In the Matter Of:

PROPOSED RULEMAKING TO AMEND PARTS 701 & 703 OF 6NYCRR

HEARING

March 09, 2015

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1 NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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3 LEGISLATIVE COMMENT HEARING ON THE PROPOSED RULEMAKING
TO AMEND PARTS 701 AND 703 OF 6NYCRR
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7 HEARING held at the offices of the ENVIRONMENTAL
8 PROTECTION AGENCY, 290 Broadway, 23rd Floor, New York,
9 New York, on Monday, March 9, 2015, at 12:00 p.m.,
10 before Jeffrey Shapiro, a Shorthand Reporter and notary
11 public, within and for the State of New York.
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14 B E F O R E : MOLLY T. MCBRIDE,
Administrative Law Judge
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1 A P P E A R A N C E S :
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Scott J. Stoner, MS
3 Chief Standards and Analytical Support Section, DEC
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2 P R O C E E D I N G S
3 MS. McBRIDE: Good afternoon, everyone. My
4 name is Molly McBride, I'm an administrative law judge
5 with the New York City Department of Environmental
6 Conservation, and presiding over this afternoon's
7 legislative comment session.
8 The purpose of this session is to receive
9 comments from the public regarding the proposed
10 rulemaking to amend Parts 701 and 703 of Title 6 of the
11 official Compilation of Codes, Rules and Regulations of
12 the State of New York.
13 The purpose of this rulemaking is to change
14 the right to require the quality of Class 1 and Class SD
15 bathing surface waters to be suitable for primary
16 contact recreation such as swimming; the rulemaking is
17 necessary to meet the swimmable goal of the Federal
18 Clean Water Act.
19 Notice of this hearing was published in
20 various newspapers that are in the New York City area,
21 serving this area, as well as the electronic
22 publication, the Environmental Notice Bulletin, and in
23 the State Register.
24 As I said, the purpose of this session is to
25 receive comments. This is not a question and answer

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2 session. If you do have any questions for DEC staff you
3 may raise them outside this hearing here today.
4 In order to make a comment on the record we
5 will need you to fill out a speaker card. Cards are
6 available at the table outside of the room. If you
7 would like to make a comment, please make sure you fill
8 out that speaker card for us.
9 Public comments will be accepted until March
10 16. So comments must be received by the Department by
11 March 16, 2015 at 5:00 p.m. Out in the hallway at the
12 table there we have both the e-mail address and the
13 mailing address for where you will send those comments
14 if you need it. You may also submit a written comment
15 this afternoon and leave it with our staff.
16 Before we see if anyone here would like to
17 make a comment, I want to introduce Scott Stoner from
18 our Division of Water for a few comments.
19 MR. STONER: Thank you, Judge.
20 Good afternoon everyone. I'm Scott Stoner,
21 Chief of the Standards and Analytical Support Section in
22 the Division of Water in the New York State Department
23 of Environmental Conservation.
24 I have a short explanatory statement about
25 the proposed rulemaking that is the subject of today's

1 public hearing.
2 To protect water quality, the waters of New
3 York State are grouped into classes with uses designated
4 for each class, along with standards to protect their
5 uses. There are five classes of saline waters defined
6 in Title 6 of the New York Codes, Rules and Regulations,
7 abbreviated 6 NYCRR, Part 701. These classes are SA,
8 SB, SC, Roman Numeral I and SD.
9 The federal Clean Water Act requires that,
10 where attainable, the quality of all waters "provides
11 for recreation in and on the water." This is commonly
12 referred to as the "swimmable" goal of the Clean Water
13 Act and was to have been achieved by 1983.
14 Of the five classes of saline waters in New
15 York State, only three of the classes SA, SB, and SC,
16 are designated for primary contact recreation, which
17 includes swimming. Class 1 and Class SD waters are not
18 currently designated for primary contact recreation, and
19 thus do not meet the swimmable goal of the federal Clean
20 Water Act. The majority of Class 1 and Class SD waters
21 are located in New York City, with a few waters located
22 in Suffolk County.
23 The purpose of this rule is to ensure that
24 the Class 1 and Class SD waters meet the swimmable goal

1 of the federal Clean Water Act.
2 The proposed rule would accomplish this by
3 requiring, in 6 NYCRRR Part 701, that the water quality
4 for Class 1 and Class SD waters be suitable for primary
5 contact recreation, and in 6 NYCRR Part 703, by adopting
6 corresponding standards for total and fecal coliforms to
7 protect the quality of Class 1 and Class SD waters for
8 this use.
9 Thank you.
10 MS. McBRIDE: Thank you, Mr. Stoner.
11 At this time we have not yet received any
12 speaker cards. What I will do is keep the record open
13 for a few more minutes in case anyone is delayed getting
14 here, and then we'll close the record after that.
15 We have a speaker card for Rob Buchanan.
16 You may come forward and make your comment here.
17 MR. BUCHANAN: My name is Rob Buchanan. I'm
18 co-chair of the New York-New Jersey Harbor Program
19 Citizens Advisory Committee. I'm not here to offer
20 testimony from that group. We have many comments and we
21 will be presenting comments. A colleague of mine of
22 that group will be presenting comments later if she can
23 get in the door.
24 I'm here representing another group of the

