



December 5, 2008

Dear President-elect Obama,

I have been distressed to read that you are actively considering the appointment of Lisa P. Jackson as Administrator of the U.S. Environmental Protection Agency. While Ms. Jackson has a compelling biography, little of what occurred during her 31-month tenure as Commissioner of the New Jersey Department of Environmental Protection (DEP) commends her for promotion.

I am writing on behalf of Public Employees for Environmental Responsibility (PEER), a service organization for environmental agency professionals. PEER has heard from many DEP employees about Ms. Jackson's actions as Commissioner and these reports raise troubling questions about her fitness to run an agency of much greater size, complexity and significance.

DEP employees describe Ms. Jackson as embracing a highly politicized approach to environmental decision-making that resulted in suppression of scientific information, issuance of gag orders restricting disclosures and threats against professional staff members who dared to voice concerns.

Contrary to your pledges of a transparent government, Ms. Jackson preferred a closed-door model of decision-making based upon non-public meetings with regulated industry executives and lobbyists. In an illustrative action reminiscent of the current administration, Ms. Jackson even invoked "executive privilege" to block a request filed by PEER under the state Open Public Records Act for sign-in logs at DEP as well as for a copy of the DEP Commissioner's schedule.

Not surprisingly, in our view, the decisions, rulings and actions produced under Ms. Jackson's administration at DEP have been nothing short of appalling. For purposes of brevity, some major points of concern are presented in outline form but detailed documentation of these and related actions are available on request – and in fact, are posted on the PEER web site at http://www.peer.org/state/state_info.php?sid=nj

I. Toxic Waste Clean-Up

As you know, New Jersey is one of the most heavily contaminated areas of the country. As such, a well-managed toxic waste and brownfields program is of vital importance, yet Ms. Jackson's tenure at DEP saw –

- ***Failure to establish any cleanup priorities among the approximately 16,000 contaminated sites that pockmark New Jersey.*** State law clearly directs DEP to develop

a cleanup priority list. In testimony before the state Senate Environment Committee back on October 23, 2006, DEP Commissioner Lisa Jackson said –

“The most important thing we are doing is developing a new ranking system to prioritize sites so that we focus our resources on the worst cases, those that present the greatest risk to public health and the environment.”

Yet, no such rankings ever emerged nor did Ms. Jackson offer any expected due date for a ranking system on which her agency has supposedly worked for the past several years. As a consequence, New Jersey DEP has been flying blind under Ms. Jackson, unable to set priorities. This failure to perform risk-based ranking for determining cleanup priorities has contributed to the belated discovery of contaminated schools and day-care centers and other fiascos costing the taxpayers significant sums and distressing thousands of victims;

- ***Toxic Day-Care Centers, Schools and Playgrounds.*** The discovery of toxic mercury vapors in a day-care center built on the site of a former thermometer factory was just one of a long series of toxic scandals to rock New Jersey under Ms. Jackson. A weak state law and political pressure to quickly re-develop old toxic sites also contributed to the exposure of more than 30 toddlers at the “Kiddie Kollege” day-care center to mercury.

Significantly, Ms. Jackson’s DEP allowed Kiddie Kollege to remain open, with no notice to parents or workers, for more than three months despite Ms. Jackson’s untrue claim that, “As soon as the DEP discovered that the formerly abandoned site was housing a day care center, inspectors moved in, took samples and shut it down.”

This is not an isolated case. DEP records indicate that there are 60 day-care centers whose drinking water wells and indoor air may have high levels of toxic chemicals, including mercury. These 60 are among the estimated 1,400 day-care centers in New Jersey located on or within 400 feet of a known toxic hazard. Moreover, PEER can catalog similar cases of schools, playgrounds and housing where a similar pattern of malfeasance and disregard for public health occurred under Ms. Jackson’s watch; and

- ***Federal Takeover of Superfund Sites.*** This summer, EPA assumed jurisdiction over several of the major state-supervised Superfund clean-ups in New Jersey following a scathing EPA Office of Inspector General Report citing inordinate delays and mismanagement by DEP. The OIG report concluded that –
 - New Jersey has the worst track record in the nation, accounting for more than one quarter of all unresolved Superfund clean-ups more than 20 years old; and
 - Delays are primarily due to DEP not using legal tools available to them to force responsible parties to clean up pollution.

The above examples are intended only to give some indication of how dysfunctional DEP was under Ms. Jackson. Moreover, it was difficult to see any signs of improvement during or due to

her tenure. Instead, she merely presided over debacle after debacle, energetically engaging only in media damage control.

The only management change embraced by Ms. Jackson was to propose privatizing pollution control and deregulating toxic clean-ups – a position that appears to conflict with your own condemnation of similar outsourcing efforts by the Bush administration. In a breakfast roundtable with a real estate group on April 3, 2008, Commissioner Jackson said:

“Sometimes I feel our department is so overworked that we are not getting results, we’re just pushing paper. Therefore, I feel outsourcing the consultant program to the private sector will ease the workload and lower the wait time for all those involved in site remediation.”

Less than six months earlier, however, Commissioner Jackson admitted, “We realize that the state’s system that allows self-reporting for monitoring of these contaminated properties is broken.” Despite conceding the fallacy of relying on industry self-reporting, Ms. Jackson believes the solution is greater reliance on industry self-regulation.

II. Worsening Water Pollution

The following are offered only to give a sense of how lax pollution control has become in New Jersey in one area vital to human health, economic recovery, wildlife protection and other important values. While Ms. Jackson is not responsible for the deplorable state of water quality in the Garden State, the actions she took as DEP Commissioner made improvements that much more difficult and remote:

- **Groundwater Pollution.** This spring, in a stunning retreat, New Jersey DEP announced that it is eliminating proposed standards to protect groundwater from chemical pollution dumped at toxic waste sites or leaking from underground tanks and pipelines. Half of New Jersey residents depend on 900 million gallons of groundwater a day for drinking water. Polluted groundwater can also migrate under buildings, causing “vapor intrusion” from volatile chemicals that poison building inhabitants.

