adoption of a Revision to the City's Act 537 Sewage Facilities Plan in order to better accommodate the proposed SugarHouse Casino. It is not appropriate to use public dollars or resources in any way to benefit the construction and increased sewage disposal of the SugarHouse Casinos.

Let me begin by asking for an extension of the public review and comment period. This is a significant issue in need of careful consideration. 30 days is not enough time to allow busy professionals to secure copies of all pertinent documents, to fully review them, and then to prepare and submit thoughtful comment. I ask for an additional 60 days for review and comment - the clock to start at the time the extension is approved.

I will note that the application materials upon which a decision is to be based are highly suspect in a number of areas. These materials need additional fleshing out before a truly informed decision can be made. In addition, the level and variety of environmental harm associated with this project mandates that no exceptions or City investments be allowed that would move this project forward. The deal that is on the table is unacceptable and cannot and should not be used to support the revision being requested.

Component 4B of the Sewage Facilities Planning Module states that the project does propose encroachments, obstructions or dams that will affect wetlands and that there are known historical or archeological resources to be impacted and when each of these impacts is asked to be described the applicant merely states that permits and clearances are required. How is this an appropriate description of the harms to be inflicted? And when asked if the plan is consistent with the use, development and protection of water resources the application says yes - but that is not an accurate statement. The plan proposes development in and along the River, will require the removal of existing vegetation, and most likely alterations to the banks of the River. This project is not consistent with use, development and protection of water resources and so the answer to the question is inaccurate at best, but in truth is plain old deceptive. These are key questions that need to be properly answered.

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The lands that sit along the banks of the Delaware River and those that sit between the high and low watermark are essential for the health of the Delaware River. The fact that so much of the City's riverfront are already developed and/or bulkheaded does not reduce the ecological value and importance of the lands and open water at issue here but in fact makes them more valuable. Vegetation along the banks of the River, the habitat between the high and low water mark, and the open water are important for the ecological health of the River and its aquatic ecosystems. Fish and other aquatic life rely on these areas for food and habitat, as well as important water quality protections.

The City of Philadelphia as a community is looking to capitalize on the health of the Delaware River. But in order to do so the Delaware River needs to in fact be healthy. Because of its desire to capitalize on the River, the City has an obligation, a heightened obligation, to take steps to protect and restore health to the Delaware River and its aquatic ecosystems. Allowing every square inch of riverfront to be covered with buildings and paving, and allowing more and more structures to encroach on river riparian lands and out into the River's open waters does not honor this obligation.

SugarHouse is proposing to use old piers 42 through 48 to support their development. They discuss the history of these piers and how over time the river between the piers was filled in. They are now looking to benefit from the damaging river fill that has taken place over time to support their proposed project. This is exactly the wrong approach. The City should be looking to this site as an opportunity to remove the damaging fill and to provide an appropriate level of river restoration - not to perpetuate the damage done in the past by building a new, massive and very costly structure.

When I travel the Philadelphia reach of the Delaware River, monitoring the health of the river and potential threats to its quality and restoration, I see individuals of all ages reaching out to the river, finding those last remaining areas of natural green and spending their time there fishing, swimming and enjoying the beauty and nature of the river. The old piers that nature has been reclaiming are also being reclaimed by the community for purposes of this river connection. The City should support this natural reclamation taking place by nature and the residents of the City.

While application materials try to minimize the importance of the project area as aquatic habitat Normandeau's study states clearly that it is used by a relatively large quantity and variety of fish (9 species with 92 fish captured in just 241 minutes on three dates). This is one reason why the area is so attractive to local residents for fishing. The report also notes the vegetation along the banks of the river, again, providing important benefits to the river but also to the fishers that come here for relaxation and recreation. Normandeau also recognizes the value of this reach of the river as nursery habitat for American Shad. While there may be additional nursery habitat along the river as one travels upstream, the value of this habitat is increased as the result of present and future development - the less habitat available the more valuable each remaining piece becomes. The Shad have a long and noble history with the Delaware River, it is important that their needs be recognized and provided for.

