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DEP'S WATERSHED POLICE

COPS IN CUFFS

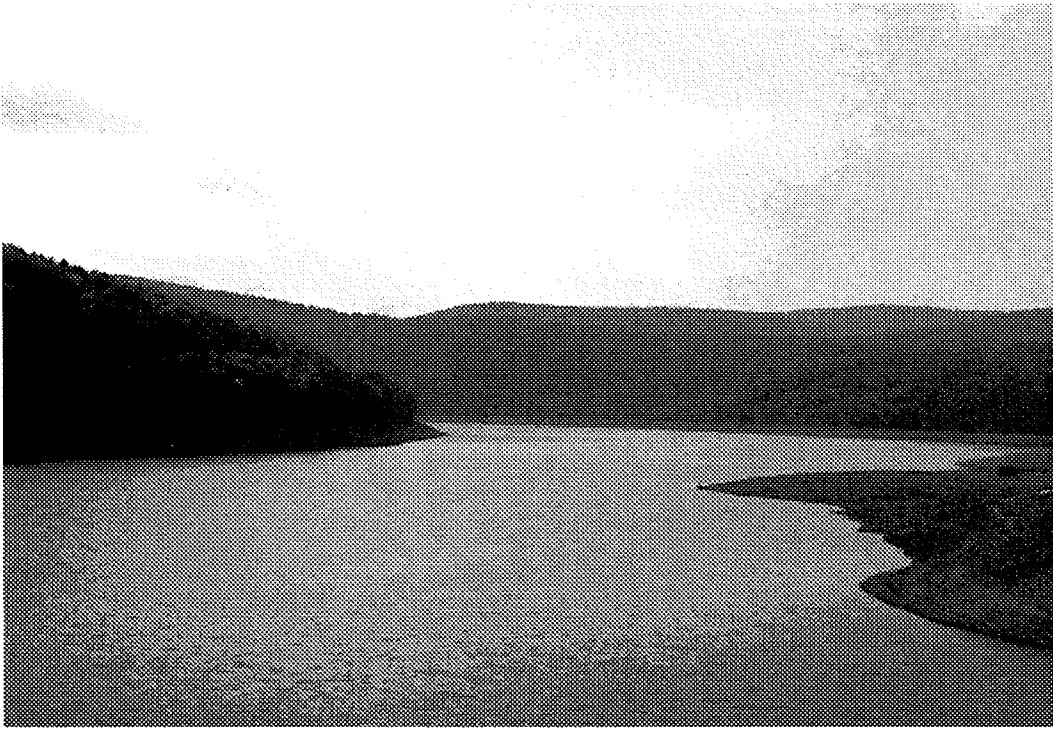
**The Failure of Environmental Enforcement and
Security in the New York City Watershed**

by
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With the support and assistance of:
New York Public Interest Research Group
Friends of Jerome Park Reservoir
Friends of the Great Swamp
Concerned Residents of Kent
Concerned Residents of Southeast
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Croton Watershed Chapter - Trout Unlimited
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Friends of the Croton Watershed
Northwest Bronx Community and Clergy Coalition

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Neversink Reservoir, October 1997. Photo: Courtesy of Nona Yehia

INTRODUCTION

This is the first in a series of five reports assessing New York City's performance in implementing the January 21, 1997 Watershed Memorandum of Agreement (MOA). The City reached the agreement with dozens of upstate counties and municipalities, state government agencies, the U.S. Environmental Protection Agency, and a handful of environmental groups. The agreement set the terms for the protection of the city's vast water supply through new regulations, acquisition of watershed buffer lands and cooperative payments to watershed communities. Subsequent reports will focus on other DEP divisions and functions including project and development review, facilities compliance, operations (infrastructure maintenance), land acquisition and watershed inspectors.

EXECUTIVE SUMMARY

A public safety crisis threatens New York City's drinking water. The police division of the New York City Department of Environmental Protection (DEP), frequently referred to as the Watershed Police, has been seriously undermined by disastrous mismanagement, institutionalized neglect and deliberate harassment. As a consequence, the Watershed Police are unable to perform their critical function: protecting the City's water supply from pollution, vandalism and terrorism.

DEP's Watershed Police force has two separate divisions. The Environmental Enforcement Division (E.E.D.) is charged with patrolling the City's vast watershed to prevent and remedy insults to water quality such as failing septic systems, oil spills and illegal dumping. The second division, the DEP Security Patrol, is charged with safeguarding the water supply infrastructure which includes 21 reservoirs, three controlled lakes, hundreds of miles of aqueducts and numerous sensitive gatehouses. Neither of these two Police units is functioning effectively.

This report outlines the many institutional and administrative failings that precipitated this crisis. It also makes fifteen recommendations for strengthening environmental enforcement and enhancing water supply protection. Among other things, the DEP must:

- Hire more officers for both the E.E.D. and the Security Patrol and retain trained officers by raising police pay and offering promotions.
- Adequately equip the E.E.D., which is presently currently for even the most basic clerical supplies.
- Provide the E.E.D. with automobiles and boats necessary for routine patrols and investigations.
- Initiate aerial patrols of the watershed to detect security breaches and

environmental insults.

- Institute policies to protect its E.E.D. officers from internal harassment.
- Beef up gatehouse and reservoir security and develop contingency plans for repairing damaged or failing aqueducts.

A demoralized, poorly trained, understaffed and ill-equipped DEP police force undermines watershed pollution prevention, endangers the City's ability to avoid a costly federal filtration mandate and jeopardizes the security of the water supply of more than nine million New Yorkers. This situation demands immediate attention. The Giuliani Administration should, at the very least, implement the fifteen recommendations enumerated below.

BACKGROUND: DEP's WATERSHED POLICE POWERS AND DUTIES

The DEP's Watershed Police are charged under section 1.20 subdivision 34(o) of the New York State Criminal Procedure Law with protecting the New York City water supply and infrastructure and keeping public peace in the watershed through enforcement of the watershed regulations and all other state, local and federal environmental, criminal and civil laws. DEP police have all the police powers of a New York State Trooper. DEP patrols originate from four precincts located at Neversink and Beerston in the Delaware watershed, Ashokan in the Catskills and the Croton precinct East of Hudson. DEP police inaugurated its Environmental Enforcement Division (E.E.D.) in 1993 in order to comply with a Filtration Avoidance Determination granted by the Environmental Protection Agency (EPA). The E.E.D. investigates violations of environmental laws.

