June 12, 2018

Ms. Michelle Tompkins
NYS Department of Environmental Conservation
625 Broadway, 4th Floor,
Albany, NY 12233-3500

[By email to BeachRule@dec.ny.gov]

Re: Proposed Amendments to 6 NYCRR Parts 700, 703, and 890, BEACH Act Standards and Reclassification Rule

Dear Ms. Tompkins,

On behalf of the Waterfront Alliance, I am writing to register our concerns regarding New York State Department of Environmental Conservation’s (DEC) proposed amendments to water quality standards on which DEC has invited comment.

Over the last generation, many of New York’s waterways have become clean enough for regular recreational use, as more people are boating, fishing, and swimming in our shared waters thanks to progress spurred by the Clean Water Act and capital improvements made by both the City and the State and oversight by DEC. New York Harbor is now a more conducive place for fish, shellfish, and marine bird populations, even as commercial shipping grows.

But we still have a long way to go in order to meet the standards of “fishable and swimmable” waters. While pollution in our waterways have been reduced considerably, significant problems persist, including combined sewer overflow, with wastewater discharging directly into the city’s waterways. We must take steps to ensure that our waterways are not only protected but improved, to foster the wellbeing of millions of residents and visitors and support the regional economy.

Holding our waterways to a higher standard is a critical aim for all of our waterways. However, the proposed changes must be accompanied with the proper additional means to ensure that our waterways are truly safer for more people. Unfortunately, as proposed, the proposed changes may produce a higher standard in name only, due to several of the following factors:

- **Limited geographic reach for new criteria.** The proposal leaves out the Hudson River, East River, Harlem River, the north and west shores of Staten Island, the Bronx River, Hutchinson River, Westchester Creek, Flushing Bay and Flushing Creek, Alley Creek, Gowanus Canal, Newtown Creek, Coney Island Creek, and tributaries of Jamaica Bay, all of which are fouled by bacteria from sewage and polluted runoff when it rains and flow directly into the lower bay. For these waters, the proposal leaves in place decades-old criteria, which EPA has directed the state to update because they do not reflect current science and do not sufficiently protect public health.
• **Insufficient sampling extent for water users.** In New York Harbor, water quality samples are taken at dozens of locations across the city’s waterways by both NYCDEP and citizen scientists. Waterfront Alliance’s Harbor Scorecard, launched in 2017, reveals significant disparities: official water testing samples, generally taken in mid-channel locations, fail to meet EPA standards for safe swimming in approximately 20 percent of samples. Samples collected by citizen scientists, at nearshore areas where people are using the water for recreation and education, fail the same standards in 33 percent of tests. DEC should specify that sampling locations must include near-shore locations so that the results accurately reflect the conditions where people are most likely to come into contact with the waterways.

• **Increasing potential risk without full oversight.** The proposed frequency (a 90-day vs. EPA-recommended 30-day geometric mean) and time frame are insufficient in this dense city where waterfront users are present and growing regardless of season. Users of the water are increasingly more active throughout a longer period of the year, and year-round sampling should be a key component of a full and transparent analysis of the health of our waterways. Similar to concerns that led to the foundation of the Sewage Right to Know Act, the proposed changes will limit transparency.

• **Maintaining an outdated standard.** New York remains one of the few states who have not yet adopted the EPA’s 2012 Recreational Water Quality Criteria. Although DEC’s proposed new standards are based on the more reliable indicators, they would only apply to a limited set of waterways. That means other waters would still be subject to current outdated standards, which EPA has found do not protect public health.

• **Reducing the likelihood of improvement.** By averaging samples over a wider time frame and omitting including some of the wettest months of the year (March-April), the criteria as defined are likely to make water quality appear better than it is, preventing oversight that could result in true improvement. With the northeast region projected to experience a disproportionate increase in precipitation in winter months as a result of climate change, these impacts may be amplified in the decades to come.

We thank you for your review of this letter and to the comments of other clean water advocates for New York Harbor. We look forward to working with you to improve New York City’s polluted waterways and unlock the full potential of our waterways as a vital resource for all New Yorkers. If you have any questions about this letter, please feel free to call me at (212) 935-9831.

Sincerely,

Roland Lewis
President and CEO
Waterfront Alliance