

Gowanus Canal Conservancy
P.O. Box 150-652
Brooklyn, New York 11215
tel 718.541.4378 / www.gowanuscanalconservancy.org

Gowanus Canal Conservancy's Statement on
Pending National Priorities Listing for the Gowanus Canal (July 28, 2009)

The Gowanus Canal Conservancy is committed to seeing that the Gowanus Canal becomes a clean and healthy component of the New York City environment, and the Conservancy is gratified that the canal is finally receiving the attention it has long needed. The watershed and canal area are poised to be cleaned and transformed into an important regional open-space resource for the 21st century. However, the current public debate as to whether the federal Environmental Protection Agency (EPA) or the City of New York is best prepared to conduct the work is actually doing a public disservice. We believe that each of the two plans has flaws and omissions that need to be addressed and that neither is sufficiently broad, comprehensive, or timely.

The EPA's plan of placing the canal on the National Priorities List (NPL) focuses attention on toxics in the sediments that lie at the bottom of the canal and proposes to map and dredge and remove those materials. The Conservancy believes that the Agency can do so, but we have nagging concerns that this approach is too narrow, will take too long, and leaves major components of the canal clean-up unaddressed.

The City plan places most of its emphasis on water quality and dredging of the surface sediment, not the toxic lower levels of sediment, and its plan to obtain federal funds to pay for that dredging is unrealistic. The City also has a history of insufficiently addressing the canal's long-standing pollution, and this neglect raises doubt within our organization and in the minds of many long time Gowanus residents. The Conservancy awaits the Administration's proof of its commitment through implementation of real, concrete remedial measures.

There are still issues related to the contamination of the canal and its adjacent upland areas that are not being addressed, and which need to be incorporated into the City and the EPA's competing proposals. These are:

- Further steps can be taken to reduce CSOs through retention and reuse of storm water runoff and the Conservancy's Sponge Park plan is one feasible method of addressing CSOs that has very real potential. The basis of the design (harnessing storm water to keep it from overwhelming the City's combined sewer system which dumps raw sewage into the canal after heavy rains, while creating public access to this unique waterfront area) has merit and has the support of the EPA and NYC Department of Environmental Protection, NYC Department of Parks and Recreation, as well as other environmental agencies and organizations.
- Both plans fail to effectively address the Gowanus upland -- the many streets behind the bulkhead. Attention needs to be given now to integrating effective planning and allocating additional funding for remediation of the contaminated soils in former industrial Brownfield sites.

- The Superfund process has a history of protracted clean-ups. Although the Conservancy has strong reservations in this context, we rely on personal assurances of Walter Mugdan, Director of the EPA's Superfund division for Region 2, that the process has evolved significantly since the program's inception such that clean-up of the Gowanus Canal will be handled in a much faster manner than other comparably complex Superfund sites. We have additional concerns in light of the recent Supreme Court decision in *Burlington Northern and Santa Fe Railway Co., et. al. v. United States, et. al.* Prior to this case, any potentially responsible party (PRP) could be held responsible for the entire clean up regardless how much of the overall contamination was their personal responsibility. This has allowed the EPA to take action against PRPs without having to take the time to determine specific levels of actual responsibility. However, the Burlington case indicates that if PRPs can prove their actual contribution to the contamination, they may only be held financially accountable for their percentage of the total pollution at this site. We are concerned that this additional layer of detailed investigation could further delay actual clean up by the EPA and result in significant unfunded remedial costs.
- The Conservancy remains apprehensive about the presence of adequate and continued funding to keep the process moving rapidly. The Gowanus Canal is located in the center of a bustling residential and mixed-use neighborhood, and we are seeking EPA's confirmation that the clean-up will keep its place as a top priority even when faced with competing projects needing funding. The City's plan also has questionable funding by relying on federal monies to make the proposal a success. Competing federal projects already exist, and it is unrealistic to think these major projects would be set aside when there is a willing conduit of federal funding (i.e., the EPA) waiting in the wings.
- The City is already under a court order pursuant to the Clean Water Act to take measures to reduce the Combined Sewer Overflows (CSOs) through the building of expanded sewer retention capacity. While the City proposes to dredge sediments in collaboration with the U.S. Army Corps of Engineers (USACE) to comply with the Act, USACE's lengthy experience is in dredging waterways to improve navigation, not in removing toxic wastes.
- Neither plan addresses the non-navigable canal side basins or turning basins, which comprise 20% of the canal's length. These troublesome areas (especially the 1st Street basin which was covertly filled in years ago) have received little consideration and are potentially significant contributors to the canal's currently contaminated state.

In addition, after years of effort by the USACE, completion of the feasibility study, which is evaluating ecosystem restoration opportunities within the canal, has been delayed pending a decision on the proposed NPL listing. Should the canal be designated a Superfund site, we do not see any reason why USACE's expertise and familiarity with the canal could not be redirected to collaborate with other restoration projects within the Gowanus and feel that our Sponge Park project would fit in well.

Since word of the possible addition of the Gowanus Canal to the EPA's National Priorities List first became public, we have been actively engaged in bringing information on the proposed clean-up plans to the public and facilitating public involvement in the process. We are eager to continue in this role and to be available as a resource regardless of which clean-up plan is ultimately implemented. Most of all, we look forward to the real clean-up work beginning.