

Assembly Judiciary and Environment Committees

Joint hearing on DEP oversight of the cleanup and illegal disposal of PCB contaminated materials generated at the Ford Motor Company Edison NJ Facility

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Good afternoon. My name is Bill Wolfe. I am director of the NJ Chapter of Public Employees for Environmental Responsibility (PEER). PEER is a national alliance of state and federal agency resource professionals working to ensure environmental ethics and government accountability. Prior to joining PEER, I spent 13 years at DEP, and 7 years as Policy Director of Sierra Club, NJ Chapter. So I've been involved in the policy issues under consideration today for some time, including serving on Senator McNamara's Brownfields Taskforce that developed the 1997 Brownfields law.

I will keep my remarks brief and submit written testimony for your consideration.

I thank the Chairs and members of both Committees for conducting this important hearing. I especially thank Chairwoman Greenstein for her leadership and responsiveness to her concerned constituents, who, as Hamilton Mayor Gilmore so aptly said, "'We're a community that's been dumped on and lied to.'" [Bergen Record. "Cleaning up the Cleanup Process in New Jersey". April 2, 2006]

But Mayor Gilmore's harsh assessment is not limited to the Hamilton and countless Trenton, Middlesex County, and Jersey City residents. Many that have taken a close look at New Jersey's cleanup program share it.

In order to understand what went wrong at the residential sites that received the PCB contaminated Ford material, the scope of the inquiry must look back to the cleanup

process at the Ford Edison site. The investigation must consider not only Ford's actions, but also the laws, regulations, and DEP programs that governed that cleanup.

In the spring of 2004, the Star Ledger wrote several front-page investigative articles on DEP's performance in cleaning up dozens of highly contaminated chromium sites in Hudson and Essex counties. Those reports disclosed improper behind the scenes influence by industry lobbyists and consultants in weakening DEP's chromium cleanup standards. The Wall Street Journal - hardly a paper with a reputation for environmental advocacy - documented gross scientific fraud in the scientific literature used to develop risk assessments and regulatory standards for chromium in NJ [12/23/05, Page 1]. More recently, following a series of cleanup fiasco's at WR Grace, American Standard, and the Martin Luther King school, the Trenton Times reported that "Confidence in DEP Power on Shaky Ground" [March 5, 2006] followed by an editorial titled: "The Watchdog Fails Again" [March 6, 2006].

Last year, we released a Report by a DEP chemical engineer on the Department's chromium standards and inadequate cleanup at dozens of sites in Hudson and Essex County. That Report identified serious scientific and regulatory flaws that threaten the health and environment for thousands of NJ residents, and can be considered a roadmap to reform [for a copy of this Report: http://www.peer.org/docs/nj/05_10_11_report.pdf]

As a result of that Report, former DEP Commissioner Campbell announced several key concessions, including: 1) a remedial requirement for complete excavation, not capping, when chromium is a source of groundwater contamination; 2) more conservative risk standards for inhalation exposures; and 3) recognizing that flawed current laws allows excessive capping, a legislative proposal to strengthen the Department's authority to order permanent remedies, in lieu of capping and engineering controls. [Commissioner Campbell letter to Jersey City Mayor Healy. December 2, 2005. Letter available upon request]. However, none of these key concessions have been adopted by DEP.

Echoing these conclusions, in a case involving an "imminent risk to human health and environment", a federal Circuit Court judge expressed no confidence in the DEP's oversight of a highly contaminated chromium site in Jersey City, concluding

...[T]he court finds that the evidence demonstrates a substantial breakdown in the agency process that has resulted in twenty years of permanent clean-up inaction. [ICO v. Honeywell. US Third Circuit Court. 2004]

Under the citizen suit provisions of federal law, the judge ordered a national precedent setting "permanent remedy", a wonderful protection of NJ residents and the environment that is not even available under NJ law.

I'd like to focus on legislative and regulatory provisions that contributed to the DEP oversight problems at both the cleanup of the Ford site in Edison and the illegal disposal of PCB contaminated wastes at several residential construction sites in central New Jersey. I will suggest several legislative and regulatory reforms to address these issues.

Before I do so, if I could emphasize two points:

First, communities have been lied to, dumped on, and not well served by Government.

With good reason, communities are losing confidence in the state's ability to protect public health and the environment. New Jersey's cleanup laws have been weakened to promote development, shutting the public out of the process and leaving residents feeling that the government protects polluters and developers, instead of their communities.

