



March 16, 2015

Robert Simson
NYS DEC - Division of Water
625 Broadway, Albany, NY 12233-3502

RE: Proposed Amendments to 6 NYCRR Parts 701 and 703 Class I and Class SD Waters

Dear Mr. Simson,

S.W.I.M. is a coalition of more than 70 organizations, including community and environmental groups, architects, engineers, boaters and scientists that are dedicated to ensuring swimmable waters around New York City through natural, sustainable stormwater management practices -Green Infrastructure - in our neighborhoods. We believe that this approach is fiscally responsible because it utilizes stormwater, currently viewed as waste, as a resource.

As a coalition advocating for fishable and swimmable waters in New York City, S.W.I.M. fully supports the adoption of more protective water quality standards for the waterways at issue. However, DEC must further strengthen the proposed new standards so that they are fully protective of public health. We propose the following :

Add “primary contact recreation” to the designated uses of these waters

DEC should adopt “primary contact recreation” as a designated use for the Class I and SD waters covered by this proposal. To ensure dischargers to these waterbodies will be subjected to enforceable pollution control requirements as needed to make these waters genuinely swimmable (see further discussion below), DEC needs to change both the officially recognized “designated uses” and the “water quality criteria” applicable to these waters. The current proposal, improperly, amends only the water quality criteria without amending the designated uses (or “best usage” as it appears in DEC’s regulations).

We recognize that some waterbodies will not fully allow for primary contact recreation for reasons unrelated to water quality (e.g., presence of shipping channels or other physical constraints). We support waterfront and waterway uses that meet the needs of the community, the City and the region. Such uses may render swimming and boating physically unsafe. However, regardless of whether a waterway is physically safe enough to encourage these activities to take place regularly, the water should be clean enough to do so. DEC’s proposed regulation appears to adopt this perspective; however, as drafted, it fails to actually protect that water quality because it does not adopt primary contact as a designated use.

Fully protect all “existing uses” that involve significant human contact with the water

DEC must survey/assess existing uses (i.e., how people are already using the waterbodies) of Class SD and I waters in the city, to make sure they have the latest information on the current existing uses, and must account for them in the revised regulations. We know that all of these waters are already being used for human powered boating and even swimming. Human powered boating exposes people to same risks of



unclean water as swimming. This is an important reason why DEC must actually change the designated use to “primary contact,” so that water quality is improved to protect existing users of these water bodies.

In addition, assessment of existing uses can tell us whether the waterbody is being used seasonally or year round. Some waterbodies, such as the Hudson River, the Bronx River and the Upper Harbor, are used as an educational resource. Students of all ages test the water, monitor biota, observe the environmental conditions, or otherwise engage in educational activities in and on the water. For these students and their teachers, the relevant season might be September to June.

Ensure these changes will improve NYC’s CSO Plans and other ongoing water quality planning efforts

DEC should clearly explain, in the regulations or accompanying explanatory guidance, that the changes to the regulations will apply to the on-going water quality improvement programs, such as the city’s Long Term Control Plans (including those that are currently under development and any that were previously approved by the DEC) and the Storm Water Management Plan that the city’s new MS4 permit will require. This is critically important, since the primary source of human pathogens in these SD and I waters are untreated sewage from CSOs and polluted runoff. New water quality standards must, as a matter of law, be applied to these and all other discharges.

Apply the most modern scientific standards for swimmable water quality

DEC should revise the draft regulations to ensure that the EPA’s Recreational Water Quality Criteria, at a minimum, apply to these waters. The proposed revisions rely on scientifically outdated fecal coliform standards to define swimmable water quality, rather than more health-protective, modern, and scientifically supported enterococcus-based standards. All coastal waters in the state that are currently designated for a swimmable use are subject to an enterococcus-based standard. Because those waters are designated for primary contact recreation, the Clean Water Act requires DEC, by later this year, to update the criteria in those waters to even stronger enterococcus standards than currently apply, to match or exceed EPA’s BEACH Act standards. DEC apply the same protection to the Class SD and I waters subject to the proposed regulation.

Protect water when people come into contact with it, not merely “average” water quality

People don’t swim or paddle in “average” water - and yet the proposed “swimability” criteria are based on a thirty day geometric mean drawn from 5 samples a month. DEC should revise the proposed criteria to be based on a statistical threshold value approach, as in EPA’s Recreational Water Quality Criteria, to set a goal of making the water safe whenever people use it.

Protect people where they contact the water, near the shore

For purposes of measuring compliance with the new water quality standards, DEC should require that the water samples must be taken from near-shore areas where people are swimming, paddling, or contacting the water through other recreation, rather than in the middle of the river or waterbody where there is much



less contact with the water. The city's current water quality monitoring (on which DEC relies to determine water quality standards compliance) typically is located in the middle of a river, rather than nearshore.

We thank you for this opportunity to submit our comments and look forward to working with you in moving closer to meeting the Clean Water Act goals for the City of New York.

Sincerely,

Julie A. Welch
S.W.I.M. Coalition Coordinator on behalf of:

S.W.I.M. Coalition Steering Committee

Sean Dixon, Riverkeeper
Robin Kriesberg, Bronx River Alliance
Larry Levine, Natural Resources Defense Council
Paul Mankiewicz, the Gaia Institute
Tatiana Morin, New York City Soil & Water Conservation District
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cc:

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