



**Testimony of Stormwater Infrastructure Matters (SWIM) Coalition
Before the New York City Council, Environmental Protection Committee
Budget and Oversight Hearing March 23, 2017**

Re: Greater Oversight of NYC Water Quality Improvement Plans

My name is Shino Tanikawa and I am a SWIM Coalition Steering Committee member. Thank you for the opportunity to offer the following comments on behalf of the Stormwater Infrastructure Matters (S.W.I.M.) Coalition.

Our testimony today is focused on DEP's efforts to reduce sewer overflows and polluted runoff, including the installation of "green infrastructure" that captures stormwater on land before it causes pollution problems in our waterways.

We ask that the Committee exercise its oversight responsibility to ensure DEP's efforts are directed towards effective, sustainable solutions that protect our waters for both human recreation and ecosystem protection.

In brief, the testimony highlights the following issues and recommendations:

CSO Long Term Control Plans and the Stormwater Management Plan for the Separate Storm Sewer System

- City Council Members sign up for sewage overflow/sewage spill alerts
- Aligning the City's water quality improvement/stormwater management plans for the combined sewer areas and separate storm sewer ("MS4") areas of the City.
- Rejecting chlorination disinfection
- Reducing overflow volume
- Sewage Spills and Illegal Discharges: More stringent fines and enforcement against violators

CSO Consent Order and Green Infrastructure Plan goals

- Ensuring that DEP does not roll back of green infrastructure goals in the Consent Order
- City Council briefings on the Consent Order negotiations

Green Infrastructure Plan:

- Missed goals to date
- Expanding green infrastructure to the MS4 Area of the City
- Diversifying green infrastructure methods beyond bioswales
- Stimulating green infrastructure on private property

Water Rate Restructuring

- Directing DEP to conduct a rate restructuring study

* * * * *



The S.W.I.M. coalition is a group of 70+ member organizations who are dedicated to ensuring swimmable and fishable waters around New York City through natural, sustainable stormwater management practices. Our members are a diverse group of community-based, citywide, regional and national organizations, water recreation user groups, institutions of higher education, and businesses.

Since our founding in 2007, (by several members of a Citizens Advisory Committee convened by NYCDEP in 2004 for the Waterbody Watershed Plans and the development of the 2005 CSO Consent Order) SWIM has closely followed the development of and amendments to the CSO Consent Order, and called for the development of the City's Sustainable Stormwater Management Plan, inclusion of Green Infrastructure in the City's stormwater management plans and provided input for the development of the current Green Infrastructure Plan along with the Green Roof tax abatement and the Green Infrastructure Grant program. SWIM steering committee members have also participated in an ongoing and productive dialogue with Commissioners and Deputy Commissioners and their staff at DEP over the past decade and are members of the NYC DEP current Water Infrastructure Steering Committee.

The development of all of the above-mentioned plans, orders, and programs can provide a comprehensive blueprint for how we'll all make New York City more resilient in the years ahead, improve water quality in our waterways, provide green jobs for our citizens, and make our waterways safe to access for recreational and educational purposes. We commend NYC DEP for their diligence and contribution to the implementation of the plans and programs in place and in development today. We recognize that the above plans are underway for a multitude of reasons that are vital to the NYC economy and ecosystem; including the goal of improving the City's waterways in order to make them more accessible to New Yorkers for recreation by the year 2030.

SWIM has kept the 2030 goal in mind and maintained it as one of the guiding principles for the work we've done over the past decade to influence the development of sustainable stormwater management practices that are necessary to make NYC's waterways fishable and swimmable. It is in that vein that we reiterate in our testimony today that widespread on-land stormwater management can make it possible for New York City waters to meet the Clean Water Act standards for safe swimming and fishing, while meeting local sustainability goals of creating more green open space, cooling and cleaning the air we breathe, reducing our energy costs, and generating accessible green jobs.

We are aware that the challenges to accomplishing the fishable swimmable water quality goals are great and constantly changing, and certainly hurricane Sandy brought a whole new level of awareness about our land management and development practices and many lessons learned. Though the challenges are many, we cannot afford to delay or postpone the development and implementation of stormwater management plans and water quality improvement plans, with a balance of both green and grey solutions to substantially reduce the volume of sewage and stormwater that currently flows into our local waterbodies each year.