1 New York City Water Trail Association, and I have
2 written comments which I will present to you by e-mail,
3 the easiest way.
4 But I wanted to make three points in that
5 group's testimony.
6 And the first point is that, if you're going
7 to call something swimmable, that changes the game for a
8 lot of people. Our group does a survey of harbor
9 boaters every year. The last year we did it, in 2013,
10 we counted more than 60,000 individuals who were put on
11 the water by organized community boating groups. That
12 doesn't count individuals who launch themselves.
13 This is a really big number. Every year
14 that we've done this survey that number has grown.
15 We've got waterfront development and access points
16 expanding. That number is going to get big. If you
17 call water swimmable people are going to expect it to be
18 swimmable, and they'll want to know.
19 So, the first point is, how are you
20 measuring that? I don't think the harbor survey, which
21 is a great thing, and I don't mean to discredit the DEP
22 in any way, but it's not an accurate reflection of
23 harbor water quality recreation users.
24 I think you're going to have to expand your

1 data points. As a model I brought this.
2 (Indicating poster board.)
3 This is a citizens program that we run
4 called Citizens Water. We do quality tests, and if you
5 look, we test at launch sites, a lot of them, more than
6 30. We test weekly, that's what the DEP does too.
7 Their test sites in the East River, if you look at
8 those, they've only got two in the middle stretch of
9 the East River. They've got 23rd Street and they test
10 at Hell Gate, and that's it. Two points, mid current,
11 mid channel, the results are different.
12 So, if you are really going to look at
13 water, look at where people are going to use the water,
14 because those numbers are going to be a lot tougher, and
15 I think you have to include them. So that's my first
16 point.
17 The second point is, monitoring and
18 notification, it's almost impossible for the public to
19 understand the public agencies' monitoring efforts, and
20 their notificiation efforts are also difficult, they are
21 not really user friendly. If we go to swimmable water
22 designation, high expectations, that has to be reflected
23 in better monitoring and more interpretable results. If
24 you look at the DEP's result pages on their website,

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they are great, the data is great, but a member of the public can't make heads or tails of it, they really cannot.

I want to show you one more -- an example, I mentioned East 23rd Street as one of their sites. If you look at their results for 2014, during the 20 weeks we tested, every single result they have is less than 30. I'm talking about enterococcus, that's what we tested. Every single result is less than 30. That means swimmable across the board. Green, green, green all the way across the board.

If you look at our results from Stuyvesant, which is at 23rd Street, roughly, but we test near the shore, it's a totally different picture. It's about 55 or 60 percent green; but the other 35 or 40 perecent is not green, does not meet swimmable standards.

So if you are going to use the results you have to be able to see them and ours side by side, and the public needs to understand those things.

So I think our model is good, I think the DEC's model is good, there are lots of good models for presenting, but the notification has to be better.

The third and final point. Enterococcus is the standard, what the City uses when they say you can

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go swimming at Coney Island or Staten Island, so it's understandable for the public. At this point it's what we use, what every citizen test group uses. And it should be the standard. I know you have said in your explanation that you envision this as a multi-part thing, you want to start with the coliform standards and switch over to enterococcus in the future.

But I think everything changes when you say the harbor is swimmable, we're designating the water waters as swimmable. I think you should be ready to explain to people what that means. And if you don't have the enterococcus standards in place, if you're still using this other system, it's going to require the public to translate from a language they don't understand to another language they don't understand. It's going to complicate things.

So, you're charging the game, it's a big, big step, but be ready. Be ready on the PR front and on the communications front, in those three areas.

Thank you.

MS. McBRIDE: We will go off the record for a few minutes and give people time to come in, in case they're delayed down at security.

(Recess taken.)

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MS. McBRIDE: For those who joined us, I understand there was a delay at security, so we did go off the record for a few minutes to allow people to get upstairs. We had one speaker so far.

What we're going to do now is call the other speakers who have signed up, and when I call your name I'd ask you to please come forward here and give your comments here at the podium.

Our next speaker is Marlene Donnelly.

MS. DONNELLY: I'm here to make statements for two organizations. I'm a member of the Gowanus Community Advisory Group under the Superfund Cleanup, and last month we passed a resolution specifically to make this entry into this statement.

The Cag is a 50 member organization compromised of organization members at large. It was formed in 2011 as part of the EPA Superfund action for the Gowanus Canal.

The first resolution was passed unanimously by this organization in 2012, was directed to the New York City DEP and copied to the New York State DEC and reads as follows:

"The Gowanus Canal Superfund Advisory Group hereby resolves that the water of the Gowanus Canal be

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reclassified from the current industrial standard designated Class SD. Class SD only mandates a minimal level of dissolved oxygen be maintained in the water, but placed no limits to the level of pathogens in the waterway.

"The request is that the Gowanus Canal be reclassified to protect -- given a water classification that protects this current recreation use, which includes contact recreation for families with children, and a reclassification that imposes limits on pathogenic levels of coliform and bacteria as necessary to insure that children and others are not exposed to unacceptable risks, including dangerous disease, due to the simple act of coming in contact with water while recreating on the Canal."

That was the resolution.

"We support any change New York City makes in terms of Class 1 and Class SD waterways that places new institutional control on the level of pathogens allowed in Class 1 and Class SD waters.

"However, the rulemaking does not affect the use designation for water classification. The above resolution to protect Gowanus recreation use includes contact recreation for families and children.

