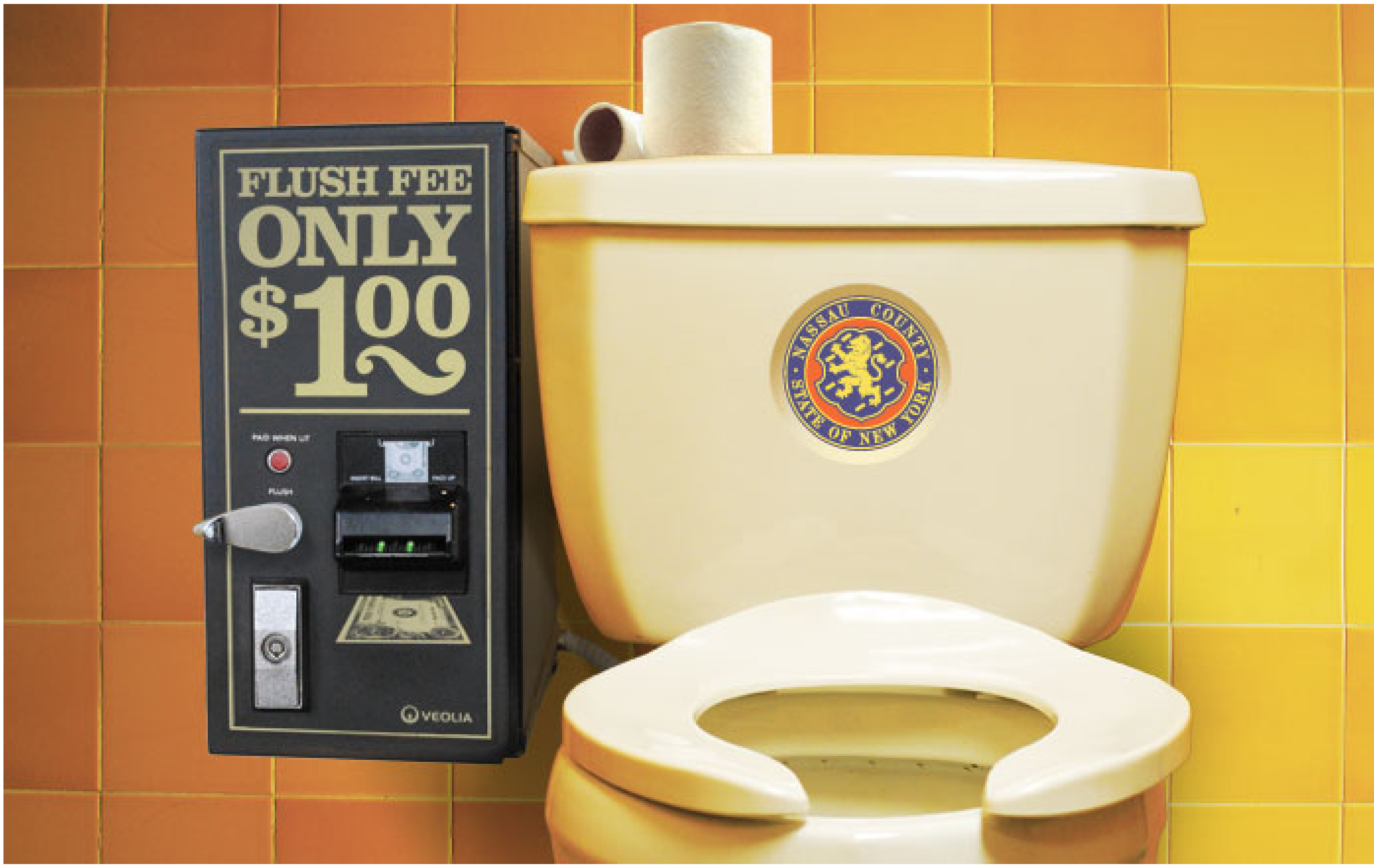
Nassau Sewage System Privatization Could Flush County's Future Down The Drain

