



**RIVERKEEPER®**

**Submitted via Regulations.gov**

**July 7, 2009**

Docket Coordinator, Headquarters  
U.S. Environmental Protection Agency  
CERCLA Docket Office  
(Mail Code 5305T)  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**RE: Riverkeeper Comments on National Priorities List, Proposed Rule No. 50, FDMS docket ID No. EPA-HQ-SFUND-2009-0063, Gowanus Canal, Brooklyn, NY**

Dear Docket Coordinator:

Please accept Riverkeeper, Inc's ("Riverkeeper") comments on National Priorities List, Proposed Rule No. 50, FDMS docket ID No. **EPA-HQ-SFUND-2009-0063**, proposed listing of the Gowanus canal on the Superfund National Priorities List (NPL). For the reasons set forth below Riverkeeper supports the proposed listing of the Gowanus Canal and believes that the "Superfund alternative" approach proposed by New York City does not present a feasible alternative to effectuate a comprehensive cleanup of the canal and upland pollution sources.

### **I. Organizational Background Information**

Riverkeeper is a not-for-profit, member-supported environmental organization, dedicated to protecting the ecological, recreational and aesthetic qualities of the Hudson River and its tributaries, and the rights of all New Yorkers to clean communities and a clean environment. Since 1966, Riverkeeper has used litigation, science, advocacy, and public education to end pollution and restore ecological health to the area's water resources. Riverkeeper has long advocated for the remediation of historic contamination of the Hudson River, its tributaries, and New York Harbor. For decades Riverkeeper has fought for General Electric to remove PCBs from the Hudson River and has served as part of the Superfund Community Advisory Group ("CAG") for the Hudson River Superfund site. Riverkeeper has also been a strong voice advocating for Newtown Creek to be studied by the EPA and considered for listing on the Superfund NPL.

Due to Riverkeeper's historic involvement with protecting the Hudson River and its waterfront, and advocating for the remediation of historic contamination we strongly support the proposed listing of the Gowanus Canal on the NPL. Riverkeeper believes that the federal Superfund program is the single best option for comprehensively cleaning up the canal.

## **II. History of the Canal and its Pollution**

The Gowanus Canal is a 100-foot wide canal extending approximately 1.8 miles from Butler Street to Gowanus Bay in Brooklyn, New York, and is bordered by several Brooklyn communities including Park Slope, Cobble Hill, Carroll Gardens and Red Hook.<sup>1</sup> It was completed in 1869 by dredging a tidal creek and wetlands to allow industrial access to Gowanus Bay and New York Harbor. Stagnant water conditions have plagued the canal since its initial construction. These conditions led to the construction of the Gowanus Flushing Tunnel in 1911 to bring water into the canal and reduce stagnation. The tunnel stopped operating in the 1960s, was repaired and reactivated in April 1999,<sup>2</sup> and now is slated for a major overhaul and upgrade. In addition to reducing stagnation the tunnel allows oxygen levels to be brought up to levels required to sustain aquatic life.<sup>3</sup>

After its completion, the canal became a busy industrial waterway, home to heavy industries including manufactured gas plants (MGPs), coal yards, cement makers, tanneries, chemical plants, and oil refineries. It was also the repository of untreated industrial wastes, raw sewage and runoff. As a result of years of discharges, storm water runoff, sewer outflows, and industrial pollutants, the Gowanus Canal has become one of the nation's most extensively contaminated bodies of water. Contaminants impacting the canal include PCBs, coal tar wastes, heavy metals and volatile organics.<sup>4</sup> Testing of the canal's sediments has found coal tar wastes in concentrations as high as 4.5% in some locations. Because of the canal's lengthy industrial history there may be more than 200 potentially responsible parties ("PRPs") who contributed to its extensive contamination according to the EPA.

## **III. Continuing Pollution of the Gowanus Canal Threatens Public Health and the Hudson-Raritan Estuary**

Riverkeeper urges the EPA to proceed with NPL listing for the Gowanus Canal. Despite high levels of historic contamination, continued leaching of toxins into the canal from upland sources, and severe water quality impacts from combined sewer overflows, public use of the canal is common. There are many active groups in the community who recreate, educate, and work to cleanup and improve the canal and surrounding area.<sup>5</sup> Furthermore, Riverkeeper staff has observed members of the public fishing and boating in and around the canal. In addition, the numerous redevelopment proposals for properties along the canal including Public Place/Gowanus Green and Toll Brothers Gowanus will increase the public's access to and use of the canal.<sup>6</sup> Riverkeeper strongly supports efforts to reclaim the canal for public use and believes

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<sup>1</sup> [www.epa.gov/superfund/sites/npl/nar1791.htm](http://www.epa.gov/superfund/sites/npl/nar1791.htm)

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> Active groups on the Gowanus Canal include: The Gowanus Dredgers Canoe Club (<http://www.waterfrontmuseum.org/dredgers/>), The Urban Divers Estuary Conservancy (<http://www.urbandivers.org/sbrooklyn.php>), The Gowanus Canal Conservancy (<http://www.gowanuscandalconservancy.org/>), Friends and Residents of Great Gowanus (F.R.O.G.G.) (<http://frog.us/>), and many others.

