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On the Gowanus, Say 'No' to Superfund

by David Von Spreckelsen

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Would Superfund status radically slow down the commercial development of the waterfront?

TOXIC NEW YORK

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Decades after the federal government adopted the Superfund law to clean up the country's hazardous sites, potentially dangerous areas persist throughout the city. Gotham Gazette looks at three of them.

**** THE GOWANUS CANAL:** Everyone agrees the Brooklyn waterway and the area surrounding it need a cleanup, but residents and others differ on how to do it.

-- [Joshua Verleun](#), an attorney with Riverkeeper, writes that the area should be designated a Superfund site.

-- [David Von Spreckelsen](#), a senior vice president of Toll Brothers, which hopes to build along the canal, argues the city has a better plan.

**** NEWTOWN CREEK:** The estuary separating Brooklyn and Queens has earned the dubious distinction of being one of the country's most polluted waterways. Residents, advocates and others have long pleaded for a cleanup -- to no avail. Is that finally about to change?

**** STATEN ISLAND'S NORTH SHORE:** This area of approximately 5.2 square miles includes more than 20 sites the government or residents consider contaminated -- many of them close to apartment buildings and houses. In March, the community learned of further dangers.

The one thing that everyone with an interest in the Gowanus Canal can agree on is that it needs to be cleaned up.

But the three important questions are: (1) what needs to be done, (2) why, and (3) when? It is the [city](#) and not

the [U.S. Environmental Protection Agency](#) that has the correct answers to these critical questions: (1) address the sewage overflow issue, (2) because it is the contaminant most affecting quality of life, and (3) do it now.

The city's plan would address the current leading contaminant of the Gowanus Canal that most affects the quality of life of those who live and work in the area -- the raw sewage that runs into the canal when the [combined](#) (storm and sanitary) sewer system overflows. Upgrading and modernizing the flushing tunnel and pumping station, as well as selective dredging and capping of exposed sediments, can begin under the [city's](#) plan this fall; the city has allocated at least \$175 million to accomplish this urgent goal.

(For an opposing viewpoint on cleanup of the Gowanus Canal, see [Brooklyn's Lavender Lake Needs Superfund](#).)

This work, combined with the city's requirement that private developers build new storm water systems when they develop properties along the canal, will dramatically reduce the [sewage overflows](#) that are today the primary source of pollution of the canal. In addition -- just as a [Superfund](#) designation would do -- the city will compel the parties responsible for the decades-long pollution of the canal to contribute money to finance additional dredging of the sediments at no expense to taxpayers. The city, officials have said, will work collaboratively with the federal [Environmental Protection Agency](#) and the New York State [Department of Environmental Conservation](#) to complete this cleanup. Rejecting a counterproductive Superfund designation will not mean excluding the federal government from a central role in the cleanup.

Taking Care of Sewage

The chief concerns of area residents are the odors and unsightly floatables in the canal caused by combined sewer overflows. Yet the Environmental Protection Agency has no intention (affirmed publicly by its Region 2 Director Walter Mugdan) to [address](#) the issue of sewage in the canal. The agency [plans](#) to dredge only the sediments at the bottom of the canal. While this is an important objective, the cost to remove all of these sediments is staggering and, notably, these sediments are *not* affecting area residents.

A Superfund designation could put on hold the city's efforts to address the important sewage issue. And given the Superfund's track record at other polluted waterways, even the sediments may not be removed for 25 years or more -- witness [last week's](#) news that, after a quarter-century, the dredging of the Superfund-designated Hudson River is just now set to begin!

Let's be clear: Sediments at the bottom of the canal pose no threat to human health unless humans come in contact with those sediments on a regular basis. That would happen only if an individual purposely and repeatedly dove to the bottom of the waterway. Yet the Environmental Protection Agency plans to ignore the sewage that runs into the canal during heavy rainfall and instead spend \$400 million on dredging sediments at the bottom of the canal that are not impacting people.

Plans Put on Hold

More broadly -- based upon empirical evidence from other similar Superfund designations of waterways that have multiple parties responsible for their pollution -- what path would this cleanup be likely to follow if the Gowanus was designated a Superfund site?

The first step is for the federal government to conduct analyses of the condition of the canal. The Environmental Protection Agency has some seed money to accomplish this. During this period *all* plans for city remediation of the canal as well as private investment would be put on hold because no one would be willing to spend money until the agency's expectations for the cleanup are clear.

Further, during this time it will be unlikely that government authorities would be willing to issue permits for anyone to do work along the canal. So, there would be no private investment to create new infrastructure that would separate storm water from the combined sewer system. The city's plans for the pumping station, flushing tunnel and selective dredging and capping of exposed sediments to be performed by the [Army Corps of Engineers](#) also would likely be stalled. As such, there would be no improvement in the quality of life for nearby residents and workers because the sewage and exposed sediments would not be addressed. In fact, the \$15 million budgeted by the Army Corps of Engineers would be rescinded if a Superfund designation were to occur, city officials have said.

Years of Lawsuits

Also at this time, the federal government will be looking for "[potentially responsible parties](#)" to determine who may be liable for past pollution. This is necessary because the agency does not have money to fund a cleanup of the canal. The federal government would sue these "parties" to raise this money. Decades, yes decades, of litigation would ensue, because those that are sued would just turn around and sue others to defray their costs.

The Environmental Protection Agency will *not* come up with \$400 million by going after private parties. There are no Exxon/Mobils or General Electrics involved here -- no deep pockets. Take a look at most of the property owners and businesses currently on the canal and who have been there historically. It is impossible to imagine how the agency could suggest that it could raise \$400 million them.

However, the potential does exist to raise the money by going after the city and the utility, [National Grid](#). Should the federal government sue the city and National Grid to raise the money that it is unable to obtain otherwise (arguing they are potentially liable parties) we would all be able to thank the agency for higher taxes and utility charges when the city and National Grid seek to recoup these monies. (National Grid took over Brooklyn Union Gas, whose coal gasification plant has been blamed for some of the canal's pollution.) And while this litigation is going on, the city would not be able to pursue its current cleanup plans and National Grid would cease the [voluntary cleanup](#) it has initiated as a part of the state's brownfields program.

While the analyses grind on and the lawsuits and countersuits rage, the condition of the canal would deteriorate. Twenty years from now, the area would likely look like it does today -- or worse. One only has to look into other Superfund projects like the Hudson and Passaic rivers. Both of these were designated as Superfund sites in the 1980s; neither has seen *any* cleanup activity commence in more than 25 years.

So let's have the city, state, and private sector -- working with the Environmental Protection Agency -- get going on the cleanup without all of the wasted time and endless litigation that inevitably accompany a Superfund designation.

David Von Spreckelsen is a senior vice president of Toll Brothers and a member of the [Clean Gowanus Now! Coalition](#) - a group of two-dozen developers and property owners along the canal. †Toll Brothers received ULURP [approval](#) for a zoning change for a mixed-use project along the canal from the City Council earlier this year. The project will include 450 market rate and inclusionary housing units.

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