



P.O. Box 1 • Ringoes, NJ 08551
Phone and Fax: (609) 397-8213
e-mail: njpeer@peer.org • <http://www.peer.org/newjersey>

February 9, 2006

Governor Jon Corzine
Office of the Governor
PO Box 001
Trenton, NJ 08625

Re: Executive Order No. 3 – reforms regarding environmental issues

Dear Governor Corzine:

I appreciate your efforts to reform the School Construction Corporation (SCC) via Executive Order No. 3. The Order establishes a transparent and deliberative process, with citizen input.

Inspector General Cooper's initial SCC Report to Acting Governor Codey found the following significant flaws, which I excerpt below verbatim:

- SCC purchased lands that are patently unsuitable for schools or that pose excessive acquisition costs. Sites targeted for school construction have been found to be environmentally contaminated, requiring substantial additional expenditures for clean-up and remediation
- SCC has minimal guidelines for what constitutes an acceptable site for a school and generally accedes to sites submitted by local school authorities. To date, the SCC has committed to or paid approximately \$328.8 million for the acquisition of sites and associated costs
- SCC has no mechanism to ensure that the Board is provided with a complete profile of candidate sites or with information on potential alternate sites
- [flaws hamper] SCC's ability.... to bring proper due diligence to land acquisition.

These problem all relate to environmental planning, site remediation, and DEP oversight of the SCC program conducted via a Memorandum of Agreement (MOA) between the SCC and the Department of Environmental Protection. I would urge the Interagency

Working Group established by E.O. # 3 to review the DEP/SCC MOA and make recommendations to rescind and reform the MOA.

Attached FYI please find related reform recommendations I submitted to the Transition Team. I also recently submitted them to Acting DEP Commissioner Lisa Jackson.

I would appreciate it if your office could provide a staff contact at your earliest convenience to discuss these concerns.

Sincerely,



Bill Wolfe, Director

NJ PEER

(Public Employees for Environmental Responsibility)

609-397-8213

www.peer.org

attachment

Attachment 1

NJ PEER

DEP/SCC related recommendations to Transition Team

2. School Construction Corporation reforms: Cost controls, school siting, due diligence land acquisition, environmental oversight, permanent site remediation, post construction monitoring, and community participation

The Inspector General issued a Report to Acting Governor Codey on the School Construction Corporation:

http://www.state.nj.us/oig/pdf/njscc_preliminary_report.pdf

The IG Report found:

- a) SCC purchased lands that are "patently unsuitable for schools or that pose excessive acquisition costs. Sites targeted for school construction have been found to be environmentally contaminated, requiring substantial additional expenditures for clean-up and remediation
- b) SCC has minimal guidelines for what constitutes an acceptable site for a school and generally accedes to sites submitted by local school authorities. To date, the SCC has committed to or paid approximately \$328.8 million for the acquisition of sites and associated costs
- c) SCC has no mechanism to ensure that the Board is provided with a complete profile of candidate sites or with information on potential alternate sites
- d) [flaws hamper] SCC's ability.... to bring proper due diligence to land acquisition.

Based on these findings, the IG recommended:

- a) land acquisition for future SCC-sponsored school construction projects should be temporarily suspended. The SCC should immediately undertake an extensive review to establish appropriate guidelines for selection of property suitable for school construction
- b) the SCC should have the authority to reject candidate sites due to environmental contamination or under other circumstances requiring excessive relocation and remediation costs.

At the outset of the schools construction program, SCC and the Department of Environmental Protection (DEP) entered into a Memorandum of Agreement (MOA) concerning DEP oversight (see attached pdf file). There are serious flaws in the SCC/DEP MOA that relate to the above lax oversight and cost overrun failures identified by the IG. These serious flaws include:

- a) too great a focus on expediting DEP review and approvals, some within as little as 30 days, instead of conducting full and proper environmental reviews, with meaningful community and parental participation; (see MOA whereas clauses)
- b) conflicts of interest – SCC is allowed to recruit, hire, and pays the salaries of a dedicated unit of DEP employees for “specialized services” provided to SCC under the MOA. This is a conflict of interest: he that pays the piper calls the tune (see Sect. I.2.);
- c) no public participation – DEP MOA allows SCC to control whether meetings are held with local officials and the public. DEP site remediation regulations do not require public hearings in site selection or cleanup decisions. DEP knew of serious problems with respect to siting and cleanup of school sites, but never informed the community or the public (see Sect. III.1.)
- d) inadequate due diligence review – Lack of rigorous due diligence review is a big reason why SCC was allowed to purchase highly contaminated land “patently unsuitable” for schools. Sampling of soil, groundwater, and buildings is NOT required by DEP prior to SCC land acquisition, making it impossible for SCC to estimate cleanup costs or to characterize potential health risks. Due diligence requirements were designed merely to qualify SCC for “innocent purchaser” legal liability protection, not protection of children or taxpayers. DEP allowed this to happen (see Sect. II.1.(a)(x))
- e) site selection – there is no SCC or DEP school siting process to establish standards and criteria for acceptable sites and to involve/inform parents and educators of environmental risks and alternative sites. There are no State level restrictions to assure that toxic waste sites are selected only as an option of last resort. The MOA merely restates DEP regulations and instead relies on local site selected under the informal Dept. of Education process that is ill-suited for highly contaminated lands (see Sect. II.1.)
- f) flawed cleanup standards – Current DEP soil and groundwater cleanup standards are not based on children’s health risks and unique school exposures. Cleanup standards are NOT more restrictive for schools sites. (see Sect. III.2.)

g) DEP rules allow incomplete cleanup requirements that allow schools to be built at sites where toxic wastes are buried under ground and covered by caps, instead of excavated and permanently cleaned up. If parents knew this, how many would approve and want to send their kids to these schools?

h) No alternatives analysis - DEP rules do not allow parents, educators, and communities to be informed of the availability of more protective permanent cleanup alternatives. The cleanup plan is selected by SCC or the polluter, and this selection may be based on cost considerations, not necessarily the safest permanent cleanup option.

i) There are no post construction air, water, and soil sampling requirements and indoor school monitoring to assure that incomplete cleanups are protective of children's health. DEP only recently sought public comment on a draft "vapor intrusion guidance" document and has not field implemented and actually sampled at school sites and buildings. This is contrary to practices in NY and other states, who have gone back and actually sampled certain sites suspected on subsurface vapor problems. What is DEP waiting for? where are the data?

Based on these serious flaws, the SCC reform agenda must include revocation of the existing SCC/DEP MOA. MOA should be replaced by a protective policy and enforceable regulations that require:

a) formal school site selection process, with full community participation.

b) land acquisition due diligence reviews must be strengthened to require soil, groundwater, and building sampling sufficient to fully delineate site-wide contamination and generate reliable cleanup cost and health risk estimates

c) contaminated lands may be selected only an option of last resort, after a public demonstration that there are no available alternative non-contaminated sites;

d) contaminated lands must be fully remediated before school construction (excavation - permanent remedy) not capped and institutional controls;

e) schools already built on contaminated lands must be monitored to assure that partial cleanups and institutional controls are protective of children's health

3. Voluntary Cleanup Program - revoke Memoranda of Agreement and enforce cleanup requirements

Briefly (fully documented and specific recommendations to follow), the majority of thousands of contaminated toxic sites are being remediated by DEP pursuant

to voluntary cleanup agreements known as MOA's. At over 90% of sites, polluted groundwater is not cleaned up and is instead allowed to remain to threaten future water supply and ecological integrity, mostly under the "Classification exception area" (CEA) loophole to the protective groundwater quality standards. Acting Governor Codey and DEP recently announced a "Time's Up for Cleanup" initiative which revokes these failed MOA's for a handful of the non-performing sites along the Delaware and Raritan rivers, where extensive cleanup delays have occurred. This initiative needs to be strengthened, incorporated in "Tech Reg" rules, and expanded statewide.

4. Strengthen and reform site remediation program

Briefly (fully documented and specific recommendations to follow) current cleanup laws and regulations are seriously flawed:

- a) DEP lacks power to compel a responsible party to implement a permanent remedy;
- b) the selection of remedy is vested solely with the responsible party;
- c) DEP lack power to compel a responsible party to conduct a "feasibility study", which is a fundamental component of federal Superfund program, which considers cleanup alternatives and subjects alternatives to public review;
- d) DEP lacks authority to consider health risks of cumulative exposures to multiple pollutants or multiple sites;
- e) DEP currently lacks legal power to enforce cleanup standards based on ecological impact;
- f) DEP can only compel additional cleanup if it can prove that cap/institutional controls have failed, placing inappropriate burden on DEP and jeopardizing public health; and
- g) public hearings are not required for major cleanup decision so public is shut out.

For our recent Report on widespread unacceptable risks due to chromium contamination, and additional issues of concern, I urge you to visit our website, at www.peer.org