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2 "The proposed rulemaking should not be a
3 substitute for reclassification of water based on actual
4 public use of the public waters. The Canal community
5 still looks forward to a water reclassification based on
6 actual use."
7 Passed unanimously February 24. That's
8 submitted.
9 I'm also making a statement for the
10 organization I represent called Friends and Relatives of
11 the Greater Gowanus. We are concerned, we support the
12 changes that there should be pathogen levels of control
13 for all waterways in the City. But we are concerned
14 that the way this is being proposed and the way water is
15 being tested and assessed is not going to be truly
16 protective of pathogens and people's use of the water.
17 We are concerned that the way the rules have
18 been written that they're not going to actually mandate
19 a whole lot of change in Class SD waters because of the
20 way the testing is taking place in the so-called center
21 of the waterways.
22 We ask that in moving forward here that we
23 look for a better way to insure the way people actually
24 come in contact with the water closer to the shore, that
25 we become protective of people coming in contact with

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2 the water in situations where it's not expected to be,
3 due to climate change and storm surges and other issues.
4 I wanted to relay a story that, during
5 Hurricane Sandy, after that issue, a community group
6 serving Thanksgiving dinners to people in Sheepshead
7 Bay, where we encountered one woman who had just been
8 out of the hospital prior to Hurricane Sandy. She found
9 herself the day of Sandy wandering in four feet of water
10 in our streets, the City of New York, with stitches,
11 having had open surgery days earlier.
12 And there are people being exposed to
13 pathogens in a lot more intense ways besides choosing to
14 recreate because of the climate change and the control
15 of pathogens in unsafe conditions.
16 And particularly, the concerns of bacteria
17 in the waterway that need to be controlled to CSA --
18 because New York City is, according to the Centers for
19 Disease Control, has the highest rate of bacteria
20 resistant infections in the entire country. It's
21 becoming a greater concern that bacteria are being
22 released into our communities more and putting people
23 more at risk.
24 Our hospitals have the highest rates of
25 antibiotic resistant bacteria, they use the sewer

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2 systems, and these elements would be released.
3 So we do want levels of control of
4 pathogens, so we're really going to address climate
5 change more. Thank you.
6 MS. McBRIDE: Diane Buxbaum?
7 MS. BUXBAUM: I'm a member of the same two
8 groups that the previous speak is a member of. I'm on
9 the Cag of the Gowanus Canal, and I am also a member of
10 -- I don't want to repeat word for word what Marlene
11 Donnelly just said, but I strongly support everything
12 that she said.
13 So if it means a statement that is exactly
14 as another statement, then you have two of them, and I
15 will submit that in writing.
16 What I am concerned about very often is the
17 ineffective and non-existent addressing of climate
18 change, and how we are going to clean up our waters.
19 It's the same thing that Marlene said. It's absolutely
20 accurate.
21 When I look at the shoreline rezoning law, I
22 think it was 2007 or 2011, I called people at the DEC
23 and the people doing the rezoning and said, "Are you
24 addressing climate change?" They said yes. There was
25 one tiny paragraph at the end of the rezoning, which

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2 actually didn't address anything about sea level rise
3 and storm changes.
4 I spoke to a person at DEP at a meeting near
5 Brooklyn Technical College in Brooklyn Heights, a DEP
6 presentation on best management practices. And I said
7 "Well, are you going to look at climate change?" At
8 that point -- well, that's too complicated. That struck
9 me as being ineffective, looking at what we need to do
10 to protect waters.
11 We have people in my neighborhood who go out
12 rowing, they go out kayaking in the Gowanus Canal, and
13 they take young people. We need to protect them from
14 the pathogens in the water. And I think the way it's
15 being proposed now, the protection will not exist. I
16 hope we get a better set of proposals.
17 Thank you.
18 MS. McBRIDE: Thank you.
19 Akila Simon?
20 MS. SIMON: Good afternoon, everybody. I
21 too agree with the previous speaker. I am the head
22 coach of the Empire Dragon Boat Team, and we do practice
23 our paddling throughout the duration of April through
24 October on Flushing Bay. And it is very disconcerting
25 for us because there's a lot of fecal matter in the

1 water during high and low tide. Our cancer survivors,
2 health is a major concern for a lot of us. I myself, as
3 well other members on our team, have skin infections
4 because of the contact with the water, because the
5 quality is so poor.
6 So it is really a major concern for us to do
7 our part to really force the government, DEC, DEP, EPA,
8 to do something about cleaning up the waterways. Over
9 the course of the summer we have over 2,000 padders go
10 out into the water.
11 We really would like the designation changed
12 to primary contact, merely because we are getting
13 splashed, we're getting flipped, the boats. People do
14 actually have contact with the water. It is very
15 important that we do something.
16 We as a boating community have come together
17 recently and formed something called Guardians of the
18 Bay, where all of the dragon boat community have come
19 together. We're talking about oyster testing, we're
20 testing the waters during the summertime. We're really
21 trying to think of ways that we can do our part, so we
22 really would like to have the designation changed.
23 I think it is very important and it is our
24 home, Flushing Bay is our home. For 2,000 recreational

1 paddlers to move somewhere else, that's something that
2 is very troubling, especially when there's really
3 nowhere else for us to go to paddle. We compete.
4 Paddling is one of the fastest growing water
5 sports here, and dragon boat paddling in the United
6 States, and we don't have another place to call home.
7 So it's very important that we do our part and you all
8 do your part to really change the designation for
9 Flushing Bay.
10 Thank you.
11 MS. McBRIDE: Thank you.
12 Larry Levine?
13 MR. LEVINE: Larry Levine, I'm a senior
14 attorney with Natural Resources Defense Counsel in New
15 York. We are a non-profit environmental organization
16 working on clean water issues and a whole wide range of
17 other environmental issues. We're working on trying to
18 get the City to clean up its sewer overflows since at
19 least the 80s, probably the 70s. We have files in our
20 office going back, legal records to all those decades.
21 And so this is a really important moment
22 that we want the CDC to follow through on both the
23 proposal, also ongoing and beyond that, and I echo all
24 the concerns raised previously by the commenters I
25 heard, the last few I was here for.

