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Stacy Passmore  
Project Manager  
Open Industrial Uses Study  
NYC Department of City Planning  
[spassmore@planning.nyc.gov](mailto:spassmore@planning.nyc.gov)  
[OIUS@planning.nyc.gov](mailto:OIUS@planning.nyc.gov)

Dear Ms. Passmore,

The Storm Water Infrastructure Matters (S.W.I.M.) Coalition would like to take this opportunity to submit comments on the Open Industrial Uses (OIU) Study (hereafter, “Study”) released in draft form this past May. S.W.I.M. is a coalition of more than seventy member organizations dedicated to ensuring swimmable waters around New York City through natural, sustainable storm water management practices (i.e., green infrastructure) in our neighborhoods. Strategically, our members’ priorities also include the development of new, comprehensive climate change policies as well as creating cross-program synergies in water pollution management planning.

S.W.I.M. commends you and your team at the New York City Department of City Planning (DCP) for the work on this study and your diligent outreach efforts to water quality stakeholders. We are encouraged that DCP has taken on a multi-agency effort to address pollution prevention in open industrial areas, particularly within the flood zone and along the City’s waterways. While we believe the Study was a significant step in the right direction, there are areas where the DCP should expand the Study’s scope, provide more thorough recommendations, and incorporate lessons learned from other agencies. **As detailed below, S.W.I.M. urges DCP to expand the breadth of the Study and its final OIU recommendations to ensure the most meaningful updates to OIU oversight and management are presented to the City.**

#### *Climate Change*

We encourage the DCP to continue to both study and plan for climate change adaptation throughout the City. It has become clear that multi-agency efforts are needed to implement climate change mitigation and adaptation policies and projects. We are interested and hopeful that DCP will lead the City’s efforts in this arena. With this in mind, we see a need for a coordinated, long-view approach to current policy and planning issues related to water quality. This approach should incorporate many of the system-wide vulnerabilities and water infrastructure solutions analyzed by the Environmental Protection Agency (EPA) in its recent Region 2 (R2) and Office of Solid Waste and Emergency Response (OSWER) Draft Climate Adaptation Plans.

Among the myriad warnings and recommendations issued by the EPA were several that are relevant to the DCP's finalization of the Study and OIU recommendations:

- **Incorporating Uncertainty.** According to the EPA R2 office, "there will be a need to incorporate greater uncertainty into permit calculations to reflect the uncertainty in climate projections related to [those programs] (e.g., precipitation projections)." (Draft R2 Climate Adaptation Plan, at 20). The final Study should articulate how this uncertainty will be addressed or planned for in the implementation of the OIU recommendations.
- **Adaptive Engineering.** For "sites where a containment remedy has been performed" – which often includes OIUs – processes like "saltwater intrusion and increased groundwater salinity in coastal aquifers may increase the permeability of clay liners" and other hydrological and geological remedies (Draft R2 Climate Adaptation Plan, at 24). At the very least, the final Study should include an examination of the security and safety of known contamination at OIUs. The R2 plan continued by noting that "other vulnerabilities include changes in site conditions and contaminant characterization of groundwater plumes" (Id., at 25). The long term health of the surrounding communities and ecosystems depends on contamination remaining separate and apart from OIU water cycles, a risk that must be measured in the final Study.
- **Adaptive Siting.** As EPA's OSWER notes in their office draft adaptation plan, the "design and placement of [hazardous and solid waste] facilities, non-hazardous ... landfills, Superfund remedies, and municipal recycling facilities may need to change to accommodate climate change impacts" (Draft OSWER Climate Adaptation Plan, at 6). Beyond engineering problems (such as materials choice for containment, aforementioned review of groundwater threats, and secondary containment systems), some OIUs may need to be entirely relocated. The final Study should more fully flesh out that potential contingency, and review the City's capacity to handle such an endeavor, should it become necessary.
- **Waste Surges.** As this region learned in the aftermath of Superstorm Sandy, OIUs often become go-to waste management areas for many types of hazardous and non-hazardous materials. Indeed, OSWER, the EPA office responsible for such management, noted that "the [climate] vulnerability that ranked the highest was the management of surges in waste, particularly from the impacts of extreme events" (Id., at 11). The final Study should include many of the discussions, and perhaps recommendations, made on this issue by state, local, and federal agencies.
- **Environmental Justice.** For many parts of NYC, densely populated communities are located alongside OIUs. According to the EPA, "in Region 2, many low-income and/or minority communities are located within or near floodplains or in areas with older water infrastructure which may not be designed to handle increased water flows...[r]esidents of these areas are vulnerable to ... flooding events are likely to increase in frequency and magnitude with more frequent heavy rainfall events under climate change" (Draft R2 Climate Adaptation Plan, at 22). Given that many of the City's OIUs are located in "ecosystems that may have [once] served as a natural buffer against storm surge," and that "an environmental justice community's resilience and ability to adapt to climate change may be complicated by their location both near a hazardous waste site and in an area prone to increased climate-related storm surge," the DCP should include in the final Study a detailed examination of community-by-community vulnerabilities and adaptive response capacity (Draft OSWER Climate Adaptation Plan, at 17-18). For OIUs located in these areas, the DCP should consider proposing special rules and regulations.

The wide-ranging issues and vulnerabilities identified by draft EPA adaptation plans represent real and immediate risks. Given that, as the DCP notes in the Study, many OIUs don't have even the most basic of today's required permits and best management practices, planning for future flexibility and adaptive response to emergencies and climate shifts demands a re-focusing of enforcement efforts and a recommitment by the OIUs themselves to active community stewardship.

