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POLICY

[Policy Guide](#)[Reports](#)[Speeches](#)[Legislative Initiatives](#)

Reports

Report on the Need for New York to Refinance the Superfund

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Toxic Waste

Many people around the country live in areas where land and water have been contaminated by toxic waste. The harmful chemicals found in this waste are known to cause serious illness and pose an environmental and health risk for everyone around the contaminated land. In a 1981 report to the Senate Committee on Environment and Public Works, the Surgeon General declared toxic chemicals to be a major public health threat in the United States. A 1980 report to the President by the Toxic Substances Strategy Committee found that exposure to carcinogens (many of which are found in toxic waste) were a major contributor to cancer.

A number of dangerous toxic chemicals are found in items commonly used in households and businesses. Before the studies from the 1980s confirmed the harmful effects these chemicals have on our health, businesses often did not responsibly dispose of these items, dumping them into the land and water around their property and exposing people in the surrounding areas to the chemicals. Items such as batteries, thermometers, photocopy machines, dry cleaning agents, pesticides, herbicides and commercial solvents contain chemicals that cause a range of physical symptoms including skin irritation, headaches, weakness and vomiting. Continuous exposure can lead to cancer, respiratory diseases such as asthma and bronchitis, and increased risk of birth defects for pregnant women.

Toxic waste is a nationwide problem. Throughout the country, one out of every four people lives within four miles of a Superfund site. 85 percent of Superfund sites have groundwater contamination and 50 percent of the nation relies on groundwater for drinking water.[1]In New York, the numbers are even starker: one in four New Yorkers lives within a mile of a state Superfund site. [2]

Children are especially susceptible to the adverse health effects of toxic waste. In February 2003, as part of its Paper Series on Children's Health and the Environment, the United States Environmental Protection Agency (EPA) released "Overview of the Special Vulnerability and Health Problems of Children." The report refers to a number of studies showing that adults exposed to toxic materials increase their risk of having babies

with a lower than normal birth weight. Low birth weight is associated with continued health problems later on in the child's life, including learning disabilities and increased risk of disease. For example, the report mentions a study that linked mothers' exposure to mercury (found in such common items as thermometers and batteries) with fetal growth retardation. The report also noted children's increased risk to cancer, asthma and chronic respiratory disease through either their exposure to toxic substances, or through their parents' exposure.

History of the Superfund

The risks that toxic waste poses to adults, children and unborn fetuses is well documented and widely recognized. In 1980, amid growing national concern about the environment and how to protect it, the United States Congress passed the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly called the Superfund Act. The Superfund Act allows the federal government to identify and respond to land, air and water sites that have become contaminated with toxic waste and pose an environmental and health threat to the area surrounding it. The federal Superfund covers sites that the EPA has placed on its National Priority List (NPL). The government considers sites on the NPL to be the most hazardous in the nation.

In 1982, to address the large number of toxic sites not covered under the federal Superfund, New York State created its own Inactive Hazardous Waste Disposal Site Remedial Program, commonly known as the State Superfund Program. This program was financed in 1986 through a \$1.2 billion voter-approved Environmental Quality Bond Act (later reduced to \$1.1 billion), established to identify and clean up toxic waste sites not on the NPL. The state passed its own regulations on how to identify and evaluate toxic sites, as well as how to execute the clean-up and how to fund it.

In New York, when a site is suspected to be hazardous, the first step the state takes is to perform a Preliminary Site Assessment (PSA). The New York State Department of Environmental Conservation (DEC) investigates the site to determine if it meets the state's definition of hazardous waste. There are three elements of the PSA. First, DEC does a background records check of the site to determine what the site was used for in the past and reviews any disposal activity that may have been recorded. Next, they take samples of the soil, surface water and exposed materials on the site to test for toxicity. Finally, DEC checks ground water by doing sample tests and installing monitors. After the PSA is complete, DEC classifies the site into one of four possible outcomes. The site may be classified as Class 1, meaning it poses an "imminent danger," requiring immediate remedial action; Class 2, meaning it poses a "significant threat to the public health or environment;" Class 3, meaning it poses "no significant threat;" or if no hazardous waste is found, the site is delisted.

After the classification process is complete, sites that are determined to be Class 1 or Class 2 are further examined by the DEC's Division of Environmental Remediation (DER). DER determines the extent of the contamination and, along with the state Department of Health, devises possible remedies.

State Plans to Refinance Superfund

The entire process of identifying and cleaning up a Superfund

site can take a number of years and there are significant expenses associated with it. The \$1.1 billion dollars initially allocated for the Superfund, plus an addition \$2.1 billion dollars collected from the parties responsible for the pollution, have helped to investigate and clean up hundreds of toxic waste sites across New York. However, in April 2001, the money in the Superfund ran out and since then the Governor and state legislature have disagreed on a method of refunding. As a result, there have been no new investigations and cleanups conducted in New York for over two years.

