



## The Bronx Council for Environmental Quality

Post Office Box 265

The Bronx, New York 10464-0265

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

President: Ira Charles Levenberg-Engel

February 8, 2010

Ms. Sue McCormick, P.E.

625 Broadway, 4th Floor

NYSDEC

Albany, NY 12233-3506

by email [sdmccorm@gw.dec.state.ny.us](mailto:sdmccorm@gw.dec.state.ny.us)

### **RE: Designation of Bronx River and Harlem River, including the Bronx Kill, as Sensitive Areas**

Dear Ms. McCormick:

This is to request that NYSDEC designate the Bronx River and Harlem River (including the Bronx Kill) as “*sensitive areas*.”

Under NYSDEC Long-Term Control Plan Requirements, sensitive areas “*shall include waters with threatened or endangered species and their designated critical habitat, waters with primary contact recreation, public drinking water intakes or their designated protection areas and any other areas identified by the permittee or permitting authority, in coordination with appropriate State or Federal agencies....*” [emphasis added]

Both the Bronx River and Harlem River, including the Bronx Kill (hereinafter referred to and constituting the whole of the *Bronx and Harlem Rivers*) support primary contact recreation.

“Primary contact recreation” has been defined by the U.S. EPA to include: swimming, rafting, wind surfing, canoeing, kayaking, tubing, scuba diving, snorkeling, water skiing, other. (See e.g. [www.epa.gov/region6/water/ecopro/watershd/standard/rec-uaa\\_worksheet.pdf](http://www.epa.gov/region6/water/ecopro/watershd/standard/rec-uaa_worksheet.pdf)). Other states have adopted EPA's perspective that “*primary contact recreation*” means activities “(1) where there is a high likelihood of incidental ingestion of water, . . . . Examples include, but are not limited to, kayaking, tubing, skin diving . . . .” (see, e.g. [www.waterquality.utah.gov/WQS/20071017\\_Follow-up\\_Email\\_WQS\\_Mtg.pdf](http://www.waterquality.utah.gov/WQS/20071017_Follow-up_Email_WQS_Mtg.pdf)). The reasoning clearly is to protect the public health: with “*primary contact recreational uses such as swimming and kayaking, health risk increases with fecal coliform count in the waterbody. For a waterbody to comply with Virginia regulations, fecal coliform standards for primary contact recreational use must be met.*” (see, e.g. page 2, [townhall.virginia.gov/l/GetFile.cfm?File=E:\townhall\docroot\103\599\1377\deq1377%28wqstandards%29.pdf](http://townhall.virginia.gov/l/GetFile.cfm?File=E:\townhall\docroot\103\599\1377\deq1377%28wqstandards%29.pdf)).

Canoeing and kayaking are supported for both the *Bronx and Harlem Rivers* (NYC Department of Parks and Recreation -- [www.nycgovparks.org/facilities/kayak](http://www.nycgovparks.org/facilities/kayak), promotes kayaking in Bronx & Harlem Rivers, and also see [www.harlemrivercommunityrowing.org/](http://www.harlemrivercommunityrowing.org/)). There is active scuba diving in the Harlem River (see e.g. [www.urbandivers.org/](http://www.urbandivers.org/)). The *Bronx River Alliance* Recreation Program (See [www.bronxriver.org/?pg=content&p=getinvolved&m1=32](http://www.bronxriver.org/?pg=content&p=getinvolved&m1=32)) works to develop the Bronx River

Greenway through canoeing, kayaking, and bicycling. (See also the news story about these events: [www.bronxnewsnetwork.org/2009/05/summer-on-bronx-river.html](http://www.bronxnewsnetwork.org/2009/05/summer-on-bronx-river.html)). Additionally, the Harlem River serves as one of the venues for area crew teams (e.g. Columbia University, Manhattan College) and, on information and belief, tubing and snorkeling also take place in and on both rivers.

In and of itself, the public's use of the *Bronx and Harlem Rivers* for primary contact recreation should provide sufficient cause and justification for NYSDEC to designate both rivers as a "sensitive area." Additionally, other New York State definitions of "*environmentally sensitive areas*" have been even more expansive and include: "...*areas of aquifer recharge, exceptional scenic beauty, exceptional forest character, open space, pine barrens, public access, trailways, unique character, wetlands and wildlife habitat..." [emphasis added]. (see e.g. NYS Environmental Quality Bond Act of 1986).*

Finally, in other urban areas, such as Philadelphia, canoeing and kayaking is considered primary contact recreation in keeping with Pennsylvania and EPA authorities. "*Direct contact recreation is also called "primary" contact recreation by state and federal authorities. As shown in the table below, primary contact recreation includes any activity that is likely to cause immersion in the water and includes jet skiing, swimming, kayaking, wading, and water skiing.*" (see [www.phillyrivercast.org/nav\\_definition.aspx](http://www.phillyrivercast.org/nav_definition.aspx) ) In Washington, D.C., James Woodworth of NRDC mentioned in his paper "Balancing Bathers and Bacteria ..." that: "*despite the swimming ban, and the current uses recognized by the regulatory body, . . . the reality is that primary contact recreation, and other activities that pose high risk of exposure to bacteria contamination, including fishing, wading, rowing, kayaking, and swimming, do occur in or on the major water bodies . . .*" ([www.epa.gov/waterscience/standards/uses/symposium/abstracts/woodworth.pdf](http://www.epa.gov/waterscience/standards/uses/symposium/abstracts/woodworth.pdf))

There is no doubt that both the *Bronx and Harlem Rivers* possess the underlined attributes that would qualify both for designation as "environmentally sensitive areas" under this broader definition.

Therefore, based upon the above cited qualifications, the NYSDEC is hereby petitioned and requested to designate the **Bronx River and Harlem River (including the Bronx Kill)** as a "sensitive area".

Sincerely,

*Dart Westphal and Karen Argenti*

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

c: Judith Enck, EPA Region 2  
Suzanne Mattei, NYS DEC Region 2  
Hon. Ruben Diaz, Bronx Borough President  
Hon. Jose Serrano, Representative 16 CD  
Hon. Joseph Crowley, Representative 7 CD  
Hon. Eliot Engel, Representative 17 CD  
Eugenia Flatow, NYC SWCD  
Linda Cox, Bronx River Alliance  
Harlem River Working Group  
Larry Levine (NRDC) and Philip Musegaas (Riverkeeper)