#### *Enforcement & Cross-Program Policy Planning*

We encourage the DCP to look at new requirements with an eye toward progress and flexibility, given that many of the problems facing OIU management and oversight are resolvable. More attention should be paid in the final Study on the two initiatives needed most: maintenance and enforcement. The DCP cataloged a menu of fixes that can be tackled at once:

- "Concrete dust and other particulate matter can block city drains triggering a system backup and flooding in the streets or on private property."
- "A significant number of open industrial facilities do not comply with [conditions]" already in place to address these simple problems.
- A comparison of the total list of facilities in NYC "with the list of MSDFP or SPDES permit holders suggests that almost half of the facilities do not have this required permit."
- "[T]esting for some heavy metals, toxic substances and hazardous materials is not performed regularly."

We commend the DCP on highlighting the many challenges facing the OIUs of the City, and look forward to working collaboratively toward a final Study that contains an action plan for implementing the myriad technological, regulatory, and enforcement changes needed to bring existing OIUs and stormwater infrastructure into compliance.

Related to this move toward city-wide compliance is integration across all of the water infrastructure initiatives currently under development – from combined sewer overflow management and long term control plans to MS4 permits, superfund remedies, green infrastructure and climate resilience. These coordinated but separate programs are discussed at length in the Study, and we look forward to a clear articulation of the DCP's plan for managing the diverse requirements of all of these programs in the unified management of OIUs. For example, while some of these programs call for aggressive implementation of green infrastructure, the DCP mentions that such installations may be counterproductive at OIUs. Even with so many overlapping priorities, the S.W.I.M. coalition is confident the final Study will shed light on an effective OIU solution.

#### *General Study Recommendation Comments*

Overall, the draft Study presents a robust suite of proposed changes to OIU programs, infrastructure requirements, and oversight. In the development of the final Study and official DCP recommendations, the S.W.I.M. coalition respectfully suggests addressing these points:

- Under Recommendation 2, requiring existing and new OIUs to comply with new physical design standards for effective on-site pollution prevention controls, S.W.I.M. suggests:

- DCP include parking in the definition of “storage areas,” as parking areas are often where vehicle repairs are made, refueling occurs, and, in some cases, transfers of goods and cargoes take place – impacts and activities that can and do lead to water pollution;
  - DCP consider requiring no-discharge requirements or permit conditions, where feasible, in order to alleviate the water loads exacerbating the City’s CSO and MS4 problems;
  - DCP develop proposals for membrane, lining, cover, and buffer requirements at OIUs, as sediments, chemicals, toxins, and other materials can and do seep through, over, and under walls, even where pile heights are kept at or below wall and fence heights; and
  - DCP consider suggesting that OIU fence and wall maintenance (including maintenance of any liners, membranes, and covers) become an enforceable part of permit conditions, instead of an element of a best management practice.
- Under Recommendation 3, which suggests requiring new OIUs provide off-street loading berths and, where adjacent to residential districts, perimeter landscaping, S.W.I.M. suggests:
- DCP consider requiring perimeter landscaping along the water’s edge for waterway-adjacent OIUs, thereby recognizing that the burgeoning reconnection taking place around the City, even in industrial zones dominated by OIUs, between the public and their waterways, is as important an element quality of life, use compatibility, and enhanced neighborhood character as the residential-industrial margin; and
  - DCP examine onsite loading, storage, and maintenance activities at *existing* OIUs, and recommend feasibility assessments for onsite, off-street requirements be included in any permit renewals or transfers.
- For Recommendation 4, which details the DCP’s suggested changes to City codes and regulations, S.W.I.M. suggests:
- DCP develop street-facing signage requirements for OIUs, modeled on SPDES permit outfall signs, that would notify the public of the health and environmental risks the facility presents, would help encourage citizen enforcement, and would aid in pollution source track-down and remediation; and
  - DCP work with FEMA, state, and local agencies to ensure that all climate change projections, including storm surge, are included in the 100-year floodplain, and develop a mechanism for reassessing vulnerable areas, communities, and OIUs as our understanding of climate and coastal processes, along with changing patterns of development, evolves.
- For Recommendation 6, DCP’s monitoring and compliance plans, S.W.I.M. suggests:
- DCP work to create a publicly-available registry of OIUs that provides access to site-by-site best management practices, discharge and water quality monitoring information, permit details, and city, state, and federal contacts (where appropriate); and
  - DCP make the development of air and water quality data, including baseline conditions around, above, and under OIUs, a priority, given that such information is vital for a host of other initiatives (including long term control planning and superfund site remediation) and can be a key factor in gauging short-term recovery and long-term restoration in the event of another environmental disaster like Superstorm Sandy.

Again, we appreciate this opportunity to comment on DCP's thorough Draft Open Industrial Use Study, and we look forward to working with the City in finalizing and implementing these vital reforms to the City's treatment of these significant sources of pollution.

Sincerely,

Jaime Stein

*Coalition Chair on behalf of the S.W.I.M. Coalition Steering Committee*

Sean Dixon, *Riverkeeper*

Robin Kriesberg, *Bronx River Alliance*

Larry Levine, *Natural Resources Defense Council*

Paul Mankiewicz, *the Gaia Institute*

Sam Marquand, *Rocking the Boat*

Tatiana Morin, *New York City Soil & Water Conservation District*

Phillip Musegaas, *Riverkeeper*

Jaime Stein, *Pratt Institute*

Shino Tanikawa, *New York City Soil & Water Conservation District*