Gowanus Canal CONSERVANCY

January 10, 2022
Testimony of Amy Motzny on behalf of Gowanus Canal Conservancy (GCC) before the New York City Department of Environmental Protection Public Hearing on the 2021 Unified Stormwater Rule.

Thank you for the opportunity to deliver public testimony on the City's Stormwater Rule and thank you to the DEP for your work to draft a Unified Stormwater Rule to establish more stringent requirements for stormwater management on retrofits and new development sites citywide as well as the important design guidelines manual to support the new rule.

Gowanus Canal Conservancy (GCC) is dedicated to facilitating the development of a resilient, vibrant, open space network centered on the Gowanus Canal through activating and empowering community stewardship of the Gowanus Watershed. Since 2006, we have served as the environmental steward for the neighborhood through leading grassroots volunteer projects; educating students on environmental issues; and working with agencies, elected officials, and the community to advocate for, build, and maintain innovative green infrastructure around the Gowanus Canal.

The next decade is crucial in terms of how we address our stormwater and climate change related challenges in Gowanus and throughout NYC. According to the NYC Panel on Climate Change, our region can expect to see a 1 – 8% increase in precipitation in the 2020s, and 4 – 11% increase by the 2050s. Recent storms have clearly foretold what our future looks like if the City doesn't accelerate its timetables to prepare our stormwater and wastewater infrastructure for increased rainfall and sea level rise. GCC strongly supports the goals reflected in the Stormwater Resiliency Plan published (in May 2021) by the Mayor's Office of Climate Resiliency as well the recommendations in the September, 2021 The New Normal: Combatting Storm-Related Extreme Weather in New York City report, produced by the Extreme Weather Response Task Force. Additionally, we commend the Department for their commitments in Gowanus as outlined in the Points of Agreement established as part of the Gowanus Neighborhood Plan, which will support needed steps toward long-term sustainability and resiliency.

We believe the Unified Stormwater Rule is a key initiative that will help achieve Net Zero CSO in Gowanus as well as the goals in the Resiliency Plan by promoting green infrastructure development on private property; easing the strain on New York City's already overburdened sewer system; improving water quality citywide; and complying with multiple regulatory compliance requirements mandated by the state Department of Environmental Conservation. GCC supports swift implementation of the Unified Stormwater Rule in recently rezoned areas of the City in order to ensure better stormwater management in new development, and we appreciate the opportunity to provide the following comments to strengthen the rule before finalization.

We stand with our partners in the SWIM Coalition and below we outline some outstanding concerns that we urge the Department to consider as they adopt the new rule Citywide:

I. **The soil disturbance threshold for covered development projects should be further evaluated to include smaller sites:**

We appreciate that DEP has included a new impervious surface area threshold for covered development projects of 20,000 square feet. This provision is crucial to ensuring that projects that create new impermeable surfaces are sufficiently controlled to manage surface water. The development of new impervious surfaces limits or prevents infiltration of stormwater, which increases the volume and rate of runoff likely to carry pollutants such as sediments, nutrients, and contaminants.

However, the impervious surface threshold could be further reduced to achieve greater impact under the new rule and we strongly urge the department to evaluate opportunities to do so. Under the 20,000 square foot threshold, we anticipate that the Chapter 19.1 requirements under the new rule will apply to approximately 41 of the 295 Projected and Potential Development Sites in the Gowanus Rezoning area. While this reduction in threshold size will target many of the low-lying waterfront sites, many of the upland, higher density Projected and Potential Development Sites will not be required to implement additional stormwater management practices that are critical for further addressing persistent inland flooding and Combined Sewer Overflow (CSO) to the Gowanus Canal.

DEP's own consultants have found that "[t]he approximate 'knee-of-the-curve' for acres v. permits is around 15,000 SF."[1] Almost all large cities impose stormwater control requirements on lots smaller than 20,000 square feet. While other cities have much smaller thresholds, Philadelphia has set its threshold at 15,000 square feet.

II. Post-construction stormwater control is crucial for projects greater than 20,000 square feet in the public Right-of-Way.

We appreciate that DEP includes maintenance and development in the public Right-Of-Way (ROW) as a "covered development project" in the draft rule and updated NYC Stormwater Manual; however, this requirement would only apply to projects that are **greater than one acre**, in contrast to all other projects that are subject to such controls for a disturbance greater than 20,000 square feet. The relaxed threshold for ROW projects reduces opportunities for stormwater management on construction or reconstruction projects that would otherwise trigger the 20,000 square foot threshold post-construction stormwater control requirement. In Gowanus, this exception limits opportunities for stormwater management in public street ends which experience frequent flooding, many of which will be rebuilt as adjacent development projects are constructed.

