

Greens Find Fault With NYC Complaint

As environmental and community organizations that work to clean up urban waterways — and have supported New York City's current approach to dealing with its combined sewer overflow problem — we were dismayed to read the recent article by the city's deputy mayor and environmental commissioner, which took aim at EPA as “the problem” standing in the way of solving our nation's sewage overflow problems and of the Obama administration's agenda to revitalize urban communities. (Cas Holloway and Carter Strickland, “The Solution, Not the Problem,” September/October 2012.)

The article paints a picture in which EPA's main role, ideally, should be to get out of the way and allow municipal sewage systems to handle sewage overflows in their own ways, presumably on their own time. We believe this would be a serious mistake — leaving communities across the country exposed to widespread, adverse environmental and health effects of sewage overflows. Rather, the Clean Water Act's regulatory framework — which calls for legally enforceable compliance schedules to meet pollution discharge limits and ambient water quality standards, with robust public participation in decision-making — remains as relevant today as ever.

Without question, combined sewer overflows (CSOs) and sanitary sewer overflows (SSOs) are a significant environmental and public health concern. These raw sewage discharges can lead to contamination of water supplies, water quality impairments, beach closures, shellfish bed closures, and other problems. Human exposure to bacteria and viruses in raw sewage can cause a range of gastrointestinal, respiratory, skin, and other illnesses. Small children, infants, the elderly, and people with compromised immune systems are at risk of severe illness.

And it's a big problem; every year

hundreds of billions of gallons of untreated sewage flow into our rivers, lakes, and coastal waters. Approximately 770 municipalities nationwide, with a combined population of about 40 million people, have sewer systems that were designed to overflow when it rains. As of 2002, CSOs in these communities discharged 850 billion gallons of raw sewage and stormwater annually, with 43,000 CSO events per year. In other communities throughout the country, where sewers are designed to (but do not always effectively) handle stormwater and sewage in separate pipes, EPA has estimated that there are between 23,000 and 75,000 SSOs a year.

EPA has estimated that up to 3.5 million people become ill from contact with raw sewage from sanitary sewer overflows alone each year. The Centers for Disease Control has concluded that the incidence of infections associated with recreational water use has steadily increased over the past several decades. Many public health experts believe that the number of illnesses caused by sewage could be much higher than is currently recognized because of under-reporting.

Against this backdrop, it should come as no surprise that EPA, charged by Congress with responsibility to enforce the Clean Water Act to protect public health and the environment, continues to bring enforcement actions to ensure sewer system operators abide by the law's requirements. Much work still remains to be done. For example, as of 2010, about 130 combined sewer systems still lacked enforceable “CSO long-term control plans” and compliance schedules. And where compliance plans do exist, they are often years, or even decades, from full implementation.

We fully agree with Mr. Holloway and Mr. Strickland that cities can — and should — be partners with EPA and state regulatory agencies in addressing illegal sewage overflows. Where cities are willing partners, EPA's Integrated Planning Framework expressly invites them to do so. Moreover, the frame-

work expressly encourages them to maximize cost-effective solutions like green infrastructure — an approach that not only cleans up waterways, but does so specifically by creating urban green space that makes for healthier, more livable neighborhoods.

The framework embraces “adaptive management” — the idea that long-term compliance plans, especially when they rely on such innovative approaches, can work best when they preserve flexibility for sewer system operators to learn from experience and improve their performance along the way. And it recognizes that, when establishing timelines for multiple Clean Water Act compliance obligations, there is a legitimate need for prioritizing among necessary investments.

But the framework also preserves important, bedrock principles of the Clean Water Act, including requirements to establish enforceable compliance schedules, ensure that technology-based and water-quality based pollution limits are ultimately achieved, and ensure public participation in the development of compliance plans.

Enforceable compliance schedules are critical because even dischargers like New York, which are willing and eager partners today, may not be so willing and eager in future years as local government leadership changes over time. With compliance plans frequently extending 10, 20, even 25 years into the future, there must be long-term accountability for achieving results.

