1 NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

2

3 LEGISLATIVE COMMENT HEARING ON THE PROPOSED RULEMAKING
TO AMEND PARTS 701 AND 703 OF 6NYCRR

4

5 ---

6

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.

12

13

14 B E F O R E : MOLLY T. MCBRIDE,
Administrative Law Judge

15

16

17

18

19

20

21

22

23

24

25

1 A P P E A R A N C E S :

2

Scott J. Stoner, MS
3 Chief Standards and Analytical Support Section, DEC

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1

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

session. If you do have any questions for DEC staff you may raise them outside this hearing here today.

In order to make a comment on the record we will need you to fill out a speaker card. Cards are available at the table outside of the room. If you would like to make a comment, please make sure you fill out that speaker card for us.

Public comments will be accepted until March 16. So comments must be received by the Department by March 16, 2015 at 5:00 p.m. Out in the hallway at the table there we have both the e-mail address and the mailing address for where you will send those comments if you need it. You may also submit a written comment this afternoon and leave it with our staff.

Before we see if anyone here would like to make a comment, I want to introduce Scott Stoner from our Division of Water for a few comments.

MR. STONER: Thank you, Judge.

Good afternoon everyone. I'm Scott Stoner, Chief of the Standards and Analytical Support Section in 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

public hearing.

To protect water quality, the waters of New York State are grouped into classes with uses designated for each class, along with standards to protect their uses. There are five classes of saline waters defined in Title 6 of the New York Codes, Rules and Regulations, abbreviated 6 NYCRR, Part 701. These classes are SA, SB, SC, Roman Numeral I and SD.

The federal Clean Water Act requires that, where attainable, the quality of all waters "provides for recreation in and on the water." This is commonly referred to as the "swimmable" goal of the Clean Water Act and was to have been achieved by 1983.

Of the five classes of saline waters in New York State, only three of the classes SA, SB, and SC, are designated for primary contact recreation, which includes swimming. Class 1 and Class SD waters are not currently designated for primary contact recreation, and thus do not meet the swimmable goal of the federal Clean Water Act. The majority of Class 1 and Class SD waters are located in New York City, with a few waters located

23 in Suffolk County.

24 The purpose of this rule is to ensure that

25 the Class 1 and Class SD waters meet the swimmable goal

of the federal Clean Water Act.

The proposed rule would accomplish this by requiring, in 6 NYCRRR Part 701, that the water quality for Class 1 and Class SD waters be suitable for primary contact recreation, and in 6 NYCRR Part 703, by adopting corresponding standards for total and fecal coliforms to protect the quality of Class 1 and Class SD waters for this use.

Thank you.

MS. McBRIDE: Thank you, Mr. Stoner.

At this time we have not yet received any speaker cards. What I will do is keep the record open for a few more minutes in case anyone is delayed getting here, and then we'll close the record after that.

We have a speaker card for Rob Buchanan. You may come forward and make your comment here.

MR. BUCHANAN: My name is Rob Buchanan. I'm co-chair of the New York-New Jersey Harbor Program Citizens Advisory Committee. I'm not here to offer testimony from that group. We have many comments and we will be presenting comments. A colleague of mine of

23 that group will be presenting comments later if she can

24 get in the door.

25 I'm here representing another group of the

New York City Water Trail Association, and I have written comments which I will present to you by e-mail, the easiest way.

But I wanted to make three points in that group's testimony.

And the first point is that, if you're going to call something swimmable, that changes the game for a lot of people. Our group does a survey of harbor boaters every year. The last year we did it, in 2013, we counted more than 60,000 individuals who were put on the water by organized community boating groups. That doesn't count individuals who launch themselves.

This is a really big number. Every year that we've done this survey that number has grown. We've got waterfront development and access points expanding. That number is going to get big. If you call water swimmable people are going to expect it to be swimmable, and they'll want to know.

So, the first point is, how are you measuring that? I don't think the harbor survey, which is a great thing, and I don't mean to discredit the DEP

23 in any way, but it's not an accurate reflection of

24 harbor water quality recreation users.

25 I think you're going to have to expand your

data points. As a model I brought this.

(Indicating poster board.)