In addition to jettisoning the proposed impact-to-groundwater standards, DEP also scrapped the scientific methodology for evaluating impacts of soil contamination on groundwater. This reversal represents a substantial rollback of protections under pressure from high-polluting industries which have vigorously opposed these toxic clean-up rules.

This inaction is even harder to understand when new state reports indicate that tens of thousands of New Jersey residents are drinking polluted water:

- More than 12% of over 51,000 residential wells sampled failed to meet drinking water standards;
- The most common standard violations were for “gross alpha particle activity (2,209 wells), arsenic (1,445 wells), nitrates (1,399 wells), fecal coliform or E. coli (1,136 wells), volatile organic compounds (VOCs) (702 wells), and mercury (215 wells); and

- These figures do not count extensive contamination from lead, found in more than 5,200 wells, because DEP considered the “results to be questionable” due to “unrealistically high concentrations of lead...”
- ***Deteriorating Quality of Surface Waters.*** In the latest official report this fall, more than one thousand water bodies across New Jersey are too polluted for fishing or swimming and are supposed to be cleaned up to meet Clean Water Act requirements. These new figures show continuing water quality declines due to the state’s inability to control sprawl or adequately fund clean water infrastructure. The Draft 2008 Water Quality Monitoring and Assessment Report paints a dismal portrait of New Jersey waters:
 - Every area assessed for fish consumption failed to pass muster because the contaminant levels in fish were high enough to issue a consumption advisory or ban;
 - More than two-thirds of recreational waters (68%) assessed did not meet swimming health standards; and
 - One in three assessed drinking water supplies did not meet standards.

These findings are troubling – what one would expect to find in a Third World country rather than in one of the richest states in the U.S. Yet, DEP did not think these numbers merited public attention because they were buried in an appendix at the end of the report. Even more disturbing is that while New Jersey waters continue to get worse, there is no coherent, adequately funded, and enforceable plan for turning things around.

- ***Standards Too Low to Protect Wildlife.*** Under Ms. Jackson, New Jersey’s latest stab at water quality standards does not pass federal muster because it leaves bald eagle, peregrine falcon, freshwater mussels and other aquatic life vulnerable to the effects of mercury, the pesticide DDT and the toxic effects of PCB’s, according to formal comments filed by the U.S. Fish and Wildlife Service. The state has been on notice for years of the need for numeric chemical limits to protect wildlife but has once again failed to address the issue in its proposed new Surface Water Quality Standards.

Even extremely low levels of these persistent pollutants in state waters have devastating impacts on fish and wildlife as they bio-magnify and accumulate up the food chain. As mandated by the federal Endangered Species Act and Clean Water Act, the state is required to assure that its water quality standards are protective of all federally protected species and their habitat. In a July 23, 2007 letter to DEP the U.S. Fish & Wildlife Service contends that –

- The “existing numeric State of New Jersey Quality Standards remain unprotective for mercury and DDT”; and
- For “wildlife protection, attainment of New Jersey’s numeric PCB standard is stalled due to implementation issues that need clear and decisive resolution...”

The record on water quality is merely an example of the questionable leadership Ms. Jackson brought to a host of pressing pollution control challenges. It inspires no confidence about how she would be expected to approach such problems at a national level.

III. Greenhouse Gas Controls

This is supposed to be an area where Ms. Jackson claims national leadership but any careful examination of her record reveals paltry results –

- DEP failed to meet its first major statutory milestone in implementing the emission reduction goals of the highly touted Global Warming Response Act. A June 30th legal deadline for producing a plan identifying the legislative and regulatory “measures necessary to reduce greenhouse gas emissions” still has not been met. As a result, despite much ballyhoo, New Jersey does not have a coherent game-plan for achieving its climate change goals.

At the same time, Ms. Jackson supported and Gov. Corzine signed “The Permit Extension Act” which exempts thousands of projects from any new energy conservation, energy efficiency, building codes, or other requirements to install solar heating or other renewable energy that may ultimately be required by the Global Warming Response Act.

- New Jersey also missed the historic first auction of greenhouse gas pollution allowances under the Regional Greenhouse Gas Initiative or RGGI this September 25, 2008 because DEP was unable to adopt regulations to implement the pollution trading program that underpinned the auction; and
- Under Ms. Jackson, DEP is proposing a cap-and-trade program to reduce carbon dioxide emissions that will do little to combat global warming because it sets emissions caps above current levels and contains numerous complex offsets and loopholes that undercut its effectiveness. Even DEP concedes that its trading program will have more rhetorical than practical effect, when it states:

“By accelerating national action to address climate change, the Department believes that the proposed rules and amendments will result in broader future environmental benefits beyond the direct emissions reduction benefits achieved through the CO2 Budget Trading Program ...and will result in a more timely adoption of required Federal measures to reduce greenhouse gas emissions, which will reduce environmental impacts to the State and its residents.”

Given this track record, putting Ms. Jackson in a key position for guiding a national global warming effort may be imprudent.

As I noted at the outset, there are more concerns with Ms. Jackson’s record in New Jersey than have been summarized in this letter. Should your staff wish to examine additional documentation to support these concerns or to speak with current or former DEP employees who witnessed these events first hand, please let me know.

In closing, Ms. Jackson is certainly not a viable candidate for redeeming a battered, politicized EPA. I would urge that your transition effort take additional time to find an EPA Administrator who will both inspire a demoralized agency workforce and have the independence and stature to restore the tattered public credibility of an agency which will face even greater challenges during the coming months.

Sincerely,

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