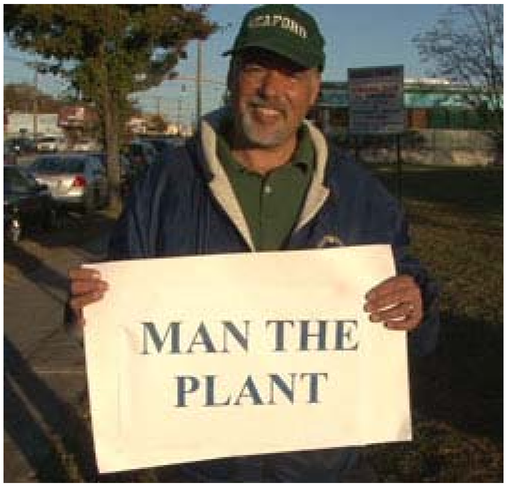
By Christopher Twarowski on November 17th, 2011



Phil Franco won't quit.

Franco is the co-chair of the watchdog Cedar Creek Health Risk Assessment Committee along with Mark Salerno of Wantagh, who's standing just a few yards away. They put this rally together to raise awareness about the latest battle in what have been several decades of issues concerning the park's main resident, the county-run Cedar Creek Water Pollution Control Plant.

About two dozen people have joined them, including Franco's wife, children and father Vincent, who has been active for decades in safeguarding the public from the plant's risks. It's a much smaller turnout than previous rallies at this same spot. Glaringly absent is Legis. Dennis Dunne (R-Levittown), whose district covers the plant, the typically vocal heads of the Wantagh-Seaford Homeowners Association and members of grassroots hell-raisers Green Bay Parkers—all historically outspoken on any matter concerning Cedar Creek or its sister facility, the county's troubled Bay Park Sewage Treatment Plant.



Wearing a light blue jacket, a green Seaford baseball cap and holding a sign that reads "Man The Plant," the 48-year-old father of four is standing at the entrance to Nassau County's Cedar Creek Park on Merrick Road.

What Franco and the handful of others are protesting this chilly afternoon in early November, however, couldn't be any more starved for sunlight or public awareness. They're part of a growing number of concerned taxpayers and county residents who have caught whispers of a scheme that, if left unchecked, will potentially dictate the future of all county residents' wallets for the next 40 years.

"This is the worst fight yet," he tells the *Press*.

Nassau Republican County Executive Ed Mangano is actively pursuing a plan to sell or lease, either in part or in its entirety, the county's sewage treatment system—the two aforementioned plants, another in Glen Cove and its vast underground network of pipes and conduits, which currently serves approximately 1 million users—to an unnamed private company. Referred to as a "public-private partnership" or "P3" in his administration's recently legislature-approved budget and Fiscal 2012-2015 Multi-Year Financial plan—one of the very few publicly available documents containing any mention, however vague, of the deal—proceeds would go toward closing the county's projected several-hundred-million-dollar budget gaps in 2013, 2014 and 2015. It's also included as a contingency for 2012.

The county has already hired Wall Street investment giant Morgan Stanley to act as its consultant and advisor through the "complicated transaction," Mangano tells the *Press*, with one contract totaling $25,000 and another "going forward for $175,000."

If successful, he says, the proposal would net between $900 million and $1.3 billion—making it the largest fiscal transaction in Nassau County history.

Short on details to the public, it's even shorter on the time frame. The budget documents have the operating contract awarded by Dec. 31, 2011, and the selection of a "winning investor" by June 2012. Team Mangano describes the arrangement as a fiscally responsible and environmentally sound means of ridding the county of its "poorly operated" sewage treatment plants—the gross mismanagement and hazardous conditions of which were the subject of an ongoing, award-winning *Press* investigative series and mini-documentary last year—while generating much-needed revenue and paying down debt.

“Public-private partnerships have proved to provide significant savings for taxpayers, as well as increase efficiencies,” Mangano tells the *Press*. “In this case, we have the ability to protect the taxpayer, increase efficiencies, protect the environment.