According to DEP, the public right of way "constitutes approximately 30% of the impervious cover in the city and generates significant stormwater runoff during rain events." This area creates a tremendous volume of polluted stormwater runoff and therefore represents an important opportunity to reshape the city's stormwater practices. Such stormwater controls are especially important at street ends abutting waterways, where the typically low-lying street ends could be used as "sponges" to retain, detain and treat polluted stormwater. Therefore, we urge DEP to revise this exception and adopt the 20,000 square foot threshold for road construction projects.

III. The No Net Increase analysis (NNI) should be required for <u>all pollutants</u> and <u>all waterbodies</u> impacted by the construction sites.

[1] N.Y. City Dep't of Envtl. Protection, Municipal Separate Storm Sewer System Management Program Updates at 24 (Dec. 13, 2016).

Under the MS4 requirements, a NNI analysis is required for “impaired waterbodies,” however, this requirement is not proposed to be extended to areas falling within the Combined Sewer Area as part of the Unified Stormwater Rule.

NNI analysis should be required for all covered projects — not just those in MS4 areas, and not just those in priority waterbody sewersheds — and DEP should use the most stringent analysis, which is the Nitrogen NNI. These standards should also be applied to other pollutants: pathogens, phosphorus, floatables. **It is only by conducting a more thorough analysis that we can understand how a waterbody will truly be impacted, and employ the proper mitigation measures to ensure a Net Zero effect on stormwater outfalls and CSOs.**

Additionally, it is recommended that the NNI requirements under MS4 be revised to include an analysis for *all* waterways and not solely limited to those listed as impaired due to CSO and urban runoff. As it stands right now, the analysis is allowed to be skipped entirely if a waterway is not listed as impaired. The analysis should not be skipped for any covered development project and must be considered to ensure long-term water quality improvements.

IV. Additional requirements/allowances should be established for sites impacted by high groundwater, depth to bedrock, and contaminated soil conditions.

As part of the SMP Hierarchy for both combined sewer system (CSS) and MS4 Areas, applicants will be required to assess whether infiltration practices are feasible based on groundwater and bedrock clearance and soil contamination. With these limitations, infiltration infeasibility is likely in many areas of the City facing high or low groundwater table, bedrock challenges, a property's proximity to contaminated sites, impaired waterbodies, waterbodies that have CSO Long Term Control Plans underway, and the surrounding density of the construction site.

Where infiltration is deemed infeasible, on the ground, infiltration-based green infrastructure will be impractical therefore limiting the potential of the new rule. We therefore recommend that this step in the permitting process be amended to require these sites provide additional stormwater capture or CSO mitigation in the watershed, through one or all of the following mechanisms:

1. Requirements for increased on-site subsurface detention in addition to vegetated treatment practices;

2. Through CSO mitigation SMP’s as part of an extended CSO No Net Increase analysis; and

3. The establishment of a fund, similar to the DPR Tree Trust, where the applicant pays into a fund (managed by DEP or other governing entity) for the implementation of green infrastructure practices on City owned land, elsewhere in the watershed (Parks, Street Ends, and public ROW).

V. Commitment to Long-Term Monitoring and Annual Reporting:

It will be essential that on-the-ground impacts of the Unified Stormwater Rule are monitored and validated incrementally over time to ensure long-term effectiveness.

While we acknowledge that on-the-ground tracking of sanitary and stormwater flows for every covered development site is not realistic, we accept modeling of projected sanitary and stormwater flows and CSO reduction for redevelopment sites as a sufficient form of monitoring.

We understand that DEP intends to provide an annual summary of proposed sanitary discharge, proposed development site storm flow, allowable flow from the site and/or the stormwater release rate for the Gowanus Canal Watershed and we urge that this provision be extended to other areas of the City with annual reporting by each Combined Sewer Watershed. Additionally, for applicant sites triggering the 20,000 square foot threshold, DEP must report on overall CSO Reduction Volume as a result of practices implemented under the new rule as part of the annual Green Infrastructure Report citywide.

Thank you for your consideration.

Sincerely,

Amy Motzny
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Gowanus Canal Conservancy