The biggest ongoing sources of water pollution to New York City waters are stormwater runoff from the City's municipal separate storm sewer system ("MS4"), and raw sewage discharges ("combined sewer overflows" of



“CSOs”) from the combined sanitary/storm sewers. MS4 and CSO pollution contaminate the waterways where New Yorkers wade, swim, fish, boat, and play. The overflows and runoff along with our toxic industrial sites both current and past, make many of our waterways unsafe for recreation and degrade habitat for fish and wildlife. DEP studies indicate that we cannot clean up our waters without addressing both of these stormwater pollution problems.

CSO Long Term Control Plans and the Stormwater Management Plan for the Separate Storm Sewer System

Over the past few years SWIM has been closely monitoring and commenting on the City’s individual CSO Long Term Control Plans for the combined sewer system as well as the forthcoming Stormwater Management Plan for the City’s separate storm sewer system.

At the moment, these two programs are not on the same timeline and the orders that inform them remain separate and distinct which is causing them to in some ways defeat one another rather than join forces. For instance, nearly all of the CSO Long Term Control plans that have been submitted to the State thus far reference the fact that the waterways the CSO Control Plans are meant to improve cannot actually be improved through volume reduction due to “other sources” namely stormwater runoff and illegal discharges that are slated to be dealt with under the Stormwater Management Plan for the separate sewer system (MS4). To us, this means the City’s CSO Long Term Control Plans currently under review by the State would, if approved, all stand to leave billions of gallons contaminated sewage in our waterways annually, for at least many decades to come.

Additionally, some of the CSO Long Term Control Plans (namely for Alley Creek, Flushing Creek and the Hutchinson River) propose using disinfection with Chlorine rather than reducing the volume of CSO. This is a band-aid solution that creates a new pollutant (chlorine, which can harm habitats and the local waterway ecosystems). There are better solutions for CSO volume reductions that include both green infrastructure and grey infrastructure solutions.

We urge City Council members and members of the Committee for Environmental Protection to become more actively engaged in the Combined Sewer Overflow Long Term Control Plans to ensure that DEP is proposing solutions which will have a positive impact on your districts and constituents.

If you haven’t already done so, we encourage the members of the Committee for Environmental Protection to sign up for the sewage spills alert system managed by the NY Department of Environmental Conservation so that you can see how often sewage overflows and illegal discharges take place in your districts, and we encourage you to make other City Council members aware of the alert system so they can warn their constituents about contamination in their local waterways. Under the State’s Sewage Right to Know Act, DEP must notify the State of a sewage spill within two hours, and the public within four hours. You can sign up for alerts in your county through the NY Alert page to see the frequency of these events and be reminded of the issue. This alert system is not widely known and the State doesn’t do a very good job of building awareness



about the system. You can find instructions to sign up for these alerts here:
http://www.dec.ny.gov/docs/water_pdf/pubvideotrans.pdf.

As an example of this lack of knowledge about the alert system, the recent issue of (possibly years long) illegal discharge of 200,000 gallons per day of raw sewage into Coney Island Creek from a large apartment complex (that diverted its sanitary sewage to storm sewer pipes which caused untreated sewage to discharge directly into the Creek) was not known to local elected officials (nor were they alerted directly by the City or the State of the matter, but the discharges were listed on the DEC alert system's site and anyone who was signed up for the alerts would have received word about the discharges), or to citizens who were conducting religious ceremonies, shoreline clean-up activities, education programs, fishing, boating and wading in the Creek and along its shoreline during the time these discharges were pouring into the Creek. This is a municipal failure that does not and did not provide for proper procedures to be implemented for the protection of the many citizens of New York and visitors who visit Coney Island and as importantly, the local Coney Island community who uses the Creek on a regular basis year - round for a wide variety of activities. **Also, as testified by members of the public at the city Council's December 13 public hearing, the current MS4 legislation in the Intro. 1346-2016 bill, to give DEP greater authority to enforce higher fines for illegal discharges, the bill as it stands now does not provide for punitive enough enforcement. We recommend that the City Council consider a more stringent enforcement process and impose higher fines for violations. Many perpetrators know how low the fines are and are willing to pay them rather than conform to best practices.**

CSO Consent Order and Green Infrastructure Plan goals

Based on analysis by the Independent Budget Office, DEP's Capital Commitment Plan includes \$787 million in spending on green infrastructure from FY17-FY20. We highly commend DEP for committing such a substantial budget to green infrastructure.

