

Inspector General Arthur Elkins
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., NW Room 3122
Washington, DC 20460

Acting Inspector General Charles Edwards
U.S. Department of Homeland Security
Washington, DC 20528

December 17, 2012

RE: Request for Performance Review

VIA U.S. MAIL, EMAIL & FAX

Dear Inspectors General Elkins and Edwards:

We are writing on behalf of Public Employees for Environmental Responsibility (PEER) to seek your offices' involvement in reviewing the public health response to a major toxic chemical spill from a train derailment by the U.S. Coast Guard and the U.S. Environmental Protection Agency (EPA) as well as the state delegated program administered by the New Jersey Department of Environmental Protection (DEP).

In the early morning of November 30, 2012, Conrail freight cars carrying chemicals overturned on a bridge crossing the Mantua Creek in Paulsboro, New Jersey, very close to the Philadelphia International Airport. Three cars fell into the creek. One of the tank cars released approximately 23,000 gallons of vinyl chloride into the air as vapor. Vinyl chloride is a colorless industrial chemical known to be highly toxic and carcinogenic.

By all accounts, the official response to the spill was badly mishandled as characterized by contradictory public health advisories, false information disseminated to the community, lack of a workable emergency response plan and the dominant role played by a corporate consulting firm with a checkered past, among other problems. Tellingly, State Senate President Stephen Sweeney, whose district encompasses the spill site, gave the joint command center an "F" for its miscommunications to his constituents following the spill.

In the hours and days following the spill, a mix of federal and state agencies issued conflicting, confusing and sometimes outright inaccurate information to affected

residents, including, but not limited to –

- Directives that residents “shelter-in-place” rather than evacuate. Sheltering in place would be demonstrably ineffective in the face of an airborne plume. Approximately a score of people were hospitalized and as many as 500 were eventually evacuated;
- Assurances from the Coast Guard and the DEP that the air was safe when the U.S. Environmental Protection Agency (EPA) monitoring found vinyl chloride at “periodic exceedances of the level of concern” in the first days after the spill; and
- Confusion at the spill site as to what the level of danger was, whether protective gear was required and who needed to be evacuated.

The incident joint command was led by the U.S. Coast Guard and included the state DEP, local authorities, as well as Conrail and its consultant. In fact, public health information was assigned to the corporate consultant, The Center for Toxicology and Environmental Health (CTEH), an entity which has been embroiled in a string of environmental disasters from Hurricane Katrina to the BP Gulf spill, the 2008 coal sludge implosion in Tennessee, Chinese drywall and more.

The chaotic and inconsistent handling of this incident has raised a number of troubling questions for which no clear answers have been publicly presented. PEER asks your offices to conduct a coordinated performance review of the actions of the agencies under your jurisdiction to address the following questions:

1. How and on what basis was the event initially classified and assigned a response framework?
2. Why was the National Response Framework (NRF) triggered and the Coast Guard selected as the lead agency, as opposed to EPA under its National Contingency Plan (NCP), Emergency Planning and Community Right-to-Know Act (EPCRA) and Clean Air Act (CAA) Section 112 (r) Accident Release Prevention responsibilities? Why were EPA and DEP required local emergency response plans not invoked, instead of the Homeland Security National Response Plans through the Coast Guard lead? Similarly, why was the framework of a federal EPA regulated “extraordinarily hazardous substance” (EHS) not selected for this chemical spill?
3. Does Paulsboro have a current, approved, and adequate emergency response plan?
4. Do the chemical facilities that manufactured the vinyl chloride (VC) from its rail car origin and processed the VC to its rail car destination have risk management

and emergency response plans under the EPA CAA Section 112 (r) and EPCRA requirements?

5. Were the more stringent (than federal) New Jersey Toxic Catastrophe Prevention Act risk management program and the state Right-To-Know as well as the DEP Emergency Response capabilities considered in the federal response? If so, how?
6. On what basis was the original evacuation ordered? Which agency conducted the scientific evaluation and issued the recommendation governing the evacuation order?
7. Similarly, which agency and on what basis ordered the “shelter-in-place” directive? Is there any evidence in support of the protectiveness of shelter-in-place in an incident of this nature? On what basis was evacuation expanded and the shelter-in-place directive withdrawn and which agency made that decision?
8. Were the risk and toxicity threshold values developed by the Agency for Toxic Substances and Disease Registry (ATSDR) used in formulating incident response measures? If so, which ones and in what manner?
9. Who selected CTEH and decided what CTEH's role would play? Why was CTEH – a private contractor with a dubious record and conflicts of interest with oil and chemical industry clients – allowed to provide the scientific support, data interpretation, and public risk communications for this event?
10. Why are CTEH and the railroad company – a legally responsible party – displayed on the logo of the Joint Operations response group?

These and other questions are still reverberating in the Paulsboro community and in the media. We assume that the relevant agencies are engaged in their own lessons learned reviews. Unfortunately, those reviews will not translate beyond the immediate participants and will lack the credibility of an independent review.

It is important that your offices undertake this requested review for three reasons –

- The community of Paulsboro and the workers involved in incident response deserve clear, authoritative answers about the risks they faced and may still face;
- Prior derailments at this site and the deteriorating infrastructure for transport of hazardous industrial chemicals make it inevitable that similar spills will occur. Absent your review there is a good possibility that the mistakes committed at Paulsboro will be repeated at the next spill; and
- These risks and incidents are not confined to New Jersey. It is critical that any “lessons learned” be transmitted on a national scale so that responders in federal

and state agencies across the country can improve spill response measures and strategies.

For the foregoing reasons, PEER strongly urges that your offices undertake a wide-ranging review of the Paulsboro incident. The continuing controversy in the region will continue to breed mistrust and misunderstanding unless a definitive review can put these concerns to rest.

Finally, the high public health and safety stakes of this and similar incidents should dictate that this type of review has the highest call upon your offices' attention and resources. Should you undertake this review, PEER will assist your efforts in any way that we can.

Thank you for your attention to this matter.

Sincerely,

Jeff Ruch
Executive Director

Bill Wolfe
New Jersey Director