Since New York City prosecutors have no authority to prosecute crimes

in the upstate watershed, DEP's Watershed Police work directly with local prosecutors in the District Attorney offices within the watershed as well as with the state Attorney General's office and the Watershed Inspector General, appointed by Governor Pataki and New York State Attorney General Dennis Vacco in 1998 pursuant to the 1997 Watershed Agreement specifically to prosecute environmental crime.



Cover, *New York Herald*, Sunday May 18th, 1913. Photo: Courtesy of John Matthews

A BRIEF HISTORY OF DEP'S WATERSHED POLICE

The DEP Watershed police force was established in 1908, as one of four independent bureaus comprising the Board of Water Supply. The first Chief of Patrol, Rhinelander Waldo (later appointed Police Commissioner for the City of New York) reported directly to the Water Board Commissioner. The police officers were charged with protecting the aqueducts and public safety within the watershed communities and enforcing the New York City Watershed regulations issued under Public Health Law. By 1910, the police force numbered 289

patrolmen, 61 sergeants and two inspectors and was internationally known for its professionalism and training. In 1941, DEP police numbered 451 sworn officers and 711 guards charged with safeguarding the facilities from saboteurs.

In subsequent years, the once-proud police force lost its independence when it was removed from the authority of the Water Board. It was placed under the authority of DEP watershed engineers – a disposition which led to the cessation of all anti-pollution enforcement and the gradual loss of its capacity to perform its security function. DEP’s engineering culture became intensely antagonistic toward a strong independent enforcement effort - a culture which continues today. Partly, this reluctance arose from the cozy relationships between DEP’s watershed engineers and local developers and political leaders. Most importantly, the DEP’s role as a construction firm and environmental facilities manager and owner is in direct conflict with DEP’s interest in strong watershed enforcement. For example, DEP’s eight sewage treatment plants historically have been among the worst polluters in the watershed. The police and inspectors were assigned to report to the very engineers who run these plants, individuals who have strong interests in seeing that these plants and other watershed polluters were not prosecuted for environmental crimes.

As a result of this conflict, the DEP’s managing engineers made certain that field enforcement was anemic. By the beginning of the Dinkins Administration, Police ranks had been decimated to less than one-tenth their former numbers and officers were assigned to perform tasks that would take them away from environmental enforcement. A 1991 report by the New York City Department of Investigations, (DOI) found that the DEP’s managing engineers encouraged watershed police to carry out activities outside the scope of their mission such as delivering payroll checks and picking up mail from the engineers.¹ DEP inspectors were also assigned to perform janitorial and messenger

services for the engineering units and were prevented from enforcing environmental laws.²

Under the rubric of “voluntary compliance,” DEP officials discouraged enforcement against environmental violators. For example, prior to 1990, DEP police officers were ordered not to arrest polluters and not a single polluter was ticketed in the three preceding decades.³ As New York City Comptroller Alan Hevesi concluded in his 1997 audit of DEP, the policy of voluntary compliance proved a disastrous failure.⁴

DEP’s bar on environmental enforcement was finally broken in 1990 when Captain Ron Gatto, then a patrolman with DEP’s watershed police, defied his superiors and ticketed two notorious polluters, only to have his tickets torn to pieces by DEP officials. They threatened to derail his career if he wrote another. Courageous testimony about this and similar incidents by Gatto and two other patrolmen before the City Council in October 1991 forced DEP to allow its officers to arrest polluters. As a result of the disclosures, Mayor Dinkins removed DEP’s police from oversight by engineers and allowed them to report directly to the DEP Commissioner, Albert Appleton. Enforcement finally became a reality. However, the Giuliani Administration has recently reorganized the DEP police so that they once again report to upstate engineers.

I. ENVIRONMENTAL ENFORCEMENT

As stated above, DEP’s police force is broken into two divisions, one focusing on pollution and the other on security threats. The first twelve recommendations below focus on the Environmental Enforcement Division, the final three to the Security Patrol, although many apply to both divisions.

- 1. DEP should increase staff and step up promotions for existing E.E.D. officers in order to keep trained personnel on staff.**

Among the most disturbing actions by DEP has been its unwillingness to adequately staff its Environmental Enforcement Division. EPA's 1993 Filtration Avoidance Determination required the immediate creation of an environmental enforcement unit within DEP police.⁵ DEP's E.E.D. has been undermanned since its inception. Until 1996, there was only one police officer, Ronald Gatto, assigned to environmental enforcement in the entire watershed. E.E.D. manpower has increased since 1996 but there are still only five police officers detailed to environmental enforcement in a 2,000 square mile watershed, that is home to more than 250,000 people, with more than 100,000 septic systems, 112 sewage treatment plants and thousands of other pollution sources.

To its credit, despite many obstacles, E.E.D. has functioned well, compiling more than 300 environmental arrests since 1993, most of them by Captain Gatto. However, it is impossible for a limited force of five officers to adequately protect 2,000 square miles.

Furthermore, while increasing manpower on paper, over the past two years, the Giuliani Administration has simultaneously decimated this tiny division by reassigning its officers and staff. Two of the E.E.D.'s three West of Hudson detectives have been permanently assigned to security detail for 60% of their time, leaving the 1,600 square mile Catskill/Delaware watersheds with only one full time environmental enforcement officer. Worse yet, since their appointment in 1996, all five E.E.D. officers have periodically been removed entirely from the division during security alerts and reassigned to security duty where they cannot complete investigations or engage in pollution patrol. Finally, Captain Gatto has been all but chained to his desk due to the removal, by his DEP superiors, of his secretary. Instead of investigating polluters, Gatto now spends 95 percent of his time writing daily, weekly, monthly and annual reports; preparing overtime sheets and weekly bulletins; and performing general filing

and secretarial work including answering phones. DEP officials have ignored his pleas for a new secretary. Under the Giuliani Administration, the E.E.D. has faded into a phantom division.

City officials defend the small number of police officers assigned to environmental enforcement with the claim that the police officers detailed to security posts also patrol for environmental crime, but in fact the officers in these details have never made a single arrest for an environmental crime.

DEP's failure to adequately staff its Environmental Enforcement Division has caused the agency to violate the 1997 EPA Filtration Avoidance Determination (FAD). The FAD requires maintenance environmental staff at levels described in previous FADs and requires enforcement officers to conduct daily sector patrols for environmental crime. These daily patrols are not occurring. In fact, in the 800 odd days since January 1997, E.E.D. has conducted fewer than ten sector patrols.⁶

2. DEP should assign the six new federal FAST COPS to environmental enforcement.

Among the most disturbing recent developments is DEP's decision to reassign six new police officers provided by President Clinton's federal FAST (Funding Accelerated to Smaller Towns) COPS program who were originally detailed to E.E.D. It was E.E.D.'s Captain Ron Gatto who discovered the FAST COPS program and realized that the DEP Environmental Enforcement Division was eligible for twelve new FAST COPS officers. Gatto obtained and filled out the 100-page application. While the federal program provides salaries for twelve police officers for a three-year period, DEP officials inexplicably slashed Gatto's manpower request in half. This was done despite DEP's eligibility for all twelve officers under the Department of Justice's (DOJ) rules and despite the chronic shortage of officers in both environmental enforcement and security.

