

Harlem: Learning about Vapor Exposures the Hard Way and Doing Something About it

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Last March I submitted comments to New York's Department of Environmental Conservation (DEC) and wrote a report (see www.cpeo.org/pubs/23450Fifth.pdf) on vapor contamination at 2350 Fifth Avenue, Harlem, New York. The multi-story structure was built as an ice cream factory, later housed a leaky dry cleaner, and briefly served as a school in 1997 before it was shut down because unacceptable levels of tetrachloroethylene (PCE) fumes were found inside. At the time I believed, from the sign on the building and DEC publications, that this was a warehouse closed to the public and not regularly occupied. I focused my comments on the potential impacts upon residents of adjacent high-rise apartment buildings.



Tenants speak up at August 17, 2012 forum

I was surprised, therefore to receive early this May an e-mail from a tenant of the building. He wrote:

My name is Albert Elkerson, and I have recently been seeing various doctors trying to diagnose a chronic health condition. Until a week ago, I was not aware that I have been going to work every morning for the past 6 years to a building that has been emitting a chemical called PCE. Not only have I been exposed, but the vapor extraction system being used for this remediation process is located directly in my leased space. Not myself nor any of the other 40-odd occupants of the building were made aware, and it seems that everyone I contact is an involved party of this situation. In other words, everybody knew but didn't say anything or didn't monitor the site as was expected by the state. Also, it seems that the people who report on the process are the contracted consultants and not

even the state itself. And they work directly for the owner. To make matters worse, because it seems to the owner that I am now aware of the issue, they are taking immediate actions to remove me from the said location.

A little more than three months later, Mr. Elkerson has organized the tenants of the building, spurred damning press coverage of the situation, met with state environmental regulators from DEC and the Department of Health (DOH), and led State Senator Bill Perkins to hold a public forum and propose legislation to expand the “*right to know*” of occupants of contaminated buildings. On August 16, 2012, the day before the Senator’s forum, DEC announced plans to expand sampling in both the 2350 building and nearby apartments.

Elkerson has explained that once he knew this was an environmental site, he did an Internet search. It took him a while to find anything, because the landlord had re-numbered the building as 2340 Fifth Avenue. Once Elkerson learned the original address, he found my article and contacted me. Since I had plans to visit New York a few weeks later, I arranged to meet him at the site. This stood out as an egregious example of environmental injustice in a community known for its historic disproportionate exposure to environmental problems.



Re-numbered entrance

I was shocked to see that anyone could enter the re-numbered front door, and that there were people working inside. The building is now known as WorkSpace Harlem, with most of the

occupants being artists. They consider the studios there to be essential in one of the nation's most significant centers of artistic creativity.

There were signs of remedial activity, but no warning signs. I confirmed Elkerson's concerns, and I urged him to organize his neighbors and go public with the problem. He has done that effectively, to the benefit not only of other building occupants and neighborhood residents, but also to the people who will receive warnings of vapor exposures elsewhere if the Senator's legislation is enacted.

In 2008, after repeated efforts by Assemblywoman Donna Lupardo from the Endicott area, New York enacted one-of-a-kind tenant notification legislation for vapor intrusion sites. DEC lawyers are investigating now to find out whether the landlord broke the law or escaped through loopholes. The law says that building *occupants* are supposed to be informed of vapor intrusion risks, but the designated instrument for notification is the lease. And many of the regular occupants have "licenses," not leases.

Senator Perkins is proposing the posting of notices at hazardous waste sites and the strengthened notification of building occupants about vapor intrusion investigations. Even where reasonable steps are being taken to mitigate and remediate toxic vapors, there are strong reasons for clarifying and enhancing the right to know.

First, there are debates among experts and differences among jurisdictions over what is a safe exposure is to contaminants, such as PCE and trichloroethylene (TCE), in the building's indoor air. Beyond the installation of mitigation equipment and the treatment or removal of toxic substances, people have a right to decide for themselves what is an unacceptable risk. For example, based upon EPA's September 2011 Toxicological Review of TCE, state and federal toxicologists in California are suggesting that the short-term exposure of pregnant women to levels of TCE comparable to those historically found at 2350 Fifth Avenue may cause cardiac birth defects. Regardless of New York State's current exposure standards, it's essential that women of child-bearing age know of such potential exposures so they can make their own judgment about building safety. That is, they may choose not to enter the building until remedies are in place and proven effective.

Second, building occupants see "remediation" activity daily. They noticed uncovered pits. They saw piles of material that may have included PCE-soaked insulation. They wondered why the soil-vapor-extraction (SVE) system was held together with duct tape. They watched crews drilling holes in the floors of their workspaces while they were present. If they had known the purpose of and responsibility for these activities, they would have been able to ask questions and report hazards. Instead, for example, Elkerson believed, as he had been told, that the SVE system in his leased area was a *ventilation* system.

Third, with a full understanding of what is going on, site occupants and neighbors can suggest improvements in remedial action plans. Only a handful of us, from outside the immediate area, commented on the 2350 Fifth Avenue plan. On the whole, it's not a bad plan, but once area residents learned what was going on they asked for more. For example, in its August 16 press release DEC reported that it was planning to conduct soil vapor sampling at the Riverbend Apartments, across Fifth Avenue from the site, "as a result of residents' concerns.



Soil Vapor Extrttaction System

While providing timely notice to building occupants should have been simple, contacting the thousands of residents nearby would have been a challenge. As far as I know, fact sheets were not distributed in the apartments, but I don't know that busy residents, not in the building itself, would have paid attention. DEC should be required in such instances to do more than merely publish ads in newspapers and circulate fact sheets, it should engage in a pro-active "marketing" campaign to ensure that potentially impacted people are informed. In cases where that population is large, DEC should be provided with adequate resources, including funds to hire dedicated community involvement personnel. The presence of only one member of the public at the official March, 2011 public meeting should not have been seen as public disinterest. Rather, it represented DEC's failure to effectively communicate at this site.

Beyond expanding the public's right to know, Senator Perkins is proposing legislation to require the state Department of Health to promptly review its air guidance value for PCE. It remains high above (less protective than) other states' at 100 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). At the beginning of December 2009, about 30 New York environmental and community groups wrote DOH asking that it update its PCE values, and within the month DOH responded that it would do so in 2010. It didn't. Even after EPA issued its PCE Toxicological Review in February, 2012, New York did nothing. At the Perkins forum state officials said that the review remains on the agency's to-do list, but wasn't necessarily a high priority. Given the prevalence of

PCE spills and leaks, as well as direct air releases, in New York City, it's hard to understand why the agency has not done its job. I say this knowing that DOH, like U.S. EPA, is likely to come up with an exposure threshold that I do not consider fully protective.



Senator Perkins at the August 17, 2012 Forum

Despite assurances from DOH, the tenants of 2350 Fifth Avenue still don't know that their air is safe, but they now know what is going on in their building. With new plans to test air and soil gas in adjacent apartments, area residents may soon know whether vapor intrusion is occurring in the high rises. As a result of the activism of one man initially, both groups are finally a part of the cleanup process. Equally significant, as a result of the news from this single Harlem site, people throughout New York may soon be better informed about vapor intrusion investigations in their homes, workplaces, and communities.