

Arthur Kill/Elizabeth River Watershed Association
Bronx Council for Environmental Quality · Bronx River Alliance
Clean Ocean Action · Friends of Brook Park · Going Coastal, Inc. · HabitatMap
Hackensack Riverkeeper · Hudson River Foundation
Hudson River Paddlers Guild · Hudson River Watertrail Association
Ironbound Community Corporation · Lower East Side Ecology Center
Natural Resources Defense Council · New York City Water Trail Association
North Shore Waterfront Conservancy of Staten Island · NYC Audubon
NYC Soil and Water Conservation District · NY/NJ Baykeeper
Raritan Riverkeeper · Riverkeeper · Rocking the Boat · Sebago Canoe Club
Stormwater Infrastructure Matters (S.W.I.M.) Coalition · Sustainable South Bronx
Swim the Apple · The Gaia Institute

March 4, 2010

Regional Administrator Judith Enck
US Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007-1866

Dear Regional Administrator Enck:

On behalf of the undersigned organizations we wish to share our concerns on an issue of critical importance to the goal of a fishable and swimmable New York/New Jersey Harbor, including the lower Passaic River, Hackensack River, Newark Bay, Raritan River, Raritan Bay, Arthur Kill, Kill van Kull, East River, Upper and Lower New York Bay and Hudson River.

Last month, many of our organizations met with members of your staff to discuss the status of total maximum daily load (TMDL) development for nutrients and pathogens for the Harbor. We were extremely disappointed to learn that both New Jersey and New York are now supporting the use of a seasonal average (May 15 - September 15) bacteria level to measure water quality standards compliance, as the water quality objective of the Pathogens TMDL. This is entirely incompatible with the Clean Water Act goal of “fishable/swimmable” waters. Quite simply, no one swims, paddles, or fishes in “average” water – they come into contact with water in whatever condition they find it at the particular time they are recreating in or on our waterways.

Using a standard based on a seasonal average would allow both states to claim “compliance” with water quality standards for primary contact coastal recreation waters, “with no to moderate load reductions”¹ – despite the fact that New York City discharges some 27 billion gallons of combined sewer overflow (CSO) in an average year and the waters on the New Jersey side are

¹ USEPA Region 2, Harbor Estuary Program, Straw Proposal, Proposed Water Quality Standards Framework for Pathogens to Protect Primary Contact Recreation in the Open Waters of the New York/New Jersey Harbor (October 2009) (provided to Pathogens Work Group).

closed to direct shellfish harvesting. In fact, according to modeling by EPA's consultants, compliance with a TMDL based on the seasonal average standard would require load reductions only for the Passaic River. In contrast, the same modeling projects that use of a 30-day geometric mean standard – while still failing to ensure the day-to-day water quality necessary for fishable/swimmable waters – would require substantial reductions in current CSO discharges.²

Setting the appropriate standard for the Pathogens TMDL is critical to the long-term health of both the Harbor and the public. Allowing billions of gallons of untreated wastewater and stormwater runoff to be discharged directly to our shared waterways threatens shellfish beds, public health and recreational users of not just the Harbor, but also New Jersey's and New York's coastal beaches.

We also note that EPA is due to issue new water quality criteria for primary contact coastal recreation waters by October 2012,³ which, in order to protect public health as required under the BEACH Act, may – and we believe must - require states to measure compliance with pathogens criteria based on daily or hourly averages, or even based on a single sample maximum. Both New Jersey and New York will likely be unable to meet such revised standards without setting more aggressive reduction targets now; indeed, the States and EPA need not wait for new nationwide criteria to adopt such an approach. Additionally, we will never realize our goal of a truly fishable Harbor until fecal levels meet the standards of non-restricted shellfishing.

We appreciate your staff's commitment to continue our dialogue as the TMDL process moves forward and are also following up directly with state regulators regarding their lack of leadership on this issue. We urge EPA, which must ultimately approve any TMDL submitted by the states, to insist on a standard at least as stringent as a 30-day geometric mean as the basis for the Pathogens TMDL.

Thank you for your attention to this important matter. Please do not hesitate to contact either Debbie Mans, NY/NJ Baykeeper at 732-888-9870 or debbie@nynjbaykeeper.org or Larry Levine, NRDC at 212-727-4548 or llevine@nrdc.org if you have any questions.

Sincerely,

Arthur Kill/Elizabeth River Watershed Association, Michelle McBean, Executive Director
Bronx Council for Environmental Quality, Karen Argenti
Bronx River Alliance, Robin Kriesberg, Ecology Director
Clean Ocean Action, Cindy Zipf, Executive Director
Friends of Brook Park, Harry J. Bubbins, Director
Going Coastal, Inc., Zhennya Slootskin, President
HabitatMap, Michael Heimbinder, Executive Director
Hackensack Riverkeeper, Capt. Bill Sheehan, Riverkeeper & Executive Director
Hudson River Foundation, Dennis Suszkowski

² Technical Memorandum from C. Dujardin, Hydroqual, to Pathogen Work Group, USEPA Region 2, Re: "TMDL Development" (9/15/09).

³ See <http://www.epa.gov/waterscience/criteria/recreation/update.html>.

Hudson River Paddlers Guild, Michael Cook, Director
Hudson River Watertrail Association, Robert Huzar, Secretary
Ironbound Community Corporation, Joseph DellaFave, Executive Director
Lower East Side Ecology Center, Caroline Kruse, Development Director
Natural Resources Defense Council, Lawrence Levine, Staff Attorney
New York City Water Trail Association, Nancy Brous, Steering Committee Member
North Shore Waterfront Conservancy of Staten Island, Beryl Thurman, Executive Director
NYC Audubon, Glenn Phillips, Executive Director
NYC Soil and Water Conservation District, Shino Tanikawa, District Manager
NY/NJ Baykeeper, Debbie Mans, Baykeeper & Executive Director
Raritan Riverkeeper, Bill Schultz, Riverkeeper
Riverkeeper, Phillip Musegaas, Hudson River Program Director
Rocking the Boat, Dawn Henning
Sebago Canoe Club, John Wright, Commodore
Stormwater Infrastructure Matters (S.W.I.M.) Coalition, Kate Zidar, Coordinator
Sustainable South Bronx, Jamie Stein, Environmental Policy Analyst
Swim The Apple, Mark Heath, MD
The Gaia Institute, Paul Mankiewicz, Executive Director

cc:

Commissioner Peter Grannis, NYSDEC
Acting Commissioner Robert Martin, NJDEP
Charles Warren, Harbor Estuary Program, Policy Committee
Roland Lewis, Harbor Estuary Program, CAC Co-Chair
Michelle McBean, Arthur Kill/Elizabeth River Watershed Association, Co-Chair
Denise Keehner, USEPA, Director, Standards and Health Protection Division,
Office of Science and Technology, Office of Water