



#1

Congressman Maurice D. Hinchey
Representing New York's 22nd Congressional District

Comments of US Representative Maurice Hinchey
Public Hearing
New York State Assembly Standing Committee on Environmental Conservation
Endicott, New York
November 15, 2004

This hearing is an important step in the overall efforts to better understand the nature of the multi-faceted threat facing this and other communities across New York State.

Proper governmental oversight has been in short supply over the 25 years since IBM first reported leaking chemicals in 1979 and that is one of the reasons to welcome the presence of the State Assembly Environmental Conservation Committee here today.

News accounts of new rounds of indoor air testing, prompted by EPA vapor intrusion guidelines issued in 2002, brought our attention to the threats of toxic contamination here in Endicott. For years this massive 300 acre toxic plume existed like some sort of sleeping monster, known about by a few at DEC, DOH and IBM, but not recognized as a threat due to a host of reasons, including: shoddy record keeping, a misunderstanding of the nature of the toxic chemicals involved, a reluctance by local officials to face up to the problem, and a deliberate strategy by the polluters to avoid culpability.

This chemical spill brought urgency to the need to study and protect the health of residents and former workers, the need to fully understand the nature of the chemical plume and advance a more aggressive remediation program. (Additionally -- and beyond the scope of this hearing -- property owners are pursuing legal actions, aided by NYS AG Eliot Spitzer, to seek relief for declining real estate values.)

To address human health issues and in light of the fact that elevated rates of childhood cancer had been reported in the region, in the Spring of 2003 I urged the NYS DOH and the federal Agency for Toxic Substance and Disease Registry (ATSDR) to initiate a health study.

My concerns about health impacts were raised by a survey conducted by my office at the time, which found that fully one third of the 71 respondents had experienced cancer and many endured multiple health disorders. Most respondents had an immediate family member who developed cancer while living in the area effected by this toxic plume.

To ensure that this matter would be fully addressed, I met with officials from ATSDR in my Washington office and then authored language in a federal appropriations bill to ensure federal oversight and involvement, specifically by ATSDR, in the comprehensive health study now under way.

While I am mostly pleased with the progress being made in analyzing the health threats related to this plume, I recognize that there is much more work to be done. The health consultation on Endicott's drinking water released last month was helpful in its determination that cancer threats from the water are "low to very low". My office is working with the Village to secure additional funding necessary to install an air stripper for the South Street Wells -- an action recommended in the study. Information being gathered in the DOH/ATSDR Health Statistics Review of Cancer and Birth Outcomes will further help us to understand the nature and pattern of illnesses here.

About a year ago I contacted some key players involved in class action lawsuits representing families of deceased IBM workers -- who believed that workplace chemical exposures had caused serious illnesses. These included Dr. Richard Clapp of Boston University, Dr. Leo Trasande of Mt. Sinai School of Medicine and Richard Alexander, a San Jose, CA based attorney. The information gained from these experts was compelling, particularly the existence of historical employee mortality data held by IBM. Dr. Clapp's research found that IBM workers died of certain cancers at younger ages and higher rates than the general population. He also found that the company knew about the higher rates -- for decades. Clapp's work prompted me to write to IBM -- over a year ago and ask the company to share its records with the health agencies now studying the situation here in Endicott. Unfortunately I have never received a reply.

When I brought Dr. Trasande, a specialist in pediatric and environmental health, to speak in Endicott last January, he fully endorsed Dr. Clapp's research and declared the danger that TCE presents to workers and residents -- particularly children. Dr. Trasande explained how children are more susceptible because, pound for pound, they ingest more chemicals in the food they eat, water they drink, and air they breathe. Their organs are just developing and are more susceptible to injury and lifelong disability. Dr. Trasande provided a sobering assessment of toxicity of TCE, it's suspected links to cancer, birth defects, kidney and liver failure, and damage to the central nervous system. Doctors Clapp, Trasande and many others have made a strong case for more research to determine causal links between health disorders and sources of toxic exposures, and I firmly believe that such study is long over due here in Endicott.

As I began investigating remediation aspects of the case, one of the most glaring problems I discovered was that the site was erroneously classified as Class 4 on New York's Registry of Inactive Hazardous Waste Disposal Sites -- implying that it was

properly closed and require only maintenance. Knowing this not to be the case -- that over four hundred structures had detected volatilized chemicals in their basements -- that chemicals were entering the sole source aquifer and public water supply -- that the plume had reached the Susquehanna River -- a Class A water body, I began an effort to persuade the NYS DEC to properly classify this site as Class 2, which was finally achieved in February of this year.

With the reclassification from 4 to 2 has come new attention to remediation process and an admission by DEC that the "groundwater contaminants were more extensive and complex than previously known." A consent order was finally brokered in August that includes additional testing and remedial actions.

To the frustration of many, questions surrounding why a consent order has been absent over the 25 history of the plume, have never been answered by DEC or IBM. Furthermore, DEC has never provided documents including written reports of the original 1979 methyl chloroform spill, nor has it provided an explanation of the decision to reclassify the site in June of 1986 from 2 to 4. The technical bureaucratic loose-ends are sources of mistrust which shroud this whole affair, leading many to think that innocent people have been unnecessarily exposed to toxic chemicals due to DEC inaction.

While an accelerated clean-up has been promised by IBM and DEC, it's worth noting that IBM agreed to the order without admission of wrongdoing or legal violation relating to releasing hazardous waste, that the release represents a threat to human health or the environment, and without an admission that there ever was a release of hazardous waste. To date, remediation efforts have removed some 80,000 gallons of toxic chemicals from Endicott's groundwater -- through a pump and treat process, and yet just 4,100 gallons are all that IBM has ever admitted to releasing.

To our knowledge, there was no public comment included, sought, or allowed relating to the new Consent Order. Questions that come to mind include, 1) is this Consent Order the ultimate guiding document for the remediation of this site or will there be a ROD-style document? A Record of Decision would require opportunities for public comment; and 2) which part of DEC now manages the clean up -- Division of Solid Waste, or Division of Remediation? (It would seem more appropriate to have this cleanup managed in the latter.)

In addition to Endicott, over the last year we've seen threats derived from vapor intrusion identified in homes in neighboring communities. From a former furniture plant in Johnson City to an electronics manufacturer Vestal to former dry cleaning facility in Binghamton, residents are learning that their homes may be unsafe. In neighboring Tompkins County, homes in Ithaca are threatened by VOCs near the former Morse Chain Corporation. The list is long and getting longer. DEC's response thus far to the threat of vapor intrusion seems ad hoc and haphazard -- communities that complain the most seem to get attention.

Lastly, of particular concern is the status TCE inhalation and drinking water standards. TCE appears as the most threatening and pernicious VOC at many of the sites we are working on in this region. The federal government has been negligent in promulgating new standards and some states like Colorado are moving forward with their own. The federal standard is 5 ppb (.005 mg/l) for water and 1 microgram per cubic meter (ug/m³) for inhalation. Efforts to revise these standards have met fierce resistance from US DOD and certain leading industrial and defense manufacturers. A 2001 EPA draft risk assessment found TCE to be a highly likely carcinogen, especially for children and made recommendations for significant reductions inhalation and water standards. Amazingly, EPA officials declined to immediately to adopt the tough new standards -- which were peer reviewed by EPA scientists as well as the Science Advisory Board. Instead the TCE risk assessment was sent to the National Academies for further review. The progress of this review is something that we are following closely and a matter that will have a profound impact on the work we are doing here in Endicott and elsewhere.

I thank Chairman DiNapoli for convening this hearing and allowing me to share my perspective on this matter. I would be happy to answer any questions you may have.