

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

625 Broadway
Albany, New York 12233-1550

In the Matter

- of the -

PROPOSED RULEMAKING TO AMEND PARTS 701 AND 703 OF TITLE 6 OF THE
OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF
NEW YORK

HEARING REPORT

by

_____/s/_____
Molly T. McBride
Administrative Law Judge

PROCEEDINGS

The New York State Department of Environmental Conservation (“Department” or “DEC”) scheduled a public comment hearing to provide an opportunity for comment on the Department’s proposed rulemaking to amend Parts 701 and 703 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

The proposed rulemaking would amend Parts 701 and 703 of Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (“6 NYCRR”) to require that the quality of Class I and Class SD saline surface waters be suitable for primary contact recreation, such as swimming. This rulemaking is necessary to meet the "swimmable" goal of the federal Clean Water Act.

A notice of hearing was published in the Department’s Environmental Notice Bulletin (“ENB”) on December 3, 2014 and the following newspapers servicing the New York City area: Daily News, Journal News (Westchester), Newsday, and the New York Post on December 24, 2014 and December 30, 2014. The Notice of Rulemaking was published in the New York State Register on December 3, 2014. The public comment hearing was originally scheduled to be held on January 27, 2015 at the Environmental Protection Agency (“EPA”) building located at 290 Broadway, New York, N.Y. at 12:00 p.m. Due to inclement weather in the New York City area on January 27, 2015, the hearing was rescheduled for March 9, 2015 at 12:00 p.m. Notice of the rescheduled hearing was published in the ENB on February 4, 2015 and State Register on February 18, 2015.

The deadline for written comments, as stated in the notices of hearing and notices of rulemaking, was extended to 5:00 p.m., March 16, 2015.

Approximately 70 persons attended the March 9, 2015 hearing. Scott Stoner, Chief of the Standards and Analytical Support Section of the DEC’s Division of Water, gave a brief presentation summarizing the proposed rulemaking before public comments were taken.

Summary of public comments

Rob Buchanan, co-chair of the New York-New Jersey Harbor Program spoke first. He indicated that his group would be submitting written comments but he also wanted to make three points on the record. First, if water is going to be classified swimmable, water test sites need to be adjusted to areas where people will be swimming to get an accurate test. Second, the New York City Department of Environmental Protection (“NYC DEP”) should have easy access to test results and easily read test results should be available to public so they know water quality as it is tested. Also, NYC DEP should put his group’s test results alongside their results for public information. Third, enterococcus is the current standard and should stay the standard.

Marlene Donnelly spoke on behalf of Gowanus Community Advisory Group (“CAG”) and the Friends and Relatives of the Greater Gowanus (“FRGG”). The CAG was formed in 2011 as part of the EPA Superfund action for the Gowanus Canal. Ms. Donnelly read a resolution passed by the group in 2012 that requested that the canal be reclassified from Class SD to a classification to protect the current recreational use. CAG supports the rulemaking but also

requests the reclassification of the canal. Ms. Donnelly's statement on behalf of FRGG was that the group is concerned because the way the pathogen levels are being proposed and the way water is being tested and assessed are not going to be truly protective of the people who use the water.

Diane Buxbaum, also a member of CAG and FRGG, supported the comments of Ms. Donnelly and voiced her concern that the protections being proposed will not be sufficient to protect the people who use the water.

Akila Simon, head coach of the Empire Dragon Boat Team who uses Flushing Bay from April through October, stated she and her team observe poor water quality during high and low tide and have experienced skin infections from contact with the water. The group would like the water cleaned up in Flushing Bay.

Larry Levine, senior attorney with Natural Resources Defense Council ("NRDC"), stated his group's biggest concern is the way the proposal is framed. NRDC would like the regulations to state clearly that the use designation is being changed and that the enterococcus standard will be applied to the waters. Finally, NRDC would like clear language on how compliance is measured.

Robert Bake, president of the Brooklyn Bird Club, spoke in favor of the regulations for the public and for the health of the whole ecosystem.

Shino Tanikama spoke on behalf of the New York-New Jersey Harbor Citizen Advisory Committee. Written comments were submitted and he highlighted that his group would like to have language changed to say the best usage of Class I saline surface water are primary contact recreation and fishing. The group would like best usage of Class SD to be primary contact recreation and fishing. The current usages need to be reviewed so that the classifications reflect how the waters are being used. They would like the enterococcus standard to be implemented now rather than in the future. His group would also like to know how NYC will incorporate the new regulations in their process.

Ate Atema stated the goal is for everyone to swim and fish in the waters of New York and know that sewage is not discharged into the waters. NYC can be a leader in green infrastructure.

Dierdre Cossman also of the Dragon Boat team agreed that the standard needs to be changed to primary contact recreation as the waters are being used for that purpose.

Ira Gershenbaum spoke on behalf of Riverkeeper and said, as a swimmer, he would like to be able to swim in the Hudson River.

Peter Molinski of the Oyster Project of New York Harbor Foundation stated his group works to restore oysters to the harbor and as a result, high school students are in the water regularly. The group supports changing the classification to primary contact use and to widen the season for that as well to protect those who are in contact with the water.

Willis Elkins, Newtown Creek Alliance, would like Newtown Creek cleaned up as well. His group also would like clarification as to how this proposal would affect current consent orders and future consent orders to ensure there is an open process with the community.

Noelle Thurlow runs a paddleboard company in Hoboken, New Jersey and she would love the Hudson River to be as clean as possible for all the people who use the water.

Karen Craddock, a member of the Empire Cancer Survivor Dragon Boat Team and Guardians of Flushing Bay, wants the water in Flushing Bay to be swimmable as direct contact occurs when her dragon boat team is on the water.

Maria Melian, also a dragon boat team member, says the Hudson River can be cleaned up, it just takes time, money and the government to do something about it.

Edith Kantrowitz, president of New York City Friends of Clearwater, spoke in support of the proposed rulemaking along with recommending changes including that the designated use of Class SD should include primary contact recreation. Also, she asked that the DEC survey and assess how people are using the waters to have a better picture of recreation. Her group would like measures taken to make sure criteria are integrated into the City's sewage overflow reduction plans and sampling should be based on single sample approach rather than an average sample. Samples should be taken where people are recreating in the water and not in the middle of the water where people are not likely to be.

Robert Coover spoke in favor of previous comments.

Mark Ringenary, the National Park Service, would like to see more recreation and the City supporting it. He would like better communication with the public if and when there is a problem. Also, he questioned what enforcement would be in place to regulate or control problems.

Robin Kriesberg, policy director of Bronx River Alliance, supports the proposed rulemaking. The Bronx River has many recreational boaters with seven boat launches. Many students use the water every year for educational purposes and the designation should be changed to primary contact. The testing standards needs to be changed to adopt modern standards and enterococcus based standards.

Randy Ng, coach of a dragon boat team that uses Flushing Bay, stated the water needs to be safe for boaters now and in the future. His group would like to help clean up the waters as well. He identified sewage systems discharging into the Bay and noted issues that arise from the discharges. His group would like to help improve the water system.

The hearing session concluded at 1:06 p.m. after all speaker cards had been called.