



**Testimony of  
Michael Dulong, Staff Attorney, Riverkeeper, Inc.**

**Joint Public Hearing on the 2015-2016  
Executive Budget Proposal – Environmental Conservation**

**January 28, 2015**

Thank you Chairman Farrell, Chairman DeFrancisco, and distinguished Senators and Assembly Members for the opportunity to testify before you regarding the Proposed Executive Budget for Fiscal Year 2015-2016.

Riverkeeper is a member-supported watchdog organization dedicated to defending the environmental, recreational and commercial integrity of the Hudson River and safeguarding the Watershed that provides drinking water to nine million New York City and Hudson Valley residents.

New York's recent \$5.4 billion bank settlement has given the State an opportunity to tackle a number of longstanding challenges. Riverkeeper respectfully submits that a portion of that windfall is desperately needed to bolster water quality protections and to respond to new public health and environmental threats. We have identified four critical areas where funding would be most useful.

**I. Hudson River Estuary Management Program**

We applaud the governor for providing a total of \$4.7 million in the 2015-2016 Executive Budget to fund the Hudson River Estuary Management ("HREM") program: \$3.9 million for Hudson Valley protection and an additional \$800,000 for the Mohawk River action plan, which is integral to protecting water quality in the Hudson. The Governor's proposal would increase HREM program funding by \$900,000 from a total \$3.8 million in 2014.

The Hudson River Estuary Management Program protects and improves the natural and scenic Hudson River watershed for all its residents by ensuring clean water, protecting and restoring fish, wildlife and their habitats, providing water recreation and river access, adapting to climate change and conserving the Hudson Valley's world famous scenery. Since it was established in 1987, the Estuary Management Program has improved water quality in the Hudson, protected over 46,000 acres of land in the Hudson Valley and restored community waterfronts along the River.

The Governor's proposed increase in HREM program funding is a strong vote of confidence that the program is working to protect our water and to bring the Hudson River back to life. **We urge the Assembly and the Senate to pass the Governor's proposed \$4.7 million funding for the Hudson River Estuary Management Program.**

## II. Investment in Clean Water Infrastructure

Despite the unquestionable need, the 2015-2016 Executive Budget does not allocate any new funds specifically for wastewater or drinking water infrastructure. We propose that the state allocate \$800 million of the \$5.4 billion in bank settlement funds to clean water infrastructure projects statewide.

The state Department of Environmental Conservation has documented that the need for investment in wastewater statewide is at least \$36 billion. According to the DEC's 2008 report, "Wastewater Infrastructure Needs of New York,"<sup>1</sup> many wastewater facilities in New York are past their expected useful lives. Maintenance and upgrades at these facilities are far behind where they need to be to keep up with increasing demand. Statewide, more than 30% of these facilities are in excess of 60 years old, though they were designed to only last 30 to 40 years. According to a recent Comptroller Report, "Growing Cracks in the Foundation,"<sup>2</sup> there is currently an \$800 million annual shortfall in wastewater infrastructure spending.

As his 2015 Opportunity Agenda notes, "wastewater and drinking water investments protect water quality, improve public health, facilitate keystone economic development, and foster recreational tourism."<sup>3</sup> Clean water development projects maintain the character and charm of our communities and protect property values. They give our kids clean places to play and tourists a powerful reason to visit. They put people to work. In fact, an estimated 47,500 jobs are created by each billion dollars of infrastructure funding spent. Yet in most cases, local communities cannot bear the costs of these infrastructure projects—especially with a 2% tax cap that inhibits long-term investment. It is true that the New York State Environmental Facilities Corporation has played a pivotal role in providing low cost financing for wastewater projects. Yet with the financial struggles of many municipalities, even with low cost loan programs in place, many simply cannot undertake such projects.

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<sup>1</sup> N.Y. STATE DEP'T OF ENVTL. CONSERVATION, WASTEWATER INFRASTRUCTURE NEEDS OF NEW YORK STATE 4, 9 (2008), *available at* [http://www.dec.ny.gov/docs/water\\_pdf/infrastructurerpt.pdf](http://www.dec.ny.gov/docs/water_pdf/infrastructurerpt.pdf).

<sup>2</sup> OFFICE OF THE N.Y. STATE COMPTROLLER, GROWING CRACKS IN THE FOUNDATION; LOCAL GOVERNMENTS STILL CHALLENGED TO KEEP UP WITH VITAL INFRASTRUCTURE PROJECTS 3 (2014), *available at* <http://www.osc.state.ny.us/localgov/pubs/infrastructure2014.pdf>.

<sup>3</sup> GOVERNOR ANDREW CUOMO, OPPORTUNITY AGENDA 103-04 (2015), *available at* [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2015\\_Opportunity\\_Agenda\\_Book.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/2015_Opportunity_Agenda_Book.pdf).

The only potential funding stream proposed by Governor Cuomo in the Executive Budget is an Upstate regional competition, through which infrastructure dollars would be awarded to only three of seven eligible regions. Long Island, New York City and Buffalo are not eligible for those funds and there's no assurance that any of the winning upstate regions will include clean water infrastructure as part of their plan.