“There’s four companies that have proven the wherewithal to complete such a transaction,” he adds. “And we will soon move to the next step, which is requesting proposals.”

Economists, law experts, environmentalists, watchdogs and a voluminous, easy-to-find, documented track record of similar schemes, however, counter his assessment. They paint a picture of a process tailored to protect the private entities that assume control of the once-public assets, in Nassau’s case something as basic and necessary as sewage and water services, while shortchanging the taxpayers and literally robbing them of their future, among a litany of other negative ramifications—including less transparency, less accountability, more costs for the public and potential public safety and health concerns.

And although the Mangano administration will not publicly release the names of the sewage system’s potential new owners—the county executive tells the *Press* “I don’t have them myself”—a *Press* investigation has learned two of the prospective suitors that have been paraded around the sewage plants in recent weeks: U.K.-based Severn Trent and Veolia, the Paris, France-based international conglomerate, whose American headquarters in Illinois recently negotiated (details of which were not released until Nov. 10, seven weeks before the proposed takeover) the $3 million contract to operate Long Island Bus.

“They’re not paying $1 billion for something because they like us,” fires Jerry Laricchiuta, president of Nassau County Civil Service Employees Association (CSEA) Local 830. “They’re paying $1 billion for something because they want to make money. And it’s going to be lots of money The taxpayers will absolutely see a significant increase in their sewer charges, because we do it for very, very little cost right now. This is not about saving the taxpayers money. This is about Mangano getting his hands on a half a billion dollars cash. That’s it, period.”

A protestor holds a painting of Nassau Exec Ed Mangano burning the US Constitution.

Flushed

Once upon a time, [Cedar Creek](#) plant—along with [Bay Park](#), now the poster child for how not to run a sewage treatment plant—was the crown jewel of the county. Workers tell the *Press* they'd compete—and win—national competitions based on their wastewater treatment skills and services. Shelves of awards and other accolades still fill a trophy case in the visitors' area just through its doors as testament. Engineers and other waste plant employees and operators from across the country would tour its many facilities and various pieces of state-of-the-art equipment.

The plants' demise began under former Nassau Republican County Executive Tom Gulotta, they say, though it was the near-decade under the administration of former Democratic County Executive Tom Suozzi that brought both Cedar Creek and Bay Park to their knees. Reams of internal documents reviewed by the *Press* last year detailed Cedar Creek's staff's futility in maintaining the facility's crucial processes and multi-million dollar equipment and machinery under gross mismanagement and abject neglect at the top, punctuated by retaliation if workers spoke out. Work orders went unfulfilled, further exacerbating costs to taxpayers. Millions of dollars went unspent or are still missing. Preventive maintenance was non-existent. Out of more than 12,000 man-hours of required preventive maintenance at Cedar Creek in 2008, for example—the equivalent of changing the oil in one's car so it doesn't completely break down—a total of eight were performed. Workers didn't receive adequate health and safety equipment or training. Both plants were also horribly understaffed, among myriad other issues that included inoperative methane gas valves at Cedar Creek despite its two closest neighbors being elementary schools.

Mangano announced in his inaugural address he would strive to resurrect the sewage treatment system. Since then, he says, his administration has invested more than $75 million "just to triage the situation." The Republican majority legislature held a hearing last February that exposed many of the plants' problems, most notably mismanagement, understaffing and lack of preventive maintenance. Mangano promised more hires, promotions and additional training.

He then banished Nassau's Superintendent of Sewage Plants Richard Cotugno to a warehouse in Westbury. Sludge streams, with no warning to the public, crept from Bay Park through the popular fishing waters of Reynolds Channel and made it onto YouTube, among other discharges.

Despite some forward progress, the reality in the plants is back to grim. Critical equipment is still broken. They're still understaffed. Overtime has been nixed. Promotions never came. Methane valves are again not being adequately serviced.