During a meeting with environmental leaders in March of 1998, Commissioner Miele acknowledged that the E.E.D. was short-staffed and promised that the six FAST COPS would be brought in to supplement the unit. This commitment was repeated by both Commissioner Miele and by William Stasiuk, Deputy Commissioner in charge of the Bureau of Water Supply, Quality and Protection, orally and in writing on numerous occasions.⁷ Consistent with these commitments, the FAST COPS positions were advertised as E.E.D. postings. According to Ara Asatoorian, regional grant advisor at the Department of Justice, the DEP obtained grant approval to hire six new officers under the FAST COPS program as of February 1, 1998. One year later, as of February 1, 1999, not a single FAST COP had been hired. More recently, in a slap to environmental enforcement and Captain Gatto, all six of the new officers were reassigned to security post details. This assignment is inconsistent with earlier commitments by Commissioner Miele and Deputy Commissioner Stasiuk.

The transfer of the officers to the security division not only violates Commissioner Miele's commitment to the environmental community, it also violates Justice Department guidelines for the FAST COPS program. The federal rules allow assignment of FAST COPS to three categories 1) starting a new police agency; 2) community policing and public education and 3) criminal investigation. The current assignments of security post duty fits none of these categories. For these reasons, City officials should reconsider their decision to assign the new FAST COPS to security postings.

3. DEP must raise police to a living wage.

Perhaps the single greatest hindrance to effective DEP security and enforcement is the scandalously low police pay. Given the essential role they play, the police are grossly underpaid. To no avail, the environmental community has repeatedly raised with DEP and City Hall officials the critical issue of

deficient DEP police officer salaries.

In a scathing report now almost three years old, New York City Comptroller Alan Hevesi emphasized the fiscal and environmental reasons the current police salaries are unacceptably low.⁸ An officer's starting salary is \$22,368 a year and never exceeds \$23,900. For comparison, starting pay for a beginner word processor at DEP is \$27,000. Comparable police departments' starting salaries are around \$30,000 with frequent raises which typically have the officer achieving top salary of \$45,000-\$55,000 within three years. Thus the DEP's top salary for an officer is far lower than the starting salary in most police departments. The pay is less than any other watershed jurisdiction, including local police departments in the impoverished Catskills. For these reasons, the DEP suffers constant turnover of the best and brightest officers to other police departments.⁹

As a result of low pay, the police department, which consists of 47 officers when fully staffed, has lost an astounding 60 officers to other police agencies during the past eight years – a 130 percent turnover. The average police officer leaves the DEP within two years.¹⁰ Thus, the City spends \$6,000-\$8,000 per person to train an officer at the Westchester County Police Academy only to lose this investment to other police departments which are more than happy to absorb the DEP's fully trained officers.¹¹ The Hevesi audit concluded that DEP would save money by raising police salaries so officers stay on the job, yet police salaries have not budged.

Furthermore, this "brain drain" has a detrimental effect on environmental enforcement and security since inexperienced officers form the bulk of the workforce. The debilitating turnover rate poses a security threat by entrusting the safety of the system almost entirely to green recruits. According to former DEP Police Director Mike Collins, it takes three years to train new recruits and then

they leave. Collins remarked, "The average experience in our department is two years. That is a recipe for disaster. These kids don't have the street experience you need to ensure a professional police force. Someone is going to get hurt."

Every DEP commissioner for the past twelve years -- Harvey Schultz, Al Appleton, Marilyn Gelber and most recently Joel Miele -- has agreed that the pay is scandalously low and has solemnly promised a pay increase. Each one has failed to keep that promise. Most recently, Commissioner Miele stated in a November 22, 1997 letter to Riverkeeper attorney, Robert F. Kennedy, Jr., "we are finalizing a proposal to increase the pay of DEP watershed police officers, which will be submitted to the City's Office of Management and Budget (OMB). We anticipate formally transmitting this proposal to OMB within the next 30 days." This statement merely repeated assurances that he and other City Hall officials made during a meeting with environmental leaders in June 1997. At that meeting deficient police pay was the environmental community's highest priority for DEP. It has been roughly 20 months since that meeting and over a year since Commissioner Miele's letter yet the City has done nothing to raise police pay. Despite Hevesi's recommendations and numerous entreaties by Riverkeeper and others, watershed police pay is a continuing embarrassment to New York City and an obstacle to effective watershed protection.

4. DEP should erect highway signs denoting watershed boundaries.

Commissioner Miele and City officials have repeatedly made the commitment that DEP would work with New York State Department of Transportation (DOT) to install signs on watershed roads warning drivers when they enter and leave the New York City Watershed. Such signs are routinely used by jurisdictions with surface water reservoirs in neighboring states. They serve a critical education and enforcement role. The signs commonly include a

hotline number that citizens can call to report dumping, spilling or other questionable activities. During the June 1997 meeting with environmentalists, Commissioner Miele endorsed the need for watershed signage and told them that he would create a DEP committee led by Captain Gatto to prepare "recommendations on signage, location, size and content." Once that occurred, he pledged "to communicate with State DOT about installation of signs along State roadways." In fact, Captain Gatto's report was complete on July 18, 1997. Almost 20 months have passed, yet not a single sign has been erected. Riverkeeper and other environmentalists have met and appealed to City officials and DEP staff repeatedly to no avail.

5. The E.E.D. should be adequately equipped.

DEP has systematically denied its police access to necessary equipment. Captain Gatto has in the past been forced to buy his own police telephone, fax machine and video camera and dye tablets necessary for conducting water testing investigations. The tradition continues. In December 1997, for the second year in a row, DEP staff denied every item on the E.E.D.'s 1998 "needs" list. The E.E.D.'s equipment requisition requests were fairly modest and absolutely critical to an effective reservoir security and environmental enforcement program. Their request included video, instamatic and 35mm cameras for recording evidence (for 10 years Captain Gatto has used his family's video camera), tape recorders, portable field testing and sampling kits for detecting metals, oil and grease and other pollutants; night vision scopes for night patrols which often net midnight dumpers; two-way radios, boats, bullet proof vests (DEP police often confront armed poachers in isolated woodlands); training videos and compact discs; laptop computers for the detectives; and \$10,000 for processing and preserving film and other evidence. In addition, E.E.D. police requested office

equipment including upgraded computers, a conference table and clerical supplies such as a secretary's desk and chair.