It has been 50 years since New York voters approved a \$1 billion Pure Waters Bond Act, at a time when the statewide need for sewer infrastructure was estimated at only \$1.7 billion. That investment paid dividends in clean water and proud communities. We're overdue for another bold investment. **Riverkeeper urges the Governor, Assembly and Senate to allocate \$800 million to create a clean water infrastructure investment bank to help municipalities upgrade their water and sewer infrastructure.**

### **III. Oil Spill Preparedness and Response Capacity**

Riverkeeper thanks the Governor for acknowledging that the new risks of irreparable human and environmental harm created by the massive increase in crude oil transport through New York State demand immediate legislative action to bolster spill prevention and response. However, the State must go further to protect the short- and long-term viability of the Oil Spill Fund. We make the following recommendations to ensure that the Fund's viability is safeguarded:

**1. The increase in the Proposed Spill Fund Cap is welcome, but still dangerously low and must be increased to protect the Fund.** We appreciate that the Governor has suggested increasing the Oil Spill Fund cap from \$25 million to \$40 million and that the Fund will be financed by increasing fees on the oil transport industry. However, \$40 million is woefully insufficient given that the potential for a major spill has grown exponentially since 2008 due to the 87 percent increase in volume of crude oil being transported, as well as the new hazards of volatile Bakken shale oil and heavy, sinking tar sands oils. Within the past two years, individual Bakken and tar sands crude oil spills have each caused over \$1 billion in damages.<sup>4</sup>

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<sup>4</sup> On July 6, 2013, 47 people were killed by an explosion in Lac Mégantic, Quebec, resulting from a derailed unit train of DOT-111 railcars carrying Bakken crude oil. The damage is estimated to cost between \$500 million and \$1 billion to remediate. OIL CHANGE INTERNATIONAL, ANALYSIS OF THE POTENTIAL COSTS OF ACCIDENTS/SPILLS RELATED TO CRUDE BY RAIL 1, 5-6, 9-10 (2013). More than three years after the spill of heavy crude oil into Talmadge Creek and the Kalamazoo River, the river's bottom sediment remains contaminated. Cleanup costs have been estimated at over \$1 billion. USEPA, *Dredging Begins on Kalamazoo River* (Aug. 2013), [http://www.epa.gov/region05/enbridgespill/pdfs/enbridge\\_fs\\_201308.pdf](http://www.epa.gov/region05/enbridgespill/pdfs/enbridge_fs_201308.pdf) (last visited Jan. 27, 2015); Max Paris, *Enbridge's Kalamazoo cleanup dredges up 3-year-old oil spill*, CBC NEWS (Sept. 6, 2013), available at <http://www.cbc.ca/news/politics/enbridge-s-kalamazoo-cleanup-dredges-up-3-year-old-oil-spill-1.1327268>.

If the \$25 million Fund established by the legislature in 1977 were merely adjusted for inflation, it would be worth over \$97 million today<sup>5</sup>—and that adjusted figure should be New York’s minimum moving forward. Yet due to the new threats facing New York, we respectfully recommend that the Legislature increase the Fund cap even further by tying it to the federal maximum liability limit (currently \$350 million<sup>6</sup>) for a single spill from a Major Oil Storage Facility, such as the Global and Buckeye facilities in Albany.

To ensure the Fund reaches that cap, fees for oil transport would have to be increased beyond the Governor’s proposed 13.75 cents per barrel. We recommend that the legislature set the fee minimum at 13.75 cents and provide authority for the Comptroller to increase that fee as necessary to fulfill the purposes of the Fund. In addition, fees should be charged to the 15-20 trains per week that carry over 3 million gallons of crude oil through our communities, putting them at risk of explosion or spill,<sup>7</sup> who are currently under no obligation to pay into the Spill Fund.

**2. The proposed new funding for spill preparation should be kept in a separate account from response and remediation funding.** Governor Cuomo’s proposed \$40 million dollar Fund cap is especially low when considering that under Governor Cuomo’s proposal, funding for on-going preparedness expenses would come from the same account that must support spill response efforts, with no cap on preparedness expenses. Riverkeeper fully supports allocation of a portion of the funds raised from fees to provide for spill response equipment and preparatory training across the state. However, preparedness expenditures should be capped and separated from the general Oil Spill Fund. If the same fund is required to support both, as the Executive Budget has proposed, the payments for spill preparation could potentially deplete the entire Fund, leaving it without the capacity to respond to an oil spill. Therefore, to protect the integrity of the Oil Spill Fund, Riverkeeper proposes that a portion of the fees collected under the Navigation Law be dedicated to a separate “Emergency Preparedness Fund.”