Morale has returned to abysmal depths. Heavy campaign contributors of Mangano's have moved in as contractors. New hires are brought in because of who they know rather than what they can do. Cotugno, though removed from the plants, still receives a salary of more than $130,000, compliments of the taxpayers, and was actually recently identified as the steward of the county sewer system's 10-year plan.

Now, the Republican majority is bent on not raising taxes, yet it is strapped for cash. The county faces a budget gap next year of more than $300 million, and it's embroiled in a money battle with county unions over additional concessions worth more than $150 million that has resulted in mass layoffs. There were 128 in June and 175 at Nassau Health Care Corp. this week; another 700 threatened if the county did not meet its projected goal. The plants, given their troubled history, have become easy targets.

Nassau is the second-wealthiest and second-highest taxed county in the nation, but its state financial watchdog, the Nassau Interim Finance Authority (NIFA), enacted a control period in January and later declared a fiscal crisis. It has the final say over the county's finances. It has also imposed a pay freeze on county workers.

CSEA President Laricchiuta says there are about 260 county employees servicing the plants and its network of pipes whom he'll be fighting tooth-and-nail to protect. Mangano assures the *Press* they'll all be safe, either retained, redeployed to fill other vacancies or possibly offered employment by whoever takes the system over.

If true, even that does little to quell the many other money battles currently raging between the county executive and Nassau's five public employee unions. Laricchiuta tells the *Press* that Team Mangano's demands in the ongoing budget war are simply unrealistic—the equivalent, he says, of an average $12,000 pay cut, per member.

"It's unattainable, and it looks like if that's the only options we have, then they're going to be laying off 700 people, which will completely destroy the services in this county," he continues. "We will remain the highest taxed county in the country, with the absolute worst services in the country."

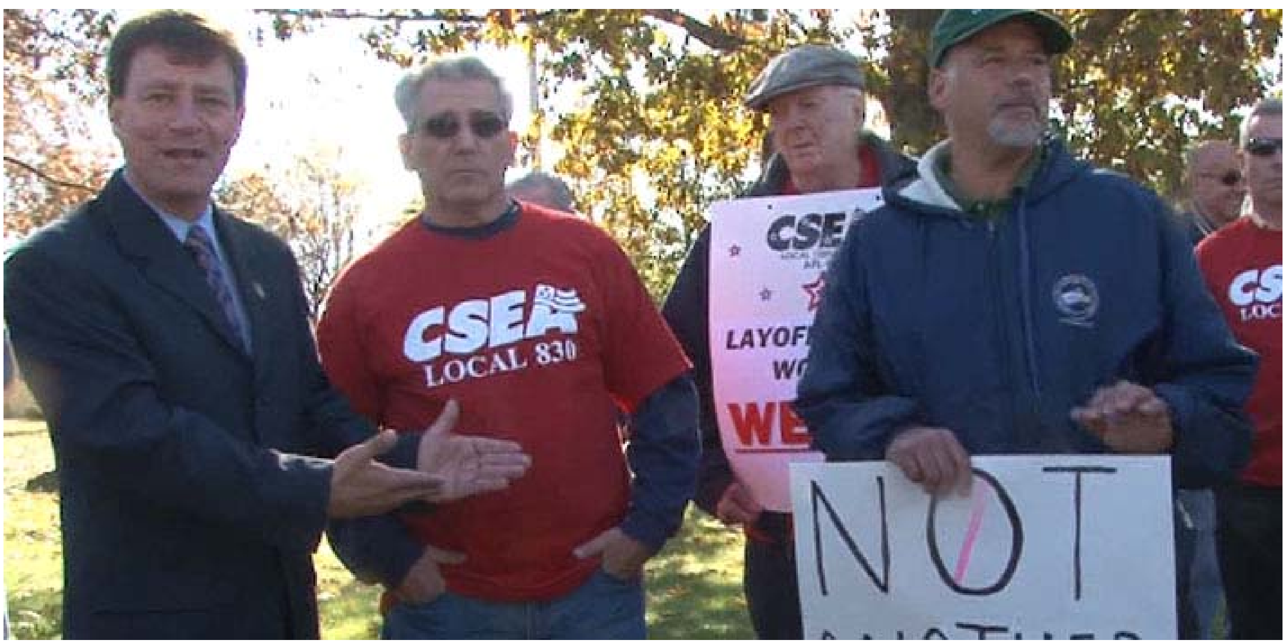
Laricchiuta describes the privatization plan, which he says he only heard about seriously roughly two months ago, as a "huge fire sale" and believes Mangano needs a change in legislation on the state level in order to do it.

