

accept petitions for reclassification on this website - dec.ny.gov/chemical/125879.html within this page, link for reclassification petition and email jason.fegal@dec.ny.gov deadline November 4, 2024.

In response to the Advanced Notice of Proposed Rule-Making (ANPRM) in the New York State Register on May 8, 2024, the Gowanus Superfund Community Advisory Group (CAG) hereby petitions that the water of the Gowanus Canal be reclassified from its current industrial standard, which is designated Class-SD. Class-SD only mandates a minimal level of dissolved oxygen be maintained in the waters, but places no limit to levels of pathogens present in the waterway.

The ANPRM solicits public input toward NYSDEC's Triennial Review of Water Quality Standards (WQS). Clean Water Act (CWA) Section 303(c) and 40 CFR 131.20 include requirements for states to perform a formal regulatory review of WQS every three years, known as the Triennial Review. The Triennial Review is an opportunity for the Department to integrate the best available science and methods into WQS to protect the waters of the State. Regulations subject to Triennial Review are any that direct the water quality standards, waterbody classification, and antidegradation policies and actions of the State. The effort may result in amendments to water quality standards found in 6 NYCRR Parts 700-706.

Petition & Comments

The Gowanus Canal is designated by the State of New York as a Class SD waterbody, indicating that its best use is for fishing and the waters are supposed to be suitable for fish, shellfish, and wildlife survival.

The CAG requests that the criteria for Gowanus Canal waters meet primary contact recreation criteria to reflect current use of the waterbody. A Class-SC designation would impose limits on pathogen levels, both coliform and enterococci bacteria, and is necessary to ensure that children and others are not exposed to dangerous diseases due to a simple act of coming into contact with the water while recreating in, on, or at the canal.

The U.S. Environmental Protection Agency (EPA) has found that New York City's Combined Sewer Overflows (CSOs) are a significant contributor of harmful sediment and Superfund regulated heavy metals and polycyclic aromatic hydrocarbons (PAHs) to the Canal. The total elimination of CSOs and PAHs into the Gowanus Canal is the only acceptable solution to the problem.

The Gowanus Canal was historically in an industrial area designated for industrial uses but the City of New York rezoned the Gowanus area for residential use in 2021, including the banks of the Canal. The area is now zoned *residential* and residential development is progressing at full throttle in the rezoned area. In fact, for many years, the Canal has been used for recreational purposes despite the toxicity of the Canal's waters. The CAG requests the necessary measures that will ensure protection of the Canal from ongoing CSO sediment solids deposits and the release of PAHs and other toxins be taken. The Gowanus Canal should be given a water classification that is

protective of its current recreational uses which include primary contact recreation for families and children in this now highly residential area. A reclassification that imposes limits on pathogen levels, both coliform and enterococci bacteria, is necessary to ensure that children and others are not exposed to unacceptable health risks, including dangerous diseases, due to a simple act of coming into contact with the water while recreating in, on, or near the Canal.

The CAG thus formally submits these comments and this petition to the New York State Department of Environmental Conservation (DEC), Division of Water, Bureau of Water Assessment and Management requesting that the Gowanus Canal be reclassified from Class-SD to Class-SC.

The current Class-SD designation mandates a minimal level of dissolved oxygen be maintained in the waters, but places no limit to levels of pathogens present in the waterway and is not protective of current and future recreational uses, which include primary contact recreation for families and children.

Background

The Gowanus Canal Community has been advocating for the reclassification of the Gowanus Canal waterway since the community's participation in the 2002 NYC Department of Environmental Protection's (DEP) Use Standards and Attainment study.

Since 2008, the community has advocated for reclassification of the Gowanus Canal. Under a 2005 Consent Order with the NYSDEC, a CSO Waterbody/Watershed Facility Plan (WWFP) was prepared by NYC Department of Environmental Protection (DEP) in September 2007. This plan concluded that the Class-SD designation was not compatible with the goals of the Clean Water Act and would normally require reclassification as part of the State's review process. At that time, DEP recommended that consideration be given to the development of a new waterbody classification of "Urban Tributary" where wet weather conditions were recognized in the designation of uses and water quality criteria.

In March 2012, the Gowanus CAG passed its first resolution, by unanimous vote, to reclassify the surface waters of the Gowanus Canal from Class-SD to a water classification protective of recreational uses. In 2012, the CAG asked the EPA to take similar action as EPA's Region 5 did when it mandated that the State of Illinois reclassify the Chicago River. The current industrial Class-SD classification for the Gowanus Canal is not consistent with the goals of the CWA.