At a meeting in May of 1997, Deputy Commissioner William Stasiuk told Police Director Mike Collins that the police would get none of their 1997 equipment needs, no promotions and no new hires for the entire year beginning July 1st. Dr. Stasiuk also told the police that the proposal to raise police pay had been killed. According to Collins, Deputy Commissioner Stasiuk was in a rage. He called the police "the most disruptive and divisive force in the upstate reservoir system" and accused them of being spies "since the Gelber era." Riverkeeper intervened with First Deputy Mayor Randy Mastro, who ordered Commissioner Miele to reverse the denial. However, in November 1997, Deputy Commissioner Stasiuk defied the order and again denied all new equipment requests for the E.E.D. Following a second intervention by City Hall, Commissioner Miele gave his word that all the items above would be issued to the E.E.D. However, with the exception of a video camera and a single laptop computer, none of the above items have materialized.

The security units have also been systematically starved for equipment and supplies. According to a current supervisor of that unit, "DEP keeps us in the stepchild mode. Every budget and equipment allocation is a battle. Police security has a pitifully low operating budget of \$60,000 per year. We have 54 people, including 47 sworn officers. We tried to raise the budget to \$150,000 and Deputy Commissioner Stasiuk called it 'unrealistic.' You could spend the whole thing in one month on clerical supplies or computers for the precincts."

6. The Watershed Police should be provided with safe and adequate automobiles.

In addition to starving them for equipment, DEP has effectively grounded the Watershed Police with an antiquated motor fleet. As of June 1998, the six

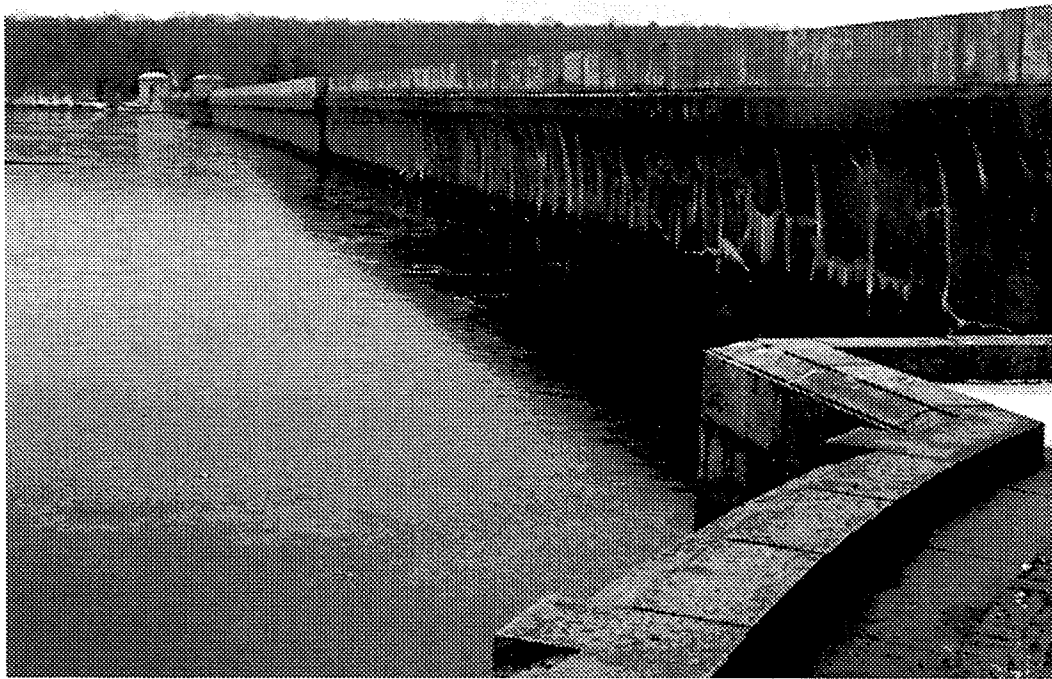
officers of the E.E.D. were down to two cars: a broken down heap at the Downsville precinct with 170,000 odometer miles and an ancient Taurus at the Croton precinct with 100,000 miles. The Ashokan and Neversink E.E.D. had no vehicles and E.E.D. detectives had to borrow a car when one was available. Instead of routinely patrolling the watershed for polluters, officers found themselves stranded at their precinct houses and unable to respond to calls. Captain Gatto's car had to be requisitioned for patrol, leaving him stuck at the precinct house.

The situation has improved, but only slightly. Today, the E.E.D.'s six officers must share three vehicles. Only two are unmarked. The Environmental Enforcement Division needs a minimum of four unmarked police cruisers, one for each precinct. Unmarked cars are critical for police officers doing environmental investigations. Unmarked cars protect witnesses in criminal investigations and make reluctant witnesses more comfortable during interviews. They allow for discreet investigations and surveillance and enable officers to inspect a site or monitor a crime in progress without drawing unnecessary attention.

The security units are no better off. By June 1998, 12 of 23 vehicles in the Security Patrol had over 100,000 miles and many of the remainder were over the 70,000 mark which triggers trade-in at most police departments. The security police were forced to relay officers to different areas due to broken vehicles. According to one supervisor from the West of Hudson security units, "It's like pushing a boulder up the hill, trying to get vehicles from them. They break our chops constantly. We had odometers with 200,000 miles. We can't put an officer on patrol with that. The Downsville precinct covers several counties and entails hundreds of driving miles per shift. Our men are driving rural state roads - the Peekamoose, between Ashokan and Neversink is a 20-mile stretch of dirt and cobble with cliffs on both sides, and three or four houses the whole way.

There is snow up there in June. I have men traversing that road every day. Police vehicles are on the road 24 hours, seven days a week. We put 70,000 miles on each vehicle each year. We need strong reliable automobiles. The volume of memos that we sent out trying to get vehicles looks like the Manhattan phone book.”

On September 12, 1997 Commissioner Miele announced the arrival of 26 pickups, 17 Escorts and 7 Explorers. Not a single one was allocated to the police. Instead, all 50 badly needed replacement vehicles were allocated to Engineering and lab staff and the Inspectors unit primarily to drive to and from



Kensico Reservoir, February, 1999.

work. Unlike the engineers whose cars sit idle most of the day and night, police officers drive their cars 24 hours per day, seven days per week.

