



August 19, 2009

Ms. Anne Canty
Department of Environmental Protection
59-17 Junction Boulevard, 19th Floor
Flushing, New York 11373-5108

Re: NYC Waterbody Advisory Program

Dear Ms. Canty,

The Storm Water Infrastructure Matters (S.W.I.M.) Coalition is writing to express our serious concerns with the recent release of the NYC Waterbody Advisory Program on the website of the Department of Environmental Protection (DEP)¹ and to request a meeting with you to discuss improvements that we believe are essential to inform the public of CSO events and associated public health risks

Local Law 5 of 2008 requires the City to undertake “a program of public notification to inform the public of the location and occurrence of combined sewer overflow events, which . . . shall include a mechanism to alert potential users of the waterbodies affected by combined sewer overflow events . . . of the estimated nature and duration of conditions that are potentially harmful to users of such waterbodies.” The same requirements appear in DEP’s Clean Water Act permits issued by the State. In other words, the ultimate goal of a CSO public notification program in New York City must be to provide the public with general public health information on the effects of CSO discharges and real-time information on when CSOs are impacting their waterbody of interest. The S.W.I.M. Coalition believes the new NYC Waterbody Advisory Program, although a small step forward, does not meet this goal.

As an initial matter, the Waterbody Advisory website does not explain the meaning of an “advisory”. The conditions that trigger an advisory, an explanation of the public health risks associated with an advisory, and a list of activities that should be avoided when the advisory is in effect are all essential elements of an effective public notification program. The Department of Health and Mental Hygiene’s public notification program for beaches,² for example, includes all of these elements. Also, DEP’s program should make clear that, unlike the beach notification program, it accounts only for anticipated effects of CSOs, but not other sources of pollution.

¹ http://www.nyc.gov/html/dep/html/advisories/combined_sewer_overflow_advisory.shtml

² <http://www.nyc.gov/html/doh/html/beach/beach.shtml>

Our most fundamental concern with DEP's new advisory program is that it does not base advisories specifically on the "location and occurrence of CSO events." Therefore, it will often give a misleading impression that waterways are safe for fishing, swimming, paddling, and other activities in many instances when CSO discharges do occur. This is clear from the fact that some waterbodies are highlighted as "Never has advisory," even though there are over 430 CSO outfalls discharging to all NYC waterbodies with varying frequencies and volumes throughout the year.

Since the "advisories" are not triggered simply by CSO discharges, we assume the "trigger levels" of rainfall that are displayed in a table linked to the website (<http://www.hydroqual.com/scraping/help.html>), are based on rainfall levels expected to lead to CSO discharges sufficient to cause water quality standard violations on a waterbody-wide basis. The state water quality standard for pathogens is based on water quality conditions averaged across space and time. But the requirement to notify the public of the occurrence and location of CSO discharges is intended to inform the public of the immediate, localized risks associated with each and every CSO discharge.

The S.W.I.M. Coalition would like to meet with you to discuss the new Waterbody Advisory website and gain a better understanding of the methodology used to create the Program. We support the use of DEP's sewershed models to develop the advisory program and offer to work with DEP to develop a program that clearly and explicitly informs the public of the occurrence of CSO discharges at each outfall location, the associated health risks, and the approximate period of time following a discharge for which contact with the water should be avoided. We believe this information can be extracted using the same modeling and real-time rainfall data on which the Waterbody Advisory Program is currently based.

Please contact the S.W.I.M. Coalition about any of the issues raised in this letter through Dawn Henning, of Youth Ministries for Peace and Justice, at (718) 328-5622. We will follow-up soon with your office about setting up a time to meet and look forward to discussing the NYC Waterbody Advisory Program in more detail.

Sincerely,

A handwritten signature in blue ink that reads "Dawn Henning". The signature is written in a cursive, flowing style.

Dawn Henning
S.W.I.M. Steering Committee Member,
on behalf of the S.W.I.M. Coalition

cc: Carter Strickland
S.W.I.M. Steering Committee