

CITIZENS ADVISORY COMMITTEE

of the New York – New Jersey Harbor & Estuary Program

To: Steve Watts, NYSDEC

Cc: Management Committee and Policy Committee of the NY-NJ Harbor & Estuary Program.
Emily Lloyd, Commissioner, NYC DEP
Venetia Lannon, Regional Director, NYS DEC Region 2
Angela Licata, Deputy Commissioner, NYC DEP
Joan Leary Matthews, US EPA Region
Jeff Gratz, US EPA Region

From: Co-Chairs of the Citizens Advisory Committee of the New York-New Jersey Harbor & Estuary Program

Re: Draft SPDES Permit No. NY-0287890 (NYC MS4 Permit)

Date: April 7, 2014

Dear Mr. Watts,

Thank you for the opportunity to comment on the Draft MS4 Permit to New York City.

The Citizens Advisory Committee (CAC) of the New York-New Jersey Harbor & Estuary Program (HEP) is an advisory committee established to support and advocate for the HEP, a national estuary program. The CAC is an official committee of the Management Committee first convened by the US Environmental Protection Agency, Region II; NY State Department of Environmental Conservation; and NJ Department of Environmental Protection for the HEP and Bight Restoration Programs.

The purpose of the CAC is to: 1) provide guidance and advice to the Management Committee on Program decision-making on behalf of the diverse stakeholders in the NY-NJ Harbor Estuary and NY Bight; 2) promote public awareness and understanding of the Program's issues, goals, and recommendations; 3) assist the Management Committee in developing and implementing the Comprehensive Conservation and Management Plan (CCMP) as required by Section 320 of the Water Quality Act of 1987.

We understand that this permit is long overdue (more than two decades). Given the delay, we want to ensure the final permit is as strong and meaningful as it can be. To this end we have the following concerns.

Construction site size requirement

We believe most residents of New York City will attest to the fact that a great majority of construction projects in the city are small. Requiring regulation of only projects larger than one acre does not seem like a meaningful approach to managing runoff from new development and redevelopment projects in the City. We urge the DEC to evaluate data on construction projects and patterns closely to determine the best size, in line with best practices in other major U.S. cities and metropolitan areas. A more appropriate size threshold will ensure that green infrastructure

Citizens Advisory Committee Co-Chairs

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practices become widespread throughout our neighborhoods, not only at a small number of large development sites in select areas of the city.

Stronger requirements for water quality improvement

The draft permit is based on the premise that stormwater discharges impair water quality and must be properly managed to prevent pollutants from entering our waterways. However, the draft permit does not include any specific pollutant load reductions that would ensure the city's waterways meet state standards to protect uses like fishing, boating, and swimming. The permit should clearly prohibit discharges that are known to cause or contribute to existing water quality impairments, and should establish binding deadlines for the city to eliminate existing violations.

Permits could also include a requirement to make a study of the site's water and sediment quality. This would allow gathering baseline data that could be used to compare future changes at the site. If the site doesn't meet standards, a plan to upgrade the site to standards would be required.

More meaningful public participation and involvement

We find the requirement for public participation and involvement to be inadequate. All reports and notices resulting from the permit (e.g., annual reports) should be publicly noticed and available for comment at both public meetings and on the City's web site (not one or the other). Such notices should also be disseminated via the City's social media (e.g., Twitter, Facebook).

For illicit discharge plans, construction site stormwater control, post-construction stormwater control, and industrial and commercial stormwater source management, the permit should require the City to develop a public-reporting system for complaints (accessible telephonically and electronically) that facilitates clear identification of the responsible parties and that not only allows the members of the public to file complaints but also allows them to track their complaints through to resolution by the City, either online or through a point of contact in the City.

We would also like the opportunity to formally share our comments on the Stormwater Management Program, to be developed by the City, with the DEC through a public comment and public hearing processes. While the permit requires that the City involve the public in the development and implementation of the SWMP, we believe it is important for the DEC, as the regulatory agency issuing the permit, to hear our comments on the SWMP, so that the DEC will be in a better position to modify the permit if necessary.

In the long run, the City may consider reviving the Citizens Advisory Committee on Water Quality for continued public involvement, while greater availability of hard copies of official documents at repositories and by mail (for a reasonable fee, if necessary) would also improve public involvement.

Coordination with other ongoing programs

We are confused by the myriad of water quality related programs underway in the City. We understand that for some waterbodies, the Combined Sewer Overflow Long Term Control Plans are in development by the City. There are also the floatables control program and the Green Infrastructure Plan. In yet other places, there are brownfields cleanup efforts and superfund remediation. We believe it is critical that these related or overlapping programs must be coordinated well for the efficient use of public resources as well as for better understanding by the public of the City's efforts. It would be beneficial to explicitly require the City to create a mechanism for coordinating its MS4 program with these other efforts.

Sincerely,

The Citizens Advisory Committee, New York-New Jersey Harbor & Estuary Program.

This letter has been adopted by the HEP CAC following procedures established in its bylaws (<http://www.harborestuary.org/pdf/CAC%20Bylaws-Revision-Jun-03-11-F.pdf>). CAC members who have voted in support of this letter include (but not limited to):

Meredith Comi, NY/NJ Baykeeper, NJ co-chair, Citizens Advisory Committee of the NY-NJ Harbor & Estuary Program

Rob Buchanan, Village Community Boathouse, NY co-chair, Citizens Advisory Committee of the NY-NJ Harbor & Estuary Program

Shino Tanikawa, New York City Soil and Water Conservation District, NY alternate co-chair, Citizens Advisory Committee of the NY-NJ Harbor & Estuary Program

Nellie Tsipoura, New Jersey Audubon, NJ alternate co-chair, Citizens Advisory Committee of the NY-NJ Harbor & Estuary Program

Manuel L. Russ, Concerned Citizens of Bensonhurst

In addition, this letter has been endorsed by the following non-voting CAC members and non members:

Nancy Brous, New York City Water Trail Association

Dr. Aline Euler, Ed.D., Alley Pond Environmental Center

NOTE: The New York-New Jersey Harbor & Estuary Program is a partner program and its members occasionally have conflicting positions on regulatory and management issues. One of the Program's roles is to facilitate the exchange of ideas and to work towards resolution of these issues. The opinions of individual agencies or committees do not necessarily reflect the opinion of the Program as a whole.

The Citizens Advisory Committee provides guidance and advice to the New York-New Jersey Harbor & Estuary Program Management Committee on Program decision making on behalf of the diverse stakeholders in the region. Its membership and meetings are open to all interested parties in the region that use, or have concerns about, the New York-New Jersey Harbor Estuary and New York Bight. The Citizens Advisory Committee is the only body in the New York-New Jersey Harbor & Estuary Program that can adopt official positions on issues and topics. These official Citizens Advisory Committee positions are adopted by a majority vote of Citizens Advisory Committee members. Citizens Advisory Committee positions do not necessarily reflect the opinion of the New York-New Jersey Harbor & Estuary Program or its members and partners.