



# New York Water Environment Association, Inc.

## *The Water Quality Management Professionals*

126 North Salina Street • 100 Clinton Square, Suite 200 • Syracuse, New York 13202  
(315) 422-7811 • Fax: 422-3851 • www.nywea.org

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75<sup>TH</sup> ANNUAL MEETING  
NYC Marriott Marquis  
February 10-13, 2003

2 May 2002

Thomas P. DiNapoli, Chair  
Environmental Conservation Committee  
New York State Assembly  
Room 625  
Legislative Office Building  
Albany, NY 12248

District Office  
11 Middle Neck Road  
Suite 200  
Great Neck, NY 11021

RE: COMMENTS ON ASSEMBLY BILL 11019 – SSO Act

Dear Assemblyman DiNapoli:

As a follow-up to the informal comments forwarded to your staff in February, please find attached comments on the above captioned bill from the New York Water Environment Association (NYWEA). The NYWEA represents 2,100 environmental professionals involved in the protection and preservation of New York's water environment. The members of the NYWEA who have developed these comments, have an intimate knowledge of the issues included in this Bill and represent municipalities and consulting firms from across New York State.

NYWEA supports the environmental goals of this bill. In fact, NYWEA members are engaged daily in cleaning wastewater and protecting the State's precious water resources. However, we believe this bill, in its current form, has both major and minor problems that must be addressed. These concerns are briefly discussed in the attached document. NYWEA agrees that Sanitary Sewer Overflows ("SSOs") are a legitimate environmental concern. They can pose threats to human health and water quality. Our common goal, and the thrust of Federal and State activity, should be their orderly elimination wherever practicable.

This bill however, would move the SSO abatement process from the scientifically and technically sound and prudent direction that USEPA, and to a lesser extent, the New York State Department of Environmental Conservation are moving toward, to a "race against the clock".

Based upon our concerns, and on EPA's related rulemaking expected later this year, NYWEA urges the Assembly to defer action on proposed Assembly Bill 11019 – the Sanitary Sewer Overflow (SSO) Act.

We do believe that the State Legislature has two important roles to play in the upcoming program to eliminate sewer overflows which potentially could affect human health or the environment and/or which are reasonably preventable:

1. **An oversight/gap analysis role** -- NYWEA and its members would be pleased to work with the Assembly's Environmental Conservation Committee to either establish an oversight process designed to ensure that the Federal and State regulatory programs discussed above proceed and are effective, or to establish a process for identifying any significant gaps in the planned Federal and State regulatory programs.

2. **Establishing a workable State funding mechanism** for a share of the public costs of improving, rehabilitating and/or replacing collection sewers and other municipal infrastructure in order to reduce and eliminate preventable SSOs. – Again, NYWEA and its members are willing to provide their expertise on this important part of the issue.

We appreciate your support of the many water programs currently underway in New York.

We regret that your schedule does not permit you to speak at the Legislative Forum next week, however, we do look forward to seeing you at the reception later that day.

Very truly yours,

John D. Cameron, Jr., P.E.  
President NYWEA

/Environmental Committee Members



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Syracuse, New York 13202

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**Formal Comments on the Assembly SSO Act (A11019)**

The New York Water Environment Association (NYWEA) wishes to offer the following formal, peer-reviewed and Board approved comments on proposed Assembly Bill 11019 – the Sanitary Sewer Overflow (SSO) Act. NYWEA is the leading environmental technical and professional organization in wastewater treatment and water quality protection in New York State and is a member association of the international Water Environment Federation.

The goals of this bill are laudable – SSOs are a legitimate environmental concern. They can pose threats to human health and water quality. **Our common goal, (along with Federal, State agencies and other environmental groups) should be the elimination of all SSOs.** However, this bill moves the process from the scientifically and technically sound and prudent direction that abatement activities are currently moving in. It substitutes instead, a complete ban (whatever that means) in an impossible to attain time frame.

Even the best designed, most optimally operated and maintained systems can, do and will experience unavoidable overflows. A good maintenance program will minimize pipe and blockage failure. Factors such as age, blockages, pipe failures and excessive wet weather are outside the control of the operator. Systems designed in the 1950's and earlier were designed under different design standards and with different piping materials; this has to be taken into consideration when elimination of SSOs is being considered. The bill makes no allowances for these conditions and proposes a zero overflow standard that will expose even the best designed and operated systems to enforcement actions that may not have any environmental benefit.

NYWEA supports the environmental goals of this bill. In fact, NYWEA members are engaged daily in the effort to transport and clean wastewater and protect the State's precious water resources. However, we believe this bill, in its current form, has **problems** that must be addressed. The most significant of these problems and our concerns are briefly discussed below:

**1. Timetable.**

The timeline proposed -“all existing SPDES permits which authorize SSOs shall terminate at the end of their current five year term or by December 31<sup>st</sup>, 2005”- is unrealistic. Eliminating SSOs takes careful study, modeling, design, and, usually, major construction. **Engineering design**, study and modeling work on a multiple

SSO system will take years to complete. The design work and development of construction documents (after a scope of work is developed and approved by NYSDEC), will take additional time. Communities with multiple SSOs simply cannot meet this deadline, even if they had the money to pay for it.