"[Mangano] could care less about services right now," he says. "He needs the money. People that need money get desperate. And I think it's a desperate move. It all comes down to: Are they allowed to do it or not?"

He also views the scheme as an extension of Republican union-busting tactics taking place in other municipalities across the country.

"The Nassau Republicans have taken on the national agenda of attacking the American working middle-class families," says Laricchiuta. "They have decided here in Nassau County that the direction they will go is to vilify the county worker, attack the working man and his family, and balance the budget on the backs of the lowest-paid workers in the county."

He stresses that it never was the county's sewage treatment plant workers who devastated the plants, but the higher-ups who ran the places into the ground—and that it's a guarantee that ratepayers are going to pay more under a private company.



Mad As Hell: Nassau Legis. Dave Denenberg (above, l), CSEA DPW Unit President Bob Campo and Cedar Creek health risk assessment committee co-chair Phil Franco protest Mangano's plan Nov. 6.

The vocal and oft-hot-tempered Legis. David Denenberg (D-Merrick), who has been involved in Cedar Creek's many trials and sparse tribulations both as an environmental attorney and lawmaker for more than two decades, also blasts Mangano's proposal. He held an investigatory hearing on the plant's many sins, following a 2005 *Press* expose, and is currently Team Mangano's most outspoken critic, recently slamming them for not approving his Spill Bill—a law that would require the county to notify the public whenever there's a sewage spill or even suspected infraction of environmental laws from any county plant—as well as railroading through the Long Island Bus contract.

The first time he ever got wind of a scheme to privatize the sewage treatment plants, Denenberg tells the *Press*, was under Mangano's predecessor Suozzi, who, he says, included it as an long-term fiscal back around 2005. Denenberg says he and the then-Democratic majority demanded it be removed or they wouldn't approve it. [He adds that Democrats allocated more than $700 million to the plants.]

Denenberg opposes the privatization plan now, just as he did then, for a slew of reasons, not the least of which being the selling of a valuable public asset for a quick, temporary fix and its potentially catastrophic ramifications on the environment.

"The purpose for doing it would be one-shot revenue," he explains. "But for that one-shot revenue we're giving up control over a public necessity, sewage, a public necessity—I mean everyone needs to flush the toilet [and] it's also an environmental necessity. Sewage treatment plants are critical elements of our environment. You need sewage treatment plants so that you don't have untreated sewage, through septic tanks or otherwise, or cesspools, going into our waterways.

"When the sewage treatment plants are owned by the public, they are subject to public scrutiny," he continues. "So better or for worse, when they're operating well, when they're operating badly, the public has a right to force improvement, the public has the right to go in the plant, to make sure that upgrades are happening. I mean look at what's going on right now. Most of the upgrades that have happened only happened because the public cried out for it."

Upon being informed of Veolia's inclusion in the mix to run the county's sewers, too, he quips, "Unbelievable . One way or another, Alfonse D'Amato is going to end up owning Nassau County government again." Veolia is a client of the former Republican U.S. Senator's global consulting firm Park Strategies, LLC.

NIFA Director George Marlin has also weighed in on the sewer privatization plan, raising serious considerations that the county and residents should ponder before moving ahead, through postings on his blog Street Corner Conservative.

A Sept. 2 blog post tells readers the initiative "is not a slam dunk" and proposes questions about its approval process, whether the legislature would be willing to approve a deal containing terms conveying to private operators "the authority to impose, to set and, if necessary, to increase residential and commercial usage fees," among other concerns.

