

April 15, 2014

Ms. Judith Enck
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007-1866

Re: Oversight of New Jersey's compliance with certain delegated and funded federal clean water and safe drinking water requirements

Dear Administrator Enck:

On behalf of Public Employees for Environmental Responsibility (PEER), I am writing to request that your office conduct a compliance review of New Jersey's implementation of federally delegated and federally funded Clean Water Act and Safe Drinking Water Act requirements related to the long overdue Update of the State Water Supply Management Plan. We are concerned that the State is not meeting its obligations under both federal regulations and mandatory conditions of federal grant funds.

As you know, Superstorm Sandy caused devastating impacts on wastewater and water supply infrastructure, which led to significant impacts on public health and the environment. These facility and infrastructure failures violated federal and state water quality and drinking water standards and the terms and conditions of several federal and state permits issued by the state Department of Environmental protection (DEP) to regulated facilities.

According to New Jersey's "Sandy Recovery Disaster Action Plan":

“At the height of the storm, 94 wastewater treatment systems suffered failures or disruptions, including inadequate treatment, broken sewer mains, and other operational issues. The loss of electrical power rendered many water systems unable to maintain service. Even at plants where backup generation was available, the disruption of the petroleum production and delivery system caused generator fuel supplies to be limited. The vast majority of New Jersey's community water supply systems were impacted: 427 of 604 community water systems experienced power loss during the event. As a direct result of the service interruptions, 362,334 New Jersey residents were placed under a boil water advisory. One month after Superstorm Sandy made landfall, eight drinking water systems in Ocean County, serving approximately 10,000 households, were still subject to a boil water advisory. ” [<http://www.state.nj.us/dca/announcements/pdf/CDBG-DisasterRecoveryActionPlan.pdf>]

In addition to wastewater and water supply facilities, there were discharges of hazardous substances and failures at facilities regulated under the Resource Conservation and Recovery Act (RCRA) and other laws regarding the storage of hazardous substances and wastes.

We believe that many of these failures were predictable, predicted, and preventable had New Jersey more effectively monitored, inspected, and enforced permit conditions related to hazard prevention, emergency planning, facility operations, and related requirements.

For example, pursuant to delegated and federally funded NJ Clean Water Act program regulations, DEP Pollutant Discharge Elimination System (PDES) regulations (NJAC 7:14A-6.12) specify emergency planning provisions for certain wastewater treatment facilities, including back up power provision.

[http://www.state.nj.us/dep/dwq/7_14a/sub06rule.pdf]

It is our understanding that these enforceable permit conditions are only loosely implemented by DEP and sometimes outright ignored.

Similarly, the DEP Water Supply Planning regulations (NJAC 7:10-2.3) include requirements for provision of potable water in emergencies.

[http://www.nj.gov/dep/rules/rules/njac7_10.pdf]

Yet, New Jersey openly acknowledges its longstanding neglect of these regulatory responsibilities – covering both regulations and facility permit requirements – in regard to infrastructure and water and wastewater facilities. According to the DEP "Asset Management" Guidance document released on April 3rd:

"To ensure drinking water and wastewater systems are adequately maintained and operated to continually and reliably meet customer service expectations as well as comply with applicable permit conditions, NJDEP rules generally require drinking water and wastewater utilities to demonstrate that they have adequate facilities, and equipment, and that they regularly perform operation and maintenance to meet the conditions in their permits...

To facilitate meaningful, cost-effective water and wastewater system rehabilitation and maintenance and to support appropriate asset management endeavors, the Department is rededicating its efforts to ensure that permittees fulfill their long-standing 'asset management' requirements. This strategy will be implemented in stages to allow sufficient flexibility for all systems while providing the Department an opportunity to assist its regulated partners."

[<http://www.nj.gov/dep/watersupply/pdf/guidance-amp.pdf>]

Lastly, there are many other federal program requirements under RCRA and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) regarding treatment, storage, and disposal of hazardous substances and hazardous wastes

that are related to prevention of exactly the kinds of failure events and dischargers that occurred during Sandy that jeopardized human health and the environment. These requirements also appear to have been neglected by DEP.

We therefore urge that Region 2 conduct a comprehensive compliance review regarding the aforementioned specific federal requirements, as well as the other applicable requirements that could have improved preventive measures and emergency response to minimize threats to human health and the environment.

At a minimum, future federal funds should be provided to New Jersey only and until the State can demonstrate that it is monitoring, inspecting, and enforcing applicable requirements at regulated facilities.

We appreciate your attention to this matter.

Sincerely,

Bill Wolfe
New Jersey PEER Director