Both EPA and DEC consider SSOs to be illegal under the Clean Water Act. Both agencies are addressing the problem through the regulatory permitting process and wastewater agencies across the state are actively engaged in abatement plans and work. This bill would push those careful planning efforts into "fast forward" leading, at the least, to the waste of already scarce municipal dollars, and perhaps to more difficult problems than currently exist. Simply put, municipalities do not have the resources and DEC does not have the staff for such a draconian and rigid timetable.

## 2. Financing

The cost of SSO abatement will be significant, yet the bill does not provide a funding mechanism. This bill is an unfunded mandate that will impose severe financial hardships on virtually every sewered community in the State.

In order to be eligible for the State Revolving Loan Fund ("SRF"), the engineering on a wastewater/water quality project must be reviewed and approved by the DEC.

Bills with the same desired goal, ending preventable SSOs, are pending at the Federal level. These bills include some increases in federal funds. To be eligible for any of the *proposed* federal funds, municipalities will have to have an engineered plan *and* a completed capacity, management operations and maintenance (CMOM) program. The CMOM program itself, which includes specific steps to identify SSOs and their causes and requires plans to eliminate overflows, is a huge undertaking and will likely take until 2005 to complete if every municipality started today.

A CMOM program is not only a necessary precursor to an abatement effort, it will point out practical directions for overflow-related abatement work.

Section 2 of the Bill states that "SSOs have long been a low priority within the enforcement hierarchy." *This is false.* The Assembly should be aware of the enforcement activities currently taking place and the sums of public money anticipated to be allocated or spent around the State on wet weather plans and abatement. It should be pointed out that many municipalities have committed large sums of money for SSO abatement. Some examples follow:

Onondaga County	\$440 million
Town of Tonawanda	\$300 million
Westchester County	\$64 million
Monroe County	\$650 million
Town of Hamburg	\$100,000+ (Long term control plan)
Buffalo Sewer Authority	\$6 million+ (Long term control plan)
New York City	\$2 billion+
Erie County	\$1.5 billion
Albany Pool	\$200 million+

This small listing of planned wet-weather related public expenditures demonstrates that it is ludicrous to think that no enforcement or abatement activity is underway. Even a quick review of the State's Clean Water SRF Priority List for the current fiscal year<sup>1</sup> further demonstrates that there are millions of dollars worth of sewer rehabilitation and Infiltration/Inflow sewer related projects working their way through the system. These projects, and most likely other projects on the SRF Plan, are intended to reduce or eliminate SSOs.

This bill, if passed, would disrupt the current planning, funding and abatement activities.

The economic burden on *all* municipalities would increase tremendously. This bill mandates that all sewer systems would have to fund a CMOM, whether or not they have an SSO.

In addition, this bill would require all septic systems in the State to meet secondary treatment standards, clearly an enormous expenditure with no discernable environmental benefit. Small communities throughout the state, many of which are located in economically troubled areas would be hard hit by this sweeping provision. While some septic systems do cause or contribute to health or environmental problems, both State and local health departments and the DEC have the power to target these and require appropriate abatement. Most often however, appropriate abatement does not equate to mandating that these, and all new septic systems, provide treatment equivalent to secondary treatment standards.

Proposed section 10, 3A.4 mandates **that each municipal SPDES permit holder** prepare an annual report to be distributed to all of their customers in May. This is in addition to all other reports, including CMOM, which permittees must prepare and submit. The Buffalo Sewer Authority serves 570,000 customers, New York City serves more than 7 million and Suffolk County more than 100,000. Obviously, this reporting requirement would impose unacceptable financial burdens while providing little information of interest to the general public.

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<sup>1</sup> "Final Intended Use Plan Project Priority System/ Project Priority List Clean Water SRF for Water Pollution Control" Effective 10/01 to 9/02. NYSDEC and Env. Facilities Corporation.

Current SPDES permittees are already required to have the monthly Discharge Monitoring Reports available to the public.

### **3. Reporting**

All current municipal POTW SPDES permits already carry a notification requirement for dry weather overflows, requiring an oral report within 24 hours followed by a written report within 5 days. We caution against overly prescriptive and duplicative notification requirements.

Furthermore, all SSOs are not created equal. While some undoubtedly may have the potential to harm human health, other SSOs do not. If an SSO occurs that has that potential, 24 hours is too long to wait. But contacting media outlets, the public, etc. for every SSO event is clearly overkill and truly important public notifications of SSO events could "get lost" in the forest of minor SSO notifications. SSO abatement is a complex subject, but this bill reduces it to a simplistic ban.

Lastly, the notification section (new section 17-1720) will require resources that stressed municipal budgets will have a hard time providing. We agree that information should be disseminated in such a way that the public is fully informed on wastewater treatment and collection systems in their community. But the blanket broadcast notification requirements in this bill do not aid in clarifying and explaining a complex process.