1 The biggest concern that we have about the
2 way that the proposal was framed is about whether it's
3 actually changing the use designation. And that's a
4 critical point of law, because it has changed the use
5 designation, and that will in turn trigger application
6 of federal beach act standards. Even though it's called
7 the beach act, they apply not only to beaches, they
8 apply to all coastal recreational waters, all of these
9 fall in that definition. But it applies only to coastal
10 recreational waters and that is defined for primary
11 contact use.
12 So it's really important that the DEC make
13 very clear in the language of the regulation that they
14 are in fact changing designated use, and not merely
15 saying there something else to use for the water quality
16 issues.
17 Saying it ought to be swimmable is one
18 thing, saying that the bacteria level amounts to
19 swimmability is another thing. So the proposal right
20 now is based on old standards from bacteria use,
21 indicator organism, fecal bacteria, that is outdated
22 science.
23 We understand the DEC is in the process for
24 all the other waterways that are already designated for
25 primary contact of updating that standard based on

1 enteroacoccus bacteria, the best scientific standard.
2 But the EPA has a new updated version of that standard
3 in the last couple of years, and so it's critical that
4 the DEC apply that enterococcus standard to protect
5 public health in all these water bodies.
6 In terms of primary contact, there's one
7 more thing I'd like to say. In many other
8 jurisdictions, many other states, EPA regions in fact,
9 team paddling, even power boating, should be primary
10 contact recreation precisely for the reason the prior
11 speaker mentioned, because you do in fact get wet.
12 Even if you don't intend to submerge
13 yourself, you do not in fact wholly submerge yourself,
14 you get wet enough that it amounts to primary contact.
15 I'm a kayaker myself, I'm sure many in the room are, you
16 know some of the speakers already.
17 So it's a legal matter as well, the DEC in
18 regulation should be treating kayaking, boat paddling as
19 primary contact activity. And as a result, it exists
20 for use legally, people are in fact doing it, and the
21 DEC needs to protect that existing use under the Clean
22 Water Act and comply with the law.

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2 One last point, which I think someone else
3 alluded to, is how compliance is measured with these
4 standards. Typically sampling now is mid channel.
5 People come in contact with the water much more
6 frequently and extensively near shore. So the
7 regulations ought to be clear as to how compliance is
8 measured, and that should be measured based on near
9 shore water quality, not after sewage discharges have
10 been diluted further into the center of a stream,
11 especially a flowing water body is going to be diluted
12 rapidly towards the center, the Hudson River for
13 example.
14 There's lots of kayaking going on, near
15 shore is a lot more polluted than the center of the
16 channel. It's an integral part of water quality, the
17 cleanup to support primary contact.
18 And so I will close with that, and say that
19 I support moving ahead with what the DEC has proposed,
20 but further, submit that the DEC needs to go further at
21 this time, not merely additional issues for a future
22 date, to have a rule that fully complies with what the
23 Clean Water Act requires to fully protect public health.
24 The rule language should be revised to
25 further what appears to be DEC's intent, to in fact

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2 achieve that and protect public health and comply with
3 the law.
4 MS. McBRIDE: Thank you.
5 Robert Bake?
6 MR. BAKE: Hi, I'm Robert Bake, I'm
7 president of the Brooklyn Bird Club. Of course I
8 support the clean water around New York City. Primary
9 use should be safe for people, no brainer. That it
10 isn't already is unconscionable. I understand it's a
11 difficult process.
12 I'd like to, as a member of the birding
13 community and the environmental community, I'd like to
14 say that it's not just for people, it's also for the
15 wildlife that uses the waters of New York City.
16 I'm sure they are susceptible to the
17 infections that people are, and there's also the whole
18 ecosystem, especially I'm very familiar with Jamaica
19 Bay, the fecal discharge from the sewage treatment
20 plants raised the levels of bacteria and nutrients in
21 the Bay and contributed to the devastation of our
22 environment, the lack of resilience in the Bay.
23 The grasslands have been reduced 30 percent
24 in the last 15 or 20 years. And they have been
25 projected to lose all the grassland in Jamaica Bay, if

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2 the trend isn't reversed. It's being reversed, but
3 especially in these times of climate change, we need the
4 resilience of the bays, the waterways of New York City,
5 returning the water to a natural state should be a
6 primary purpose of EPA work, all our work.
7 That's it. Thank you.
8 MS. McBRIDE: Thank you.
9 Shino Tanikama?
10 MS TANIKAMA: Good afternoon. My name is
11 Shino Tanikama. I'm with the New York City Tunnel and
12 Water Conservation District. Today I'm speaking as the
13 alternate New York co-chair of the New York-New Jersey
14 Harbor Citizen Advisory Committee. We submitted our
15 letter a while ago. I will speak to what we already
16 submitted, but I'd like the opportunity to share with
17 the rest of the members of the public what we submitted.
18 We would like more clearly amended
19 designated use. As Larry mentioned, I think the way to
20 interpret the current proposal is changing the water
21 quality standards without really explicitly changing the
22 designated use. We would like to have the language
23 changed to say that Class I saline surface water, the
24 best usage of Class I waters are primary contact
25 recreation and fishing.