In 1999, in anticipation of the Superfund's pending bankruptcy, Governor Pataki released recommendations tying Superfund refinancing with reforms that would weaken the program's stringent cleanup and liability standards. The Governor's proposal, which he has introduced every year since then, provides for funding of three different cleanup efforts – Superfund sites, brownfields, and oil spills. Because the Governor's bill weakens clean-up standards and liability rules for polluters, his plan is opposed by most environmental groups and has not been adopted by the state legislature. In addition, the Governor's bill provides only \$90 million annually for Superfund clean-ups, which environmental groups say would create an unacceptably long timetable of more than 20 years for all known sites in New York State to be cleaned up.

In the two years since the state Superfund went bankrupt, several bills have been introduced in the Senate and Assembly to refinance the Superfund. The environmental community has largely backed legislation introduced by Assemblyman Alexander Grannis and Senator Kenneth LaValle (A. 1858/S.2402) that would refinance the Superfund program, with 75% of the funding coming from industry fees, while maintaining the program's stringent standards. This legislation has failed to pass out of committee in either house, however.

In an attempt to bridge the impasse, both the Senate and the Assembly introduced new bills in the spring of 2003 that would both refinance the State Superfund and create a new brownfields program in New York.

Assembly bill 7507, sponsored by Assemblyman Thomas P. DiNapoli, which passed the house in early June, would provide \$200 million a year in bonding to refinance the Superfund, with clean-up expenses to be shared equally between the public and businesses. This would provide sufficient funding to clean up all known Superfund sites over the next ten years. Senate bill 2935, sponsored by Senator Carl Marcellino, which the Senate passed in March, uses the Governor's Superfund refinancing plan, without incorporating many of his reforms that would weaken the Superfund cleanup program. Negotiations are currently underway between the two houses to determine whether they can come to agreement on final legislation this year.

Results of Public Advocate's Study

In New York City there are 38 Superfund sites that have not been cleaned up. There are three sites in the Bronx, nine in Brooklyn, one in Manhattan, 16 in Queens, and nine in Staten Island. For our investigation we looked at the health information provided in the Department of Health's most recent Community Health Profiles to determine if the communities where these sites are located suffered from a higher instance of health

conditions associated with toxic waste. We found that all of the 21 communities where Superfund sites are located have higher instances of respiratory diseases, cancer, asthma, and birth and early infancy complications. In the nine communities with two or more Superfund sites, residents were at an even higher risk for these illnesses.

The nine communities with multiple Superfund sites are Sunset Park, Greenpoint, and the Downtown, Brooklyn Heights – Park Slope sections of Brooklyn; West Queens, Rockaway, Long Island City and Jamaica in Queens; Willowbrook, and the Stapleton – St. George sections of Staten Island. The health statistics in these communities revealed higher than the city average of the following health conditions:

Infant Mortality: Downtown, Brooklyn Heights – Park Slope; Rockaway; Jamaica and Stapleton
Low Birth Weight: Rockaway, Jamaica and Stapleton
Asthma Hospitalization: Sunset Park and Jamaica
Cancer Hospitalization: Greenpoint and Willowbrook
Bronchitis and Bronchiolitis Hospitalization: West Queens
Lung Cancer: Sunset Park, Greenpoint, Rockaway, Long Island City, Willowbrook and Stapleton – St. George
Colorectal Cancer: Downtown, Brooklyn Heights – Park Slope; Rockaway and Stapleton – St. George
Breast Cancer: Downtown, Brooklyn Heights – Park Slope; Rockaway and Willowbrook
Prostate Cancer: Downtown, Brooklyn Heights – Park Slope and Jamaica
Cancer Deaths: Willowbrook and Stapleton – St. Georges
Lower Respiratory Diseases Deaths: Willowbrook

Conclusion

The need to refinance New York State's Superfund is clear. The state Assembly has made reasonable and responsible attempts to pass legislation to do this since the fund expired in 2001. Along this road, the Assembly and the Senate have worked to reach a compromise. The Assembly is making progress towards passing Assemblyman DiNapoli's bill, which incorporates some of the Senate's bill in terms of the rate of the state and private business' share of the funding, while not sacrificing important clean-up standards. And the bill that the Senate passed moves away from the Governor's proposal and towards the Assembly's goal of tighter clean-up standards. This is a sign that the state legislature recognizes the need to refinance the Superfund and resume cleaning up hazardous waste sites in New York. Everyday this issue remains unresolved more and more people are in danger of getting sick from toxic waste in their community.

The results of our investigation make it clear the refinancing New York's Superfund and cleaning up the remaining sites should be a priority. Although exposure to the harmful toxins found in Superfund sites are not the only factor causing health problems in the communities, continued exposure to these toxins undoubtedly contributes to health problems and places residents of these communities at increased risk. It is unacceptable that so many families are living in areas that clearly pose a serious health hazard. The Assembly and Senate are working towards a compromise. We support this effort and hope that ultimately the compromise reached leans towards the stricter standards set forth by the DiNapoli bill. We hope that now Governor Pataki will take action in this matter and assure

that New York State adopts a fair plan to refinance the Superfund as soon as possible.

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[Back to top](#)

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