

**Rulemaking for Class I and Class SD
Waters: Meeting CWA Swimmable
Goal (6 NYCRR Parts 701 and 703):**

**NY-NJ Harbor & Estuary Program
CAC Meeting**

Selvin Southwell, PE

Deputy Regional Water Engineer

Division of Water – Region 2

January 16, 2015



Water Classes and Standards

- **To protect water quality, waters are grouped into Classes, with uses designated for each class**
- **Water quality standards are adopted for each water class to protect their uses**
- **Standards are generally maximum levels of contaminants that are permissible in the waters**



Water Classes

- **Freshwaters: A, AA, A-Special, AA-Special, B, C, D**
- **Saline waters: SA, SB, SC, I, and SD**



Saline Water Classes

- **Class SA: Best Uses are shellfishing for market purposes, primary (incl. swimming) and secondary contact recreation, and fishing;** waters shall be suitable for fish, shellfish and wildlife propagation and survival
- **Class SB: Best Uses are primary and secondary contact recreation and fishing;** waters shall be suitable for fish, shellfish and wildlife propagation and survival



Saline Water Classes

- **Class SC: Best Use is fishing.** Waters shall be suitable for fish, shellfish and wildlife propagation and survival. Water quality shall be suitable for primary and secondary contact recreation, although other factors may limit the use for these purposes
- **Class I: Best Uses are secondary contact recreation and fishing;** waters shall be suitable for fish, shellfish and wildlife propagation and survival



Saline Water Classes

- **Class SD: Best Use is fishing.** Waters shall be suitable for fish, shellfish and wildlife survival. This classification may be given to those waters that, because of natural or man-made conditions, cannot meet the requirements for primary and secondary contact recreation and fish propagation



Water Quality Standards

- Water quality standards (WQS) are a State program with US EPA oversight and approval
- The Federal Clean Water Act (CWA) requires that “wherever attainable,” water quality that “provides for recreation in and on the water” be achieved by 1983
- This is commonly referred to as the “swimmable” goal of the CWA



Meeting the Swimmable Goal in NYS

Currently meet the goal:

- All Freshwater Classes
- Saline Water Classes SA, SB, and SC

Currently do not meet the goal:

- Saline Water Classes I and SD



NY WQ Regs: 6 NYCRR 700-706

- 700: Definitions, sampling, analytical
- **701: Water Classifications**
- 702: Standard-setting procedures; some implementation regs
- **703: WQ Standards**
- 704: Thermal criteria
- 705: References
- 706: Appendix I – standard-setting procedures for aquatic life



What Waters Would the Rule Apply To?

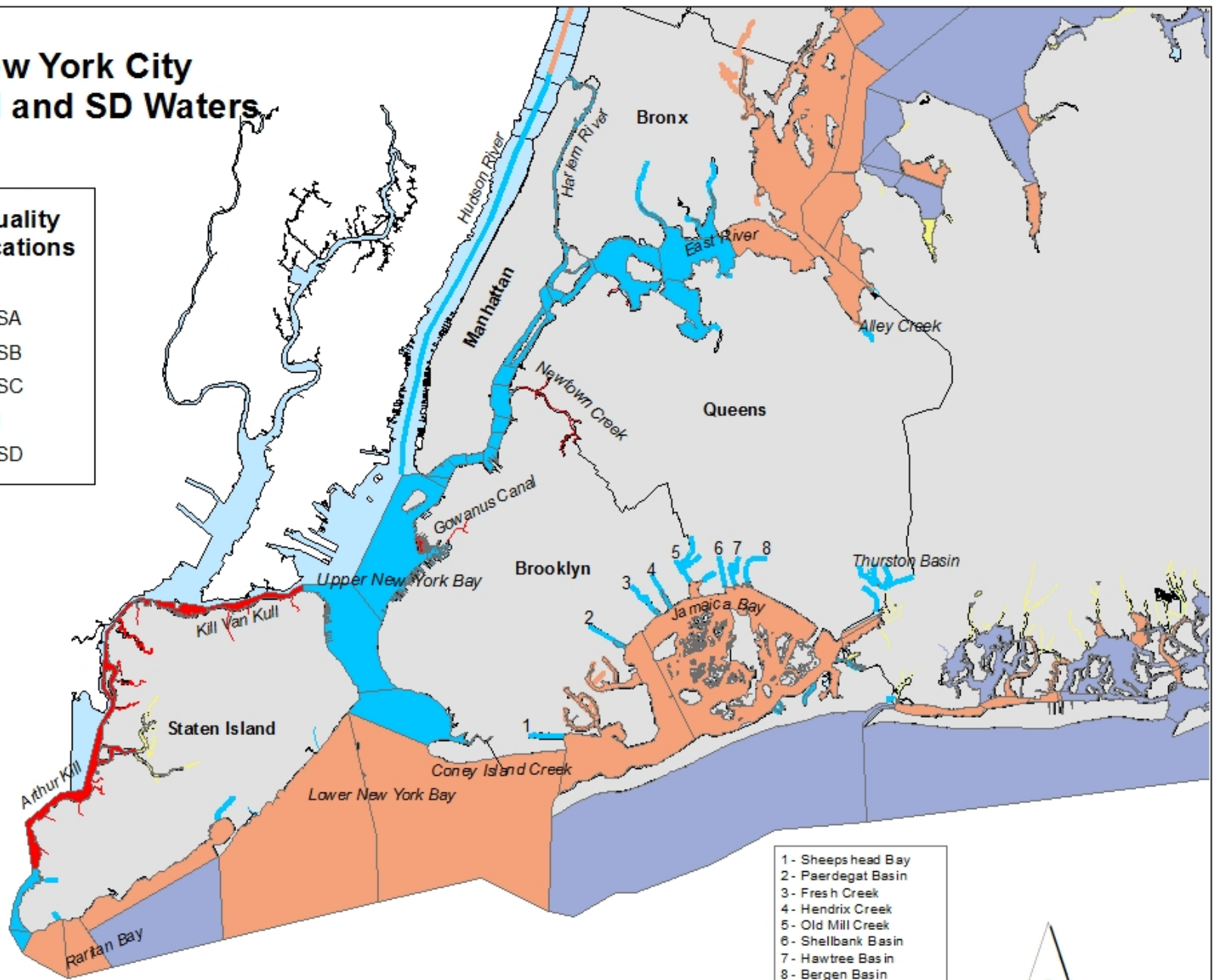
- **Applies only to Class I and Class SD saline surface waters**
- **In New York State the only Class I and Class SD waters are in New York City and Suffolk County**