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2 We'd like to have the words "primary contact
3 recreation" explicitly inserted into the section of the
4 water quality standards that talks about the designated
5 use and the best usage.
6 Likewise, for Class SD, we'd like the best
7 usage of Class SD waters to be primary contact
8 recreation and fishing. So we would like for inclusion
9 of the word "primary in" that language.
10 We would also like to protect existing uses,
11 and that might entail the New York DEC conducting a full
12 assessment of existing uses. Beyond setting the goal
13 for fishable and swimmable, which we are fully
14 supportive of, I think we need to really look at how the
15 water bodies are currently being used, and insure that
16 we do everything to meet the goal, because the uses are
17 already there as existing uses.
18 All I'm saying is, really, we don't want
19 anybody to say we can't meet these water quality goals.
20 We want people to really look at how the water bodies
21 are used today without meeting these goals, so that we
22 can meet the water quality goals.
23 We'd also like to switch to enterococcus as
24 part of this amendment process. I understand the DEC
25 will be switching to using enterococcus as an indicator

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2 next year or the year after, but we think it would be
3 prudent for us to actually do this now to avoid
4 confusion in the future.
5 We also want water quality criteria to be
6 relevant to the people who use the waters. What I mean
7 is, the current standard is based on the geometric means
8 over 30 days. However, people are using the water today
9 or yesterday, on that particular day, to the users of
10 the water bodies, the geometric mean over 30 days is
11 irrelevant. You're exposed to a high concentration of
12 bacteria on a given day, it doesn't really matter if the
13 average is lower than the standard.
14 We would like something that is more
15 relevant and more protective of the users of the body.
16 Along the same line, I know as an environmental
17 educator, I take small children to sample the water once
18 a month throughout the year. Ironically, the only month
19 that I don't sample is when school is not in session,
20 July and August.
21 But the rest of the year I do go out to the
22 river, fill up a bucket of water, and we do come into
23 contact with that water. So in some places it may be
24 prudent to look at year round water quality standards
25 and not just seasonal uses.

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2 Again, I think if the DEC looks at the full
3 existing uses and analyzes how the water bodies are
4 being used, you would know which water bodies warrant
5 year round protection.
6 Finally, we would like to know how this
7 change will be integrated into the ongoing water quality
8 improvement program, particularly the long term control
9 planning process to the CSO and NS in the City.
10 We are presuming these standards will be
11 incorporated into the planning process, but we would
12 like clarity on how the City will amend the LTC plan
13 submitted already, or if they are going to be
14 resubmitting those plans. We need guidelines and
15 clarification on that point.
16 Again, the City Advisory Committee of New
17 York-New Jersey supports this initiative, but we'd like
18 to see strengthening of the proposal.
19 Thank you.
20 MS. McBRIDE: Thank you.
21 Ate Atema.
22 MR. ATEMA: My name is Ate Atema, I'll be
23 brief. I'm speaking as a citizen, as a lover of this
24 city, as a lover of cities in general, as an architect
25 and somebody who's been working for the last three years

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2 in developing a strategy for preventing storm water from
3 combining with raw sewage to creat the CSOs that are
4 driving the problems we're speaking about today.
5 The really big picture for me is, this is an
6 opportunity for New York City to establish itself as a
7 leader in green infrastructure and demonstrating that
8 large cities can be responsible ecological citizens of
9 the planet. We all, I think, understand the benefits of
10 density, and I think any opportunity New York City has
11 to take leadership in that area should be embraced.
12 So that's, I think, something like the
13 primary contact recreation standards is the right goal,
14 it's a very simple one, it's clear, it's a goal I think
15 everybody agrees we want to get to. We want to be able
16 to swim in our waters, we want to able to fish in our
17 waters and to be able to know that sewage is not
18 discharged into our waters.
19 And so, I think there's an elegance and
20 simplicity to the goal, and we should get there as soon
21 as possible.
22 Thank you.
23 MS. McBRIDE: Thank you very much.
24 Dierdre Cossman?
25 MS. COSSMAN: Hi, my name is Dierdre Cossman

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2 and I'm member of the Empire Dragon Boat Racing Team.
3 And we practice on Flushing Bay, and obviously a lot of
4 the same points have been made already by Coach Akila
5 Simon.
6 And basically it's about not only the water
7 quality getting changed for the designation of these
8 waters to primary contact, because on a regular basis,
9 which is a few times a week, we're out there paddling
10 with hundreds of others every week, and there have been
11 incidents of infection and rash and things, just from
12 paddling and getting splashed by the water.
13 So it's important that the designation is
14 changed to be amended for not just water quality
15 criteria, but the actual language for primary contact
16 recreation.
17 Thank you.
18 MS. McBRIDE: Thank you.
19 Ira Gershenbaum.
20 MR. GERSHENBAUM: My name is Ira
21 Gershenbaum, I'm here representing myself and River
22 Keeper. Two points. One point is, I missed the first
23 part of this hearing because of the security procedures
24 outside. Many people are also coming in right now
25 because of that and missed much. I arrived early, not

