



June 29, 2015

The Honorable Emily Lloyd  
Commissioner  
New York City Department of Environmental Protection  
59-17 Junction Blvd  
Flushing, NY 11373

**Re: SWIM Coalition Comments on the Second Public Presentation for the Draft Gowanus Canal Long Term Control Plan**

Dear Commissioner Lloyd,

On behalf of the Stormwater Infrastructure Matters (“SWIM”) Coalition Steering Committee (“the Committee”), as well as Riverkeeper and its New York City-based members, please accept for your consideration these comments regarding the Gowanus Canal Long Term Control Plan (“LTCP”) process.

At a community meeting hosted by the New York City Department of Environmental Protection (“DEP”), the agency presented the public with an overview of the Gowanus Canal and the suite of potential investments under consideration for the Canal’s combined sewer overflow (“CSO”) sewershed. Some of the same information was presented to Riverkeeper on May 5, 2015, in a stakeholder meeting (although, as noted below, some information was left out of the public meeting that had been presented on May 5th).

Overall, SWIM and Riverkeeper submit that, as with previous LTCP public meetings and calls for public input, too little information was made available prior to the DEP’s decisionmaking, the wrong assumptions were made with respect to water quality baselines, and the alternatives presented were insufficiently described, reviewed, and presented. Moreover, the presentation offered failed to include a permanent record of how the DEP views the overlap between the Gowanus Canal LTCP process and the Gowanus Canal Superfund process.

We look forward to working with you and your agency on developing a truly long-term plan to control CSO discharges – not just by diverting, diluting, or disinfecting raw sewage, but by actually directly tackling and reducing the risk that CSO pollution will be generated in any given storm.

### **Public Participation and Input**

As we have done in the past, SWIM and Riverkeeper ask that the DEP expand the manner in which the public is engaged, and the information presented by the DEP in the LTCP process. Chiefly, we specifically draw your attention to the following:

- *Data Presentation* – First, in presenting water quality data, DEP noted in two places that their sample locations were consistent with sample sites maintained by Riverkeeper and Citizen

Scientists. DEP should be sure to disclaim in its final LTCP submission to the State that this means that the sample sites are where Riverkeeper and Citizen Scientist sample locations are located, not that the water quality data is consistent. Second, members of the SWIM Coalition have requested, on many prior occasions, that water quality data (especially pathogen counts) not be displayed on logarithmic scales. Such a presentation misleads the public as to the scope of the problem, showing, for example, samples from wet-weather CSO discharge events as only slightly higher than dry-weather days when in reality there's a ten- or hundred-fold difference in the contamination level. Clarity in data presentation will help inform the public and lead to more robust community involvement in the LTCP process. Please adjust the final LTCP submission accordingly.

- *Scope of Outreach* – While we are appreciative of a meeting coordinated by the DEP for Riverkeeper in early May to review water quality data, two entire communities were left out of the DEP's discussions as to alternatives: Sunset Park and Greenwood. According to the DEP LTCP program staff at the May Riverkeeper meeting, one of the alternatives on the table is to divert CSO discharges (alluded to in the most recent LTCP meeting as the "OH-007 Weir Modifications" alternative) to CSOs located in and around Bush Terminals. Yet, no meetings were held with stakeholders currently working to improve the water quality of that area, nor with stakeholders working on the newly finished public parks and waterfront access points which would be burdened by significant increases in CSO discharges.

In the final LTCP submitted to the State, the DEP should clarify its characterization of data sources, present an appropriately scaled picture of the scope of the pathogen problem, and address whether (and if so, why) it left out Sunset Park and Greenwood (communities potentially impacted by one of the two proposed alternatives) from its public outreach process.

### **Assumptions & Alternatives**

The City's LTCP presentation which we are commenting upon here, we believe, painted an inaccurate picture of the state of the Gowanus Canal water quality and the City's Superfund responsibilities.

- *Water Quality Standards* – The DEP stated in its presentation that the water quality of the Gowanus Canal "meets" standards, and therefore, that no action is technically required for the waterway. First, the Gowanus Canal is a Superfund site considered to be one of the most polluted waterways in the nation, with world-famous CSO problems despite its relatively small size and sewershed. The Canal is given the lowest water quality classification in the State. To say that no pathogen reduction is needed is disingenuous. Second, Riverkeeper, citizen science, and the City's own data show that there are regular exceedances of pathogen criteria (existing and proposed), especially during wet weather events. When judged against the *Enterococcus* standards promulgated three years ago by the EPA, the Canal – according to the City's own presentation – is regularly in noncompliance. Third, as discussed below, the goal of an LTCP, and in general the Clean Water Act, is to improve water quality – not stagnantly maintain the status quo for waters that fail to meet the lowest level of water quality. The City should be doing more than the bare minimum when it comes to the Gowanus, so as to improve this nationally-worst waterway and make it fishable and swimmable.
- *Superfund Requirements* – Put most simply, the City, in this presentation, implies that it is under

no obligation to actually build Gowanus CSO storage tanks as dictated by the EPA's Record of Decision (ROD) in the Superfund process. SWIM and Riverkeeper wish to echo the statements made by the EPA at a recent Community Advisory Group meeting and state that this is not the case. The City must install two tanks under the specifications and the process outlined in the Superfund ROD. The tanks should be the first, and most minimal actions listed in the LTCP for Gowanus Canal.

