



**ENVIRONMENTAL
ADVOCATES OF NEW YORK**

YOUR GOVERNMENT WATCHDOG

July 29, 2015

Robert J. Simson
New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-3505

Sent via email to: sprtkcomments@dec.ny.gov

Re: Rule Making to Implement Environmental Conservation Law Section 17-0826-a, I.D. No. ENV-24-15-00013-P

Dear Mr. Robert J. Simson:

Environmental Advocates of New York offers the following as comments on the Rule Making to Implement Environmental Conservation Law Section 17-0826-a, amendment of Parts 621 and 750 of Title 6 NYCRR. We applaud the Department of Environmental Conservation (DEC) for requiring additional disclosure and reporting beyond that which has been required since the 2013 implementation of the Sewage Pollution Right to Know Act (SPRTK) and appreciate the opportunity to provide comments on the rule.

Environmental Advocates is the state's leading green government watchdog, holding the Executive and Legislative branches of state government accountable for enacting and enforcing laws that protect natural resources and public health. We work alone and in broad coalitions, have an advocacy network of more than 45,000 New Yorkers, and are the New York affiliate of the National Wildlife Federation.

Enacted in 2013, SPRTK Act requires that the public, DEC and the local or state Health Department is notified by publicly owned treatment works (POTWs) and publicly owned sewer systems (POSSs) when partially treated or raw sewage is discharged into waterbodies. As wastewater infrastructure in the state ages, sewage overflow can increasingly become an environmental and health risk in many communities. The broadest implementation of this law is necessary so the public is properly aware of any hazards.

The following represent our significant concern that key provisions within the proposed rules do not fulfill the spirit of the law, and create scenarios in which public health continues to be compromised due to reporting exemptions and inadequate public notification.

Combined Sewer Overflows must be thoroughly addressed in SPRTK regulations

Many overflows in New York State are attributable to overflows from Combined Sewer Systems (CSSs), known as Combined Sewer Overflows (CSOs). It is estimated that in the Capital Region alone, CSOs account for approximately 1.2 billion gallons of raw sewage discharged into the

Hudson River annually.¹ Approximately 27 billion gallons of raw sewage are discharged into the New York Harbor from 460 CSOs annually.²

Given how large a contributor CSOs are to the amount of raw sewage discharged in New York, it is critically important that the public is made aware when these overflow events occur. The Sewage Pollution Right to Know law, § 17-0826-a, explicitly states the inclusion of CSOs in reporting requirements. We commend the DEC for including CSOs in the proposed regulations for Sewage Pollution Right to Know, NYCRR part 750-2.7; however, no CSOs should be excluded from reporting requirements.

Environmental Advocates recommends the following changes to part 750-2.7 (b) (2) iii:

(iii) Additional notification requirements for discharges from combined sewer overflows. For combined sewer overflows for which real-time telemetered discharge monitoring and detection does not exist, owners and operators of POTWs and POSSs must [shall make reasonable efforts to] expeditiously issue advisories through appropriate electronic media as determined by the Department to the general public when, based on actual rainfall data [and] or predictive models, enough rain has fallen that combined sewer overflows may reach waters of the State [are likely of enough volume to cause potential health concerns for people who may come in contact with the water]. Advisories may be done on a waterbody basis rather than by individual combined sewer overflow points.

We have seen with the DEC's current data collection for two hour reporting that there are counties that have not reported a single discharge. It has been evidenced that unless it is clearly mandated for all CSOs to report, there will be communities that do not report at all. The above changes must be incorporated to ensure that the public is notified regardless of where they live.

There are counties that have CSOs which been complying with reporting and notification requirements even though they are "observation" CSOs. For example, Westchester has numerous CSOs that are observation only, and they have complied with reporting requirements.

Currently, there are very few CSOs with telemetered discharge monitoring and detection. While DEC is working to provide funding for communities to install monitoring and modeling, with or without this technology, all CSO events must be reported. It was brought up during the July 7, 2015 public meeting on the proposed SPRTK regulations that DEC will be providing trainings to operators in order to teach them techniques for estimating the volume of an overflow event. Between these trainings and operators' general knowledge of their systems, we believe all CSOs can comply with the above suggested changes.

Broaden the scope of who will receive notification

When a sewage overflow event takes place, it is often not just one community or location that is affected, as the SPRTK law addresses. In section 2 of § 17-0826-a it is stated that a POTW or operator of a POSS shall notify "...the chief elected official or their authorized designee of any adjoining municipality that may be affected." The proposed language in part 750-2.7 (b) (2) (ii) (a) currently defines "adjoining municipality as "any municipality that is adjacent to the municipality in which the discharge occurred."

¹ "Cleaning up our Hudson," Times Union, July 5, 2015, <http://www.timesunion.com/tuplus-opinion/article/Cleaning-up-our-Hudson-6367454.php>

² "Combined Sewer Overflows," Riverkeeper, Accessed on July 20, 2015, <http://www.riverkeeper.org/campaigns/stop-polluters/sewage-contamination/cso/>

We believe that the scope of the definition for “adjoining municipality” is too narrow and recommend that the definition is expanded to include any potentially affected communities. We propose:

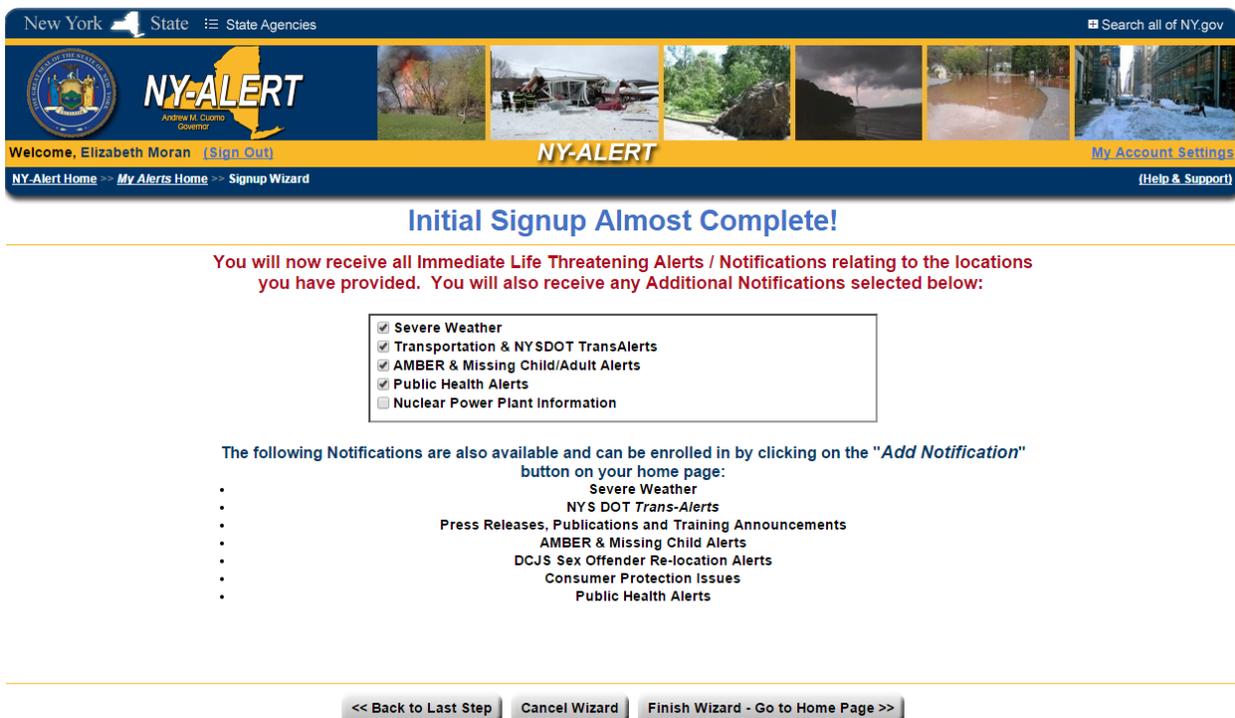
...*adjoining municipality* means any municipality potentially affected and any municipality that is adjacent to the municipality in which the discharge occurred.

We believe that this language will provide inclusion for communities that are located, for example, downstream of a discharge.

Additionally, we are concerned that DEC’s chosen electronic media, NY-Alert, will not reach enough New Yorkers. NY-Alert, while clearly advantageous for data collection and ease of reporting for POTW and POSS operators, is not the easiest for the average New Yorker to navigate, if they are even aware that the system exists.

To further the reach of NY-Alert, we believe DEC should sign press and local media up for NY-Alerts on sewage overflows. Local media already receive alerts about poor air quality, weather, and traffic. They should also receive notifications and report on sewage overflows, as this would not only inform the general public about an overflow event, but it could also bring awareness about NY-Alert. Additionally, we recommend that DEC develops an ongoing public awareness campaign to educate New Yorkers about NY-Alert and how to sign up.

Finally, we have found that the NY-Alert registration system is difficult to navigate. For the average individual seeking to receive notifications about sewage overflows in their area, it is unclear where those alerts can be found. When the initial sign-up is almost complete, there is a page that allows you to select additional notifications and lists notifications that are also available:



We recommend that DEC look into either including sewage pollution notifications as a notification you can select immediately at that page, or is suggested in the list of optional notifications that can be found by clicking “add notification.” Sewage notifications should also have their own title in the types of environmental notifications. Currently, sewage notifications are under “environmental- not otherwise categorized,” but this is not clear to the average user. If

nothing else, there should be a description indicating what kinds of notifications can be found under the “environmental- not otherwise categorized” selection.

Language in the regulations should mirror language in the statute

Section 1 of § 17-0826-a states:

Publicly owned treatment works or the operator of a publicly owned sewer system shall *immediately*, but in no case later than two hours after discovery, report discharges of untreated or partially treated sewage...

However, the proposed language for part 750-2.7 (b) (2) (i) simply states “within two hours of discovery” owners and operators of POTWs must report. We suggest that the same language from the statute quoted above should be used in this section of the regulations. The term “immediately” is crucial to ensure that there is reporting as soon as an overflow has been discovered, thus minimizing the risk of potential exposure.

Similarly, we recommend that for part 750-2.7 (b) (ii) that the language from the statute is adopted so it will read “as soon as possible, but no later than four hours from discovery of the discharge...” instead of the current proposed language that states “within four hours of discovery...”

New requirements for POSSs are strong and should remain in the regulations

In order to comply with the reporting and notification requirements of the SPRTK statute, the proposed rule establishes a SPDES registration program for POSSs. We thank and commend the DEC for these new POSS requirements, which would mandate POSS compliance with discharge reporting and notification requirements, create operation and maintenance requirements, and allow the public with access to records relating to operation and maintenance of a POSS. We believe these new requirements for POSSs will not only help with SPRTK compliance, but will also encourage POSS facilities to prevent any maintenance or operation failures that could lead to discharges.

Environmental Advocates of New York thanks the DEC for the opportunity to comment on these proposed regulations and looks forward to working with you to protect New York’s waters.

Sincerely,

Elizabeth Moran
Water & Natural Resources Associate
Environmental Advocates of New York