1 early enough, an hour early.
2 The second thing is, I'm a swimmer, I like
3 to swim in the Hudson River. The only thing that
4 prevents me from currently swimming in the Hudson River
5 is the fact I don't have access to it. Many who want to
6 swim in the Hudson River are afraid of it. And this
7 initiative should help that. Hopefully, at some point
8 it will also help the fact that the bad news comes out
9 whenever a swim, an organized swim, people come out with
10 mustaches from the Hudson River because of sewage and
11 things in the water.
12 Thank you.
13 MS. McBRIDE: Thank you.
14 Peter Molinski?
15 MR. MOLINSKI: I'm speaking from the New
16 York Harbor Foundation, the oyster project. We do a lot
17 of work, primary contact work, in the water restoring
18 oysters to the harbor. So we have high school students
19 diving in the water from the end of April through the
20 end of November. So I echo the point of widening the
21 season for primary contact uses, that we are in the
22 water for July and August.
23 And just -- someone else mentioned -- more
24 clarification -- I might have missed it, I was late,
25

1 based on the line -- what exactly the new designation
2 means, whether there's any action on DEC's part to
3 change the quality of the water or simply a designation
4 to change the -- I'm unclear about it.
5 MS. McBRIDE: Thank you very much.
6 Willis Elkins?
7 MR. ELKINS: I'm Willis Elkins, from the
8 Newtown Creek Alliance -- a couple of comments. One of
9 the SD water bodies, which means one of most polluted
10 the in the City. So generally, we're supportive of this
11 effort.
12 It's difficult for us to make progress on
13 the waterway, especially with existing use saying there
14 already are people recreating on the water. The agency
15 says it doesn't matter, conditions don't reflect that.
16 So, a couple concerns we have, though,
17 because some of the places in Newtown Creek have such
18 poor water quality, we're interested in knowing what the
19 mechanism is to enforce the compliance? We want to make
20 sure the responsible agencies are responsible for
21 cleaning that up and don't have a way of getting out of
22 this because conditions are so bad.
23 Does that make sense?
24 The other concern we have is about what it
25

1 means for existing plans in place, including consent
2 orders. The Newtown Creek Alliance along with River
3 Keeper have been fighting a current consent order about
4 aeration at Newtown Creek for reasons actually over
5 public health.
6 And one of the issues we had is saying it's
7 not a public health concern, people are not supposed to
8 be recreating there anyway. We want to know what that
9 would mean for that, because right now the aeration only
10 addresses the oxygen level. The new level, the bacteria
11 level, does that mean the aeration program will have to
12 be entirely redesigned?
13 And going forward with future consent
14 orders, to promote presumably new standards, we want to
15 make sure there's an open process with the community.
16 The community was left out of a lot of these processes,
17 and I understand there's lots of concern over that, so I
18 want to make sure there's enforcement or a mechanism to
19 insure compliance of efforts.
20 Thank you.
21 MS. McBRIDE: Thank you very much.
22 That was our last speaker card. I will
23 repeat for those of you who were not here at the
24 beginning. The Department is receiving comments
25

1 regarding this proposed rulemaking until 5:00 p.m. on
2 March 16.
3 If you'd like to submit comments, you may
4 mail them into Robert Simson at the New York State DEC.
5 The mailing address is 625 Broadway, Albany, New York
6 12233-3500. I will have Mr. Stoner here give the e-mail
7 address.
8 Sorry, we do have a couple more speakers.
9 Also, information for sending in comments is at the
10 table out in the hallway.
11 Noelle Thurlow is our next speaker.
12 MS. THURLOW: Hello, I'm Noelle Thurlow, I
13 run a small kayaking paddleboard company in Hoboken, the
14 other state across the river, the Hudson River. I bring
15 children, I do lessons for them and a small youth
16 program as well.
17 If you've ever done any paddleboarding, then
18 you know we're all in the water. We fall off all the
19 time, the children jump off, they love it. It's a
20 wonderful opportunity. I make sure to include
21 environmental education with every program that I do,
22 so they're learning to understand the Hudson River
23 estuary.
24 So I would love it for the water to be as
25

1 clean as possible for the children and all people that
2 use the water.
3 Thank you.
4 MS. McBRIDE: Thank you.
5 Karen Craddock?
6 MS. CRADDOCK: Hi. My name is Karen
7 Craddock. I'm a breast cancer survivor and I grew up on
8 Long Island on the North Shore near the Throgs Neck
9 Bridge.
10 I've always been afraid of the water quality
11 in the area on the North Shore of Long Island, going to
12 Queens where we did hang out.
13 I am a member of the Empire Cancer Survivor
14 Dragon Boat Team. I'm also a member of the Guardians of
15 Flushing Bay. This is a group of Dragon boaters who are
16 in the Flushing Bay who are concerned about the water
17 quality.
18 Our mission is to preserve and protect the
19 water quality of the Bay in order to save human contact
20 with the human body. I'm involved in the team because
21 we're very concerned about the environment and our
22 health risks due to the gradual destruction and abuse of
23 the ecosystem that New York has grown industrially over
24 the decades.