### **4. Satellite Collection Systems**

The thrust of current Federal and State regulators is to clearly establish the responsibility for satellite collection systems (defined as contributory sewer systems that do not own or operate a treatment system). The regulated community has been aware of this thrust for some time. This bill would accelerate this process and, ironically, make it harder to achieve.

New York takes pride in being a "Home-Rule" state. Inter-municipal relationships are often sensitive issues and should not be coerced into a "one-size fits all" mandated relationship in the area of preventing SSOs. These types of relationships are better handled in a manner designed through local discussion and according to a local timetable. The State, through the DEC and its SPDES issuing and enforcement powers, can ensure that the State's water resources are not negatively impacted by satellite collection system issues.

Also, any provisions relating to satellite systems should define them in such a way that small, out of sewer district connections are excluded. Satellite collection system issues are also expected to be addressed through EPA's SSO regulations.

## 5. Capacity Management Operations and Management

Once again, the development of CMOM (*which is currently in draft form and is anticipated to change in the final phase*) is best left to the regulators who daily deal with local conditions. No one denies the importance of CMOM. However, its development is a substantial undertaking that must be accomplished with prudent fiscal management. The bill's shotgun approach – everyone must do one now – is unnecessary and inappropriate. Systems that do not have SSOs may not have to participate in CMOM or may be given more time and latitude in developing one. Again here, the bill adopts an inflexible and simplistic approach to a complex problem.

## 6. Consistency With Federal and State Regulatory Programs

While EPA's SSO and Capacity Management regulations were derailed with the changing of the administration last year, EPA has indicated that it will be proposing SSO regulations later this year. DEC has recently proposed amendments to its SPDES regulations, part 750-2.9 of that proposal<sup>2</sup> which will mandate a systematic approach for POTWs to manage their flow. While this proposal does not directly address collection system issues such as SSOs, it is anticipated that these problems will be identified and wrapped into the flow planning process. DEC will also be required to incorporate any new federal requirements into provisions into POTW SPDES permits. New York should not adopt a law that is inconsistent with expected Federal regulations. It is prudent and sufficient to wait for DEC to complete, and EPA to at least initiate its rulemaking. At that point in time a "Gap" analysis can be done to determine if there are significant gaps that need to be addressed through either legislation or further rulemaking.

## 7. Definitions

Some of the terminology in the bill is at variance with either regulatory definitions and/or terminology commonly accepted by wastewater professionals and the regulatory agencies.

A *sanitary sewer* should be defined as a pipe or conduit intended to carry wastewater or water-borne wastes from homes, businesses and industries to the POTW.

A *SSO* should be defined as untreated or partially treated sewage (which) overflows from a sanitary sewer system. It does not include combined sewer overflows. (It certainly should not include the bill's language adding "a spill, release" in the definition.)

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<sup>2</sup> The comment period on the proposed rules closes 5/21/0. The proposal can be found at <http://www.dec.state.ny.us/website/dow/part750.html>,

This is unnecessarily restrictive and can be construed to mean a spill from a waste hauler, which a municipality would have no control over.)

## 8. Other Issues

We have other concerns with the bill's language. **The prohibition against an affirmative defense mechanism** is troubling. It is outside the boundaries of current State and Federal regulations and is probably unenforceable.

The proposed *Legislative Findings* are inexact. Raw sewage can include *any or all* of the substances and compounds listed in the bill, but it does not always. The bill makes no recognition of the success of current pre-treatment programs and permits in controlling the inflow of many of these compounds.

Sections 3 and 4 of the bill contain contradictory language regarding "*bypasses and upsets*" that must be resolved.

### Conclusion and Recommendation

NYWEA members work "24-7" to protect New York's great water resources and to ensure that wastewater generated throughout the State is collected, transported, treated and/or discharged not only in compliance with applicable laws and regulations, but also in ways which are both protective of human health and the environment and, where public funds are involved, in as cost-effective a manner as possible. It is our belief that EPA, DEC and the State and local health departments have sufficient statutory authority to regulate and abate SSOs, CSOs and septic systems. Where there already does not exist a regulatory framework to eliminate sewer overflows which potentially could affect human health or the environment **or** which are reasonably preventable, both EPA and DEC are already in the process of expanding their regulations to establish a systematic approach for doing so. Further legislative authority is not necessary and could actually delay the efforts that are already underway.

For this reason, NYWEA urges the Assembly to defer action on proposed Assembly Bill 11019 – the Sanitary Sewer Overflow (SSO) Act.

We do believe that the legislature has two important roles to play in the upcoming program to eliminate sewer overflows which potentially could affect human health or the environment and/or which are reasonably preventable:

1. **An oversight/gap analysis role** -- NYWEA and its members would be pleased to work with the Assembly's Environmental Conservation Committee to either establish an oversight process designed to ensure that the Federal and State regulatory programs discussed above proceed and are effective, or to establish a process for identifying any significant gaps in the planned Federal and State regulatory programs.
2. **Establishing a workable State funding mechanism** for a share of the public costs of improving, rehabilitating and/or replacing collection

sewers and other municipal infrastructure in order to reduce and eliminate preventable SSOs. -- Again NYWEA and its members are willing to provide their expertise on this important part of the issue.

**-End of Comments-**