An Oct. 6 statement calls for public discourse on the plan as to whether the proposed sale is good public policy and introduces the frightening idea of a "flush tax" for residents once the sewers are under private control.

"The public should be told how much more it will cost to flush their toilets if there is a sale," Marlin writes. "There will be a flush fee (a/k/a tax) because sewage costs will no longer be based on property tax assessments and because the buyers of the sewer system will require a profit on their investment."

But it’s not just Democrats, warring union heads and watchdogs criticizing Mangano’s fast-paced privatization scheme. Academics warn the *Press* to beware of its potentially crippling effects as well.


EMERGENCY: Sludge and waste cake bays inside the Thickening Building at Nassau’s troubled Bay Park Sewage Treatment Plant, cementing its mechanisms and rendering much of the costly taxpayer-financed equipment useless due to gross mismanagement and neglect (L). A log-jammed final tank at Bay Park (R). Nassau Exec Ed Mangano says conditions at Bay Park and Cedar Creek are one of the reasons he’s looking to get rid of them.

The Fine Print

Gregory DeFreitas is a professor of economics at Hofstra University and director of its Labor Studies Program and Center for the Study of Labor and Democracy. He warns that the short-term benefits of privatization deals often result in long-term costs for taxpayers.

“What you get is a weakened middle class, probably lower quality services, and also less accountability,” he explains. “Once you’ve sold off the jewels, and whether it lasts you one year or two years or three years, then what we have is a short-term strategy. Of course, politicians, they just live till the next election. The voters will have to live with it and their kids will have to live with it for a long, long time.”

DeFreitas says privatization schemes often result in wages being slashed, which leads to less-qualified workers, affecting the quality of services. In addition, private companies need to make profits, he adds—so the overall long-term costs don’t necessarily fall.

“In fact, it can rise, because of the private company’s administrative costs and its desire for profit,” he adds. “And then you need monitoring And that costs money.”

Another major issue, DeFreitas stresses, is the lack of accountability.

“You’re really letting the fox in the chicken house when you get these kinds of privatizations,” he says. “It’s not a free lunch just bringing in some fancy global company like Veolia or others like it. It’s a very dangerous proposition.

“A private company has a very legitimate claim to a certain degree of secrecy,” he adds. “They make their little reports periodically, but they mainly are responsible to the shareholders, who are global in this case . Nassau County voters may have very little say in what they do with the future of the infrastructure.”

Then, of course, there’s the potential ramifications on residents’ health and safety, continues DeFreitas, since it is sewers Mangano’s looking to relinquish.

“You’re dealing with a major public health situation that has great hazards for families all over Long Island, for the fishing industry, the tourism industry, water sports and so on,” he stresses. “And you’re putting it in the hands of a private company, in which there’s little or no accountability or transparency.

Elliott Sclar, economist and professor of urban planning and director of the Center for Sustainable Urban Development at Columbia University’s Earth Institute, echoes these concerns. Sclar is a nationally recognized expert on privatization and author of *You Don’t Always Get What You Pay For: The Economics of Privatization.*

Sclar says there’s no question taxpayers will end up paying more.

“They work one of two ways,” he explains of the process. “What the companies prefer is that the government raises the rates just before they take over so they don’t have to do the first raise. Or, they takeover, and then they pay a little less on the upfront money, or they’re going to raise the rates afterwards, because they have to pay back the money they give to the government, to the county.

“It’s a shell game,” Sclar continues. “Essentially [what the] county does is they say, ‘Well, we didn’t have to raise taxes, we got this. We bailed ourselves out.’ But what they’ve essentially done is they turned the power to tax over to a private entity, who will now charge people more. Because the money still has to come from citizens What they did was all smoke and mirrors, because there isn’t anything that the private entity is going to do that’s terribly different.”

The county is essentially selling off its very future, he adds.

“What’s going on is just a way to sell a stream of future revenues to get present money to cover some of the shortfall now,” explains Sclar. “In the end, the only people who are going to be paying are going to be the Nassau County residents.

