



RIVERKEEPER

Testimony of Sean Dixon, Staff Attorney
Riverkeeper, Inc.

New York City Council, Environmental Protection Committee
December 13, 2016

Re: Int. No 1346 - In relation to water pollution control, including provisions relating to stormwater management and control of discharges into storm sewers.

Good afternoon. I would like to begin by thanking Council Members Constantinides and Richards, as well as the entire Environmental Protection Committee for giving Riverkeeper an opportunity to testify in support of Int. 1346, a bill granting the City authority to manage and control stormwater pollution.

Riverkeeper is a member-supported watchdog organization whose mission includes safeguarding the environmental, recreational and commercial integrity of the waters of the Hudson River, including the East River and the waterways of New York City. For 50 years, Riverkeeper has been working with the communities, advocates, citizen scientists, businesses, and industries along New York City's waterways on stormwater control and the elimination of water pollution.

Overall, Riverkeeper supports this bill and the DEP's efforts to build a new stormwater pollution management and enforcement program. The DEP's separate stormwater system team, for the past year and a half, has been working diligently to develop the City's first-ever MS4 stormwater management plan with robust community input and transparency. That said, this bill – designed with that plan in mind – can and should have a larger impact. As such, Riverkeeper respectfully requests that the Council widen the lens through which it views today's proposal.

First and foremost, then, Riverkeeper asks the Council to broaden the bill's reach. As stated in the draft bill, the Council today considers granting the DEP authority to regulate, study, investigate, and enforce – on public and private property – stormwater runoff, water pollution discharges, and any adverse impacts on water quality. Indeed the charter would be amended to challenge the City's agencies to, as a laudable and appropriate goal, "*control[] and eliminate[e] pollution of waters within and about the city of New York.*" In a proposed new section within the City's administrative code, 5-A, the Council clearly and unambiguously notes that "*A high percentage of impervious area correlates with a higher rate of stormwater runoff, which generates greater pollutant loadings to the city's separate stormwater and combined sewer systems.*"

From performance standards governing long-term stormwater management and nonpoint source pollution control to groundwater recharge, material handling and storage, and equipment maintenance, **this bill highlights a host of pathways for pollution that must be managed, controlled, and ultimately eliminated.** The City has a clean water interest in, as this bill notes, managing construction and post-construction activities, as well as ensuring compliance with performance standards at industrial and commercial sites.

Unfortunately, then, the bill (in Section 24-550 of Subchapter 2) then limits the DEP's authority to implement water pollution protection to only those parts of the City within the separate storm sewer system and the City's 2015 MS4 Permit.

Of particular note, this bill limits post-construction and maintenance programs to just MS4 areas. Indeed, the bill constrains the entire program – training, compliance, recordkeeping, the DEP's ability to enter and inspect properties, and enforcement – to MS4 area activities. Subchapter 3 similarly limits the DEP's ability to oversee industrial stormwater sources to only those in MS4 areas.

Riverkeeper asks that the City Council broaden the bill to include the combined storm sewer system. As drafted, this laudable bill only protects around 40% of City waterways (and thereby, only partly addresses public health, economic, and ecosystem function impacts caused by water pollution). All residents and all waterways deserve an agency with the authority to protect, enforce, and oversee clean water compliance.

Second, we ask that the Council provide the DEP with the means to enforce these water pollution prevention and control provisions.

For years – at city, state, and federal agencies – declining environmental budgets have led to shrinking staffs and diminishing capacities. Enforcement and oversight, in the case of pollution from sources such as industrial facilities or construction sites, can be staff-intensive activities and are often the first budgets to be cut. Riverkeeper asks, when it considers the City budget, that the Council give the DEP the tools it needs to fully build this program, walk the City's development projects through these new permit systems, and help immediately bring the City's industrial and commercial operators into compliance with the law.

The DEP does not just need adequate funds to work externally, it also needs the ability to drive internal New York City agency compliance. Fiscal support is key here, but so too is moral, legislative, and oversight support by the Council. Riverkeeper asks that this committee work with Council leadership to make sure the Departments of Design and Construction, Buildings, Transportation, and Parks, the Economic Development Corporation, the NYC Housing Authority, and other agencies do everything they can to assist the DEP, ensure that their actions and approvals do not work counter to the DEP's efforts to control stormwater pollution, and work toward cumulatively "smart" stormwater planning with the DEP and local communities.

Finally, Riverkeeper would like to echo the concerns submitted in writing and by testimony today of our partner organizations including the SWIM Coalition and NRDC. This bill should direct DEP to broaden its green infrastructure program beyond certain "priority" watersheds in order to bring greener streetscapes and cleaner waters to all corners and communities of the City. The bill should also provide for a new class of "qualified inspectors" beyond experts in erosion and sediment control who are skilled and certified in post-construction stormwater infrastructure upkeep and maintenance.

In closing, Riverkeeper would like to again acknowledge our appreciation for the DEP's work to-date developing this bill and educating the community. We thank Council Members Constantinides and Richards for their leadership, and for the invitation to testify today. If we can be of any assistance, Riverkeeper is at the disposal of the Council.

Thank you.