

January 26, 2006

Lisa Jackson, Acting Commissioner
Department of Environmental Protection
401 East State Street
CN 001
Trenton, New Jersey 08625

Re: Chromium Report – Scientific integrity - Zoe Kelman retaliation

Via email and US mail

Dear Acting Commissioner Jackson:

Congratulations on your nomination for Commissioner. We look forward to working with you in advancing environmental and public health protections, and in assuring that conscientious employees are encouraged to enforce environmental laws and uphold environmental ethics.

The purpose of this letter is to ask that you take specific steps to resolve Zoe Kelman's problems. We also request a meeting at your earliest convenience to begin to address a larger series of scientific and regulatory issues related to the Department's recent Chromium Workgroup Report.

As you know, NJ PEER supports the work of DEP employee Zoe Kelman and is prepared to represent her legal interests, should that become necessary. However, for the record, this letter is written solely on behalf of NJ PEER, and it does not legally represent or necessarily reflect the views of Ms. Kelman.

It has come to our attention that sometime after press reports of Ms. Kelman's October 2005 memoranda and dissenting Report to former Commissioner Campbell (and NJ PEER's letter request for EPA oversight), that Ms. Kelman was directed by supervisors to stop all work on chromium and to not interact with other agency professionals working on chromium. At the same time, Ms. Kelman was not given other meaningful work assignments, and she is frustrated by a lack of work assignments.

These retaliatory directives have caused a lot of stress and created a hostile work environment. They also restrict Ms. Kelman's ability to respond to false, incomplete, and/or misleading aspects of the Department's "rebuttal" of her Report, which "rebuttal" is posted on the Department's website. The Department's handling of this matter also sends a chilling message to staff and the public regarding those who engage legitimate scientific dispute and provide constructive criticism of Departmental policy.

In the wake of Ms. Kelman's Report and PEER EPA petition, the Wall Street Journal of December 23, 2005 disclosed that scientific fraud may have impacted the Department's review and application of science in regulatory policy. This WSJ disclosure follows a series of investigative articles in the Newark Star Ledger, which documented similar abuses regarding undue influence of consultants and responsible parties in Department chromium standards and cleanup decisions. The California legislature has conducted oversight hearings on related topics, including conflicts of interests.

These news articles, California legislative oversight hearings, and Ms. Kelman's Report raise serious legitimate questions about the scientific integrity and protectiveness of DEP chromium decisions. It is curious that instead of taking steps to restore public and staff confidence in the scientific integrity of Department's decisions, that Department appears to be repeating the mistakes of the past, and creating new vulnerabilities. I would think you would like to take steps to distance your DEP leadership from these mistakes of the past.

In order to eliminate this hostile work environment and begin to remedy the large issues, we request that you immediately take the following steps:

1. Remove the Department's "rebuttal" to Ms. Kelman's Report from the DEP website. If you don't want to take this "rebuttal" down, the Department must allow her to work on chromium in order to respond to this "rebuttal", and the Department should post this response.
2. Issue an agency wide policy of non-retaliation for the expression of scientific disagreement, and establish a process for handling scientific and technical disputes within the Department. It is curious that the Department's Site Remediation Program allows private RP's to challenge Department decisions via "Technical Dispute Panels", but that the public, academia, and staff are not provided that opportunity to engage scientific and technical issues throughout the Department (e.g. DSR, DWQ, et al).
3. Provide Ms. Kelman with meaningful work assignments and lift the prohibition on interaction with her DEP colleagues working on chromium.

NJ PEER sands prepared to work constructively with the Department in resolving these issues. We also can offer policies and guidance of other federal and state agencies for the Department to consider as models.

In addition to the above immediate action steps, we would like to discuss and propose remedies to address the larger scientific integrity and regulatory issues involved.

As you may know, Dr. Paul W. Brandt-Rauf, is editor of the Journal of Occupational and Environmental Medicine (JOEM). He was also one of lead "peer reviewers" in the peer review team put together by Dr. Eileen Murphy to review NJDEP chromium workgroup report. He gave the workgroup's report the following glowing endorsement:

"It is my opinion that the overall process followed by the workgroup in the generation of the report was thorough, rigorous and appropriate, yielding a report that was responsive to the charge by the Commissioner. The recommendations of the workgroup were based on the best available scientific evidence, and the conclusions were reasonable and justified."

