December 19, 2006

Jon Corzine, Governor
State House
State Street
CN 001
Trenton, New Jersey 08625-0001

Re: S2261[1R]/A3529[2R] – request for Conditional Veto

Dear Governor Corzine:

On behalf of Public Employees for Environmental Responsibility (PEER), we write concerning the "Kiddie Kollege" reform bill, S2261[1R]/A3529[2R]. The bill has passed both Houses of the legislature and is now on your desk for consideration.

While we support the intent of this legislation, the current version of the bill is seriously flawed and will not achieve its stated objectives. Accordingly, we strongly urge that you conditionally veto (CV) the bill to assure that all NJ children are adequately protected from health hazards associated with exposure to toxic substances while at home, school or in state licensed day care centers.

The CV should address the following issues:

1. **Restore residential dwellings, as per the introduced version of the bill**

The introduced version of S2261 applied to buildings used for residential purposes. Because residential exposure potential is as greater, or greater, than school and/or day care exposures, it is poor public policy and contradicts public health science to delete these provisions.

2. **Strengthen the no "No Further Action" letter provisions**

As currently drafted, the bill would allow new construction of schools, day care centers, and homes on suspected or known toxic contaminated and DEP regulated industrial sites, if:

"*the Department of Environmental Protection has approved a remedial action workplan for the entire site or that*[2] *the site has been remediated consistent with the remediation standards and other remediation requirements established pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12) and a no further action letter has been issued by the Department of Environmental Protection for the entire site*".

Over the last several years, the DEP has issued over 11,000 "No Further Action" (NFA) letters and approved thousands of "remedial action workplans" (RAW). These DEP approvals were issued in accordance with applicable standards, including "*with the remediation standards and other remediation requirements established pursuant to section 35 of P.L.1993, c.139 (C.58:10B-12).*"

First, we note that current DEP remedial standards do not address the indoor exposures and children's health risks expressly regulated by the bill. Therefore, it is inappropriate for the bill to rely on any prior DEP approvals issued pursuant to these flawed cleanup standards.

Second, many of these 11,000+ DEP previously issued NFA's and RAW's have not evaluated industrial buildings, building interiors, subsurface conditions, and the potential indoor exposure risks associated with the site that are intended to be regulated by the bill. For example, the Department is just beginning to address exposure risks associated with subsurface gas migration, a phenomena known as "vapor intrusion". In fact, DEP recently issued a Vapor Intrusion Guidance document in October 2005. DEP's own Guidance document acknowledges this historical deficiency in the site remediation program. Other DEP regulatory documents note scientific gaps in derivation of groundwater standards and soil cleanup standards with respect to the vapor intrusion and indoor exposure pathways and children's health risk. As a result, hundreds of potential vapor intrusion sites may have been issued NFA's or RAW approvals without evaluating indoor exposure potential and risks associated with vapor intrusion. The bill would allow schools and day care centers to be built on or adjacent to such sites, under the false assumption that these potentially significant risks were adequately addressed during the DEP's issuance of a RAW and NFA in the site remediation processes.

Third, as a result of legal and scientific uncertainties regarding the extent of DEP's jurisdiction over former industrial buildings, building interiors, and indoor exposure potential, an unknown universe of possibly hundreds of sites have been issued NFA's and RAW's without adequately addressing potential indoor risks.

Accordingly, the bill's reliance on DEP's NFA and RAW is seriously flawed.

To remedy these seriously defects, we recommend CV language to mandate:

"*the site's NFA and/or RAW shall be based upon sampling for and remediation of all detected contamination of building interiors. The NFA or RAW shall have considered*

vapor intrusion potential in accordance with the current vapor intrusion Guidance. The NFA or RAW shall be an "unrestricted use" permanent remedy approval that applied to soils, groundwater, building interiors, and full compensation or restoration for damages to natural resource injuries (NRD)."

3. **Establish a program for indoor sampling of existing day care and school sites**

Senate bill #2260 (Madden/Sweeney)/A3621 (Mayor/Moriarity/Greenwald/Greenstein) was introduced as a companion to S2261**.** The bill would provide that the owner or operator of any building in which an existing or newly constructed child care center is located shall request the Department of Environmental Protection to test the air, water and soil of the space in the building in which the child care center is located and the grounds on which the building is located for the purpose of determining if contamination is present. The cost of any sampling conducted pursuant to this bill would be paid by the department.

There are over 4,200 existing day care centers. We understand that DEP has screened these sites and identified over 700 that are located on or within 400 feet of a known contaminated site. However, DEP has only sampled the building interiors of a handful of these 700 potential risk sites. Additionally, there are an unknown but potentially large universe of schools that fit these same potential risk characteristics.

We urge you to incorporate CV language that would expand upon the language in S2260 to mandate the indoor sampling of day care centers and schools located on or within 400 feet of a known contaminated site that has the reasonable potential to impact children. Funding for this program could be recovered by fees imposed by DEP on the regulated community, including the party responsible for the contamination, instead of the day care operator.

4. **Assure DEP oversight and control of indoor exposure consultants**

It is widely known that site remediation consultants and cleanup contractors have contractual conflicts with comprehensive site investigation and sampling, full disclosure, and permanent remediation of all potential risks at a contaminated site. The clients paying these consultants have strong economic incentives to cut corners. Additionally, DEP has acknowledged that the technical work of consultants is deficient. In fact, on September 18, 2006, DEP adopted "grace period "enforcement rules expressly to provide additional oversight and enforcement of cleanup consultants. DEP Commissioner Jackson testified to the Senate on October 23 2006 that:

"Today, a responsible party or their consultant may submit a document to the DEP

numerous times before there is agreement on how a site will be investigated or cleaned up." (http://www.nj.gov/dep/commissioner/102306_srp.pdf)

PEER has released audit results showing serious flaws in the work of private cleanup contracts in the Massachusetts program (for audit data, see: http://www.peer.org/news/news_id.php?row_id=628.)

Given these defects, and in light of the many new scientific and regulatory unknowns and uncertainties created by this bill, it would be reckless and irresponsible to allow the health of our children to be held hostage to private cleanup consultants with inadequate regulatory oversight. Accordingly, we urge that you CV the bill to require that all consultants involved in this program do so under contractual control of the DEP and/or DHSS.

5. **Provide notification and information to operators and parents**

Government has a legal duty to warn and parents have a right to know of any day care or school potential risks their children may be exposed to. Parents have a right to be informed in order to take steps to prevent these exposures and it is government's responsibility to provide this information. Accordingly, we urge that you CV the bill to require that DEP provide precautionary notification and technical assistance to day care operators, school officials, and parents, in the event of potential exposure. DEP waited for far to long, from early April discovery until July 28, 2006 sampling results were in, to notify Kiddie Kollege of known indoor contamination. This is totally unacceptable policy and practice that must be changed in this legislation.

6. **Strengthen indoor standards to consider cumulative exposures**

The indoor standards in the bill ignore the health risks of cumulative exposures to multiple chemicals and multiple pathways, such as ambient air, groundwater, building interiors, and drinking water. We urge CV language to mandate that the indoor standards be based upon consideration of

"*all potential exposure pathways and all cumulative exposures*"

We urge your timely and favorable consideration of these requests.

Sincerely,

Bill Wolfe, Director
NJ PEER (Public Employees for Environmental Responsibility)