THE ENFORCEMENT EXAMPLE: BALTIMORE CITY’S WASTEWATER CONSENT DECREE

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What’s that money for anyway?

- Pipes fail when they age
  - Cracks – infiltration & inflow, root intrusion
  - Sags – low points where solids can build up
- Maintenance
  - Roots
  - Fats, oils, grease
  - Non-flushables

Image source: brokensewerpipeminneapolis.com
Lack of investment can lead to...
Sewer Overflows – Legal Stuff

• Violation of section 301 of the Clean Water Act and §9-322 of the Environment Article of the Maryland Code

• Because any discharge is pollution, and pollution is illegal, there’s no official minimum standard of acceptable SSOs.

• No way to prevent all overflows 100% of the time.

• MD law requires these to be reported to MDE

• In theory regulators could bring enforcement action for one sewer overflow one time

• How many overflows trigger enforcement is up to discretion.
SSO Enforcement in Baltimore

• Late 1990s
• Settled by consent decree in 2002
• Original CD gave 14 years to make structural changes, study system, propose upgrades, and build them
• Very expensive proposition and City had to start raising wastewater rates.
• Lots of uncertainty
  • Impact of change on system
  • How long things would take
How Did That Work?

• No major compliance issues throughout CLD duration
• Lots of early wins like completing mandated structural changes
• Finished and submitted studies on time... BUT
• Proposed the smallest possible upgrades.
• In 2011, regulators formally disapproved the sewershed studies
Negotiation of Modification

- Negotiation took about 5 years
- Complete re-vamp of consent decree
  - Deadline extension
  - New methodology
  - New provisions
- Lots of work for lawyers and engineers
- Interest from environmental groups, perception that regulators were not doing enough. Eventual intervention.
Modified Consent Decree – Capital program

- Approximately $1.8 billion
- Phase I
  - Structural Rehabilitation
  - Headworks
  - Completed by 2021
- Phase II
  - Capacity Improvements
  - Using new methodology to determine right size
  - Completed by 2030

Source: Kristian Bjørnard/Creative Commons/Wikimedia
Modified Consent Decree – Other provisions

• Cleaning & Inspection Program
• Sanitary Discharges of Unknown Origin
• Basement Backups / Cleaning Reimbursement Program
• Other technical and legal stuff

Source: Bay Journal, Dave Harp
Take this as a cautionary tale

• How old are your sewers?
• Are they regularly cleaned and inspected?
• Do you have overflows?
• How is your relationship with MDE?
• How is your relationship with local environmental groups? Community groups?
• Are you giving them a level of comfort that when something goes wrong you have the ability to fix it?

1 oz. prevention > 1 lb. cure
Thank you!

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