New York City Class I and SD Waters

Water Quality Classifications

- SA
- SB
- SC
- I
- SD



- 1 - Sheepshead Bay
- 2 - Paerdegat Basin
- 3 - Fresh Creek
- 4 - Hendrix Creek
- 5 - Old Mill Creek
- 6 - Shellbank Basin
- 7 - Hawtree Basin
- 8 - Bergen Basin



Synopsis of Proposed Rule

- 1) **Require water quality of Class I and Class SD waters be suitable for primary contact recreation (Part 701)**
- 2) **Adopt total and fecal coliform standards for Class I and Class SD waters to protect primary contact recreation; repeal standards for secondary contact recreation (Part 703)**



Text of Proposed Rule (Express Terms)

§ 701.13 Class I saline surface waters.

The best usages of Class I waters are secondary contact recreation and fishing. These waters shall be suitable for fish, shellfish, and wildlife propagation and survival. In addition, the water quality shall be suitable for primary contact recreation, although other factors may limit the use for this purpose.



Express Terms – 701.14

§ 701.14 Class SD saline surface waters.

The best usage of Class SD waters is fishing.

These waters shall be suitable for fish, shellfish, and wildlife survival. In addition, the water quality shall be suitable for primary and secondary contact recreation, although other factors may limit the use for these purposes. This classification may be given to those waters that, because of natural or man-made conditions, cannot meet the requirements for [primary and secondary contact recreation and] fish propagation.



Express Terms: 703.4(a)

Total Coliforms (number per 100 mL)

Classes: A, B, C, D, SB, SC, I, SD:

Standard: The monthly median value and more than 20 percent of the samples, from a minimum of five examinations, shall not exceed 2,400 and 5,000, respectively.

Classes: [I]

Standard: [The monthly geometric mean, from a minimum of five examinations, shall not exceed 10,000.]



Express Terms: 703.4(b): Fecal Coliforms (number per 100 mL)

Classes: A, B, C, D, SB, SC, I, SD:

Standard: The monthly geometric mean, from a minimum of five examinations, shall not exceed 200.

Classes: [I]

Standard: [The monthly geometric mean, from a minimum of five examinations, shall not exceed 2,000.]



Regulatory Impact of Proposed Rule

- **Rule would affect waters in Suffolk County and New York City**
- **Suffolk County: No costs**
- **NYC: No costs beyond those currently required**
- **See Regulatory Impact Statement for full analysis**



Timeline

- **Publication of Notice of Proposed Rulemaking in NYS Register: Dec 3, 2014**
- **Public Information Meeting: Jan 6, 2015**
- **Public Hearing: Jan 27, 2015**
- **Close of Public Comment Period: 5:00 PM Monday Feb 2, 2015**
- **Prepare DEC response to public comments**



Timeline, cont.

- **Prepare final rule for adoption (unless DEC decides to make substantial change that would require notice of revised rulemaking)**
- **Final rule filed with NYS Dept. of State and published in NYS Register**
- **Obtain NYS Attorney General Certification**
- **Submit rulemaking and supporting analysis to US EPA for review and approval**



How to Submit Comments?

At Public Hearing on Jan 27, 2015 (oral/written) or

Mail to:

**NYSDEC, 625 Broadway, Albany NY 12233-3500,
Attn: Robert Simson**

Or email to:

Comments.NYCRR701and703@dec.ny.gov

**Submit comments by 5:00 PM Monday February
2, 2015**



Further Information/Questions?

- **Proposed Rule and Supporting Documentation:**
<http://www.dec.ny.gov/regulations/propregulations.html>
- **Questions: Scott J. Stoner, Chief
Standards and Analytical Support Section
518-402-8193;
Comments.NYCRR701and703@dec.ny.gov**