This is a citizens program that we run called Citizens Water. We do quality tests, and if you look, we test at launch sites, a lot of them, more than 30. We test weekly, that's what the DEP does too. Their test sites in the East River, if you look at those, they've only got two in the middle stretch of the East River. They've got 23rd Street and they test at Hell Gate, and that's it. Two points, mid current, mid channel, the results are different.

So, if you are really going to look at water, look at where people are going to use the water, because those numbers are going to be a lot tougher, and I think you have to include them. So that's my first point.

The second point is, monitoring and notification, it's almost impossible for the public to understand the public agencies' monitoring efforts, and their notificiation efforts are also difficult, they are not really user friendly. If we go to swimmable water

23 designation, high expectations, that has to be reflected

24 in better monitoring and more interpretable results. If

25 you look at the DEP's result pages on their website,

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

23 presenting, but the notification has to be better.

24 The third and final point. Enterococcus is

25 the standard, what the City uses when they say you can

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

23 a few minutes and give people time to come in, in case

24 they're delayed down at security.

25 (Recess taken.)

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

23 reads as follows:

24 "The Gowanus Canal Superfund Advisory Group

25 hereby resolves that the water of the Gowanus Canal be

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

23 use designation for water classification. The above

24 resolution to protect Gowanus recreation use includes

25 contact recreation for families and children.

1 DEC Public Hearing
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

the water in situations where it's not expected to be, due to climate change and storm surges and other issues.

I wanted to relay a story that, during Hurricane Sandy, after that issue, a community group serving Thanksgiving dinners to people in Sheepshead Bay, where we encountered one woman who had just been out of the hospital prior to Hurricane Sandy. She found herself the day of Sandy wandering in four feet of water in our streets, the City of New York, with stitches, having had open surgery days earlier.

And there are people being exposed to pathogens in a lot more intense ways besides choosing to recreate because of the climate change and the control of pathogens in unsafe conditions.

And particularly, the concerns of bacteria in the waterway that need to be controlled to CSA -- because New York City is, according to the Centers for Disease Control, has the highest rate of bacteria resistant infections in the entire country. It's becoming a greater concern that bacteria are being 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

systems, and these elements would be released.

So we do want levels of control of pathogens, so we're really going to address climate change more. Thank you.

MS. McBRIDE: Diane Buxbaum?

MS. BUXBAUM: I'm a member of the same two groups that the previous speak is a member of. I'm on the Cag of the Gowanus Canal, and I am also a member of -- I don't want to repeat word for word what Marlene Donnelly just said, but I strongly support everything that she said.

So if it means a statement that is exactly as another statement, then you have two of them, and I will submit that in writing.

What I am concerned about very often is the ineffective and non-existent addressing of climate change, and how we are going to clean up our waters. It's the same thing that Marlene said. It's absolutely accurate.

When I look at the shoreline rezoning law, I 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

actually didn't address anything about sea level rise and storm changes.

I spoke to a person at DEP at a meeting near Brooklyn Technical College in Brooklyn Heights, a DEP presentation on best management practices. And I said "Well, are you going to look at climate change?" At that point -- well, that's too complicated. That struck me as being ineffective, looking at what we need to do to protect waters.

We have people in my neighborhood who go out rowing, they go out kayaking in the Gowanus Canal, and they take young people. We need to protect them from the pathogens in the water. And I think the way it's being proposed now, the protection will not exist. I hope we get a better set of proposals.

Thank you.

MS. McBRIDE: Thank you.

Akila Simon?

MS. SIMON: Good afternoon, everybody. I too agree with the previous speaker. I am the head 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

water during high and low tide. Our cancer survivors, health is a major concern for a lot of us. I myself, as well other members on our team, have skin infections because of the contact with the water, because the quality is so poor.

So it is really a major concern for us to do our part to really force the government, DEC, DEP, EPA, to do something about cleaning up the waterways. Over the course of the summer we have over 2,000 padders go out into the water.

We really would like the designation changed to primary contact, merely because we are getting splashed, we're getting flipped, the boats. People do actually have contact with the water. It is very important that we do something.

We as a boating community have come together recently and formed something called Guardians of the Bay, where all of the dragon boat community have come together. We're talking about oyster testing, we're testing the waters during the summertime. We're really trying to think of ways that we can do our part, so we

23 really would like to have the designation changed.

