



The Bronx Council for Environmental Quality
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Dear Person reading this email:

Please accept these comments to the Annual Citywide Public Meeting on New York City's CSO Long Term Control Plan on December 11, 2014 in the Bronx, submitted on behalf of the Bronx Council for Environmental Quality (BCEQ). We are a borough wide volunteer organization formed in 1971, with the goal to establish — as an Inherent Human Right — a sound, forward-looking environmental policy regarding an aesthetic, unpolluted, environment protecting a natural and historic heritage.

The DEP plan is insufficient on three points. (1) It does not respond to the fundamental principles to insure CSO controls are effective as there is no review and revision of water quality standards to reflect the site-specific wet weather impacts of CSOs. (2) The plan does not meet the criteria of the nine minimum controls as it does not include adequate consideration of sensitive area to reflect the EPA policy nationwide; nor does it meet the criteria for (3) public participation as the agency is not responsive to comments, only repeats process answers.

Specifically on the issue of sensitive area designation and primary contact recreation, there are discrepancies with the EPA CSO Policy. This issue should be resolved prior to any further progress.

In the **Bronx River** Waterbody/Watershed Facility Plan of July 2010, (4.7.1 CSO Policy pp 4-77), Table 4-25, lists Primary Contact Recreation, but the answer is No; Despite the fact that people swim in the Bronx River, or that many use boats on docks along the river. Footnote (4) states "Existing uses including secondary contact recreation and fishing." There is no description of the issue, of the plans review, or whether the plan meets the criteria stated in the CSO Policy.

Later, the **Newtown Creek** Waterbody/Watershed Facility Plan (June 2011), 4-7. P 4-77, mentions that "The Natural Resources Division of the DEC was consulted during development of the assessment approach, and provided additional sensitive areas for CSO abatement prioritization based on local environmental issues (Vogel, 2005)." That DEC memo identifies sensitive areas to be "Important Tributariessuch as the **Bronx River**"

The **Westchester Creek** CSO Long Term Control Plan (June 2014), 2.2.a.3, pp. 2-31, states that NYC Parks has "no plans for promoting swimming in the waterbody in the near future. The physical characteristics of Westchester Creek preclude bathing without substantial physical modifications to this waterbody and associated watershed." Table 2-11 shows the use under Primary Contact Recreation as No. Despite the fact that that many use boats, canoes or kayaks on docks along the creek.

The **Hutchinson River** CSO Long Term Control Plan (September 2014), 2.2.a.4, pp. 2-30, states that while there are wetlands in Pelham Bay Park, there are no sensitive areas in the Hutchinson River assessment area because, among other reasons, bathing “beaches are specifically prohibited by local law.” Table 2-9 under Primary Contact Recreation as None. Despite the fact that that many use boats, canoes or kayaks on docks along the creek.

For several years, BCEQ has been instrumental in bring the Wilderness Inquiry to bring public school children and later, their families, on large canoes on several waterbodies in the Bronx – including the **Harlem and Bronx Rivers**.

Now to the discussion of what is primary contact recreation. “Primary contact recreation” has been defined by the U.S. EPA to include: swimming, rafting, wind surfing, canoeing, kayaking, tubing, scuba diving, snorkeling, water skiing, other.¹ Other states have adopted EPA's perspective that "primary contact recreation" means activities “where there is a high likelihood of incidental ingestion of water, Examples include, but are not limited to, kayaking, tubing, skin diving . . .”² The reasoning clearly is to protect the public health: with “primary contact recreational uses such as swimming and kayaking, health risk increases with fecal coliform count in the waterbody. For a waterbody to comply with Virginia regulations, fecal coliform standards for primary contact recreational use must be met.”³

Canoeing and kayaking are supported for both the **Bronx and Harlem Rivers**. The NYC Department of Parks and Recreation⁴ promotes kayaking in Bronx & Harlem Rivers, as does community residents.⁵ The Bronx River Alliance Recreation Program⁶ works to develop the Bronx River Greenway through canoeing, kayaking, and bicycling. Additionally, the Harlem River serves as one of the venues for area crew teams (e.g. Columbia University, Manhattan College) and, on information and belief, tubing and snorkeling also take place in and on both rivers.

In and of itself, the public’s use of the Bronx and Harlem Rivers for primary contact recreation should provide sufficient cause and justification to designate both rivers as a “sensitive area.” Additionally, other New York State definitions of “environmentally sensitive areas” have been even more expansive and include: “...areas of aquifer recharge, exceptional scenic beauty, exceptional forest character, open space, pine barrens, public access, trailways, unique character, wetlands and wildlife habitat...” [emphasis added]. (see e.g. NYS Environmental Quality Bond Act of 1986).

Finally, in other urban areas, such as Philadelphia, canoeing and kayaking is considered primary contact recreation in keeping with Pennsylvania and EPA authorities. “*Direct contact recreation is also called "primary" contact recreation by state and federal authorities. . . . primary contact recreation includes any activity that is likely to cause immersion in the water and includes jet skiing, swimming, kayaking, wading, and water skiing.*” In Washington, D.C., James Woodworth of NRDC mentioned in his paper “Balancing

¹ see e.g. www.epa.gov/region6/water/ecopro/watershd/standard/rec-uaa_worksheet.pdf

² see, e.g. www.waterquality.utah.gov/WQS/20071017_Follow-up_Email_WQS_Mtg.pdf

³ see, e.g.

townhall.virginia.gov/1/GetFile.cfm?File=E:\townhall\docroot\103\599\1377\deq1377%28wqstandards%29.pdf, p. 2

⁴ www.nycgovparks.org/facilities/kayak

⁵ see www.harlemrivercommunityrowing.org

⁶ See www.bronxriver.org/?pg=content&p=getinvolved&m1=32

⁷ see www.phillyrivercast.org/nav_definition.aspx

Bathers and Bacteria ...” that: “*despite the swimming ban, and the current uses recognized by the regulatory body, . . . the reality is that primary contact recreation, and other activities that pose high risk of exposure to bacteria contamination, including fishing, wading, rowing, kayaking, and swimming, do occur in or on the major water bodies . . .*”⁸

The Agency’s delay in presenting the Harlem River CSO Plan due to it being included in the Open Rivers section presents a risk to the public health. While financial considerations may be valid, the interest of the public health should be a higher standard. There should be “no new or significant increase in overflows,” and “reassessments in each permit term” in the meantime. We request that the Harlem River, with the Tier 3 CSO among others, should be considered separate and apart from the Open Rivers.

We find it curious that the New York State Department of Environmental Conservation approved these plans as serious questions remain:

- (1) What is the point of the CSO policy if the plan does not make water quality better?
- (2) If the Federal CSO Policy requires that the long-term CSO control plan give the highest priority to controlling overflows to sensitive areas, then should or could that designation be completed before the LTCP?

Westchester Creek, the Hutchinson, Bronx and Harlem (including the Bronx Kill) Rivers support primary contact recreation and should be considered sensitive areas. We hope you will take action to remediate the LTCP for Westchester Creek and the Hutchinson River, to change the Bronx River WWFP, and to review the Harlem River as a separate watershed/waterbody.

Finally, once adequate review of wet weather impacts of CSOs is presented (including how much rain sets off each flap in each pipe), we reserve comments to review your Green Infrastructure program of identifying sites, particularly in Bronx County.

Thank you for your time and consideration. Please respond with your comments in a timely manner.

Sincerely,

Karen Argenti

BCEQ Water Committee Co-Chair

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⁸ www.epa.gov/waterscience/standards/uses/symposium/abstracts/woodworth.pdf