It falls to this Committee to ensure that DEP spends those funds as effectively as possible, to achieve the City's green infrastructure targets and maximize water quality and community benefits. Unfortunately, despite DEP's accomplishments installing thousands of "bioswales" in many neighborhoods, we have serious concerns that the DEP's green infrastructure program is not heading in a direction that will achieve those overarching goals.

Importantly we note that, as of this hearing date, the City and State are currently renegotiating the CSO Consent Order. Based on, among other things, DEP's shortfalls to date on meeting its green infrastructure targets to date, and DEP's suggestion in reports to the State that the targets should be revisited, we have serious concerns that a renegotiating Consent Order may substantially weaken DEP's green infrastructure obligations. The current goal is stated in DEP's Green Infrastructure Plan and in the current Consent Order: **to manage stormwater on 1.5% of impervious surfaces in combined sewer areas within the first five years of the program, and 10% by the end of the 20-year plan.** Last year, in the fifth year of the plan, DEP released a Contingency Plan stating they missed their first target by more than half. Their proposed solution for "catching up" over the next 5 years was, essentially, to do more of the same. Further, DEP provided no



explanation of how they could not only catch-up to missed targets, but also meet the much higher green infrastructure target set for 2020, which is to manage runoff from 4.0% of impervious area and ultimately 10 % by 2030. We are very concerned that rolling back these vital milestones or removing them from the Consent Order -- thereby removing all accountability for long-term results -- will decrease DEP's motivation to manage stormwater runoff sustainably and lessen the ability to accomplish the CSO volume reduction necessary to make our waterways clean enough for fishing, swimming and recreation.

The City's current OneNYC plan applauds and supports DEP's Green Infrastructure Plan and we see no reason to abandon the GI Plan's and the CSO Consent Order's key goal. In fact we believe the MS4 Stormwater Management Plan, which DEP is currently developing, should expand on the goal and include extensive Green Infrastructure to manage stormwater runoff. **This is an area we think the City Council Committee on Environmental Protection can offer encouragement both on maintaining and expanding the GI goals, and in budget discussions to allocate monies for GI in the MS4 area in the forthcoming 2018 Stormwater Management Plan for the separate storm sewer system which serves nearly 30% of NYC neighborhoods. Additionally, as per our December 13, 2016 testimony on the Intro. 1346, we request that City Council amend the bill so the post-construction section which directs DEP to develop retention standards, applies citywide, not just in the MS4 area.**

Additionally, the City and State are not including the general public in the matters they are considering for the renegotiation of the CSO Consent Order. While NYCDEP has met with us to discuss the proposed changes to the Green Infrastructure goal, we cannot assess that matter without a full understanding of the entire Consent Order and are concerned that it appears that neither City Council members, nor advocates, nor the general public will see the new consent order until it has already been signed by the City, leaving us with little practical opportunity to seek improvements to a legally binding order that will impact our communities for generations to come. **We call on the City Council members of this committee and all City Council Members to seek briefings from DEP and the Mayor's Office on the CSO Consent Order renegotiations, in order to be in the loop (and be able to inform your constituents) on how the plans will impact your districts, and to advocate for an agreement that protects your communities and the waters that all New Yorkers share.**

Through our numerous and greatly appreciated meetings with DEP, we understand that there are many challenges with green infrastructure in the right of way, including site constraints and maintenance. We certainly commend the NYC DEP for the implementation of the bioswales in the public right of way and the success they have had in terms of the amount of stormwater the bioswales divert (far more than originally anticipated when they were installed!) from the City's combined sewer system during rain and snow events. However, we believe there is opportunity to improve the green infrastructure program citywide.