They’ll either being paying it as ratepayers or they’re going to be paying it as taxpayers.

“What this is about is a promised stream of revenue into a future that nobody can predict,” he adds. “I don’t even think the guys running the county have thought about all of these things. I don’t think they care. At this point, they’re short-term thinkers. All they hear care about is getting through the next election.”

By the next election, Nassau ratepayers may have already had their rates jacked up exponentially, according to facts outlined in nonprofit consumer advocacy group Food & Water Watch’s 2009 report *Money Down the Drain: How Private Control of Water Wastes Public Resources*.

Its key findings: “Private utilities charge higher rates than municipalities; privatization does not increase the efficiency of water and sewer systems; privatization has many hidden expenses; water corporations drive up costs and shoot down service quality; the public can do it better and cheaper.”

Sins Of Omission

Mangano, in his budget and four-year fiscal plan—the only public document semi-available to the taxpayers who will ultimately be footing the bill, and also the first whiff many got of the sewage scheme—makes a strong case for the sewer-privatization deal and the hiring of Wall Street behemoth Morgan Stanley to guide it under a section called “Relevant Precedents”:

“Many other US governments have successfully pursued similar P3 transactions,” it reads, referring to public-private partnerships. “For example, on July 26, 2010, the City of Indianapolis approved the $1.7 billion acquisition of the City’s Waterworks and Wastewater Systems by Citizens Energy Group. The acquisition of the largest municipal water and wastewater acquisition to date in the United States. Morgan Stanley served as the sole financial advisor and exclusive senior manager to Citizens Energy Group on this transaction, including serving as senior manager on Citizens Energy Group’s 1.0 billion transaction to finance the acquisition, capital improvements and working capital.”

Yet the *Press* has discovered that this very example used by Team Mangano is in reality markedly different from what they are planning to do here in Nassau County. Firstly, Citizens Energy Group is a “public charitable trust that operates like a not-for-profit,” according to a press release it issued to announce the transaction, not a private company that seeks to make a profit.

Secondly, what the fiscal plan—which was submitted to the legislature and reviewed by NIFA—fails to mention, at all, is that this behemoth financial transaction in Indianapolis was done more as an emergency action in order to wrestle the municipality’s sewage system *from a private company*, which happens to be the foreign company, Veolia—*the complete opposite of what Mangano is proposing*.

Indianapolis city officials were so happy to get rid of Veolia they issued press releases with glowing remarks about the takeover—including that residents will realize more than $60 million in annual savings.

“Today marks a great day for our community,” said Indianapolis Mayor Greg Ballard. “This historic transfer will make Indianapolis a better place to live and do business by making our rivers and streams cleaner, bringing more consistency to these vital utilities, and saving utility customers money through rates that will be lower than they otherwise would have been. This transfer will benefit our community for generations.”

The public trust even agreed to pay Veolia $29 million for an early termination of the contract just to get them out. Residents later fought the payment, alleging fraud and falsified documents to regulators.

Mangano’s plan also touts Morgan Stanley’s role as advisor in the recently closed transaction of privatizing Indianapolis’ parking system. Yet if it’s anything like the Morgan Stanley deal hatched in Chicago—another scheme left unmentioned in Mangano’s fiscal documents—Nassau residents will be screaming mercy after just a couple flushes.

The city “gave up billions of dollars in revenue when it announced in 2008 that it leased Morgan Stanley its 36,000 parking meters, the third-largest U.S. system, for $1.15 billion to balance its budget,” reads an August 2010 article from *Bloomberg News* detailing the arrangement.

“Chicago drivers will pay a Morgan Stanley-led partnership at least $11.6 billion to park at city meters over the next 75 years, 10 times what Mayor Richard Daley got when he leased the system to investors in 2008,” it states.