24 I think it is very important and it is our

25 home, Flushing Bay is our home. For 2,000 recreational

paddlers to move somewhere else, that's something that is very troubling, especially when there's really nowhere else for us to go to paddle. We compete.

Paddling is one of the fastest growing water sports here, and dragon boat paddling in the United States, and we don't have another place to call home. So it's very important that we do our part and you all do your part to really change the designation for Flushing Bay.

Thank you.

MS. McBRIDE: Thank you.

Larry Levine?

MR. LEVINE: Larry Levine, I'm a senior attorney with Natural Resources Defense Counsel in New York. We are a non-profit environmental organization working on clean water issues and a whole wide range of other environmental issues. We're working on trying to get the City to clean up its sewer overflows since at least the 80s, probably the 70s. We have files in our office going back, legal records to all those decades.

And so this is a really important moment

23 that we want the CDC to follow through on both the

24 proposal, also ongoing and beyond that, and I echo all

25 the concerns raised previously by the commenters I

heard, the last few I was here for.

The biggest concern that we have about the way that the proposal was framed is about whether it's actually changing the use designation. And that's a critical point of law, because it has changed the use designation, and that will in turn trigger application of federal beach act standards. Even though it's called the beach act, they apply not only to beaches, they apply to all coastal recreational waters, all of these fall in that definition. But it applies only to coastal recreational waters and that is defined for primary contact use.

So it's really important that the DEC make very clear in the language of the regulation that they are in fact changing designated use, and not merely saying there something else to use for the water quality issues.

Saying it ought to be swimmable is one thing, saying that the bacteria level amounts to swimmability is another thing. So the proposal right now is based on old standards from bacteria use,

23 indicator organism, fecal bacteria, that is outdated

24 science.

25 We understand the DEC is in the process for

all the other waterways that are already designated for primary contact of updating that standard based on enteroacoccus bacteria, the best scientific standard. But the EPA has a new updated version of that standard in the last couple of years, and so it's critical that the DEC apply that enterococcus standard to protect public health in all these water bodies.

In terms of primary contact, there's one more thing I'd like to say. In many other jurisdictions, many other states, EPA regions in fact, team paddling, even power boating, should be primary contact recreation precisely for the reason the prior speaker mentioned, because you do in fact get wet.

Even if you don't intend to submerge yourself, you do not in fact wholly submerge yourself, you get wet enough that it amounts to primary contact. I'm a kayaker myself, I'm sure many in the room are, you know some of the speakers already.

So it's a legal matter as well, the DEC in regulation should be treating kayaking, boat paddling as primary contact activity. And as a result, it exists

23 for use legally, people are in fact doing it, and the

24 DEC needs to protect that existing use under the Clean

25 Water Act and comply with the law.

One last point, which I think someone else alluded to, is how compliance is measured with these standards. Typically sampling now is mid channel. People come in contact with the water much more frequently and extensively near shore. So the regulations ought to be clear as to how compliance is measured, and that should be measured based on near shore water quality, not after sewage discharges have been diluted further into the center of a stream, especially a flowing water body is going to be diluted rapidly towards the center, the Hudson River for example.

There's lots of kayaking going on, near shore is a lot more polluted than the center of the channel. It's an integral part of water quality, the cleanup to support primary contact.

And so I will close with that, and say that I support moving ahead with what the DEC has proposed, but further, submit that the DEC needs to go further at this time, not merely additional issues for a future 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

achieve that and protect public health and comply with the law.

MS. McBRIDE: Thank you.

Robert Bake?

MR. BAKE: Hi, I'm Robert Bake, I'm president of the Brooklyn Bird Club. Of course I support the clean water around New York City. Primary use should be safe for people, no brainer. That it isn't already is unconscionable. I understand it's a difficult process.

I'd like to, as a member of the birding community and the environmental community, I'd like to say that it's not just for people, it's also for the wildlife that uses the waters of New York City.

I'm sure they are susceptible to the infections that people are, and there's also the whole ecosystem, especially I'm very familiar with Jamaica Bay, the fecal discharge from the sewage treatment plants raised the levels of bacteria and nutrients in the Bay and contributed to the devastation of our 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

the trend isn't reversed. It's being reversed, but especially in these times of climate change, we need the resilience of the bays, the waterways of New York City, returning the water to a natural state should be a primary purpose of EPA work, all our work.