7. DEP Police should be provided with boats for reservoir patrol.

Among the new needs that Commissioner Miele promised in 1998 were boats for the DEP police. Incredibly, the DEP police own only a single boat - a

broken down, gas-leaking two-stroke outboard stored in a Beerston garage West of Hudson. DEP's official patrol guide for the E.E.D. requires the unit to conduct "boat patrol investigations" including "inspecting all incoming streams and discharges," some of which can only be reached by boat. The fact that its reservoir police are denied a piece of equipment so central to their purpose is embarrassing for New York City and bespeaks the City's lack of commitment to watershed protection. There are many occasions when DEP police are called to dumpings, drownings, airplane crashes or other emergencies at reservoirs and have no boat with which to respond to the incident.

8. DEP police ought to have an aerial patrol unit.

As far back as 1993, the DEP police recommended aerial observation for the protection of the water supply system. However, several recent proposals to initiate helicopter and fixed-wing patrols have foundered due to administrative hostility towards environmental enforcement.

In 1995, responding to DEP police suggestion, Commissioner Miele's predecessor, Marilyn Gelber, ordered a study assessing the use of aerial observation to protect the New York City water supply from terrorism, vandalism, and pollution. The 60-page comprehensive study recognized the difficulty in policing a 2,000 square mile watershed with hundreds of miles of aqueducts and tunnels vulnerable to enemy attack and environmental insults. Large portions of the watershed and reservoirs cannot be seen from the road or from a boat patrol. In fact, a single air patrol, conducted as a trial mission on May 31, 1997, picked up a number of insults to water quality that were invisible by boat and road patrols, clearly demonstrating that aerial patrols increase police effectiveness. The report, labeling aerial patrols "long-overdue", recommended that DEP purchase a helicopter.¹² After reviewing the study, Commissioner Marilyn Gelber

and senior staff met with First Deputy Mayor Peter Powers, who approved the acquisition of a helicopter by DEP police. Draft bid specifications, operational guidelines and a capital purchase request were completed for submission. However, in yet another retreat from the City's commitment to support watershed enforcement and security, for reasons left unexplained, the purchase of the aircraft never occurred.¹³

In addition to DEP's own thwarted helicopter program, working closely with the DEP police, the New York State Wing of the Civil Air Patrol¹⁴ developed a proposal by which it would perform valuable air surveillance, aerial photography and pollution patrol of the reservoirs for free. The Civil Air Patrol operates 17 Cessna airplanes at various airports in or near the New York City watershed. These aircraft could be readily equipped with video and still photograph equipment and made available 24 hours a day, seven days a week for emergency or routine flights. The Civil Air Patrol program, entitled DEPCAP, would have cost DEP only \$88,489 over three years to cover fuel for the aircraft and special wing mounts for cameras.¹⁵ In May of 1998 DEP staff inexplicably rejected the Civil Air Patrol's generous offer.¹⁶

9. DEP Police should be allowed to investigate and ticket all watershed polluters.

DEP's own data suggest that upwards of 30% of the watershed sewage treatment plants are in violation of their permits. Some, like the sewage treatment plants for Yorktown Heights and Putnam County Hospital, have been chronic violators for many years. There is also strong evidence of ongoing criminal activity at several plants.¹⁷ Nonetheless, DEP does not allow its police to ticket sewage treatment plants and when violations are discovered at these plants by DEP engineers, those violations are never forwarded to DEP police, foiling possible enforcement action. The DEP Police should be left unfettered to enforce

all federal, state and local environmental laws as well as the New York City Watershed Rules and Regulations against any and all potential violators.

DEP's engineering staff has adopted other policies designed to frustrate prosecution of watershed sewer plants when they violate state and federal laws. For example, DEP has inexplicably refused to adopt federally prescribed protocols when it performs routine sampling at watershed sewer plants. This means that evidence gathered during those visits cannot be used to prosecute plant operators for violation of state and federal laws. This policy has been roundly criticized by New York City Comptroller Alan Hevesi and others.¹⁸ However, DEP has refused to change its policy.

10. DEP's hotline should be routed through the DEP police switchboard.

DEP seems to be exercising all its ingenuity to limit the role of its police and protect polluters from aggressive enforcement. For example, the toll free number that DEP has posted (1-888-NYC1) is supervised by the DEP police switchboard during evening hours. During work hours, however, spill reports, erosion control problems, trespassing reports and reports of tree cutting are routed first through the Engineering Division. This seriously hinders DEP's ability to prosecute violators due to DEP engineers' antipathy toward the police. Good police practice and successful criminal prosecutions demand that police officers visit a crime scene before civilian investigators contaminate it. All calls should be routed first through the police switchboard and then to the other divisions. This is absolutely critical if enforcement is to have a role in the watershed.

11. DEP should implement policies to protect its environmental police officers from internal harassment.

Many DEP observers believe that Captain Ronald Gatto's ingenuity, resourcefulness and devotion are the sole driving force behind all of DEP's envi-

ronmental enforcement efforts. Outside of Gatto's personal commitment, there does not seem to be any institutional commitment within DEP to environmental enforcement. In 1990, Gatto made the first arrests of polluters (Putnam County Hospital Center and Bedford Correctional Facility) in over thirty years. Since that date, Gatto has made over 721 arrests, including 538 under the penal law and 156 for environmental crimes. Gatto's Environmental Enforcement Division has handled over 400 major pollution investigations and made over 300 arrests with a 100% conviction rate. He and his men have enjoyed this success despite lack of support by the agency and chronic problems with inadequate equipment and vehicles. Until 1997, Gatto was the arresting officer in virtually every pollution case ever brought by DEP. Gatto continues to play a central role in all of DEP's enforcement cases. If he disappeared, it is doubtful that any meaningful watershed enforcement would continue. However, rather than being rewarded for this extraordinary police work, Gatto has been systematically isolated and harassed by his superiors within DEP.

Captain Gatto has been subjected to a steady stream of abuses both official and unofficial since he began arresting polluters in 1990. These include everything from regular hate mail and anonymous racial slurs directed at his wife by agency employees to acts of petty spite. Captain Gatto's superiors have blocked his appearance on television shows intending to praise his environmental record and denied him an office at the Croton gatehouse, confining his unit to a rabbit warren at the Croton precinct house.¹⁹ He has repeatedly been denied pay raises and promotions to which he is entitled and has never received a single promotion from DEP without intervention of City officials reacting to vigorous lobbying efforts by the environmental community. Most recently, Captain Gatto has been refused his promotion to Major despite

the strong recommendations of his immediate superiors within the DEP police.

