June 20, 2023

New York State Department of Environmental Conservation
625 Broadway, 4th Floor
Albany, NY 12233-3500 ATTN: Michelle Tompkins
Phone: (518) 402-8179
Email: WQSrulemakings@dec.ny.gov

Re: Proposed Amendments to 6 NYCRR Parts 701 & 703 - Water Quality Criteria to Protect Primary and Secondary Contact Recreation in NYS Saline Waters

Dear Michelle Tompkins,

On behalf of Newtown Creek Alliance (NCA), a community-based organization dedicated to Restoring, Revealing and Revitalizing Newtown Creek, I submit these comments regarding the proposed amendments to Water Quality Criteria inNYS Saline Waters. Since 2002, NCA has worked to restore community health, water quality, habitat, access, and vibrant commerce in and along the waterway. Given how historic and ongoing water quality issues continue to threaten the health of those that live near, work along and recreate on Newtown Creek we feel very strongly that New York State needs to take steps to strengthen existing standards, not weaken them.

Current Water Quality in Newtown Creek

For years insufficient water quality standards have justified the slow and inadequate responses/solutions to reduce significant ongoing pollution sources, namely Combined Sewer Overflow and untreated municipal stormwater runoff. What was once a rich ecosystem, where residents of the City could safely interact with the calm waters of Newtown Creek has been treated as a dumping ground for the past 150+ years. Unfortunately, the dumping continues to this day as Newtown Creek receives over 1.2 billion gallons of untreated sewage discharges into its narrow and stagnant areas (based on 2008 rainfall). The impacts of CSO are clear: In most areas of the Creek, the waters are unfit for primary contact the majority of the time. This means that the surrounding communities are unable to safely engage with the waterway, thus perpetuating a state of avoidance, neglect and ultimately abuse. This state of affairs is not in line with the goals of the 1972 Clean Water Act, and it is simply unacceptable.

The EPA standard for enterococcus (which NY State does not even currently implement) requires a geometric mean under 35/30 MPN[1]. To give a sense of how far behind Newtown Creek is from current federal Clean Water Act standards here is a breakdown of water quality sampling that NCA compiled in 2020.

Based on NYC Department of Environmental Protection water quality samples collected at 4 consistent sites in Newtown Creek, the average geometric mean from 2003 to 2020 was 45 for Whale Creek; 70 for Meeker Ave; 97 for the Turning Basin; and 171 for English Kills[2]. In examining water quality data that NCA and LaGuardia Community College collected from 2016 to 2020 at 7 distinct sites in Newtown

[1] https://www.dec.ny.gov/docs/water_pdf/draftenterococcifs.pdf
[2] https://data.cityofnewyork.us/Environment/Harbor-Water-Quality/5uug-f49n

Creek, the total geometric means were: 57 for Pulaski Bridge; 61 for Apollo Street; 92 for Dutch Kills Mouth; 143 for Turning Basin, 214 for Dutch Kills Head; 328 for English Kills; and 411 for East Branch[3].

Yet instead of adopting modern EPA standards, and taking steps to ensure that waterways like Newtown Creek can one day meet the swimmable goals of the Clean Water Act set over 50 years ago, New York State is proposing to go the opposite direction, by reducing all protections for human use and interaction of this natural resource.

Current Uses on Newtown Creek

What are the human uses of Newtown Creek currently and how should these be incorporated into water quality standards? The Creek is far from an ideal place for recreation. In addition to the onslaught of sewage overflow, the Creek is a federally designated superfund site; home to largest terrestrial oil spill in US History, a designated Significant Maritime Industry Area, and what was once 1,200 acres of tidal salt marsh surrounding the Creek has been replaced almost entirely with privatized, inaccessible bulkheaded shorelines. Of the total 11 miles of shoreline only two percent is officially accessible to the public. Yet despite these challenges the Creek is visited and used recreationally by thousands each year. Last year, our organization hosted over 85 field trips to our facilities, located on Newtown Creek. Our educational programming covers a range of environmental topics, including water quality and marine ecology where students collect water samples and observe organisms living in the Creek. Unfortunately, due to poor water quality conditions students must wear gloves and follow strict sanitizing procedures as part of these activities. Additionally, we have to cancel these activities if there has been significant rainfall prior to the field trip. Is this the future that NY State wants to perpetuate? One where education programs are canceled and people can't dip a finger into their local waterway without fear of contamination and illness?

Outside of our field trips, there are a number of partner organizations that we work closely with where again secondary contact with the waters happens. Faculty and students from LaGuardia Community College are often involved in taking field trips to Newtown Creek and using the natural resource as a learning opportunity as part of the environmental science program. Again these students and professors are restricted in their learning and research because of poor water quality.