Dr. Paul W. Brandt-Rauf is featured in the December 23, 2005 Wall Street Journal article exposing how his JOEM poisoned the scientific literature with fraudulent information on the toxicology of ingested chromium. The fraudulent paper published in 1997 by JOEM was entitled "*Cancer mortality in a Chinese population exposed to hexavalent chromium in water*". The paper was reported to have been authored by JinDong Zhang and ShuKun Li. The fraudulent nature of the paper has been well publicized over the past several years by the Environmental Working Group, the California Environmental Protection Agency, the California legislature, and now the Wall Street Journal.

The fraud was perpetrated by a consultant to chromium polluters, ChemRisk. (ChemRisk worked closely with NJDEP's site remediation program to develop the 1998 NJDEP chromium cleanup standards which were recently affirmed by the NJ Chromium Work Group chaired by Dr. Eileen Murphy.) The purpose of the fraud was an attempt to distort the original work of Dr. Zhang which linked ingestion of hexavalent chromium contaminated water to the high rates of cancer found in the contaminated area. (Zhang J. XiLin L. 1987. Chromium pollution of soil and water in JinZhou. J. Chinese Prevent Med. 21:262-264.) ChemRisk went half way around the world to commit this fraud because their clients have an enormous financial liability for the toxic effects of their extensive chromium pollution if it is established that chromium is carcinogenic via oral ingestion as well as its long established ability to cause cancer via inhalation.

We are unaware of any actions by Dr. Paul W. Brandt-Rauf to notify the scientific community that a paper circulating in the published literature from his JOEM is fraudulent. We are unaware of any actions taken to retract the paper or to assure that those responsible for introducing the fraudulent paper are appropriately disciplined. Because of this inaction, the fraudulent 1997 article has had wide spread influence on the scientific views including many of the documents and references relied upon by the New Jersey chromium work group. In 2000, the U.S. Agency for Toxic Substances and Disease Registry updated its chromium profile, adding a paragraph about the 1997 study. Other bodies, such as the Environmental Protection Agency and the California Department of Health Services, also cited the second study to that effect.

The selection of Dr. Paul W. Brandt-Rauf to participate as a peer reviewer for the NJ Chromium Work Group raises serious concerns about the integrity of the process. In order to restore continued public confidence in NJDEP's ability to fairly and impartially conduct scientific reviews of important public health issues related to chromium contamination a number of steps need to be taken immediately.

Recommended steps:

1. The Chromium Work group report, which recommended keeping the 1998 NJDEP chromium cleanup criteria in effect, must be immediately retracted. The moratorium on "No Further Action" (NFA) letters for chromium sites must remain in effect. The NFA moratorium should be expanded to include a moratorium on approvals of remedial investigations and remedial action workplans until the scientific and standards issues are resolved.
2. The Chromium Work group should be reconvened and include a full review of the original work of Dr. Zhang (Zhang J. XiLin L. 1987. Chromium pollution of soil and water in JinZhou. J. Chinese Prevent Med. 21:262-264.)
3. All work product of current or former members of the ChemRisk consulting firm should be disqualified from the review.
4. All risk assessments and site specific cleanup criteria developed by ChemRisk for New Jersey chromium contamination sites should be identified and subject to meticulous review.
5. The peer review process for the Chromium Work Group should be reviewed in terms of the process for screening and selecting unbiased motivated participants with no past association that would create bias.
6. Deficiencies noted in Ms. Kelman's Report must be addressed by enforceable regulatory action.
7. Statutory and regulatory flaws and remedies identified by PEER at the Jersey City public hearing (and acknowledged by Commissioner Campbell as serious flaws) and by Ms. Kleman's report, must begin to be addressed. We understand that there are legislators interested in and now prepared to conduct legislative oversight hearings in this regard, in addition to the scientific integrity and conflicts of interests issue raised in press reports.

We appreciate your prompt and favorable consideration of our requests. You may contact me at 609-397-8213 to discuss this matter.

Sincerely,

Bill Wolfe, Director

NJ PEER