

**Testimony before the Assembly and Senate Environment Committees  
Joint hearing on DEP Site Remediation Program Reforms**

April 15, 2008

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Good morning.

My name is Bill Wolfe. I am director of the New Jersey Chapter of Public Employees for Environmental Responsibility (PEER). PEER is a national alliance of state and federal agency resource professionals working to ensure enforcement of environmental laws, scientific integrity, and government accountability. Prior to joining PEER, I spent 13 years at DEP, and 7 years as Policy Director of Sierra Club, NJ Chapter. 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'd like to thank the Chairs and members of both Committees for conducting this important hearing and inviting me to testify.

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

I understand that the focus of this hearing has been limited to 4 issues: 1) licensed professional program; 2) insurance; 3) remedy selection; and 4) repeal of the Fast Track law. I understand that additional hearings will be held to discuss a broader reform agenda.

Accordingly, I'd like to make the following points with respect to these issues:

1. Privatization is the cause not the solution to problems;
2. Insurance undermines accountability and increases "moral hazard";
3. Remedy selection is key; and
4. Repeal of Fast Track accomplishes nothing because implementation of that law is subject to a moratorium under Former Governor Codey's Executive Order.

**Licensed professional program – the Massachusetts experience**

According to random and targeted State audits of the Massachusetts program, from FY 1999- FY 2004, only 9 – 36% of cleanups passed the audit (see Tables 1 & 2 of Exhibit 2). Three quarters of sites had violations and deficiencies that had to be corrected. The most frequent violations are summarized in Table 5 – as you will note, these are not "minor" paperwork technical violations, but concern the adequacy of the data and scientific bases upon which important public health, environmental, and economic decisions are based.

Furthermore, DEP has provided no cost study or consultant cost and performance data from the NJ site remediation program that would justify importation of the Massachusetts program to NJ.

Many DEP professionals have told me of shoddy, high cost, and duplicative or unnecessary consultant work. The recent “grace period” program has just begun to document this technical performance record, although I know of no data on cost effectiveness.

Poor consultant work compounds the flaws that result from the statutory limitations on DEP’s power and policy decisions not to enforce applicable laws in favor of incentivizing voluntary cleanups and brownfields redevelopment.

Before New Jersey considers the Massachusetts program, DEP must provide data to justify it and the overall current brownfields policy framework.

### **Insurance**

An insurance scheme is not the solution to weak cleanup laws and lack of field compliance monitoring and enforcement.

To reduce long run risks and costs, the real solution is less reliance on engineering and institutional controls (i.e. caps and “classification exception areas” for groundwater), more permanent remedies, and implementation of traditional field compliance monitoring and enforcement.

Furthermore, insurance spreads the costs of risks and therefore creates moral hazard by reducing accountability and incentives to prevent failures.

For example, consider the costs of our already high car insurance rates would be if there were no traffic laws and lax police presence.

### **Remedy Selection**

In 1993, the Legislature revised cleanup laws to vest remedy selection exclusively with the responsible party. At the same time, feasibility study (alternatives analysis) and public participation was stripped.

This scheme has failed miserably.

Who selects the remedy, the definition of remedy, and the process and basis for remedy selection must be changed in law.

We recommend legislative amendments that

- a) Vest DEP with selection of the remedy;

- b) Remedy selection should be based on a policy of a preference for permanent remedies, reinforced by legislative bans on certain remedies for certain high risk, high priority, or unacceptable ecological impact locations where short term exposure controls are unacceptable (e.g. a cap over volatile organics at a school site or tidally influenced riparian area); and
- c) Remedy selection must be based upon a comparison of alternatives. Alternatives analysis must be subject to public review and comment and DEP decisions must respond to community preferences.

We would be glad to work with the Committees to develop policies and scientifically sound criteria to flesh out these recommendations in the form of amendments.

In the interim, please consider our more specific suggestions in Exhibit 3.

Thank you. I would be glad to respond to any questions you may have.

#### List of Exhibits

Exhibit 1 – June 1, 2006 PEER testimony to Joint Assembly Judiciary and Environment Committees

[http://www.peer.org/docs/nj/06\\_1\\_6\\_peer\\_testimony.pdf](http://www.peer.org/docs/nj/06_1_6_peer_testimony.pdf)

Exhibit 2 – Audits of Massachusetts licensed cleanup professionals program

[http://www.peer.org/news/news\\_id.php?row\\_id=628](http://www.peer.org/news/news_id.php?row_id=628)

Exhibit 3 – NJ PEER legislative amendments

[http://www.peer.org/docs/nj/06\\_1\\_6\\_peer\\_rec\\_law\\_changes.pdf](http://www.peer.org/docs/nj/06_1_6_peer_rec_law_changes.pdf)

Exhibit 4 – DEP “Hot Issue” – Remedial Priority System regulations lapse (12/13/04)

[http://www.peer.org/news/news\\_id.php?row\\_id=909](http://www.peer.org/news/news_id.php?row_id=909)

Exhibit 5 – DEP “Options Paper” - Remedial Priority System (9/15/04) "Deliberative - not for further release"

[http://www.peer.org/docs/nj/06\\_27\\_11\\_secret\\_sites.pdf](http://www.peer.org/docs/nj/06_27_11_secret_sites.pdf)

Exhibit 6 – DEP Senate testimony “Reforming Site Remediation Program” (10/23/06)

[http://www.nj.gov/dep/commissioner/102306\\_srp.pdf](http://www.nj.gov/dep/commissioner/102306_srp.pdf)

Exhibit 7 – DEP “Vulnerability Assessment” SRP – (February 2002)

[http://www.peer.org/news/news\\_id.php?row\\_id=728](http://www.peer.org/news/news_id.php?row_id=728)