In addition, we submit the following comments on the proposed alternatives:

- *Goals* – the City, in developing this LTCP, should be to lock in the suite of system-wide improvements needed to meet the goals of the Clean Water Act; namely, to make the Gowanus Canal water quality meet the fishable, swimmable goals set forth therein. In developing the LTCP infrastructure recommendations, the DEP should try to capture as much sewage as possible before it enters the storm system (green infrastructure), and if water cannot be captured, ensure that it stays within the system and gets treated (grey infrastructure). Discharging combined sewer effluent out of other CSOs (as proposed in the weir modification alternative) or relying on effluent diversions into other sewersheds (as suggested in the context of high level sewer modifications) does not meet the spirit or intent of the Clean Water Act, nor does it solve the problem – it diverts the problem.
- *Weir Modifications* – In a meeting with Riverkeeper in May, the DEP noted that weir modifications would result in diversion of CSO effluent to Sunset Park and Greenwood CSOs along the Gowanus Bay waterfront. Some of those CSOs would see significant increases in discharge volumes. At no point did the DEP discuss or review (that we can see) whether or how those discharge events would affect the new Bush Terminals parks, esplanades, waterfront greenspace plans, or community educational uses. Also left out of the presentation posted online for the public to review was the need to close 3<sup>rd</sup> Avenue in Brooklyn for the actual weir modification itself. If this alternative is chosen, it will have been chosen based on incomplete review, without community input, and without a full accounting of potential impacts.
- *Disinfection* – For each of the other LTCPs developed by the DEP in recent years, disinfection has been on the table, presented as a way to reduce pathogen pollution from CSOs while not actually addressing CSO discharge volume. For the Gowanus, as with other waterbodies, if disinfection is considered, it presents a number of yet-to-be-answered questions that should be addressed immediately. Primarily, we are concerned about the impact of discharges of any residual chlorine on the river; thus we would call for **zero discharge of residual chlorine** in the Gowanus Canal until we have a complete understanding of the effects of disinfection on the aquatic and human ecosystem. We recommend DEP share with the public how it arrives at the appropriate dosage. Research on dosage for disinfecting CSO discharges is sparse and we would like to know the methodology for dosage determination.
- *Environmental Review* – Finally, we repeat our request that a full Environmental Impact Statement be developed for this LTCP before its ultimate selection and approval by the State. A host of impacts (from road closures and construction impacts, to community exclusion, open space impairments, and public health effects) would directly result from implementation of any of the proposed alternatives, and those impacts must be reviewed prior to final agency action. At this point, the DEP is proposing to make its decision here based on cost alone (as it has disclaimed any water quality-based need to act); which is antithetical to the informed

environmental decisionmaking required under the State Environmental Quality Review Act (SEQRA).

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We appreciate DEP's efforts over the last several years to improve its openness about its CSO planning process and its willingness to receive constructive feedback from SWIM Coalition, Riverkeeper, and other members of the public. In many respects, DEP has come a long way in that regard since the SWIM Coalition was formed in 2007. We would welcome the opportunity to meet with you to discuss these matters further, and we will continue our efforts to improve both the process and the results.

Please feel free to contact SWIM Coalition Steering Committee Chair Jamie Stein at (718) 399-4328 ([jstein9@pratt.edu](mailto:jstein9@pratt.edu)), or Riverkeeper Staff Attorney Sean Dixon at (914) 478-4501x247 ([sdixon@riverkeeper.org](mailto:sdixon@riverkeeper.org)) with any questions.

Sincerely,

**Jaime Stein, Chair, SWIM Steering Committee**  
**Sean Dixon, Staff Attorney, Riverkeeper**

***On Behalf of the SWIM Steering Committee***

**Larry Levine, Natural Resources Defense Council**

**Paul Mankiewicz, The Gaia Institute**

**Tatiana Morin, New York City Soil & Water Conservation District**

**Nina Sander, Rocking the Boat**

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cc: Judith Enck, Regional Administrator, US EPA Region 2  
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