

N Y L P I

**JUSTICE THROUGH
COMMUNITY POWER**

**Comments of Hayley Gorenberg, Legal Director of
New York Lawyers for the Public Interest
To the Committees on Transportation, Environmental Protection and Resiliency and
Waterfronts, Regarding City and MTA Resiliency Efforts and Preparation for Storms
(September 14, 2021)**

We must use this moment to address inadequate infrastructure and transform New York City's environmental justice communities so they are resilient and thriving, as part of a city-wide initiative to better prepare for more powerful storms like Hurricane Ida and other challenges wrought by global warming. Much of what we need to work on is right under our feet – the City's sewer system. When storms slam into the City and dump rain and runoff, the fitness of our sewers determines our wellbeing. Are they flooding and collapsing? If so, our infrastructure failings contaminate homes and waterways, destroy possessions and lives, and even potentially drown fellow New Yorkers – especially in poor communities and communities of color.

My name is Hayley Gorenberg, and I'm the Legal Director of New York Lawyers for the Public Interest, a community-driven civil rights organization with an Environmental Justice Program that has contributed to reforms throughout the City and State's trash, transit and other vital systems. Since the Thanksgiving 2019 sewage backup disaster that wrecked homes and lives for hundreds of New Yorkers in South Ozone Park, Queens, NYLPI has convened and been working with a half-dozen excellent New York law firms, working pro bono as part of [NYLPI's South Ozone Park Sewage Legal Assistance Project](#), or SLAP, to pursue justice for families flooded out by sewage. When Ida hit the City, the storm hit our team and community partners with a sense of dreadful familiarity.

Ida's rains synergized with decrepit and inadequate sewer infrastructure to cause disastrous flood damage and even deaths. The wreckage wrought by the previous Queens sewer disasters, caused by infrastructure malfunction for which the City appropriately took responsibility, provides a case in point. With or without storms, the state of the City's sewers has become life-threatening. In Hollis, Queens, where Ida's floodwaters killed a mother and

son, neighbors said they had reported drainage system problems for years.¹ And the sewers weren't the only system overwhelmed by the storm – so was 911.²

These are examples from one of the City's numerous environmental justice communities—fighting marginalization on any number of fronts, including horrendous impacts of dilapidated infrastructure, especially when it's stressed by more and more frequent and violent storms. Again and again, climate disasters will hit these communities first and worst; but if our government addresses their needs, the City will be uplifted, and everyone will be safer.

We're not without warning on this front. In the course of our work pulling together the Sewage Legal Assistance Project, NYLPI sought years-old reports from the Department of Environmental Protection indicating longtime surcharging of our communities' sewers and pointing to the longstanding need for major work. (In accepting the invitation to testify at this hearing we submitted copies of those reports, including one detailing an investigation commenced more than a decade ago because of well-known, chronic sewage backups.)

In any case, when the sewer in South Ozone Park gave out, blocked up, and collapsed in what the DEP itself called a "calamitous back-up of sewage," the filth that flooded about 120 homes drove people to hotels and hospitals. Potential health impacts were legion – including from mold and, as is more widely discussed now, from contact with sewage-tainted floodwater. Some families were split up and never came back together. Matriarchs of intergenerational households relocated to other states, leaving lifelong homes with extended family. To have infrastructure neglect, of all things, split the fabric of our families undermines our City and the values of proud and caring New Yorkers.

When affected New Yorkers turned to the City's claims process, many, many of them felt re-victimized. Here, too, New York City lacks strong agency infrastructure that families need, in order to be resilient in the face of disaster. That's why we created our legal assistance project. The problems Queens residents experienced provide a roadmap for improving service. Here are some examples:

- The City helped with cleanup in some instances -- but did not ensure that sewage-damaged belongings were catalogued or photographed or otherwise recorded before

¹ <https://pix11.com/news/local-news/queens/very-devastating-queens-mother-son-killed-by-ida-floodwaters-in-hollis-apartment/> ("They are also frustrated, saying the city has failed them as they have been complaining about the faulty drainage system for years on the block to no avail.")

² <https://www.thecity.nyc/2021/9/2/22654573/ida-deadly-rains-hochul-de-blasio-preparation> ("The city's 911 emergency call system was overwhelmed, with many callers being put on hold until call takers were available, according to a source at the city's tech department. The NYPD, which operates the system, asked the approximately 400 call takers on the day shift to work another tour to handle the expected increase, according to Ralph Palladino, second vice president of District Council 37's Local 1549, the union representing the call takers.")

they were hauled away. So when residents sought to get compensated for the damage, they lacked what would have been simple records to support their claims;

- Replacement boilers installed by the City led to complaints of substandard installation and lack of necessary insulating barriers, and residents had trouble procuring what they were told should have been simple tracking documentation from agencies showing exactly what was installed;
- Overall, proofs of loss were poorly understood, and inappropriate downward pressure on loss estimates resulted. Here's just one example of the problems: People with low limits on their homeowner's insurance would receive insurance appraisals essentially showing they'd maxed their policies at a few thousand dollars, with no specification of their actual loss beyond the maximum of the policy. Then these low appraisals would be misinterpreted as showing actual loss and creating a ceiling, inappropriately limiting compensation;
- In some ways, the Comptroller's claims process operated like what Legal Services lawyers recognize as "poor people's courts," with sub-par service, including legion delays and neglect of phone calls and emails. Paperwork accompanying offers included legal language that exerted coercive pressure on claimants to take lowball offers.

Given the experience of the New Yorkers served by NYLPI's Sewage Legal Assistance Project, the Comptroller's office and City Bar have come to support the idea of an independent claimants' office. If that proposal goes forward, New York Lawyers for the Public Interest would urge that the City consider hiring members of our flood-affected community partners to guide transforming the process, using their experience as their expertise.

With an eye toward future work together, I close with thanks to our elected officials and committee staff members for convening this critical hearing. As FEMA and national legislation focus on addressing disasters and preventing them with better infrastructure, New York Lawyers for the Public Interest looks forward to continuing work with the Council to ensure lasting solutions for environmental justice communities in Queens and throughout the City.

Hayley Gorenberg, Legal Director
New York Lawyers for the Public Interest
151 West 30th Street, 11th floor
New York, NY 10001
hgorenberg@nylpi.org
212.336.9322 (direct)

New York Lawyers for the Public Interest (NYLPI) has been a leading advocate for civil rights and a pioneer of community-based lawyering in New York City since 1976. Our interdisciplinary team of advocates uses community organizing, policy advocacy, litigation, pro bono partnerships, and strategic communications to advance ambitious campaigns. NYLPI's Environmental Justice Program has worked to advance sustainable and

environmentally just solid waste management policies in New York City for over a decade. NYLPI also offers a Pro Bono Clearinghouse that connects innovative and high-impact nonprofit organizations with New York's most prestigious law firms and corporate law departments, providing free, high-quality legal solutions to organizations that strengthen communities and serve underrepresented New Yorkers. Through our Environmental Justice work, NYLPI seeks to eliminate the unfair burdens of environmental hazards borne by communities with low incomes and by Black, Latinx, Asian, and other communities fighting marginalization -- and to dismantle structural racism to create a more equitable and sustainable city, state and society. In partnership with community-based organizations, advocacy groups, pro bono law firms, and individual New Yorkers, our Environmental Justice team builds coalitions, devises and executes campaigns, launches strategic litigation, and shapes policy. We support grassroots organizing and leadership and strengthen communities' ability to assert their right to a healthy and sustainable environment.