In 2015, the CAG submitted formal public comments to DEC and DEP on the Gowanus Long-Term Control Plan (LTCP) further urging both agencies to adopt a water quality standard consistent with recreational use *before* LTCP approval.

The EPA was sued by Riverkeeper and co-plaintiffs, represented by Pace, in 2017 under the CWA and Administrative Procedure Act (APA) for its disapproval of New York State's water quality criteria for New York City waters. *Riverkeeper, Inc. v. Regan*, No. 1:17-cv-04916-VSB (S.D.N.Y.).

In March of 2018 EPA reevaluated and disapproved NYS water quality criteria for pathogens as not protective of a primary contact designated use EPA required in 2015.

DEC did not resolve the EPA disapproval by promulgating new WQS. NYS established new pathogen standards in 2022 but has not submitted those standards for EPA approval.

In November 2018, in response to the proposed neighborhood rezoning, the CAG urged NYC Department of City Planning (DCP) to submit a reclassification petition to support proposed future land use on the waterfront.

In September 2019 the CAG again petitioned for the same relief.

The CAG formally requested EPA's direct assistance in requiring the DEC and DEP to reclassify the Gowanus Canal's waterway classification in response to the CAG's "Reclass Petition" dated 2/4/2020."

For the past two decades the community's and the CAG's petitions have yet to yield any acceptable results.

NYS established, and EPA approved, that the Gowanus Canal should be swimmable and that the water quality criteria applied to the Gowanus Canal must meet EPA pathogen recommendations. Currently, New York State is not applying the swimmable criteria to the Gowanus, despite EPA assertion that these saline waters should be made safe for swimming.

The Gowanus continues to be designated SD and so has no pathogen standard applied despite pleas by the community to both the City and the State to follow EPA CWA requirements. Thus, all current planning under the City's rezoning Environmental Impact Statement (EIS) was based upon WQS that were rejected by EPA and are at the very least still under dispute. Therefore, the Gowanus CAG requests that DEC alter the water classification of the Gowanus Canal to primary contact recreation use - Class SC.

In light of the fact that the two sewage treatment facilities that service the Gowanus neighborhood may already be at capacity in "dry" weather conditions and the proposed CSO retention tanks are still being designed and built to only handle the "current" load in heavy-weather events, this request for reclassification is of the utmost importance to ensure that the City and State of New York drive continuing infrastructure improvements to meet their obligations under the CWA. The Superfund Record of Decision specifically requires that CSO retention tanks be sized to *"accommodate projected additional loads to the combined sewer system that result from current and future residential development, as well as periods of high rainfall, including future rainfall increases that may result from climate change"* ([p. iii, first bullet point](#)).

CONCLUSION

The CAG anticipates tens of thousands of new residents residing on the banks of the Gowanus Canal and in the Gowanus Area potentially aggravating long-standing CSO outflows and thus creating additional risks to health and the environment. It is therefore vital that the Gowanus Canal's waters be reclassified to be protective of residents, local marine and animal life. The Gowanus Canal must be reclassified to require primary

contact recreation and more stringent regulatory oversight and enforcement for improved water quality as required by the Federal Clean Water Act.

Cc:

Hon. Charles Schumer, US Senator
Hon. Dan Goldman, US Congressperson
John Blasco, Deputy Chief of Staff for Congressman Daniel Goldman
Tevin Williams, Director of Community and External Affairs
Hon. Andrew Gounardes, NYS Senator
Hon. Jo Ann Simon, NYS Assembly Member
Susannah Pasquantonio, Chief of Staff for Assembly Member Simon
Antonio Reynoso, Brooklyn Borough President
Shahana Hanif, Councilmember, District 39
Alexa Aviles, Councilmember, District 38
Lincoln Restler, Councilmember, District 33
Brooklyn Community Board 6
Brooklyn Community Board 2

National Grid:

Patrick Van Rossen, Manager, Site Investigation & Remediation Program

USEPA:

Lisa Garcia, Region 2 Regional Administrator
Alyssa Arcaya, Region 2 Dep. Regional Administrator
Ariel Iglesias, Region 2 Director, Land, Chemicals & Redevelopment Division
Pat Evangelista, Region 2 Director, Superfund & Emergency Mgmt. Division
John Prince, Region 2 Dep. Director, Superfund & Emergency Management Division
Dore LaPosta, Region 2 Director, Enforcement & Compliance Assurance Division
Javier Laureano, Director - Water Division
Natalie Loney, USEPA Community Involvement Coordinator, Region 2
Brian Carr, Esq., USEPA Regional Counsel, Region 2

Please direct responses and inquiries to Doug Sarno at Doug@forumfg.com and Joan Salome-Rodriguez at Jblue406@aol.com