**3. Responsibility for the Spill Fund should not be transferred from the Comptroller to DEC.** While we strongly *support* increasing the Spill Fund cap and providing resources for spill preparedness, we *oppose* transferring fiduciary responsibility for the Fund from the New York State Comptroller to the Department of Environmental Conservation Commissioner. The State Comptroller is in the best position to manage the Fund. As an elected official with a limited four-year term, the Comptroller is directly answerable to the people of New York, unlike

<sup>5</sup> U.S. Dep’t of Labor, Bureau of Labor Statistics, CPI Inflation Calculator, [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm) (last accessed Jan 26, 2014).

<sup>6</sup> 33 U.S.C. § 2704(a)(4).

<sup>7</sup> Kevin Rogers, *Railroad Insurance Policies Not Enough for Oil Accidents: DOT*, WASHINGTON TIMES (Aug. 6, 2014), available at <http://www.washingtontimes.com/news/2014/aug/6/insurance-policies-not-enough-oil-train-accidents/>.

the DEC commissioner. The Comptroller's Office has responsibly managed the Spill Fund for over 25 years and has institutional expertise that places it in the best position to continue that responsibility. In addition, under Cuomo's proposed transfer of responsibility, DEC would have to hire and train eight new employees who are wholly unfamiliar with the fund. Transferring authority over the Fund now would be irresponsible, particularly at a time when we will be looking to the fund to do more. We recommend that the Spill Fund remain under the fiduciary control of the Comptroller's Office with the legislative direction that that Office seek input from DEC, OHS and local emergency agencies with respect to the creation of a separate spill preparedness fund.

**4. The Spill Fund should be authorized to recover money spent for spill remediation up to the federal maximum liability levels.** Under the Navigation Law, the Spill Fund is responsible for all cleanup and removal costs as well as damages, including property and economic losses suffered by individuals and businesses. Yet the Navigation Law directs DEC to set limits on how much of those costs and damages paid by the fund can be recovered from those responsible for the pollution. *See* N.Y. Navigation Law § 181(3)(c). In the event of a catastrophic spill akin to those we have recently seen in Quebec and Michigan, the Fund would be depleted with only limited authority to recover money from polluters. Section 181 of the Navigation Law should be modified to set state liability limits at the maximum amounts allowed under the Federal Oil Pollution Act.

**5. The Navigations Law's requirements for financial assurance must be modified to require all persons responsible for the transport of oil by rail in the state to maintain evidence of the financial capability to pay for a worst-case scenario spill.** The owners of Major Onshore Storage Facilities, such as those owned by Global and Buckeye in the Port of Albany, should be required to show financial resources in the amount of \$350 million, the maximum recoverable amount in the case of an accidental catastrophic spill. In addition, New York law should require any person transporting oil by railroad tank car to establish and maintain evidence of financial responsibility, as has been done in several states, including Alaska. New York could consider coupling this requirement with a prohibition on rail transport of crude oil unless DEC has approved an oil discharge response plan and the carrier is in compliance with that plan.

#### **IV. Clean Water Act Enforcement**

The Department of Environmental Conservation's ("DEC") enforcement of water pollution violations is in free fall. According to a recent report by the Comptroller, in 2014 there were 1,071 facilities in violation of water quality laws—roughly the same as in 2010. However, the number of facilities in significant noncompliance went up 20% between 2010 and 2014 (from 288 to 342). Despite the increase in significant non-compliance, the number of facilities facing



any kind of enforcement for clean water act violations (formal or “informal”) declined from 547 in 2010 to 196 in 2014. That is a *64 percent drop* in only four years.

The shocking drop in enforcement is directly attributable to the deep and disproportionate staff cuts DEC has seen in the past 15 years, as compared to other state agencies. Disturbingly, DEC has roughly 30 percent fewer employees than it did in the 1990s—cut from 4,000 to 2,936—despite an 11% population rise during those years. Between 2008 and 2010 alone, DEC lost 849 of its scientists, engineers, and enforcement officials<sup>8</sup>—one-quarter of its total workforce.

DEC is a shell of its former self, and the 64 percent decline in clean water enforcement is shocking. We are now at risk of having the agency become a paper tiger. We know first-hand that DEC staff are dedicated to protecting the environment and are frustrated that they do not have the resources and support they need to do their jobs. The disproportionate cuts at DEC warrant disproportionate restoration immediately, well as close scrutiny of whether DEC is using its enforcement authority sufficiently.

**We urge the Governor and the Legislature to reverse the disproportionate decline in staffing and other budget expenditures suffered by DEC in past years, and restore DEC’s capability to enforce New York’s environmental laws.**

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On behalf of the tens of thousands of Riverkeeper members and supporters throughout New York, thank you again for the opportunity to participate in today’s Joint Hearing on the Executive Budget and for the important role you play in protecting New York’s environment. We look forward to working with the Members of the Assembly and Senate to improve upon some of the key provisions of the Executive Budget we have highlighted today.

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<sup>8</sup> Press Release, The Adirondack Council et al., “Groups Congratulate Gov-Elect Cuomo, Send 1st Green Assignment: Rebuild NY’s Environmental Agencies & Restore Funding” (Nov. 3, 2010), *available at* <http://www.riverkeeper.org/news-events/news/riverkeeper/cuomo-1st-green-assignment/>.