The reach of the river to be developed by SugarHouse is part of the river habitat used by the federally endangered shortnose sturgeon. The application materials reference future action to consider impacts to the sturgeon. We believe this kind of information needs to be obtained prior to any decisionmaking that helps a project like this to move forward. Shortnose sturgeon experts need to be consulted.

Normandeau mentioned that the ecologically important Asiatic clam (*Corbicula*) was found in the project area - while perhaps not in abundance they were found. Their importance to shortnose sturgeon was noted. The fact that the clam was not more abundantly found should not be interpreted as proof that this habitat has little value, it could just as easily be interpreted (given the limited information provided) as proof that this is an area conducive to this ecologically important species and one that therefore warrants additional protection and restoration efforts. This latter interpretation is more in keeping with the spirit and goals of our environmental protection laws.

It was found that the open water habitat associated with the proposal is supportive of the red bellied turtle. The red bellied turtle is a state threatened species and therefore entitled to a greater level of protection. A Phase II survey is recommended. This survey needs to be complete before any decision could be made to move forward with this project at any level. The PA Fish and Boat Commission recommended the assessment - it is important that all decisionmakers and regulators consider and work to further the findings.

Item B3 in Appendix D section one (Joint Chapter 105 permit) is not fairly responded to. The application materials dismiss the value of river current patterns in this reach of the river claiming that they "do not appear substantially material to the project." What information is used to back up this position? The habitat that runs along the edge of streams and rivers is important ecologically and the flow patterns associated with them are important, particularly when open water work is proposed that could/would alter the flow, shape and value of those areas. This element of the application needs to be properly analyzed and addressed.

Item B6 in Appendix D section one (Joint Chapter 105 permit) is not accurate. Fill in floodplain is important, it is not easily dismissed, and merely placing a structure at elevation does not address or mitigate all concerns associated with flooding and floodwaters. Structures located in a floodplain, in addition to additional fill, further inhibit the flow of the river and its carrying capacity during high flow events, it forces more water onto downstream and adjacent communities, and it continues to leave the built structure at risk of harm including those located inside. This element of the application materials needs appropriate consideration and response.

The project will not enhance Penn Treaty park as asserted by the materials. A massive building situated in close proximity to this currently open community area will become a shadow, a looking giant, that overshadows and destroys the character of the parks and the now gentle access it provides to the Delaware River.

The proposal to actually fill in, and support existing fill in, parts of the Delaware River to accommodate this new, massive and largely unwanted development is inappropriate. The facility proposed is not a water dependent use, it in no way needs or relies upon the presence of the Delaware River for construction or access. It is wholly inappropriate to allow dredge and fill of the river to accommodate this private enterprise or to allow any encroachment into or on the river itself. The promise of jobs and limited public access are not enough to justify such a proposal or request. The City must take no action to support it. And it is wholly inappropriate for SugarHouse to be asserting that it anticipates receipt of all needed permits for this activity - they have no right or ability to make such characterizations and no defensible basis upon which to make it - these are gratuitous statements designed to create an air of inevitability and must not be accepted as true. It is up to the agencies, pursuant to the law and public process to make these decisions - and we suggest that permitting is likely to be contentious and far from the "slam dunk" SugarHouse would have you believe.

The applicant has not, as they assert, taken steps to avoid and minimize environmental impacts - they are continuing to press a project that requires dredging, filling and bulkheading along the river (at least as discussed in some elements of their packet, but then later dismissed or denied in other elements of their application - one of the reasons an extended comment period is needed, to allow the public to get a full and accurate understanding of what is being proposed). These are major river harms and impacts that are totally unnecessary for the use being pursued. The mitigation being proposed, or future unknown mitigation referenced, do not make up for this major harm. And it is important to note that mitigation elsewhere along the river is not likely to be of equal value - this reach of the river is severely impacted by multiple uses and much development, the habitat that is being harmed is needed here, at the location where it exists, undertaking mitigation elsewhere in the river where habitat is more plentiful is by no means equivalent.

The proposed location is in close proximity to bald eagles nesting on and around Petty's Island. The impact of the proposal on this particular nesting pair was not discussed or even referenced. It is an important element that needs to be considered - both individually and cumulatively with other developments proposed for this reach of the river.