Official harassment has also included five separate investigations by the City Department of Investigations (DOI) on trumped up charges brought by anonymous DEP sources:

- After he testified before the City Council in 1991, Captain Gatto was accused of carrying on a romantic liaison with a nurse at Northern Westchester Medical Center while on duty. The charges were dropped when Captain Gatto proved that his visits to the hospital were to care for his father during the 7-year coma that preceded his death. Every visit took place while Gatto was off duty or with permission from then Police Director Severin. There was no nurse.
- The following year Captain Gatto was advised to resign by City officials when an anonymous source accused him of sleeping on the job and accepting free meals in uniform. New York City Department of Investigation investigators summoned him to DEP's Valhalla offices and told him they had photographic proof to support the charges. Gatto challenged them to produce the evidence. DOI dropped the charges.
- In 1995, DOI again investigated Gatto based upon an anonymous charge that he used his office fax machine for his campaign for Yorktown Supervisor. DOI investigators promised Gatto that this time they had the goods and advised him to resign. Gatto demanded the evidence and DOI dropped the investigation.
- In 1997, DOI accused Gatto of interfering with cases against individuals who had contributed to his campaign. To investigate, DOI assigned Clive Morricks, a former assistant attorney general whom Gatto had criticized for his unwillingness to prosecute a series of watershed polluters during Morricks' tenure with the Attorney General's Environmental Division. Morricks had DOI investigators interview Gatto's family members, friends, fellow workers, police officers and secretarial staff on a prosecutorial fishing expedition. The investigation held up Gatto's promotion to Captain for six months and killed his potential promotion to Deputy Director. Yet after an intensive eight-month investigation, DOI was unable to produce any evidence to support the accusations and Morricks was forced to officially declare the charges "unfounded."
- In June of 1998, DOI commenced its fifth investigation of Gatto, which is still pending.²⁰ Officially, DOI claims to be investigating Gatto's

purported misuse of a DEP computer to assist his wife's garage door company. However, the investigation has the smell of another fishing expedition. DOI investigators have questioned fellow police officers about Gatto's personal habits in a desperate effort to drum up charges that would stick. The incidents they deemed worthy of investigation included his using the wrong stationary in a letter to the Mayor and other grave matters like sneezing without covering his mouth, frequently tucking his shirt in at the station house, and not closing the door completely while using the bathroom.

Captain Gatto has been under almost constant investigation by City officials since he arrested his first polluter in 1990 and refused to back down to the DEP bureaucrats. DOI has obligingly conducted lengthy and grueling investigations of each baseless allegation no matter how petty or insignificant. At the same time, DOI has ignored serious charges brought by Gatto. In the latest such incident, City officials broke into Gatto's offices and stole his personal and official police documents. Although he reported the incident to his superiors at DEP and to the Department of Investigations, the parties responsible have never been investigated, nor punished.

Not just Captain Gatto but the entire E.E.D. has been subject to this harassment campaign. In December 1997, Officers Pavone and Flynn were promoted from Patrolmen to Detective Sergeants within the E.E.D., following intervention by City Hall prompted by intensive lobbying by the environmental community. For over one year, City officials have spitefully kept these two officers from getting sergeant's salaries. While performing sergeant's duties, these two officers have been forced to survive on a patrolman's \$22,900 salary.

12. DEP Police should report directly to the DEP Commissioner.

DEP's water delivery and environmental facilities management functions have an obvious, inherent conflict of interest with a police force responsible for enforcing pollution laws against environmental facilities. For this reason, DEP police should report directly to the DEP Commissioner rather than to the region-

al engineers. This recommendation was implemented during the Dinkins Administration and later under Mayor Giuliani's first DEP Commissioner, Marilyn Gelber, who allowed environmental police to report directly to her.

Since Commissioner Miele became Commissioner in 1996, he has pledged to support environmental enforcement by the DEP police and to reform the police into an effective, professional and independent police force.²¹ Recent actions by DEP, however, herald a retreat from that commitment. Under Commissioner Miele's most recent reorganization, the police are again reporting to an engineer, Deputy Commissioner Stasiuk, at the Bureau of Water Supply Quality and Protection, instead of directly to the DEP Commissioner. Deputy Commissioner Stasiuk has no police or military or enforcement background.

DEP recently swore in a new Police Director to replace outgoing Police Director Michael Collins, who was dismissed in December. The new chief, Steven King, is a low-level DEP attorney with no environmental expertise and no police or public safety experience. He has worked at DEP for less than two years, principally processing FOIL requests. His only qualification for the police post is his personal loyalty to the managing engineers.

Mr. King will report to Deputy Commissioner Stasiuk, who has consistently shown his deep antagonism to environmental enforcement. Mr. King's first act after taking office on January 23rd was to circulate a bizarre memo forbidding communication between his police officers and prosecutors from the state Attorney General's office, or the New York City Watershed Inspector General. Communications between police officers and prosecutors occur daily in every police force and are essential to case planning and investigations. Such communications are the foundation of successful police work and prosecutions. Mr. King's order is a bald move to muzzle and cuff the Police and another insult to the vision of a professional, independent police force within DEP.



Ashokan Reservoir, October 1997. Photo: Courtesy of Nona Yehia

II. SECURITY

In addition to protecting the reservoirs against polluters, DEP Police are responsible for guarding the waterways and delivery infrastructure against the increasingly real threat of terrorist attack. While this report will not explore the security threat in detail, it is clear that the City should take immediate and decisive action to counter this risk. Most importantly, DEP must begin supporting and rebuilding its demoralized watershed police force.

1. The City should beef up security against vandalism and terrorism.

The DEP does not take security risks seriously. New York City reservoirs are almost frighteningly vulnerable to vandalism or terrorism which could either poison or shut down the supply. Any student of the reservoirs' infrastructure can easily catalogue dozens of unguarded sections of the system from which a terrorist could drown watershed cities and towns and poison New York City' water

supply, or shut it down for months -- even years. The consequences are almost too horrible to contemplate.

It would be imprudent to list the many vulnerabilities in detail. But it is worth mentioning a recent example of near criminal neglect by DEP engineers that illustrates the system's vulnerability to terrorist attack. In June of 1998 DEP engineering staff allowed the alarm contracts for its most critical installations, including the Kensico dam, to lapse. The alarms were not reactivated until August. World War II security forces viewed the Kensico Dam as particularly vulnerable to attack since once inside the dam, saboteurs would go unnoticed. Manned guard posts were established across the installation. Today, however, the alarm system is the only reliable barrier to such attacks. When DEP police investigated the matter, they were astounded to learn that the alarms had been effectively inoperative for nearly one year during which the engineering divisions had failed to make provisions for alarm monitoring. Intruders could have entered any of these facilities, tripped the alarms and the police would never have been notified. A recent Westchester County study showed that a bomber with access to the Kensico valves could drown parts of White Plains under 70 feet of water within four hours and submerge its downtown under 12 feet. Such lackadaisical attitudes by DEP engineers indicate the ease with which terrorism might destroy the water supply. Yet within DEP there has been scant attention paid to this possibility. Indeed the agency seems to deliberately wear blinders to the possibility of terrorist attack.

