



## The Bronx Council for Environmental Quality

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[www.bceq.org](http://www.bceq.org)

President: Ira Charles Levenberg-Engel

April 19, 2010

Honorable Pete Grannis  
Commissioner  
New York State Department of Environmental Conservation (NYS DEC)  
625 Broadway, 14<sup>th</sup> Floor  
Albany, NY 12233-3506

By mail and fax 518- 402-8541

Dear Commissioner Grannis:

Let's celebrate a great 40 years of Earth Day! In the spirit of this great event, let's join to protect our water.

This is an appeal of the decision in the March 5<sup>th</sup> letter from Mr. Joseph DiMura, the Director of the Bureau of Water Compliance where the State finds that sensitive areas do not exist for the Bronx River and the Harlem River, including the Bronx Kill. Attached please find copies of the BCEQ February 17<sup>th</sup> letter and the above stated DiMura letter for your review.

We urge you support a reversal of this decision as its impact on the health of the people of the Bronx, including a large Environmental Justice Community of concern. As stakeholders active in protecting the water quality in these two rivers (among others in the Bronx), we urge you to reconsider these actions for many reasons, including:

- The ruling was too narrow as it only addressed the non-existence of swimming from public access points ignoring other criteria
- 6 NYCRR 700.1 (49) was cited yet does not mention "public access points"
- 6 NYCRR 700.1 (49) was cited and includes other opportunities for complete body immersion aside from swimming
- The ruling did not consider other primary contact recreation (e.g. swimming not from public access points; wading; kayaking; canoeing)
- Bronx residents from environmental justice communities are actively participating in water events that impact their health on both these rivers, including kayaking as primary contact recreation.
- Recreational uses such as those occurring in and on the Bronx and Harlem Rivers (e.g. kayaking) are considered to be primary contact recreation in other states

- The NYC public has been patiently waiting for CSO abatement action for nearly 50 years.
- It is common knowledge that people participate in Kayaking as Primary Contact Recreation on both rivers.
- Compliance of the Clean Water Act is the State's responsibility.
- Compliance of the Clean Water Act includes the "attainment of water quality standards."<sup>1</sup>

Finally, we expect your agency to review the facts and choose the stakeholder side that protects and preserve the public's health -- not the municipality, its health code, or whatever they condone. The protection of the public's health is your primary responsibility. The work of your agency on behalf of these issues should be supervisory. If you find that your office is not able to accomplish its task, we suggest that the DEP be required to act quicker. A consent order, such as the many that have been addressed in other states would be appropriate.<sup>2</sup>

We expect many people in the community to support this position. Petitions and letters will be sent under separate cover. Happy Earth Day!

Sincerely

*Karen Argenti and Dart Westphal*

Karen Argenti and Dart Westphal  
Co-Chairs of the BCEQ Water Committee

Enclosure - DEC March 5 letter, BCEQ February letter, Other stakeholder letters  
Copy by email: Sue McCormick, Joseph DiMura, Suzanne Mattei, James Tierney of NYS DEC  
Judith Enck, Jeff Gratz, Mohammed Billah, US EPA  
Jessica Noon, Wilhelm Rhonda of Office of Borough President Ruben Diaz  
Linda Cox, Bronx River Alliance  
Harlem River Working Group  
Eugenia Flatow, Shino Tanikawa, NYC SWCD  
Larry Levine, NRDC  
Philip Musegaas, Riverkeeper

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<sup>1</sup> The CSO Policy calls for the development of a long-term control plan (LTCP) which includes measures that provide for compliance with the Clean Water Act, including attainment of water quality standards. LTCP development that is consistent with the CSO Policy is key to the success of local CSO control efforts. The CSO Policy provides that "[d]evelopment of the long-term plan should be coordinated with the review and appropriate revision of water quality standards (WQS) and implementation procedures on CSO-impacted receiving waters to ensure that the long-term controls will be sufficient to meet water quality standards" (59 FR 18694). In the seven years since EPA issued the CSO Control Policy, implementation of this principle has not progressed as quickly as expected. ([http://www.epa.gov/npdes/pubs/wqs\\_guide\\_final.pdf](http://www.epa.gov/npdes/pubs/wqs_guide_final.pdf)) page 3

<sup>2</sup> Region 5, Illinois, City of Rock Island on 02/13/98 This Order addressed CSOs to environmentally sensitive areas and failure to implement the NMCs. The Order also required plant and sewer improvements to reduce CSOs. ([http://www.epa.gov/npdes/pubs/csossoRTC2004\\_AppendixK.pdf](http://www.epa.gov/npdes/pubs/csossoRTC2004_AppendixK.pdf)) from Appendix K: Summary of Enforcement Actions [[Click here to view in PDF format - 708KB](#)]