1 Why I'm concerned about the Bay is that it's
2 the only protected bay in our area fit for human powered
3 water sports and other activities that have incidental
4 direct contact with the water.
5 Also, I see people fishing off the dock. I
6 don't know if it's for personal consumption or illegal
7 commercial comsumption, but I fear that toxic catch is
8 ending up on a plate somewhere.
9 Personally, I have seen water pouring out of
10 the CSO. It smells horrible, you can see sometimes a
11 cloudy discharge in the water. I'm afraid that I will
12 get sick or get an infection as many teammates have in
13 the past. I'm trying to cover myself head to toe with
14 as many layers as possible.
15 Even though our hands are in the water, we
16 do get splashed all the time. We accidentally swallow
17 it and it's not a pleasant experience.
18 What we want is the water quality be raised
19 to a level where it's swimmable, at least when we have
20 primary contact with the water to not feel as though
21 we're in danger of harming yourself.
22 Paddlers have direct contact with the water.
23 I think it's assumed that we're above it so therefore
24 we're not near it, but we are in it. Please make
25

1 changes for us to be safe.
2 Thank you.
3 MS. McBRIDE: Thank you.
4 Maria Melian?
5 MS. MELIAN: I'm Maria Melian, I'm also part
6 of the Empire Dragon Boat Team. We're one of the many,
7 many dragon boat teams that use Flushing Bay as our only
8 lake, actually. It's a huge sport, started in Asia, and
9 it's very strong in Canada and the West Coast.
10 The water basically is filthy. Part of it
11 is industrial waste, but most of it is from human sewage
12 from the CSOs. And it's due to faulty engineering.
13 This can be fixed. It takes time, it takes money and it
14 takes effort, but it can be done.
15 I lived here in the 70s, I saw the Hudson, I
16 smelled the Hudson. It is a different thing now. I saw
17 the tens, I see it now, it can be done. We just need
18 everybody and we need the government to do something
19 about it.
20 And the idea -- somebody, I can't remember,
21 EPA had the idea of putting disinfectant in the sewers?
22 In the water? We're cancer survivors on our team.
23 That's not what we need. We don't need more chemicals
24 in our water. We need engineering solutions, which can
25

1 be done.
2 Thank you.
3 MS. McBRIDE: Edith Kantrowitz?
4 MS. KANTROWITZ: Hi, Edith Kantrowitz,
5 president of New York City Friends of Clearwater. We
6 are a chartered club, the Clearwater organization
7 originally started by Pete Seeger to clean up the Hudson
8 River. And so we are continuing to work on cleaning up
9 the Hudson River. Of course, we're very interested in
10 the other waterways in the New York City area and making
11 sure they're clean and swimmable and healthy for us to
12 put our bodies into if we're going to swim and recreate
13 in other ways.
14 So we would like basically to express our
15 support for the proposed rulemaking, but there are some
16 changes that we'd like to recommend. These were
17 directly suggested by the Water Infrastructure Matters
18 Coalition. You may have already heard them today
19 because I came up late because of the line.
20 I'd like to reiterate our support for those
21 principles that the designated used for Class SD waters
22 should explicitly include primary contact recreation.
23 We recognize that designated uses and water quality
24 criteria should both be included.
25

1 DEC Public Hearing
2 Number 2, the DEC should survey and assess
3 how people are using the water so we have a better
4 picture of recreation.
5 Number 3, measures should be taken to make
6 sure that these criteria are integrated into the City's
7 sewage overflow reduction plans.
8 Number 4, the sample should be based on a
9 single sample approach rather than an average sample.
10 The DEC should revise the draft regulations
11 to insure that the EPA beach act standards apply to
12 these waters, and also for measuring the water quality.
13 The sample should be taken from the near shore areas
14 where people swim and are paddling, rather than out in
15 the middle of the water where people are not as likely
16 to be.
17 Again, we want to endorse the suggestions of
18 the Water Infrastructure Matters Coalition to see
19 everything is done to make the water as clean and
20 healthy as possible.
21 Thank you.
22 MS. McBRIDE: Thank you.
23 Robert Coover?
24 MR. COOVER: I'd like to add my support of
25 the points mentioned by the previous speaker, endorse

1 DEC Public Hearing
2 storm water matters, the ongoing existing use as primary
3 contact or recreation of these waters and support
4 general continuing use of such.
5 MS. McBRIDE: Thank you.
6 Mark Ringenary?
7 MR. RINGENARY: Good afternoon. I'm from
8 the National Park Service -- Gateway Recreation is our
9 name. We'd like to see more recreaction -- the City
10 supporting it -- we have a number of people using
11 recreational activities.
12 We have a biologist in the park testing the
13 water. I can tell you Jamaica Bay is very bad. I don't
14 know the indicators the DEC looks at in the background
15 -- people can get a false sense of security by passing
16 measures.
17 I'd love to have better control. I want to
18 know there's monitoring to keep people safe who are
19 using the water for specific recreational activities. I
20 want to inform the public if there's a problem -- I want
21 to know what kind of enforcement you will use to
22 regulate or try to control this, engineering-wise? How
23 to educate the public on these issues?
24 Again, it's a question for me that I see
25 people using the water who don't know there is a problem

1 DEC Public Hearing
2 --
3 One side comment before I'm done. I live on
4 Staten Island. After Sandy -- a lot of houses,
5 infrastructure, plus vegetation -- I see trees being cut
6 down all over the place. The tree program helps, but
7 the city parks, it wiped out the underbrush in certain
8 areas. Standing trees were impacted, high winds -- the
9 water system, its impact is a big issue in the City.
10 Thank you.
11 MS. McBRIDE: Thank you.
12 Robin Kriesberg?
13 MS. KREISBERG: Good afternoon. I'm Robin
14 Kriesberg, I'm the policy director of Bronx River
15 Alliance. We partnership to protect, improve and
16 restore the Bronx River, and I'm also on the steering
17 committee for the Storm Water Infrastructure Matters
18 Group, a citywide coalition of more than 60
19 organizations advocating for swimmable and fishable
20 waters in New York City.
21 We enthusiasticly support the proposed
22 amendments to set the water quality goal of all New York
23 City waters being swimmable, which would make the Bronx
24 River safe for primary contact.
25 Thanks to the tremendous efforts of