That's it. Thank you.

MS. McBRIDE: Thank you.

Shino Tanikama?

MS TANIKAMA: Good afternoon. My name is Shino Tanikama. I'm with the New York City Tunnel and Water Conservation District. Today I'm speaking as the alternate New York co-chair of the New York-New Jersey Harbor Citizen Advisory Committee. We submitted our letter a while ago. I will speak to what we already submitted, but I'd like the opportunity to share with the rest of the members of the public what we submitted.

We would like more clearly amended designated use. As Larry mentioned, I think the way to interpret the current proposal is changing the water quality standards without really explicitly changing the 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.

We'd like to have the words "primary contact recreation" explicitly inserted into the section of the water quality standards that talks about the designated use and the best usage.

Likewise, for Class SD, we'd like the best usage of Class SD waters to be primary contact recreation and fishing. So we would like for inclusion of the word "primary in" that language.

We would also like to protect existing uses, and that might entail the New York DEC conducting a full assessment of existing uses. Beyond setting the goal for fishable and swimmable, which we are fully supportive of, I think we need to really look at how the water bodies are currently being used, and insure that we do everything to meet the goal, because the uses are already there as existing uses.

All I'm saying is, really, we don't want anybody to say we can't meet these water quality goals. We want people to really look at how the water bodies are used today without meeting these goals, so that we 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

next year or the year after, but we think it would be prudent for us to actually do this now to avoid confusion in the future.

We also want water quality criteria to be relevant to the people who use the waters. What I mean is, the current standard is based on the geometric means over 30 days. However, people are using the water today or yesterday, on that particular day, to the users of the water bodies, the geometric mean over 30 days is irrelevant. You're exposed to a high concentration of bacteria on a given day, it doesn't really matter if the average is lower than the standard.

We would like something that is more relevant and more protective of the users of the body. Along the same line, I know as an environmental educator, I take small children to sample the water once a month throughout the year. Ironically, the only month that I don't sample is when school is not in session, July and August.

But the rest of the year I do go out to the 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.

Again, I think if the DEC looks at the full existing uses and analyzes how the water bodies are being used, you would know which water bodies warrant year round protection.

Finally, we would like to know how this change will be integrated into the ongoing water quality improvement program, particularly the long term control planning process to the CSO and NS in the City.

We are presuming these standards will be incorporated into the planning process, but we would like clarity on how the City will amend the LTC plan submitted already, or if they are going to be resubmitting those plans. We need guidelines and clarification on that point.

Again, the City Advisory Committee of New York-New Jersey supports this initiative, but we'd like to see strengthening of the proposal.

Thank you.

MS. McBRIDE: Thank you.

Ate Atema.

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

in developing a strategy for preventing storm water from combining with raw sewage to creat the CSOs that are driving the problems we're speaking about today.

The really big picture for me is, this is an opportunity for New York City to establish itself as a leader in green infrastructure and demonstrating that large cities can be responsible ecological citizens of the planet. We all, I think, understand the benefits of density, and I think any opportunity New York City has to take leadership in that area should be embraced.

So that's, I think, something like the primary contact recreation standards is the right goal, it's a very simple one, it's clear, it's a goal I think everybody agrees we want to get to. We want to be able to swim in our waters, we want to able to fish in our waters and to be able to know that sewage is not discharged into our waters.

And so, I think there's an elegance and simplicity to the goal, and we should get there as soon as possible.

Thank you.

23 MS. McBRIDE: Thank you very much.

24 Dierdre Cossman?

25 MS. COSSMAN: Hi, my name is Dierdre Cossman

and I'm member of the Empire Dragon Boat Racing Team. And we practice on Flushing Bay, and obviously a lot of the same points have been made already by Coach Akila Simon.

And basically it's about not only the water quality getting changed for the designation of these waters to primary contact, because on a regular basis, which is a few times a week, we're out there paddling with hundreds of others every week, and there have been incidents of infection and rash and things, just from paddling and getting splashed by the water.

So it's important that the designation is changed to be amended for not just water quality criteria, but the actual language for primary contact recreation.

Thank you.

MS. McBRIDE: Thank you.

