



GOWANUS CANAL COMMUNITY ADVISORY GROUP (CAG)

your local voice for Superfund

For more information: www.GowanusCAG.org

DATE: November 30, 2021

TO: Javier Laureano, Division Director USEPA Clean Water Division, Region 2
Dore LaPosta, USEPA Compliance Assurance Division, Region 2
Lisa Garcia, USEPA Regional Administrator, Region 2
Basil Seggos, NYSDEC Commissioner

RE: Current regulatory limbo between EPA and DEC Water Quality Standards (WQS) for pathogen levels permitted in class "SD" waters of New York State, and the multi-party legal actions on this matter pending before the courts, as it effects the current regulation of Gowanus Canal water.

Background: EPA noted in the November 8th Water Quality/Technical Committee special meeting with EPA Clean Water Division members that the USEPA water standard for the Gowanus Canal and all class SD waters of the State of New York, has been a contact recreation water standard adopted by the EPA in 2015. We further learned:

- USEPA was sued by Riverkeeper/Pace in 2017 under the APA for failure to act on reviewing and approving the new WQS
- USEPA completed WQS review in March of 2018 and disapproved NYS WQS for pathogens as not protective of a primary contact designated use EPA applied in 2015.
- NYSDEC did not resolve the USEPA disapproval in promulgating new WQS, so USEPA is now in the process of doing so; results expected in July of 2022
- Given the USEPA disapproval of the state pathogen WQS, the NYS criterion used prior to the EPA 2015 rule is being allowed to stand even as the EPA affirms standing by the 2015 standards and is expected to release EPA pathogen standards in 2022.
- This means the Upper Gowanus remains designated SD which has no pathogen standard applied, and that all current planning under the City's rezoning EIS is based upon WQS which are currently under dispute and which the EPA has stated they do not uphold.
- And given the pathogen loads in Gowanus routinely run beyond contact-recreation-use standards as seen in this year of [weekly citizen science data](#) documented in Gowanus water by Riverkeeper.

The Members of the Gowanus CAG here Resolve:

Given the current regulatory limbo, the Gowanus CAG requests that USEPA and NYSDEC take immediate action to prevent new pathogen loading in the waters of the Gowanus by placing a moratorium on all new sewer-hookup in the Gowanus sewer-shed.

The moratorium should stay in place until:

- all disputes before the courts are resolved,
- the EPA releases their Clean Water Standards for pathogens for 2022
- and enforcement policies are in place to ensure the Federal Clean Water Law is properly applied in waters of the Gowanus Canal.

cc:

Charles Schumer, U.S. Senator for NY State
Nydia Velazquez, Congresswoman, NY 7th District
Jerry Nadler, Congressman, NY 10th District
Walter Mugdan, Acting Regional Administrator, USEPA
Natalie Loney, Gowanus Canal CIC, USEPA Region 2

Kathleen Hochul, NY State Governor
Jo Anne Simon, Assemblymember, Assembly District 52
Jabari Brisport, Senator, Senate District 25