First, a stormwater rule was passed in 2012 that required new developments to meet a more stringent allowable flow rate into the combined sewer system. The result of this rule has been mostly underground storage tanks and very few green infrastructure projects. We believe the rule could be strengthened to better encourage green infrastructure solutions that have ample co-benefits for the community and the watershed, and these projects should be quantified and counted towards DEP's consent order goals.



Second, we believe DEP's green infrastructure techniques can be diversified beyond the standard right-of-way-bioswale, which DEP now calls rain gardens. We've seen alternative designs for ROW green infrastructure in North-Eastern Queens after residents complained about the bioswale design. We believe a wider palette of designs will result in greater opportunities for green infrastructure in the right-of-way.

Our final point about the green infrastructure program is regarding the GI grant program to support private property retrofits. There have been very few projects awarded a green infrastructure grant (we only find public record of less than 40 over the four years of the program, and know that the number has been decreasing each year) due to the hurdles private property owners must go through to get reimbursed. We know there is much enthusiasm for green infrastructure throughout NYC, but without being able to access funding or a rebate, many property owners cannot afford even the preliminary design costs. It simply does not pay off without financial incentives.

We are aware that DEP is working to restructure and overhaul their Grant Program for GI on private property and are hopeful about their efforts to improve it. The grant program -- or successor to that program -- needs to be scaled up and made more user friendly in order to fully address capturing and managing stormwater runoff. SWIM has offered our comments for this program in response to DEP's recent RFI on this matter and will follow the process carefully. **We encourage the members of the Committee to follow it as well and offer their support of the City's efforts to improve the program. There are many incentives that could be integrated into the plan and that would align with the OneNYC equity goals.**

Water Rate Restructuring

A major contribution to creating more incentives for green infrastructure would be to restructure the water bill to properly account for stormwater runoff. Currently, wastewater and stormwater are charged a single fee. Properties with large impervious surfaces (such as a parking lot) have a greater impact on the City's stormwater management expense than those with less impervious space, such as a single-family home.

Restructuring the water rate so that there is a separate fee for stormwater is a more equitable way to charge for the water, sewer and stormwater services that DEP provides. We recognize that this restructuring would have to be studied very carefully so as to avoid creating a burden on certain types of housing stock and to ensure that low income households would not be unfairly burdened by the restructuring of the rates. A separate stormwater fee, based on impervious area of a property, has already been implemented in nearly 2,000 municipalities across the country, including larger cities like DC and Philadelphia, and there are proven ways to structure the water rate so that it does not burden low-income ratepayers. A restructured water rate will create a market for green infrastructure and provide opportunities for incentives, such as rebates or credits, for green infrastructure. Without such incentive, the rate of green infrastructure retrofits on private property will continue to dwindle. **We recommend City Council work with the Water Board to develop legislation that mandates that DEP conduct a new rate study (with ample input from stakeholders and advocates from all sectors) to find a rate structure that prioritizes equity and the environment, and which ensures a reliable source of ongoing funding for green infrastructure and other stormwater management**



needs. It has been a decade since DEP conducted a rate study to evaluate options for a stormwater fee, and we have not seen any significant progress since then.

Lastly, we are concerned that the current Mayoral Office of Sustainability and Long Term Planning is largely missing in action on these issues from a public standpoint and has seemingly not made the NYC DEP's mission a priority. We are concerned that the capacity of DEP is diminished because a Commissioner has not been appointed by the Mayor's office. This is hampering the capacity of the NYC DEP at a time when the agency needs to operate at its highest potential to complete the CSO LTCP's and the MS4 Stormwater Management Plan. **We call on the City Council Committee on Environmental Protection to urge the Mayor's Office of Sustainability and Long Term Planning to engage with, monitor, and support the NYC DEP's CSO Long Term Control Plans and the MS4 Stormwater Management Plan and to help ensure that there is interagency coordination to support DEP's efforts to improve water quality in our waterways and make them safe for all New Yorkers.**

In conclusion, we know there are ways to develop collaborative solutions for all the challenges we face regarding stormwater pollution and CSOs. We invite City Council and DEP to work with the SWIM Coalition and other interested stakeholders to convene citizens over the coming years to discuss these matters and develop local solutions that can be supported by and implemented through City and State budgets.