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Joel Beauvais, acting deputy assistant administrator, Office of Water, EPA; Keith Creagh, director, Department of Environmental Quality, State of Michigan; Marc Edwards, Virginia Tech professor, Environmental and Water Resources Engineering; and Flint resident LeeAnne Walters, are sworn in on Capitol Hill. // AP Photo/Molly Rile

Why It's So Disturbingly Common for Water Regulation to Fail

LAURA BLISS FEB 12, 2016

The Texas border towns of Rio Bravo and El Cenizo had always lacked safe drinking water supplies, back to their founding as *colonias* by unscrupulous developers in the 1980s. When the Rio Bravo Water Treatment Plant opened in 2006, the citizens, predominantly poor and Latino, hoped their tainted-tap troubles would be washed away.

But the \$12 million, state-of-the-art plant didn't work. The water smelled and came out in peculiar colors. Almost immediately residents complained about stomach problems and skin rashes to Webb County officials, and eventually to the Texas Commission on Environmental Quality, which issued some violations. But it wasn't until 2013 that the TCEQ, alongside the Texas Rangers, launched investigations that found the county had been falsifying water quality records all along. In 2015, one county employee pled guilty to criminal charges, while TCEQ was probed for not having done more about the dysfunctional plant.

Toxic water, a marginalized community, and a regulator locked in a long stalemate with a public agency: Sound familiar? The same forces shaped the story on a larger scale in Flint, Michigan. Similar tales are unfolding in California's Central Valley, Nashville's suburbs, and the plateaus of Ohio.

Why, time after time, does this pattern emerge? Why don't water agencies always provide safe drinking water, and why don't regulators always regulate?

Manuel Teodoro, an associate professor of political science at Texas A&M University, studies the people behind environmental regulations, and why they make the decisions they do. As the story of Flint rises to international attention, his research sheds light on how things can go so terribly wrong.

The case of Flint

In 2014, Flint was under the control of a state-appointed emergency manager. As a cost-saving measure, the manager switched Flint's water source to the local Flint River, gaining approval from the Michigan Department of Environmental Quality (MDEQ), which enforces EPA water standards. But the river water was corrosive, and for 18 months it caused lead to leach from the city's pipes. Now nine people are dead from a Legionnaire's outbreak that may be linked to the water's improper treatment, thousands of children have been exposed to dangerous levels of lead, and miles of infrastructure have been ruined.

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Multiple investigations have been launched by the state and federal government, and they could end in charges of involuntary manslaughter. Fingers are flying between MDEQ and the federal EPA. (City officials are also implicated in Flint's crisis, but because Flint was under state management when it switched to the Flint River, the accusations fall mainly between MDEQ and EPA.)

Some salient questions: Why did MDEQ fail to insist that Flint include a corrosive control in the water? Why didn't it act when outside evidence suggested that the water was toxic? Why didn't the EPA force MDEQ to do more when it learned that Flint's water did not comply with Safe Drinking Water Act standards? And why didn't it make that information public as quickly as possible?

There are no certain answers yet. But Teodoro says there are some broad truths about environmental regulations that can offer some understanding for what went wrong in Flint—not to mention Rio Bravo, El Cenizo, and beyond.

Local politics affect compliance

One crucial concept is environmental federalism, the basic enforcement structure underlying America's big environmental protection laws. The federal government sets environmental standards, such as the Safe Drinking Water Act. States are the "primacy agencies" charged with implementing and enforcing those standards on a local level. Local governments and public water districts are supposed to comply with the state (and, by extension, the feds).

But environmental federalism creates some common trip-ups. First of all, "local and state politics always affect compliance," says Teodoro. Local governments might determine that the cost of complying with federal and state standards is simply too high, too burdensome, or too politically onerous. For instance, compliance might require raising water rates, a risky move for local leaders seeking reelection. Or maybe the local population served by the water agency is politically marginalized, and thus deemed unworthy of the funding necessary for compliance.