Additionally, the North Brooklyn Community Boathouse has, since 2012, taken thousands of individuals out onto the Creek in canoes and kayaks. This programming is not just educational in terms of informing and engaging folks with the Newtown Creek and East River, it is a key recreational opportunity to be on the water, in a city that is surrounded by water and was created because of its connection to water. The boathouse has had to cancel numerous community events because of rain events and resulting sewage overflow. In addition to the boathouse, Newtown Creek already has three existing public kayak/canoe launch sites. These are used by numerous individuals each year, but it is unclear how many are familiar with waterbody classifications or know current water quality conditions.

[3] http://www.newtowncreekalliance.org/water-quality-monitoring-charts/

Again, we firmly believe that individuals should be able to freely canoe, kayak, and row in a waterway without fear of sewage related exposure and health risk, and we ask that all types of secondary contact, be they recreational or educational, be fully protected for waterways like Newtown Creek.

Future Uses on Newtown Creek

In addition to the current uses of the Creek, there is significant desire and movement towards a wider and more inclusive range of uses for Newtown Creek in the coming years. Our organization has been hard at work to identify and create more access to Newtown Creek, particularly those neighborhoods which are entirely fenced off from their waterway. Our 2018 Newtown Creek Vision Plan outlines a number of opportunities and we have been working closely with the EPA and NRDA Trustees to advance access, restoration and recreational opportunities in conjunction with a thorough Superfund remediation. In the shorter term, there are two community boathouse facilities set to open on the Creek this year and next, Queens Landing Boathouse in Long Island City and North Brooklyn Community Boathouse in Greenpoint respectively which will significantly increase the number of paddlers on the waterway each year. The issue at hand is not just improving water quality standards to protect current uses, but for the significant increase in use that will happen in the coming years.

Meet the Goal Not the Number

We would also like to comment on the means by which the State and NYC often seek to reach water quality standards. To this day we have seen water quality improvement projects that are not designed to make the waters truly fishable and swimmable and thus available to the community, they are designed to meet unique numerical standards alone. Such standards often fail to reduce actual threats to human health or even curtail the reduction of pollution sources, like combined sewer overflow. This is most evident with projects like Aeration in Newtown Creek and proposed Chlorination in other similar tributaries in NYC. While we appreciate the need for baseline amounts of dissolved oxygen within the waterway to support marine life, the aeration project has not addressed the cause of the DO problem, rather sought to use an energy extensive mechanical system to treat the symptom and achieve a numerical standard. Furthermore, the aeration project has created additional problems by potentially aerosolizing both bacteria and harmful chemicals that exist within this superfund site, which has actually restricted people's ability to engage with and recreate on the waterway for fear of exposure to the aerosolizing bacteria./chemicals. Despite the vast improvements that have occurred over the past two decades in Newtown Creek, there have been no proper milestones by which to examine the necessity of aeration, a project that was originally conceived in the 1990s and ultimately based on water quality from 1984 to 2003. I mention this project as a critical learning opportunity and urge for NYS to not pursue shortsighted symptom-treating approaches in meeting water quality standards, in particular those based on out-dated data. This approach is not in line with goals or spirit of the Clean Water Act and the investments need to be directed specifically towards pollution source reduction, as well as nature based solutions and green infrastructure, including rain gardens, green roofs, as well as wetlands and species restoration, including ribbed mussels, oysters, and other filtering organisms, that can naturally improve water quality conditions.

As with our urging to not relax protections for water quality in Newtown Creek, we also urge DEC to re-examine the Long Term Control Plan (LTCP) that was approved in 2017, given that is was based not on modern enterococcus standards, and that precipitation rates are already and will continue to increase in the coming years, making the 2008 rainfall data less valid. The current completion date for the LTCP is 2042, and NYC DEP has only just started the design process for the storage tunnel. We can not afford to wait 20 years to even begin considering modifications to this plan that would meet evolving Water Quality standards. As such we recommend that DEC implement a mechanism to re-evaluate the LTCP on a regularly occurring basis and implement modifications, including increased CSO capture and more Green Infrastructure, as modern and fully protective clean water act standards require.

No Wet Weather Exceptions

Lastly, we are very concerned that NY State may pursue wet weather exceptions for meeting water quality standards. Given the current reality, and changing nature of our local climate, rainfall needs to be fully integrated and not considered a cause for an exception. Significantly restricting when individuals can safely interact with a waterway based on recent rainfall is not only impractical, it is not just. With increasing temperatures and population density in NYC, being able to safely engage with the inner harbor waterways will become more of a necessity.

Sincerely,

Willis Elkins
Executive Director
Newtown Creek Alliance