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April 10, 2015

Steve A. Watts
NYSDEC Region 2 Headquarters
47-40 21st St
Long Island City, NY 11101
stephen.watts@dec.ny.gov

Re: NYC MS4, *Application ID: 2-6500-00058/00001* under *Permits(s)*
Applied for: 1 - Article 17 Titles 7 & 8 Industrial SPDES - Surface Discharge

Dear Mr. Watts,

We write to comment on the above stated changes recently proposed. The Bronx Council for Environmental Quality, is a non-profit 501(c)3 membership organization located in NYC's only mainland borough — The Bronx. We are a diverse collection of individuals all seeking to leave a future with better air, land, and water quality than we have at present. Since 1971, BCEQ has sought “to establish — as an Inherent Human Right — a sound, forward-looking environmental policy regarding an aesthetic, unpolluted, environment protecting a natural and historic heritage.” We focus on the Bronx, Harlem, Hudson, Hutchinson and East Rivers, as well as the Westchester Creek, Long Island Sound, and Bronx Kill. While we appreciate your work on this permit and the changes from last year's comments, it is still too little too late.

1. **The Public.** Do you have any idea of how difficult it is to discuss water quality with people and what they have to do to protect it? It is clear that everyone wants clean water. What is not clear is the administrative presentation (CSO, MS4, Stormwater, SWMP, Direct Discharge) and barriers agencies pose to protect their own jurisdiction. While that may be helpful for the agencies, it is not for the public. It adds one more layer of understanding to the teaching rubric. That is why intergrated planning on a watershed basis is important for public understanding and review. In addition, a real Citizens Advisory Committee run by the committee should be part of the Public Participation Plan; it is not appropriate for the agency to lecture the public. Please reconsider.
2. **Water Quality.** How do you expect the public to comment and monitor old and new discharges? Complying with Water Quality Standards is another area of concern, especially for new projects along waterfronts. Take for instance the Harlem River Yards -- state owned property. Currently, the state lease is allowing a new facility to do earth moving and drainage of some sort, but no one can figure out what they are doing? Did your office provide the permit? Since you know that the Harlem River and Bronx Kill is impaired waters, is it a zero discharge? Are they contributing to the overall discharge? Where are the older existing facilities (Fedex, etc.) discharging?

Another unsolved state problem is the water runoff from some of the many bridges discharging directly into the rivers!



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Harlem River Yards outfalls

Current activity at the Fresh Direct site

(Note: As you are aware, NYS has adopted best management practices not only for construction but for design of any facility on its property.¹ In addition, the close proximity of the above noted property to the Harlem River puts this project into a delicate area requiring zero discharge of any stormwater or other pollutants. The property is within 100 feet of the surface water of the Harlem River, the East River and the Bronx Kill; and it is within a coastal zone and flood zone. This is also a requirement of the New York City Department of Environmental Protection. “All sewer certifications for new development shall be consistent with the latest DEP rules and regulations and shall require on-site detention or retention based on the Master Plan for Sewers and Drainage, DEP, 1985, under which the sewers were designed and built. Only allowable flow will be permitted to discharge into the combined or storm sewer system.”²)

- 3. SEQRA.** It is curious how this could be considered an Unlisted Action under SEQRA when even the NYC DEP admits that “The Draft Permit applies to the approximately 40% of the City’s land area that is served by the MS4 or by direct drainage, with the rest of the City served by the combined sewer system. Every year, New York City has approximately 45 inches of precipitation, generating an average of 165 billion gallons of stormwater runoff. Approximately half that rainfall/ snowmelt makes its way into the City’s combined sewer system, with much of the balance flowing directly into surrounding waterways through the City’s MS4.” (NYC’s April 2014 comments). Anyone can tell that more than **80 billion gallons** of water is a large enough impact to qualify for SEQRA.
- 4. Floatables.** Please note that the web page hidden CSO Annual Reports discuss floatables. The explanation is insignificant. Hopefully, the new MS4 report will not be as hidden as that one. On page 225 of the 2013 report, the total recovered floatables are 927, but 645.5 are from the Bronx River. How is this explained? Is anyone curious? The DEP talks about the Sanitation Scorecard leveling off at 95%. However, a review of the neighboring community boards along the Bronx River tell another story – they hover between 80 to 90%. Since there are only 59 community boards citywide, this clearly indicates a need for more sanitation in the areas around the Bronx River; it may suggest a bigger problem (such as the Metro North) which should be reviewed as well.

¹ [New York State Stormwater Management Design Manual \(January, 2015\)](#)

² [NYC DEP Annual Report 2013](#), page 59. A rule to “reduce the release rate of storm flow to combined sewers of from new developments to 10% of the drainage plan allowable or 0.25 cfs, whichever is higher (for cases when the allowable storm flow is more than 0.25 cfs),” was promulgated on January 4, 2012, and has been in effect since, July 4, 2012. All sewer certification for new development must follow DEP rules and regulations and must be permitted by DEP.



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5. **Time.** Finally, how long can we wait? Can you really believe that the NYC DEP who gives permits to all new construction, cannot develop a plan to protect the water quality – probably its most important mission which is primarily ignored? They have plenty of people working at the agency, and if they would stop paying consultants, they would have enough time and money to protect our waterways.

Thank you for this opportunity to comment on the draft permit. We look forward to receiving DEC's response. If you have any questions please contact Karen Argenti at 646-529-1990.

Sincerely,

Karen Argenti

Karen Argenti
Co-Chairs, Water Committee, BCEQ

Dart Westphal

Dart Westphal

- C: BCEQ Board
SWIM
Harlem River Working Group
East Bronx Coastal Working Group
NRDC
Riverkeeper
SWCD
DEP, EPA
Bronx Elected Officials