Application of the Clean Water Act's water quality and pollution control standards is critical, to provide objective criteria for evaluating the sufficiency of proposed compliance plans. Different municipal governments may place greater or lesser priority on keeping raw sewage out of local waterways and downstream drinking water supplies, but everyone must play by a common set of rules to ensure all communities benefit from the environmental and health protections guaranteed by federal law.

And public participation is critical, both to serve our widely shared demo-

cratic values of transparency and citizen engagement, and to generate better environmental solutions. In New York City, for example, persistent citizen engagement played a central role leading to the green infrastructure plan of which Mr. Holloway and Mr. Strickland — two architects of that plan — are now so justly proud. When local advocates first called for the city to embrace green infrastructure solutions to sewage overflows nearly a decade ago, city officials were dismissive.

But a formal citizens advisory committee process, which the city initiated in 2005 to satisfy Clean Water Act requirements, gave birth to the Storm Water Infrastructure Matters (S.W.I.M.) Coalition, composed of more than seventy New York City community, environmental, business, and academic organizations. In the ensuing years, S.W.I.M. successfully advocated to integrate green infrastructure approaches into the city's CSO compliance program; today, S.W.I.M. is a key supporter of the city's bold vision and continues working to ensure green infrastructure efforts achieve the twin goals of cleaning up our waterways and promoting community revitalization.

In short, municipalities, state and federal regulators, and an engaged public must all play active roles in fulfilling the Clean Water Act's promise of fishable, swimmable, drinkable waters. And the act provides the essential ground rules for all of us to do so. Let's not lose sight of that, as we celebrate the 40th anniversary of this landmark law.

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We asked authors Cas Holloway and Carter Strickland to respond. Mr. Holloway is deputy mayor for operations of the city of New York, and Mr. Strickland is commissioner of the city's Department of Environmental Protection —ED.

We agree that the public health of New Yorkers is a top priority and that the Clean Water Act has produced significant public health benefits, particularly in the first few decades of its implementation. The relevant question is, however, What next? If the answer is to be simply more of the same, then we will see more conflict without advancement of practical solutions. In particular, the letter writers provide only limited answers to the two significant issues of the day.

First, how are we to reconcile the separate programs under the Clean Water Act to address point sources, stormwater, and non-point sources of pollution? The current system perpetuates "siloed" programs where everything is a priority; in a world of limited budgets and resources, this means nothing is a priority.

The authors cite only combined sewer overflows — a focus of New York City's efforts — but we are currently required to invest in nitrogen reduction and in the future may have to spend billions to address other pollutants, some of which we believe have little if any environmental impact. It may well be that the EPA's new Integrated Planning Framework will allow prioritization based on health impact or other objective performance measures. Yet, immediately after the writers praise this program, they take away its promise with the caveat that it must preserve all of the hallmarks of the current enforcement program.

We too have high hopes for the framework but it must result in an entirely new approach and relationship with municipalities, utilities, and other regulated entities. It must also be recognized that the frame-

work will not allow municipalities to consider Safe Drinking Water Act or Clean Air Act or any other legal obligations, or even self-imposed greenhouse gas reduction goals. Moreover, municipalities must make non-mandated reinvestment in water and wastewater plants and pipes to maintain current levels of service. All of these investments are necessary to improve overall environmental performance.

That leads to the second issue, funding, which the authors omit altogether. As in most municipalities, New York City's water and sewer construction and operations programs are funded almost exclusively through rates paid by our customers. Since 2002, the city's Department of Environmental Protection has committed more than \$21 billion to fund drinking and water quality systems, 69 percent of which was necessitated by federal mandates; state and federal grants have provided less than 2 percent of the capital costs for these projects.

From a social and political point of view, it is only sustainable if those who must pay for services have greater, not lesser, control over spending. That means that municipalities and their ratepayers need the ability to pursue cost-effective, science-based solutions to improve public health and the environment. In supporting a dominant role for the federal administrative apparatus and the current status quo, the authors dismiss the role of ratepayers and the municipalities that are closer to and responsive to those who pay for services. In that sense, they argue against the very public participation they purport to support.

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