Chairperson Greenstein and Senator Buono have aggressively represented their constituents. In response, to their credit, DEP held several public hearings, and has taken the first step in ordering Ford to clean up the mess. To their credit, Ford has begun to do so.

However, the Legislature now must act swiftly and aggressively in strengthening cleanup laws in order to restore public trust and confidence in Government, and to assure that a similar episode does not occur again.

Second, the Ford situation is not an isolated case or an anomaly – it is symptomatic and the predictable consequence of changes in laws and policies made in the 1993 ISRA law and expanded in the 1997 Brownfields and Site Remediation Act.

Those legislative and policy changes were explicitly intended to provide “incentives” for “brownfields redevelopment” by reducing the cost of cleanup, by privatizing cleanup decisions, by virtually eliminating public participation, and by accelerating DEP reviews and systematically weakening DEP's oversight powers, resources, and enforcement capabilities.

As a result, what was once the strongest State cleanup program in the nation - where robust community involvement and strong enforcement powers shaped DEP cleanup decisions to require that polluters excavate contaminated soils and treat polluted groundwater - has devolved into a paper tiger. The current cleanup approach allows the polluters themselves, not DEP or the community, to choose the cleanup plan to minimize costs, shift risks and shut the public out of critical cleanup decisions that affect the health, redevelopment potential, and quality of life of their communities.

As a result of this privatized “Fast track” approach, NJ now has thousands of “cleanups” governed by unenforceable voluntary cleanup “Memoranda of Agreements” (MOA's). Hundreds of these voluntary MOA sites are not be cleaned up and redeveloped, which is not only a continuing threat to the environment and a drag on NJ's redevelopment based economy, but completely contradicts the basic premises and intent of the program, which were to accelerate cleanup and redevelopment of more sites.

As a result of this stalled voluntary program, the Department recently initiated a process to revoke non-performing MOA's under the “Time's Up for Cleanup” program

announced last year by Governor Codey. However, we understand that that initiative is not statewide, but limited in scope to contaminated sites along the Delaware and Raritan Rivers.

For those sites that are cleaned up, “engineering and institutional controls” allow highly contaminated soils to be left on site under caps that are destined to fail. Over 90% of polluted groundwater is not cleaned up but instead left untreated under “passive remedies” or “natural attenuation”. Over time, the caps will crack and fail. And, as we know from the “call before you dig” program, caps at these site will be breached. So, for many years, these sites will threaten public health and the environment while the public loses access to potential groundwater water supplies.

In order to repair these legislative flaws and gaps, the Committee should consider expand the pending McKeon/Greenstein legislative package to:

- Require meaningful public participation in cleanup and redevelopment decisions at large or moderate to high risk sites. Had a public hearing been held on the Ford cleanup plan before decisions were made, perhaps someone would have asked where the contaminated material was being disposed of and this whole costly fiasco would have been prevented;
- Restore DEP’s power to select the appropriate cleanup plan at large or moderate to high risk sites, rather than having the polluter choose the cleanup method;
- Increase reliance on complete permanent cleanups while reducing reliance on merely covering highly contaminated soil with caps on site;
- Phase out and abandon the failed voluntary cleanup program;
- Impose cradle-to-grave management requirements for contaminated soils and demolition waste;
- Prohibit any “beneficial reuse” of contaminated materials in residential areas;
- Establish a DEP and local health officer monitoring presence on scene during active critical stages of the cleanup process;
- Raise Spill Act hazardous substance surcharges and DEP oversight fees, which have been cut by 50 percent in over the last decade, to provide adequate resources for appropriate oversight, monitoring of approved “caps”, on scene cleanup coordinators, and an expanded community relations program;
- Expand community relations outreach efforts at major cleanup and redevelopment sites; akin to the community involvement reforms being considered by the legislature on the “eminent domain” redevelopment issue.
- Remove the arbitrary moratorium on the ability of DEP to develop science based cleanup standards to protect ecological impacts and to protect human health risks from cumulative exposures to multiple pollutants.

We are simply recommending that the Legislature put teeth back into a law that was de-fanged. It is time to restore public confidence in DEP, strengthen our cleanup laws, and send a clear message that government is on the right side.

I will respond to any questions. Thank for the opportunity to testify today.