“[Morgan Stanley] brought in a private operator,” explains Sclar. “Then they bond out their money, the money they put [out]—they get their money right back. They sell all these bonds. And you’ve got all these entities, pension funds and other things that are looking for a return. When interest rates are now down to 1 percent and less, all of a sudden they say, ‘We can pay 3, 4, 5 percent.’ It becomes a very attractive offer. So the bondholders come in and they get the bonds.

“But then what happens—let’s say the city of Chicago needs to close down a street,” he continues. “They say, ‘No, no, no, you just closed that, put a strain on a block of our revenue out of business, you have to pay us for the lost revenue.’ Let’s say they don’t plow the streets fast enough in a snowstorm.

“So what happens in [Nassau’s] case is, the bondholders now have a claim against Nassau County—essentially because they’re supposed to deliver this revenue stream from these sewers, and if the county does anything that interferes with that.”

It’s a scenario exposed over and over in *Crumbling Infrastructure, Crumbling Democracy: Infrastructure Privatization Contracts and Their Effects on State and Local Governance*, an in-depth article into the many intricacies of the issue published in *Northwestern Journal of Law and Social Policy* earlier this year.

Its author, Ellen Dannin, Fannie Weiss Distinguished Faculty Scholar and professor of law at Penn State Dickinson School of Law, tells the *Press* the physical contracts for some of these privatization deals are so voluminous sometimes municipal officials don't even know what they're signing into. They're also loaded with protections for the private companies, not the taxpayers.

"Key arguments for privatizing public infrastructure range from providing money so cash-strapped governments can fix crumbling infrastructure and build much needed new infrastructure to shifting future financial risk from the public to a private contractor," she writes. "The reality, though, is far different. Provisions commonly found in infrastructure privatization contracts make the public the guarantor of private contractors' expected revenues. Indeed, were it not for provisions that protect contractors from diminution of their expected returns, the contracts would be far shorter and much less complex. An effect of those contract provisions is to give private contractors a quasi-governmental status with power over new laws, judicial decisions, propositions voted on by the public, and other government actions "

Dannin's article examines three provisions commonly found in infrastructure contracts: "compensation events," "noncompetition provisions" "and the contractor's right to object to and receive compensation for legislative, administrative, and judicial decisions.

"The operation of these provisions gives private contractors power over decisions that affect the public interest and are normally made by public officials and subject to oversight, disclosure, and accountability—none of which apply to private contractors," she writes.

Dannin's research also highlights the effects of little-known and little-read "adverse action" provisions, which in the case of Colorado's Northwest Parkway, according to her article, gave its private contractors the legal right to object to road improvements and even mass transit systems. Additionally, Dannin found, "the contractors had the right to receive compensation for lost anticipated revenues if those roads or transit systems were built during the term of the 99-year contract."

Longtime environmentalist Morris Kramer of Atlantic Beach, Point Lookout Civic Association board member Gerald Ottavino and Scott Bochner of Long Beach—the guy who documented Bay Park's sludge excretions into popular swimming and fishing grounds and posted it on YouTube—say studies coming out next month into the poor water quality of the Western Bays could eventually lead to mandates for remediation, including such major projects as an outflow pipe to the Atlantic Ocean or a directive demanding more stringent tertiary treatment at the sewage plants.

"How can someone who just paid $1.3 billion pay another half billion to comply with those types of standards?" asks Ottavino. And would these initiatives constitute an "adverse action" that would trigger more costs for taxpayers?

For Franco, the Cedar Creek advocate, the more he learns the angrier and more frustrated he becomes. He already works two, sometimes three jobs, he says, and already pays an average of $150 a month on his water bill due to private operator Aqua New York, when friends in neighboring towns pay as little as $12.

He questions what would happen to the community and the environment should the private workers strike—something public workers are prevented from doing. After all, people won't stop flushing their toilets.

"When it comes to the safety part of it and the sewage backing up and a plant going down, Wantagh-Seaford is going to take the brunt of it," he says. "We're going to be the disaster area. We're going to be the ones that FEMA's going to have to be [helping]   This is going to be ground zero if this plant backs up like that."

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