I recently attended a Delaware River Basin Commission meeting discussing the concerns about the effects that existent and increasing nutrient pollution may have/be having on Delaware Estuary and Bay ecosystems. At this joint meeting of the DRBC's Monitoring Advisory Committee and Water Quality Advisory Committee (of which I am an appointed member), the largest concern discussed is the reality that we don't in fact know what affect high nutrient inputs into the Delaware River system is having now and/or could have in the future. It is clear that the scientists have not given this issue the focused concern or research necessary to evaluate the affects, and have not been monitoring the appropriate endpoints to know the effects. In light of this tremendous deficit of information and the potential ramifications it might hold for our present or future, it is not at appropriate for the City to be considering using its precious, limited resources to support additional sewage inputs into the Delaware River system.

In the 2006 Delaware River and Bay Integrated List and Water Quality Assessment Zone 5c of the Delaware Estuary was identified as not meeting DRBCs current water quality criterion for Dissolved Oxygen. Identified sources for the problem include "Municipal Point Sources Discharges, Package Plant or Other Permitted Small Flows Discharges, Wet Weather Discharges (non-Point Source), Wet Weather Discharges (Point Source and Combination of Stormwater, SSO or CSO)". Supporting expanded sewage inputs that would further exacerbate this pre-existing water quality violation and negative condition is not an appropriate use of the City's limited resources. In addition, several sections of Zone 6 of the Delaware Estuary and Bay were identified as being impaired for shellfishing as the result of pathogens, and in one section for Primary Contact Recreation as the result of Enterococcus, coming from "Residential District, Wet Weather Discharges (Non Point Source), Wet Weather Discharges (Point Source and Combination of Stormwater, SSO or CSO), [and] Source Unknown". Additional sewage treatment inputs, a primary source of pathogens and nutrients to our waterways, could contribute to and compound these pre-existing, harmful, and unacceptable conditions in our Bay. The City should not be a party to compounding these violations and harms.

A big deal is being made of the "public access" this project would be providing - 2100 linear feet, 25 to 50 feet wide, that will be built on sheetpiling. Putting people on cement that borders the River is not creating quality public access. Members of the Philadelphia community do not need more cement and do not need more hardened riverfront, they need land that contributes health and habitat to the Delaware River - they need quality access that allows them to relax, fish and access the Delaware directly, in a natural, cooling and healing setting. The access that SugarHouse is proposing is not quality access, it is simply a hardened river view perhaps with a few trees and grass around; it is access that is actually doing harm to the River as opposed to providing healing to the community.

It is interesting how SugarHouse is so dismissive of the value of the already existing vegetation on the site and yet so quick to tout the values of the few sparse trees it is proposing to line its artificial river access walk. The vegetation that already exists on this site is already inviting and beneficial to the community, its presence cannot be so easily devalued or dismissed.

The fact is the City is allowing SugarHouse to abuse our River both with pollution in its waters and pavement along its banks. The trade the City made, sewage in our river for a transportation plan to accommodate the traffic problems the casino itself will create, waterfront access to address the access the casino would otherwise be preventing and making that access cement on water in lieu of the current trees on water, securing LEEDS certification which may reduce but will not prevent the environmental (particularly the river) harms created by a massive facility being built on the banks of a river and seeking to actually construct within the river itself, creation of a service program to address the harms the casino's presence will inflict on neighboring communities, security and emergency services for problems originating in its own complex, and a role in relocating a combined sewer overflow, i.e. moving a significant pollution problem and source from one location to another, is not a fair one, it is not one that benefits the River the City relies upon or the residents within its borders. And the City committing upfront to a "streamlined" development process is of great concern and seems way out of line considering the environmental and community impacts that will result from this project.

With regards to the relocation of the CSO - with what regulatory agencies as the City discussed this concept? What review has been undertaken by regulatory agencies of the proposal to increase the cross-section of the CSO outfall by 86%? What permits and approvals are needed for this work? To what degree has the City secured such needed approvals?

I thank you for your consideration of these comments and look forward to your answers regarding the request and questions asked.

*Yours sincerely,
Maya K. van Rossum
the Delaware Riverkeeper*