

Dear Chairwoman Spencer and Assemblyman Greenwald:

Per your request, following up on my testimony today in support of your bill, A2340, below are the proposed amendments I suggested to improve the bill. Each amendment includes a brief rationale and supporting information. Language of the proposed amendments is *in italics*:

**1. Include vapor intrusion pathway in DEP Report, risk screening, and risk assessment**

Amend section 1.a.(1) at line 19, after “human health and the environment”, insert:

*“, including the vapor intrusion pathway and potential for vapor migration”*

Here is EPA’s Federal Register Notice proposed revision of the Superfund revision to include vapor intrusion (Jan. 31, 2011):

SUMMARY: The Environmental Protection Agency (“EPA”) is soliciting stakeholder input on whether to include a vapor intrusion component to the Hazard Ranking System (“HRS”). The HRS is the principal mechanism EPA uses to place sites on the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) National Priorities List (NPL).

<http://www.epa.gov/superfund/sites/npl/a110131.pdf>

**2. Provide a public petition process to request that DEP conduct a Preliminary Assessment, Site Investigation, and Hazard Ranking Score**

This recommended amendment is based on existing federal CERCLA and EPA Superfund Guidance, that provides an opportunity for the public to nominate sites for EPA’s NPL consideration. See this link for that EPA Guidance, which can be used to draft this amendment. The EPA Guidance lays out the content requirements and review process for a petition.

[http://www.epa.gov/superfund/programs/npl\\_hrs/papetition\\_oct02.pdf](http://www.epa.gov/superfund/programs/npl_hrs/papetition_oct02.pdf)

Insert new Section 2 in the bill as follows (basically a similar process to a petition for rule making under the Administrative Procedures Act):

*“Any person may petition the DEP Commissioner to conduct a preliminary assessment, site investigation, and a Hazard Ranking Score for a suspected contaminated site where there has been a suspected or actual release of a hazardous substance. The petition shall state the factual basis for the suspected release of hazardous substances on the site and provide any evidence to support the suspected release of a hazardous substance.*

*DEP shall provide notice of receipt of the petition in the NJ Register within 30 days of receipt.*

*DEP shall review the petition and make a determination on whether to proceed with the requested PA,SI and HRS within 120 days or to deny the petition. DEP may not deny the petition if evidence is provided of a known release of hazardous substances at the site. DEP shall notify the petitioner and file a notice of determination and the factual basis for that determination in the NJ Register.*

**3. Require disclosure of all sites that have HRS scores of 28.5 or greater and are eligible for Superfund NPL listing.**

As I testified, EPA’s decision to list sites on the National Priority List is primarily based on risk to human health and the environment. The EPA methodology for evaluating these risks is called the “Hazard Ranking Score” (HRS). Sites that score 28.5 or greater on the HRS are eligible for NPL listing by EPA.

The public has a right to know about sites in their communities that pose these kinds of risks. The HRS is one important tool in screening and assessing these risks.

The Legislature, in the the 1982 amendments to the NJ Spill Act and again in the Site Remediation Reform Act (of 2009) mandated the DEP adopt a risk based “Remedial Priority System (RPS) by May 7, 2010. The DEP has failed to meet this Legislative deadline.

Add New Section.

*“The DEP shall prepare and publish a list, on an annual basis, of all known contaminated sites that have been scored under the HRS system. The list shall identify the site, its location, its HRS score, and the responsible party(ies). The List shall be published in the January version of the NJ Register.*

**4. Enforce current law under the SRRA regarding the May 7, 2010 deadline for adopting a “Remedial Priority System” (RPS)**

The RPS is a fundamental component of the SRRA.

One of the factors the Department may consider in assuming direct oversight of a site is (see: C.58:10C-27 Direct oversight of remediation by department; conditions.):

*(b) [1-3]*

*(4) the site is ranked by the department in the category requiring the highest priority pursuant to the ranking system developed pursuant to section 2 of P.L.1982, c.202 (C.58:10-23.16).*

The RPS also is one of the factors that triggers additional safeguards and requirements pursuant to C.58:10C-21 Inspection of documents, information; review.

*b. The department shall perform additional review of any document, or shall review the performance of a remediation, if:*

***(1) the contamination at the site poses a significant detrimental impact on public health, safety, or the environment as determined by a receptor evaluation or the site is ranked by the department in the category requiring the highest priority pursuant to the ranking system developed pursuant to section 2 of P.L.1982, c.202 (C.58:10-23.16);***

In order to implement these provisions, the legislature the legislature mandated that the RPS be adopted by May, 7, 2010 (one year after enactment):

*C.58:10-23.16 Database listing known hazardous discharge sites, cases, areas of concern; ranking system.*

*2. The department shall prepare and maintain a database that lists all known hazardous discharge sites, cases, and areas of concern. The database shall comprise an inventory of all the known hazardous discharge sites, cases, and areas of concern in the State. **No later than one year after the date of enactment of P.L.2009, c.60 (C.58:10C-1 et al.) the department shall establish a ranking system** that establishes categories in which to rank sites based upon the level of risk to the public health, safety, or the environment, the length of time the site has been undergoing remediation, the economic impact of the contaminated site on the municipality and on surrounding property, and any other factors deemed relevant by the department. The database shall include information concerning each site that identifies the location of the known or suspected contaminated site, the status of the remediation, the contaminants of concern, and whether institutional or engineering controls are in use at the site. The department shall provide public access to reports from the database on its internet website.*

**The DEP has not complied with this non-discretionary legislative mandate, almost 4 years after the deadline imposed by the Legislature. This RPS risk information is directly related to the purposes of the bill and should be incorporated.**

**Perhaps budget language can be inserted to condition any expenditure of DEP site remediation program salary accounts on compliance with this deadline.**

**5. Assure that DEP's recommendations to nominate a site to EPA for NPL listing are based on science and risk to public health and the environment,, not local politics**

Section 1.b would authorize DEP to consider “*”impact the listing may have on the municipality”* (line 25 page 3)

This is a broad and vague standard that would allow all sorts of inappropriate factors to influence DEP's recommendations.

To narrow the scope of impact insert the following in Section 1.8 (following "impact may have" on line 25)

***"on human health and the environment in"***

I look forward to working with you to improve the bill and your favorable and prompt consideration of these proposed amendments.

Sincerely,

Bill Wolfe, Director

NJ PEER