That's where environmental injustice can enter the picture. In a research paper under peer review, Teodoro and doctoral candidate David Switzer analyze local government violations of the Safe Drinking Water Act from all over the U.S. They found that in communities with low socioeconomic status, race and ethnicity were extremely strong predictors of high numbers of violations. In other words, poor black and Latino communities are more likely to get stuck with bad water.

"This can't just be a consequence of source-water quality," Teodoro says. "It's partly that officials are deciding where to put resources towards compliance, and it has these racial and ethnic effects."

Government can't touch government

Water-quality violations aren't just the result of decisions made at a local level. States, and ultimately the EPA, are supposed to check that environmental standards are being enforced. Can't states just crack down on any local agency that flagrantly violates them, and can't the feds crack down on the states that don't care?

Yes, but it's complicated. Neither state and federal enforcers have that many levers they can pull to punish the agencies below them.

Flint resident Jerry Adkisson and his children carry bottled water they picked up from a fire station. (REUTERS/Rebecca Cook)

Technically, states can fine non-compliant cities, and the EPA can fine non-compliant states. And the EPA can revoke the state's oversight authority, just as states can put water systems into receivership. And sometimes these things do happen.

But as I wrote in [July 2015 about Teodoro's previous research](#), fining a city is essentially punishing the public that both government bodies are supposed to serve. Fines take away public funds that could be directed towards compliance; they essentially encourage more violations, not less. And because local public utilities are often monopoly providers of essential services, regulator threats to revoke their licenses are often empty ones. It's not like the EPA can shut down the city of Baltimore, or the Tennessee Valley Authority, when they fail to comply with federal standards—that would be depriving citizens of the only service provider around.

All told, this structure can add up to a game of “catch me if you can”: local governments make risky decisions, knowing their regulators won't do much to punish them.

One big dysfunctional family

The relationships between EPA regulators, state enforcers, and local water providers are just that—relationships. More specifically, they are ongoing connections between human beings caught up in big bureaucracies, shaped by all sorts of interests from inside and out.

Daniel J. Fiorino is the director of the Center for Environmental Policy at the School of Public Affairs at American University, a position he accepted after 31 years of working on policy at the EPA. Describing how EPA officials work with their counterparts at the state level, he says: “I often compare it to family relationships. You may not all get along, you may have different perspectives, but you’re in the same space and you have to learn to work together.”

Invariably, that means there can be tension, resentment, and sensitivity. So when an EPA official finds a state environmental agency has made a violation, the first move isn’t necessarily going to be issuing a fine or making a public statement. Rather, in the interest of preserving its working relationship with that state, the EPA might quietly nudge state officials towards compliance.

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Another force that encourages the EPA to act with discretion is the fact that it’s been a controversial agency since its inception. “The level of conflict and criticism has risen in recent years,” says Fiorino. “We have people seriously running for president saying that we don’t need an EPA or a Clean Air Act. So that can make an agency very cautious and reluctant about appearing alarmist or like it’s taking over for the state.”

But none of this is to excuse what happened in Flint. As FOIA-obtained email evidence shows, MDEQ resisted taking responsibility for Flint’s problems long after the EPA flagged them. Still, rather than assert its authority, the EPA stayed behind the scenes, and even went so far as to allegedly silence one of its own experts who was sounding alarm bells.

It took the EPA nearly a year to admit that it hadn’t acted as forcefully as it could have. MDEQ, as the primacy agency charged with upholding Safe Drinking Water Act standards, failed from the start, and took nearly 18 months to admit it. Clearly, these regulatory games and tactics went on far too long.

“You’d like to think that the bureaucrats in power would get that there are children drinking lead,” says Teodoro. “You’d like to think that some kind of humanitarian instinct kicks in and they decide that they’re going public.”

Alas, in Flint, that instinct never kicked in. Instead it took outsiders—a doctor, a scientist, and an outraged mom—to shake MDEQ and EPA officials awake from their bureaucratic trance.

About the Author

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