1 DEC Public Hearing
2 community leaders, concerned citizens and government
3 officials, the Bronx River has seen a remarkable
4 resurgence since the 1970s when it was an abandoned
5 dumping ground.
6 Today over 5,000 recreational boaters enjoy
7 the Bronx River every year. We've opened up seven boat
8 launches along the year when none previously existed.
9 Over 9,500 students have touched or been touched by the
10 river. We work with over 2300 educators who have made
11 the river an outdoor classroom for hundreds of students
12 ever year.
13 It's a testament to the progress that we've
14 made, it came in 2012 when the National Park Service
15 designated the Bronx River as a national water trail.
16 The designated uses of waters of the river should be
17 changed to primary contact to support a variety of
18 recreational and educational activities already taking
19 place on the river.
20 Human powered boats exposes people to the
21 same risks as swimming, so that's why primary contact is
22 really essential.
23 The Bronx River long term control plan
24 process began in February, with a scheduled completion
25 date of June of this year, and the water quality changes

1 proposed by DEC should be incorporated into the planning
2 process to insure that the final plan achieves water
3 quality standards that protect the public and support
4 existing uses of the river.
5 To insure the safety of those coming into
6 contact with the river, as previously said, water
7 quality criteria should be based on a single sample
8 maximum testing approach rather than a 30 day means --
9 five samples per month. People don't come into contact
10 with average water. The river should be safe for
11 contact whenever they do come in contact with it.
12 In addition, testing standards should be
13 revised to adopt modern scientifically supported,
14 enterococcus based standards. Samples should be taken
15 from near shore areas where people actually recreate
16 rather than the middle of the water body.
17 Building on the great progress that's been
18 achieved so far on the Bronx River, we urge DEC to make
19 important regulatory changes to protect the many
20 citizens who depend on a clean and healthy river so they
21 can safely enjoy all the recreational and educational
22 opportunities it offers.
23 MS. McBRIDE: Thank you.
24 Randy Ng?
25

1 MR. NG: Good afternoon. Thank you,
2 everybody for your time at this meeting. My name is
3 Randy Ng, I am one of the members affiliated with
4 Flushing Bay, the dragon boat community. We've bonded
5 together to call ourselves the Guardians of Flushing
6 Bay.
7 I'm one of the coaches of another team. As
8 you can see, we have quite a few members here today of
9 the dragon boat community, representatives of the
10 passion of the sport, most importantly of Flushing Bay.
11 We talked about the sport dragon boating,
12 and I will try not to repeat what was talked about.
13 Dragon boating is the ultimate team support. It's 22
14 people in a boat, ten on the left, ten on the right,
15 brought together to race or to paddle together as one
16 whole team.
17 As you can see, the Empire State Dragon Boat
18 Team is a bunch of cancer survivors. On my crew, I'm
19 actually the coach of 140 high school students yearly
20 for the last 16 years.
21 What we're trying to do at Flushing Bay is
22 to improve the quality of the bay so it's safe for them
23 to paddle, but really to put forward support for the
24 next generation, to teach these kids and have a safe
25

1 place for them to go to paddle and to learn about
2 leadership and adversity, working together using this
3 sport called dragon racing.
4 Now, Flushing Bay is next to LaGuardia
5 Airport, we also have challenges there. There is a
6 sewage deposit, 1.1 million gallons of sewage is dumped
7 in, especially during a storm it's more problematic,
8 just because of the high levels of bacteria, e-coli.
9 Most of times what happens is, Flushing Bay is our only
10 home, where many people actually get sick and some have
11 severe cases that ended up in the emergency room.
12 The other two things that are in our
13 community, we have two municipal sanitation areas that
14 actually block the entrance, the sanitation building
15 that's in our entrance; and the municipal waste facility
16 in the back. At times you can tell that the municipal
17 waste, the liquids come through the sewage and create
18 the slick and smell and engage bacteria that are in our
19 waters.
20 We also have two cement treatment plants,
21 cement concrete plants, which one is owned by the
22 Department of Transportation.
23 So what we're here today, to support and
24 asking for help in education, we're asking for help in
25

1 learning what to do, how we can be part of this
2 community to improve the water system.
3 As you can see today, many of our team
4 members, our group, Guardians of Flushing Bay, have a
5 passion to be here to try to improve the water quality.
6 Again, for me as a coach, I'm also the coach
7 of Team USA. A lot of members train here on the
8 national level team. I ask for your help, not only for
9 us, not only for the breast cancer survivors, but for
10 future generations.
11 Thank you.
12 MS. McBRIDE: On behalf of the DEC I want to
13 thank you all for coming out this afternoon and giving
14 us your comments. Again, Comments will be received
15 until March 16. Thank you.
16 (Time noted: 1:06 p.m.)
17 (Matter concluded.)
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1
2 C E R T I F I C A T I O N
3
4 I, Jeffrey Shapiro, a Shorthand Reporter and
5 Notary Public, within and for the State of New York, do
6 hereby certify that I reported the proceedings in the
7 within-entitled matter, on Monday, March 9, 2015, at the
8 offices of the ENVIRONMENTAL PROTECTION AGENCY, 290
9 Broadway, 27th Floor, New York, New York, and that this
10 is an accurate transcription of these proceedings.
11 IN WITNESS WHEREOF, I have hereunto set my
12 hand this 19th day of March, 2015.
13
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17 JEFFREY SHAPIRO
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