<sup>6</sup> [www.gowanusgreen.com](http://www.gowanusgreen.com); [www.tollbrothersgowanus.com](http://www.tollbrothersgowanus.com)

that the proposed redevelopment of the area requires a full and comprehensive remediation of the Gowanus, one that can only be accomplished through the federal Superfund program.

Riverkeeper conducts regular boat patrols of the Hudson River and New York Harbor performing water quality sampling, gathering evidence of pollution, investigating environmental law breakers, and educating the public and decision makers about the importance of protecting the Hudson River and its tributaries. In addition, Riverkeeper conducts aerial patrols of the Hudson River and waters surrounding New York City.

During recent patrols of the Gowanus Canal Riverkeeper staff has documented the ongoing and historic pollution of the canal. Aerial patrols have revealed oil sheens near the canal's head, floating debris, and patches of floating coal tar wastes. Boat patrols have confirmed that the water in the canal is often a toxic cocktail of sewage, coal tar waste, and other pollutants. Furthermore boat patrols have yielded evidence of collapsing bulkheads, ongoing dumping of waste and debris, and the continued leaching of pollutants from sediments and the canal's bulkheads (see exhibit A).

In addition to the public health risks posed by the canal, the Gowanus is part of the Hudson-Raritan Estuary of New York and New Jersey, which the EPA has designated as an Estuary of National Significance. Given the interconnected nature of the entire estuary, the Gowanus Canal's high levels of contamination contribute to the overall degradation of this nationally significant estuary. It is only through the elimination of historic pollution hotspots such as the Gowanus Canal, Newtown Creek, the Passaic River, and General Electric PCBs in the Hudson River that this interconnected estuary can be protected and restored.

#### **IV. Superfund Represents the Best Method to Comprehensively Clean the Gowanus Canal**

During Riverkeeper's patrols of the Gowanus Canal by air and water staff has documented the extent of historic and continuing pollution that is afflicting the canal. Although efforts are now underway to clean up some of the former industrial sites along the canal's banks, reduce sewage overflows, and improve water quality, the canal itself has not been proposed for a comprehensive cleanup until now.

Given the magnitude of the canal's contamination, the complexity of any remediation, and the large number of possible PRPs (which may number more than 200), Riverkeeper believes that listing the Gowanus Canal on the NPL is the only approach that will fully address both contaminated canal sediments and upland sources of pollution. Additionally, NPL listing for the canal is the only approach to clean the Gowanus that can utilize the full resources of the EPA and draw upon money from the Superfund trust if viable PRPs cannot be located to pay for the remediation of upland pollution sources or canal sediments. While New York City and others have suggested that the canal should be cleaned up through alternative means, only Superfund has the legal tools to coordinate a comprehensive cleanup and compel responsible parties to conduct a cleanup if they do not agree voluntarily.

If the Gowanus Canal is not placed on the NPL and an alternative approach is utilized, the lack of comprehensive EPA Superfund authority to compel cleanup both in the canal and at the upland sites could lead to the continued pollution of land, groundwater and the canal making a comprehensive cleanup impossible. Additionally, without Superfund designation, the cleanup process will likely consist of an assortment of piecemeal approaches by the state, federal, and city agencies each with different priorities, resulting in delays and disorganization.

The Lowe's Home Improvement store along the canal on Second Avenue serves as an example of the dangers associated with cleaning up contaminated land without comprehensive planning. The Lowe's was built on the site of a former MGP and was remediated under the New York State Brownfields Program. Although Lowe's conducted a cleanup prior to starting construction, published reports state that Lowe's did not address the entire site and that coal tar contamination has now migrated toward the supermarket next door.<sup>7</sup> Riverkeeper's patrols of the Gowanus have found large amounts of coal tar waste on the canal's water in the vicinity of the Lowe's bulkhead. This suggests that the property is still leaching contaminants into the canal despite the cleanup. Without a comprehensive cleanup plan and the resources and legal tools of Superfund there is a danger that other sites will not be adequately remediated.

**V. New York City's Proposed "Superfund Alternative" is not a Feasible Option to Perform a Comprehensive and Efficient Cleanup of the Gowanus**

New York City has publicly opposed the listing of the Gowanus Canal on the NPL stating that the listing will cause the area to be "stigmatized" thus slowing down or causing the cancellation of proposed development projects such as Gowanus Green and Toll Brothers Gowanus. The city has also expressed concerns that the remediation of properties slated for redevelopment would be delayed by an NPL listing as would plans for upgrades to the Gowanus flushing tunnel and sewage infrastructure. Acknowledging that the Gowanus needs to be cleaned up, the city has proposed an "alternative" plan that they claim will be as thorough as the Superfund process, but faster, more efficient, without any perceived "stigma," and without any delays to proposed development and sewage infrastructure projects.