On December 29, 1997, Police Director Michael Collins delivered to Commissioner Miele a vulnerability risk assessment detailing the various risks from terrorism and infrastructure failure that threaten the City water supply. Collins spent two years preparing the report, which represents the most detailed analysis ever performed of the upstate water system. The report followed a five-

year campaign by Collins to get City officials to confront the grave risks to its water supply. In addition to shocking revelations uncovered by Collins, the report summarizes detailed findings and recommendations of several earlier studies on the same subject. Among these are a 1988 report of Kevin Ford of the New York City Inspector General's Office and a 1985 report by the New York Police Department Crime Prevention Unit. Each of these earlier reports contains numerous detailed recommendations for reform. According to Collins, none of these recommendations have been implemented. "Those documents were put on a shelf at DEP and ignored." The recommendations in Riverkeeper's 1997 *Culture of Mismanagement* about the need to upgrade the gatehouse security were also ignored.

Collins waited ten months for a response to his report. When he heard nothing from Commissioner Miele, he sent copies of his report to the FBI and the New York City Police Department. According to Collins, Dr. Stasiuk ordered him not to send a copy to City Hall. Soon after sending out his report, Collins was relieved of his duties. His gun, badge and car were removed and he was reassigned to an unheated office in a City-owned house in Valhalla, New York.

2. DEP should develop contingency plans for detecting contaminants and repairing aqueducts damaged by failure or terrorism.

The Collins report shows how even low grade explosive charges placed in certain chambers of the reservoir system could shut down the water supply to New York City for months or even years. Some of these sections are unguarded and easily accessible. According to Collins, DEP has "no backup valves, no pre-fab forms or aqueduct sections which would make quick repair feasible and the City has no plans and no biological and chemical monitoring." Such early warning systems have been strongly advocated by DEP's laboratory and security per-

sonnel and just as vigorously opposed by Deputy Commissioner Stasiuk and DEP's upper level staff. Collins cites many other examples in which City officials have been almost obstinate in their refusal to develop contingency plans for aqueduct failure or terrorist attack.

While the Delaware aqueduct is pressurized at 1,000 feet below the surface, the Catskill aqueduct is a "cut and cover" pipe that travels mostly at ground level and is visible, accessible and vulnerable to vandalism (or terrorism) or accident anywhere along its 120-mile length from Ashokan to Hillview. These sections are "wide open" and unguarded for miles. Their vulnerability was demonstrated in 1997 when DEP police uncovered hundreds of pounds of dynamite near an unlocked Catskill aqueduct manhole. Police detectives later traced the explosives to a careless construction crew working in the Continental Village area. They worried, however, that if large quantities of high explosives can find their way to the aqueduct through simple negligence, how much more could be brought by a determined attacker.

3. Manpower shortages have compromised DEP's security mission.

DEP's security mission also has been compromised by manpower shortages. DEP's tiny security force of 47 officers has shrunk dramatically from historic levels of over 451 sworn policemen and 711 armed guards assigned to protect the watershed system from saboteurs during World War II. Today, at a time of equally grave security threats, short staffed police security units lack the means to conduct terrorism and vandalism patrols in large sectors of the watershed. Police officers assigned to security patrol in the Neversink precinct, for example, claim to have not even seen the Neversink Reservoir during the last two years because of chronic manpower shortages.²² Only three patrolmen are assigned to this vast precinct and they are largely untrained and unsupervised.

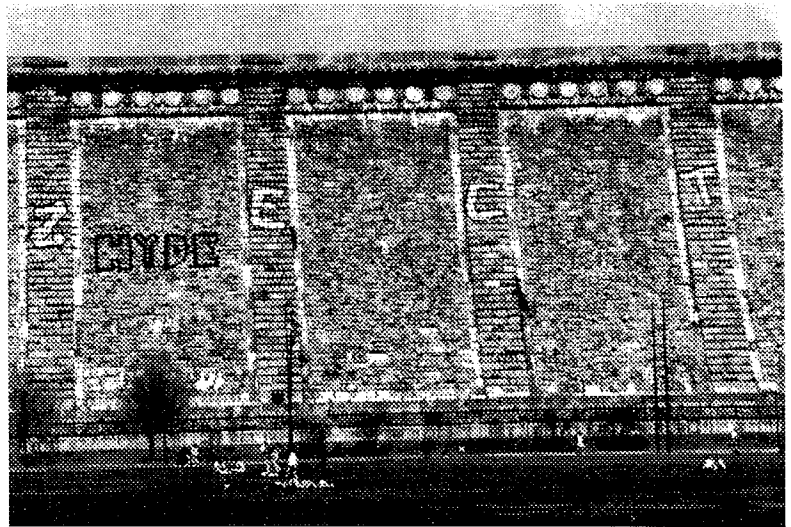
There are no field training officers and the only supervisors are stationed 50 miles away at Ashokan. The men work rotating eight-hour shifts, meaning only one officer is on duty at any one time. Manpower shortages mean officers can't use their sick time and patrolmen are frequently forced to work mind numbing 18-hour shifts. Those officers spend all their time on a 17.8-mile road encircling the Rondout Reservoir. Thousands of miles of road and shoreline are ignored. Veteran officers had never seen and could not even locate five of the six Neversink chambers, each of which is a potential target of terrorist attack.

Officers who are not assigned to security patrol are detailed to fixed gatehouse security posts - DEP's centerpiece counter-terrorist strategy. However, short manpower means that DEP's heavy reliance on fixed gatehouse security to protect its most critical installations is a failed strategy. Current assignments have one or two officers, untrained in anti-terrorism, sitting on lawn chairs or in their vehicles for up to 18 hours in front of the various chambers with .45 caliber pistols. According to their own officers, these men give the system no more protection than did the private security company they relieved. The officers themselves are sitting targets. Service on the gatehouse detail quickly demoralizes the most idealistic young recruits. "It should be obvious," says one veteran, "that one or two untrained kids sitting in front of a gatehouse bored to tears with a holstered pistol is an inadequate deterrent to a determined attacker."