Ira Gershenbaum.

MR. GERSHENBAUM: My name is Ira Gershenbaum, I'm here representing myself and River 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

early enough, an hour early.

The second thing is, I'm a swimmer, I like to swim in the Hudson River. The only thing that prevents me from currently swimming in the Hudson River is the fact I don't have access to it. Many who want to swim in the Hudson River are afraid of it. And this initiative should help that. Hopefully, at some point it will also help the fact that the bad news comes out whenever a swim, an organized swim, people come out with mustaches from the Hudson River because of sewage and things in the water.

Thank you.

MS. McBRIDE: Thank you.

Peter Molinski?

MR. MOLINSKI: I'm speaking from the New York Harbor Foundation, the oyster project. We do a lot of work, primary contact work, in the water restoring oysters to the harbor. So we have high school students diving in the water from the end of April through the end of November. So I echo the point of widening the season for primary contact uses, that we are in the

23 water for July and August.

24 And just -- someone else mentioned -- more

25 clarification -- I might have missed it, I was late,

based on the line -- what exactly the new designation means, whether there's any action on DEC's part to change the quality of the water or simply a designation to change the -- I'm unclear about it.

MS. McBRIDE: Thank you very much.

Willis Elkins?

MR. ELKINS: I'm Willis Elkins, from the Newtown Creek Alliance -- a couple of comments. One of the SD water bodies, which means one of most polluted the in the City. So generally, we're supportive of this effort.

It's difficult for us to make progress on the waterway, especially with existing use saying there already are people recreating on the water. The agency says it doesn't matter, conditions don't reflect that.

So, a couple concerns we have, though, because some of the places in Newtown Creek have such poor water quality, we're interested in knowing what the mechanism is to enforce the compliance? We want to make sure the responsible agencies are responsible for cleaning that up and don't have a way of getting out of

23 this because conditions are so bad.

24 Does that make sense?

25 The other concern we have is about what it

means for existing plans in place, including consent orders. The Newtown Creek Alliance along with River Keeper have been fighting a current consent order about aeration at Newtown Creek for reasons actually over public health.

And one of the issues we had is saying it's not a public health concern, people are not supposed to be recreating there anyway. We want to know what that would mean for that, because right now the aeration only addresses the oxygen level. The new level, the bacteria level, does that mean the aeration program will have to be entirely redesigned?

And going forward with future consent orders, to promote presumably new standards, we want to make sure there's an open process with the community. The community was left out of a lot of these processes, and I understand there's lots of concern over that, so I want to make sure there's enforcement or a mechanism to insure compliance of efforts.

Thank you.

MS. McBRIDE: Thank you very much.

23 That was our last speaker card. I will

24 repeat for those of you who were not here at the

25 beginning. The Department is receiving comments

regarding this proposed rulemaking until 5:00 p.m. on March 16.

If you'd like to submit comments, you may mail them into Robert Simson at the New York State DEC. The mailing address is 625 Broadway, Albany, New York 12233-3500. I will have Mr. Stoner here give the e-mail address.

Sorry, we do have a couple more speakers. Also, information for sending in comments is at the table out in the hallway.

Noelle Thurlow is our next speaker.

MS. THURLOW: Hello, I'm Noelle Thurlow, I run a small kayaking paddleboard company in Hoboken, the other state across the river, the Hudson River. I bring children, I do lessons for them and a small youth program as well.

If you've ever done any paddleboarding, then you know we're all in the water. We fall off all the time, the children jump off, they love it. It's a wonderful opportunity. I make sure to include environmental education with every program that I do,

23 so they're learning to understand the Hudson River

24 estuary.

25 So I would love it for the water to be as

clean as possible for the children and all people that use the water.

Thank you.

MS. McBRIDE: Thank you.

Karen Craddock?

MS. CRADDOCK: Hi. My name is Karen Craddock. I'm a breast cancer survivor and I grew up on Long Island on the North Shore near the Throgs Neck Bridge.

I've always been afraid of the water quality in the area on the North Shore of Long Island, going to Queens where we did hang out.

I am a member of the Empire Cancer Survivor Dragon Boat Team. I'm also a member of the Guardians of Flushing Bay. This is a group of Dragon boaters who are in the Flushing Bay who are concerned about the water quality.