For the reasons set forth below Riverkeeper does not believe that the city's plan presents a feasible alternative to Superfund. Furthermore Riverkeeper has doubts about the validity of the city's concerns that a Superfund listing will cause the delay of existing projects or "stigmatize" the area any more than it may already be.

The city's proposed Superfund "alternative" has four components: 1) Water quality restoration, 2) Canal sediment cleanup, 3) Responsible party engagement, and 4) Remediation of land.<sup>8</sup>

The first component of the city's plan is water quality restoration. This component is focused on the previously announced projects to rehabilitate the flushing tunnel and upgrade sewage infrastructure by increasing pump station capacity, and diverting approximately one-third of the annual Combined Sewer Overflow (CSO) volume away from the canal. While these upgrades represent a significant investment in infrastructure by the city, they are already required under an

<sup>7</sup> <http://therealdeal.com/newyork/articles/gowanus-vision-stirs-troubled-waters-2>

<sup>8</sup> [http://nyc.gov/html/oer/html/gowanus\\_canal/gowanus\\_canal\\_city\\_plan.shtml](http://nyc.gov/html/oer/html/gowanus_canal/gowanus_canal_city_plan.shtml)

existing Consent Order with the New York State Department of Environmental Conservation ("DEC").<sup>9</sup> The EPA has stated that an NPL listing for the Gowanus will not delay these projects. Furthermore, since the city is required to complete these upgrades separate from any canal cleanup, Riverkeeper believes that it is inappropriate to call these projects a centerpiece of the Superfund "alternative" plan that the city has presented to the public.

The second component of the city's proposed alternative focuses on cleaning the canal's sediment. Although this process would be supervised by the EPA (the same as under Superfund), it would rely on the US Army Corps of Engineers to dredge the canal's sediments and provide funds under the Water Resources Development Act (WRDA) to cover part of the cost. According to the city, the use of funds from WRDA would serve as an incentive for PRPs to voluntarily enter into cleanup agreements, knowing that part of the cleanup would be paid for with federal money.

Setting aside for the moment Riverkeeper's concerns regarding the likelihood of 200 or more PRPs voluntarily agreeing to clean the Gowanus, the city's prospect of securing funding through WRDA seems highly unlikely. The city has acknowledged that the WRDA program is only allocated \$50 million per year for the entire country and that WRDA funding requires congressional appropriation. In addition, while the city has appeared optimistic about their chances of securing funding at public meetings, Congresswoman Nydia Velazquez, whose district includes the canal, has stated that "[t]he Gowanus Canal has never been included in WRDA... [f]or the city to say that their plan relies on money that the federal government won't be able to provide is a disservice to the community."<sup>10</sup>

Under the third component of the alternative plan known polluters, such as National Grid and others would be asked to voluntarily pay to remediate the canal and upland sources of pollution. Although this approach has been used at other sites proposed for the Superfund NPL it has rarely been used on sites like the Gowanus, where many PRPs are likely to be identified. According to the city, the voluntary process is faster than the Superfund's adversarial process. However, in light of the more than 200 possible PRPs, the canal's lengthy history of industrial use, and the fact that to date, no PRP's have voluntarily stepped forward, Riverkeeper has serious concerns about the likelihood of a voluntary program being effective.

The fourth component of the alternative plan deals with the remediation of contaminated land on the canal's shores and halting the continued pollution of the canal from these upland sources. Under either the alternative plan or Superfund existing remediation projects currently being performed under the supervision of the DEC would continue on schedule. As with the remediation of the canal's sediments the city's alternative relies on a voluntary approach to deal with upland sources of canal pollution. Given the extensive nature of contamination and the many possible PRPs, Riverkeeper has serious doubts about the city's ability to locate and enter into voluntary cleanup agreements to address all upland sources of pollution. In addition the EPA has raised concerns that the under this alternative plan the Army Corps will be responsible for remediating the canal's sediments, but will have no jurisdiction to coordinate remediation of the upland sources.

<sup>9</sup> <http://www.dec.ny.gov/environmentdec/18679.html>

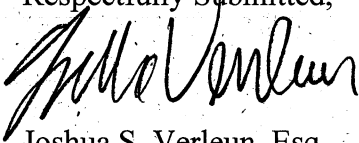
<sup>10</sup> [http://www.brooklyndowntownstar.com/printer\\_friendly/2705524](http://www.brooklyndowntownstar.com/printer_friendly/2705524)

**VI. Conclusion**

The Gowanus Canal should be placed on Superfund's NPL and remediated under the federal Superfund program. Superfund designation is the only way to achieve an efficient and manageable cleanup of the canal and the city's alternative is not feasible. Without Superfund, the tools and funding would be lost, and few advantages (if any) gained. Superfund is a thorough and comprehensive cleanup program, and is exactly what the Gowanus Canal needs.

Riverkeeper appreciates this opportunity to submit comments. If I may provide any clarification regarding the above, or additional information, please contact me at [jverleun@riverkeeper.org](mailto:jverleun@riverkeeper.org) or 914-478-4501 x 247.

Respectfully Submitted,



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