

August 9, 2012

State Of New Jersey  
Office of the Comptroller  
PO Box 024  
Trenton, NJ 08625

Dear Comptroller Boxer:

I am writing on behalf of the members of Public Employees for Environmental Responsibility (PEER) to request your office's assistance in addressing an environmental program that appears to be failing in its mission, jeopardizing state water resources and costing taxpayers hundreds of millions of dollars.

PEER is a national non-profit alliance of local, state and federal scientists, law enforcement officers, land managers and other professionals dedicated to upholding environmental laws and values. As head of the New Jersey PEER Chapter, I have long been concerned about the performance of an important program at the Department of Environmental Protection (DEP) regarding the public compensation and restoration of natural resource damages (NRD).

As we understand that the Office of the State Comptroller is an independent office created to bring greater efficiency and transparency to the operation of all levels of New Jersey's government., we would request that your office review the performance of the NRD, the extent to which taxpayers are not attaining full NRD recoveries and methods you would recommend to put the program back on track and to make it more transparent and accountable.

The public's economic and environmental interests' in the NRD program are huge. In a June 29, 2007 press release, DEP announced the filing of 120 NRD lawsuits. The press release claimed:

“The state has filed approximately 120 lawsuits that could result in hundreds of millions of dollars in compensation from polluters who have harmed New Jersey's natural resources, including numerous manufacturers and marketers of the gasoline additive MTBE, Department of Environmental Protection Commissioner Lisa P. Jackson announced today...

Attorney General Anne Milgram added: “We are working with DEP to ensure that contaminated properties are cleaned up and restored, and that, where appropriate, polluters compensate the residents of New Jersey for the loss of precious natural resources.” [http://www.nj.gov/dep/newsrel/2007/07\\_0037.htm](http://www.nj.gov/dep/newsrel/2007/07_0037.htm)

The state's lawsuits take a special focus on polluters that have damaged river resources. Lawsuits have been filed against ISP Environmental Services and G-I Holdings Inc., located in Linden along Piles Creek near the Arthur Kill; Mallinckrodt Baker, along the Delaware River in Phillipsburg, Warren County; Genstar Gypsum, located along the Delaware River in Camden, Camden County; and Rhone Poulenc along the Raritan River in Middlesex Borough.

Since its inception in 1994, DEP's Natural Resource Damage program has recovered more than \$51 million and preserved approximately 6,000 acres of open space as wildlife habitat and ground water recharge areas as compensation for pollution resulting from 1,500 contaminated sites and oil spills. However, realization of these important potential economic and environmental benefits for the people of New Jersey of the NRD program is in jeopardy, as outlined in a recent Appellate Court decision.

On August 24, 2007, a state Superior Court dismissed with prejudice an attempt by the New Jersey Department of Environmental Protection (DEP) to recover a natural resource damage claim involving benzene and toluene contamination of private wells in the Hillwood Lakes area of Ewing Township. (N.J. Dept. of Env'tl. Prot. v. Exxon Mobil Corp., Docket No. MER-L-2933-02 (N.J. Super. Ct. Law Div. Aug. 24, 2007)). The Court found that DEP did not follow the rule making process to establish, by regulation, a reliable formula for calculating natural resources damages. In the absence of regulations, the Court also found DEP lacked adequate scientific support to proceed on a case-by-case basis.

This March in the case of *New Jersey Department of Environmental Protection, et al. v. Essex Chemical Corporation*, the Appellate Division chastised DEP for failure to make a cogent claim for millions of gallons of groundwater contaminated during 8 years of leaking underground storage tanks.

This line of cases puts in jeopardy the recovery of NRD at more than 120 sites and potentially cripples the ability of DEP to enforce the NRD provisions of New Jersey's cleanup laws. In a time of fiscal crisis in State budgets, loss of these NRD compensation revenues is not acceptable.

The absence of a regulatory undergirding for NRD has been known as a serious vulnerability inside DEP for a decade. In addition, the Christie Transition Report on DEP in January 2010 recognized the problem:

“With respect to the State's efforts to seek compensation for damages to natural resources (NRD), we recommend that...rules be adopted to provide transparency, certainty and consistency in the assessment of those damages.”

Unfortunately, this recommendation for NRD regulations has yet to be undertaken, let alone implemented.

Without assessment of NRDs in major contamination case, the taxpayers are stuck with the enormous bill for treatment of tainted groundwater, replacement lines and new wells.

Because so many contaminated sites and millions of dollars are at stake in this program, and because DEP's mismanagement appears to be putting those benefits to state taxpayers and residents in jeopardy, we urge that your Office investigate this DEP program and make recommendations for improved performance, transparency and accountability.

We appreciate your earliest and favorable response to this request.

Sincerely,

Bill Wolfe, Director  
New Jersey PEER