Our mission is to preserve and protect the water quality of the Bay in order to save human contact with the human body. I'm involved in the team because we're very concerned about the environment and our

23 health risks due to the gradual destruction and abuse of

24 the ecosystem that New York has grown industrially over

25 the decades.

Why I'm concerned about the Bay is that it's the only protected bay in our area fit for human powered water sports and other activities that have incidental direct contact with the water.

Also, I see people fishing off the dock. I don't know if it's for personal consumption or illegal commercial comsumption, but I fear that toxic catch is ending up on a plate somewhere.

Personally, I have seen water pouring out of the CSO. It smells horrible, you can see sometimes a cloudy discharge in the water. I'm afraid that I will get sick or get an infection as many teammates have in the past. I'm trying to cover myself head to toe with as many layers as possible.

Even though our hands are in the water, we do get splashed all the time. We accidentally swallow it and it's not a pleasant experience.

What we want is the water quality be raised to a level where it's swimmable, at least when we have primary contact with the water to not feel as though we're in danger of harming yourself.

23 Paddlers have direct contact with the water.

24 I think it's assumed that we're above it so therefore

25 we're not near it, but we are in it. Please make

changes for us to be safe.

Thank you.

MS. McBRIDE: Thank you.

Maria Melian?

MS. MELIAN: I'm Maria Melian, I'm also part of the Empire Dragon Boat Team. We're one of the many, many dragon boat teams that use Flushing Bay as our only lake, actually. It's a huge sport, started in Asia, and it's very strong in Canada and the West Coast.

The water basically is filthy. Part of it is industrial waste, but most of it is from human sewage from the CSOs. And it's due to faulty engineering. This can be fixed. It takes time, it takes money and it takes effort, but it can be done.

I lived here in the 70s, I saw the Hudson, I smelled the Hudson. It is a different thing now. I saw the tens, I see it now, it can be done. We just need everybody and we need the government to do something about it.

And the idea -- somebody, I can't remember, EPA had the idea of putting disinfectant in the sewers?

23 In the water? We're cancer survivors on our team.

24 That's not what we need. We don't need more chemicals

25 in our water. We need engineering solutions, which can

be done.

Thank you.

MS. McBRIDE: Edith Kantrowitz?

MS. KANTROWITZ: Hi, Edith Kantrowitz, president of New York City Friends of Clearwater. We are a chartered club, the Clearwater organization originally started by Pete Seeger to clean up the Hudson River. And so we are continuing to work on cleaning up the Hudson River. Of course, we're very interested in the other waterways in the New York City area and making sure they're clean and swimmable and healthy for us to put our bodies into if we're going to swim and recreate in other ways.

So we would like basically to express our support for the proposed rulemaking, but there are some changes that we'd like to recommend. These were directly suggested by the Water Infrastructure Matters Coalition. You may have already heard them today because I came up late because of the line.

I'd like to reiterate our support for those principles that the designated used for Class SD waters

23 should explicitly include primary contact recreation.

24 We recognize that designated uses and water quality

25 criteria should both be included.

Number 2, the DEC should survey and assess how people are using the water so we have a better picture of recreation.

Number 3, measures should be taken to make sure that these criteria are integrated into the City's sewage overflow reduction plans.

Number 4, the sample should be based on a single sample approach rather than an average sample.

The DEC should revise the draft regulations to insure that the EPA beach act standards apply to these waters, and also for measuring the water quality. The sample should be taken from the near shore areas where people swim and are paddling, rather than out in the middle of the water where people are not as likely to be.

Again, we want to endorse the suggestions of the Water Infrastructure Matters Coalition to see everything is done to make the water as clean and healthy as possible.

Thank you.

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

storm water matters, the ongoing existing use as primary contact or recreation of these waters and support general continuing use of such.

MS. McBRIDE: Thank you.

Mark Ringenary?

MR. RINGENARY: Good afternoon. I'm from the National Park Service -- Gateway Recreation is our name. We'd like to see more recreaction -- the City supporting it -- we have a number of people using recreational activities.

We have a biologist in the park testing the water. I can tell you Jamaica Bay is very bad. I don't know the indicators the DEC looks at in the background -- people can get a false sense of security by passing measures.