DEP's police force does not have the manpower to cover even the critical installations. For example, on April 11, 1997, two graffiti artists went unnoticed for three hours creating a 20 foot high by 400 foot wide eyesore on the Kensico Dam. Terrorists with that kind of access and time could have easily blown the valves and drowned White Plains. Over this past autumn, at least four freelance investigators and curiosity seekers have strolled into the most vulnerable gatehouses in the reservoir system to demonstrate the ease with which terrorists

could shut down the water supply. In each case, they were able to enter, spend hours in the compounds and leave without being questioned or challenged.²³

If the City is serious about confronting the terrorist threat, it should deliberately and systematically develop a genuine anti-terrorist



Kensico Dam, April 1997. Photo: Courtesy of *The Journal News*

security system including a ten-foot Anchor Hocking fence with concertina wire, video surveillance, armed guard towers, and other appropriate measures around the gatehouses at the critical Kensico, Hillview and Ashokan reservoirs. Collins concludes that a successful assault on the Hillview chambers in Yonkers could shut down the City water supply indefinitely and suggests that that installation should be guarded like Fort Knox. “But at present,” he concludes, “it does not even have the security of a local seven-eleven.”

CONCLUSION

DEP’s police are in no way at fault for the grave security and environmental enforcement lapses described above. The blame lies squarely on the shoulders of an administration that has systematically underpaid, undermanned, overworked, undersupplied, undersupervised and undertrained its bedraggled and demoralized officers. The Giuliani Administration has dismissed Michael Collins and responded to adverse publicity surrounding the Collins report by initiating a handful of “security awareness” classes for DEP Police and commissioning yet another study on system vulnerability. The City has ignored the obvious first step in any solution to its security emergency - hiring more police officers and providing strong experienced police leadership capable of transforming DEP’s

watershed police into a highly trained and effective force for protecting water quality and reservoir security. The crisis in the DEP police jeopardizes the health and safety of watershed residents and nine million downstate water consumers. While the City has spent millions of dollars fortifying City Hall against terrorist attack and deployed hundreds of police officers to protect municipal buildings and other sensitive terrorist targets such as the World Trade Center, it has turned a blind eye to the very real threat against its most vital, vulnerable and valuable asset.

END NOTES

1. *Culture of Mismanagement: Environmental Protection and Enforcement at the New York City Department of Environmental Protection*, Pace Environmental Law Review, Vol. 15, Number 1 Winter 1997 at 284.

2. Id.

3. Id.

4. Alan G. Hevesi, *Audit Report on the New York City Department on Environmental Protection Regulatory Compliance and Inspection Unit*, June 30, 1997. Hevesi's audit concluded that ". . . [environmental] violators are a common occurrence and a frequent source of pollutants entering the reservoir source waters" and that DEP's voluntary compliance approach was "not effective" in preventing the illegal flow of sewage into the City's drinking water. Id. at E5-3. Of 14 sewage treatment plants randomly sampled over a two-year period (1995-1997) by the comptroller's audit team, all had acute and chronic violations in both years according to DEP's own test results. DEP had taken no action in seven cases and had only issued warning letters in six others with no further action. DEP claimed that it had worked informally with owners/operators of the plants to cure the problems. "However" according to Hevesi "it seems clear that neither DEP's formal nor informal actions were effective in eliminating the chronic and acute SPDES violations at these plants." Id. at 17.

5. This unit is charged with investigating complaints and gathering intelligence through sector patrols targeting illegal dumping, sewage discharges, illegal storage of hazardous materials, spills and other environmental offenses.

6. DEP's patrol guide also required DEP's police E.E.D. to create and maintain a public education program for public schools in the watershed towns. This program has also been abandoned due to the manpower shortages.

7. Memorandum from William Stasiuk to Commissioner Miele, August 13, 1997 on file with author.

8. See Alan G. Hevesi, *Audit Report on the New York City Department of Environmental Protection Watershed Protection Program Catskill and Delaware Watershed Inspectors*, June 27, 1996 at pp. 21-23. The Comptroller's audit found that 62% of officers who resigned during the ten year period between 1986 and 1996 became police officers for other county jurisdictions and that 51% of the officers who left DEP worked there for less than two years. The audit states, "[t]he Director of the DEP police unit informed us that DEP police officers' low starting salaries and their lack of raises were the main reasons for the high turnover rate." Id. at p. 21. Five DEP police officers who had been on the force for over ten years were earning only \$23,563 per year. See Id. at 22.

9. See Id. at 22.

10. See Id. at 23.

11. Id.

12. *DEPCAP Program, Department of Environmental Protection & Civil Air Patrol*, City of New York Department of Environmental Protection Police, 1997.

13. Id.

14. Established shortly before World War II, the Civil Air Patrol is a program by which volunteer aviators donate their time and resources to patrol the

nation's borders and waterways. Today, in conjunction with agencies such as the U.S. Forest Service, the Drug Enforcement Administration, and local and state police agencies, the Civil Air Patrol conducts thousands of low-level route surveys, aerial photography, search and rescue and disaster and recovery operations. Id.

15. Id.

16. Then Police Director Michael Collins recalls Deputy Director William Stasiuk boasting that he killed the helicopter patrol and the DEPCAP proposal, stating that “the helicopter patrol is a waste of money and the DEPCAP program is just an attempt to reintroduce the helicopter patrol.”

17. A 1997 audit report by City Comptroller Alan Hevesi showed that material discrepancies existed between discharge monitoring reports submitted by each sewer plant and the DEP’s own independent testing results. In virtually every case, the self-monitoring discrepancies favored the sewer plants indicating fraud. See Alan G. Hevesi, Audit Report on the New York City Department of Environmental Protection Regulatory Compliance and Inspection Unit at 26-28, June 30, 1997.

18. Id. at 11-12, 27; See also, Culture of Mismanagement: Environmental Protection and Enforcement at the New York City Department of Environmental Protection, Pace Environmental Law Review, Vol.15, No.1, Winter 1997 at 282.

19. Moving the police to the gatehouse location would add the logical advantage of providing gatehouse security by an on duty officer.

20. Ironically, DOI refused to investigate the DEP Engineering Division in 1996 when DEP employees submitted proof that a managing engineer and over 20 subordinates were operating a gambling pool using City-owned computers and on City time. Ultimately, then Commissioner Gelber issued a memo ordering the engineers to cease the gambling operation.

21. Without which they have no authority to enforce environmental laws against polluters.

22. The Neversink precinct covers both the Rondout and Neversink watersheds.

23. The Giuliani Administration cannot claim surprise at such incidences. The 1996 Comptroller’s audit by Alan Hevesi makes a series of specific (and unheeded) recommendations for improving security after describing a disturbing incident where an inspector observed graffiti on a water chamber wall within the distribution systems indicating that trespassers have little trouble gaining access to DEP’s most vulnerable facilities and plenty of time to create much greater mischief than merely painting walls.