I'd love to have better control. I want to know there's monitoring to keep people safe who are using the water for specific recreational activities. I want to inform the public if there's a problem -- I want to know what kind of enforcement you will use to 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

community leaders, concerned citizens and government officials, the Bronx River has seen a remarkable resurgence since the 1970s when it was an abandoned dumping ground.

Today over 5,000 recreational boaters enjoy the Bronx River every year. We've opened up seven boat launches along the year when none previously existed. Over 9,500 students have touched or been touched by the river. We work with over 2300 educators who have made the river an outdoor classroom for hundreds of students ever year.

It's a testament to the progress that we've made, it came in 2012 when the National Park Service designated the Bronx River as a national water trail. The designated uses of waters of the river should be changed to primary contact to support a variety of recreational and educational activities already taking place on the river.

Human powered boats exposes people to the same risks as swimming, so that's why primary contact is 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

proposed by DEC should be incorporated into the planning process to insure that the final plan achieves water quality standards that protect the public and support existing uses of the river.

To insure the safety of those coming into contact with the river, as previously said, water quality criteria should be based on a single sample maximum testing approach rather than a 30 day means -- five samples per month. People don't come into contact with average water. The river should be safe for contact whenever they do come in contact with it.

In addition, testing standards should be revised to adopt modern scientifically supported, enterococcus based standards. Samples should be taken from near shore areas where people actually recreate rather than the middle of the water body.

Building on the great progress that's been achieved so far on the Bronx River, we urge DEC to make important regulatory changes to protect the many citizens who depend on a clean and healthy river so they can safely enjoy all the recreational and educational

23 opportunities it offers.

24 MS. McBRIDE: Thank you.

25 Randy Ng?

MR. NG: Good afternoon. Thank you, everybody for your time at this meeting. My name is Randy Ng, I am one of the members affiliated with Flushing Bay, the dragon boat community. We've bonded together to call ourselves the Guardians of Flushing Bay.

I'm one of the coaches of another team. As you can see, we have quite a few members here today of the dragon boat community, representatives of the passion of the sport, most importantly of Flushing Bay.

We talked about the sport dragon boating, and I will try not to repeat what was talked about. Dragon boating is the ultimate team support. It's 22 people in a boat, ten on the left, ten on the right, brought together to race or to paddle together as one whole team.

As you can see, the Empire State Dragon Boat Team is a bunch of cancer survivors. On my crew, I'm actually the coach of 140 high school students yearly for the last 16 years.

What we're trying to do at Flushing Bay is

23 to improve the quality of the bay so it's safe for them

24 to paddle, but really to put forward support for the

25 next generation, to teach these kids and have a safe

place for them to go to paddle and to learn about leadership and adversity, working together using this sport called dragon racing.

Now, Flushing Bay is next to LaGuardia Airport, we also have challenges there. There is a sewage deposit, 1.1 million gallons of sewage is dumped in, especially during a storm it's more problematic, just because of the high levels of bacteria, e-coli. Most of times what happens is, Flushing Bay is our only home, where many people actually get sick and some have severe cases that ended up in the emergency room.

The other two things that are in our community, we have two municipal sanitation areas that actually block the entrance, the sanitation building that's in our entrance; and the municipal waste facility in the back. At times you can tell that the municipal waste, the liquids come through the sewage and create the slick and smell and engage bacteria that are in our waters.

We also have two cement treatment plants, cement concrete plants, which one is owned by the

23 Department of Transportation.

24 So what we're here today, to support and

25 asking for help in education, we're asking for help in

learning what to do, how we can be part of this community to improve the water system.

As you can see today, many of our team members, our group, Guardians of Flushing Bay, have a passion to be here to try to improve the water quality.

Again, for me as a coach, I'm also the coach of Team USA. A lot of members train here on the national level team. I ask for your help, not only for us, not only for the breast cancer survivors, but for future generations.

Thank you.

MS. McBRIDE: On behalf of the DEC I want to thank you all for coming out this afternoon and giving us your comments. Again, Comments will be received until March 16. Thank you.

(Time noted: 1:06 p.m.)

(Matter concluded.)

23

24

25

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
14
15
16
17 JEFFREY SHAPIRO
18
19
20
21
22

23

24

25