



**New York State Senate
Democratic Policy Group**



***Protecting Jobs, Health &
Our Communities:
Enhancing New York's Superfund
in the Age of Trump***

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In October 2015, Democratic Conference Leader Andrea Stewart-Cousins launched the Democratic Policy Group to develop policy initiatives to serve all New Yorkers. The group, chaired by Senator Daniel Squadron, with Senators George Latimer, Velmanette Montgomery, Kevin S. Parker, and José M. Serrano, works with the entire Democratic Conference to identify and advance practical solutions to the most pressing problems facing New Yorkers today.

In his 2018 budget, President Trump has proposed drastic cuts to the federal Superfund program, which protects New Yorkers by removing toxic chemicals from contaminated sites around the state and creates jobs in environmental cleanup and for businesses that can newly operate at sites that have been cleaned up.¹

These Trump administration cuts will cost New York jobs and leave New Yorkers less safe.

Enhancing Superfund and Environmental Cleanup in the Age of Trump

Enhancing state Superfund and environmental cleanup laws will save jobs and protect New Yorkers' health and safety in the face of Trump administration attacks. President Trump's budget cuts \$330 million from the federal Superfund program² – a 30% cut in resources³ for this essential federal program that cleans up sites contaminated with dangerous toxins and pollutants.

New York has 85 federal Superfund sites⁴ including Eighteenmile Creek in Lockport, the Hopewell Precision Area in Hopewell Junction, and numerous sites on Long Island and around the state.⁵ Ongoing site cleanup work that now depends on federal funding would be slowed or halted by the drastic federal Superfund cuts proposed by the Trump administration.

These cuts loom at a terrible time for New York.

Communities across New York are facing increasingly severe threats from illegal and contaminated waste, including at former industrial sites and illegal “dumping grounds” that imperil local quality of life.⁶ Rather than cutting support for environmental cleanup as President Trump has proposed, Environmental Conservation Committee Ranking Member Senator Todd Kaminsky and Senators John E. Brooks, Joseph P. Addabbo, Jr., Leroy Comrie, Toby Ann Stavisky and the Policy Group have here identified 4 steps New York can take now to enhance Superfund and other environmental cleanup programs in New York to create jobs and protect health and communities across the state.

Reducing or stopping federally supported cleanup at New York Superfund sites will cost New Yorkers jobs. Superfund cleanup creates on-site jobs in excavation, dredging, ground and water treatment, and rehabilitation to allow sites to be safely re-used.⁷ Nationally, studies have shown environmental cleanup already to be employing 126,000 people and generating \$25 billion in economic activity.⁸ In New York, EPA figures show 6,185 people employed and \$277 million in annual income from businesses operating on Superfund sites that have been safely rehabilitated.⁹

Slowing or halting work on federal Superfund sites will also imperil New Yorkers as toxic contaminants will continue to sit in New York ground and water, leaching further and further toward homes and drinking water.¹⁰

Recent incidents on Long Island have included the dumping of tens of thousands of tons of toxic construction debris in Roberto Clemente Park in Brentwood,¹¹ and West Hills County Park in Huntington,¹² along with numerous other incidents of construction debris discovered on

roads, in parks and residential areas.^{13,14,15,16} Incidents of illegal disposal have also been uncovered elsewhere in the state, including in Queens,¹⁷ the Hudson Valley,¹⁸ Buffalo,¹⁹ and other upstate areas.²⁰

To combat significant cuts to the federal Superfund program and protect New Yorker's jobs, health, and safety, New York must ensure its state Superfund and environmental cleanup laws provide tools as strong or stronger than federal Superfund to support localities across the state struggling with dangerous and unauthorized disposal of waste.

1. Give New York Stronger Tools to Hold Polluters Accountable for Environmental Cleanup

Currently, the New York Attorney General and localities must often rely on federal Superfund laws to hold responsible parties accountable for environmental site cleanup. In contrast, other states make polluters explicitly liable under state law, providing an important alternative remedy to support environmental cleanup.²¹ With the federal Superfund program under attack, making polluters explicitly liable under state law in New York will provide the state and localities an important new tool to support environmental cleanup in the age of Trump.

In addition, several state Superfund laws provide stronger tools than New York's to recover money for cleanup costs from those responsible for illegal dumping. New Jersey, Pennsylvania, and Massachusetts, for example, allow recovery of up to three times cleanup costs in environmental actions.²² Several states, but not New York, also explicitly allow for liens against all revenue and property of responsible parties to help pay for cleanup.²³ Providing the state and localities with stronger tools to support environmental cleanup projects will support such projects – and the jobs they create – in the face of Trump administration cuts.

By making polluters explicitly liable and adding stronger legal remedies like liens and treble damages to New York's Superfund, as in S.6466 (2017) sponsored by Senator Comrie, New York can better address the increasingly severe and dangerous dumping being experienced by many communities with new and stronger tools to support environmental cleanup and hold those responsible for dumping accountable.

2. Increase Enforcement and Penalties for Commercial Offenders

As the Trump administration decreases support for environmental cleanup, providing stronger penalties for illegal disposal and supporting local enforcement will also help New York decrease and prevent illegal dumping at the state level. Although New York has some laws on the books to discourage illegal waste disposal, more can be done to increase the costs of illegal dumping and thereby deter future incidents.

First, although New York law provides for fines for illegal dumping,²⁴ state-level fines in nearby Connecticut are higher and allow for other deterrents such as vehicle confiscation,²⁵ which could be an appropriate penalty for repeat offenders or those caught dumping significant loads of material. Increased penalties are likely to reduce illegal disposal²⁶ and could fund additional enforcement staff in areas experiencing the most significant illegal disposal issues.²⁷ Strengthening the penalties the state can impose for commercial offenders, as in S.6467 (2017) sponsored by Senator Stavisky, will better deter future incidents.

The state can also assist localities looking to increase enforcement through state support and coordination. For example, several localities are seeking to install surveillance cameras in areas where illegal dumping is a concern.²⁸ State legislation to support this and other anti-

dumping enforcement efforts in interested communities and coordinate these programs across localities, as in S.6316 (2017) sponsored by Senator Brooks, will ease local burdens and help prevent perpetrators from moving from locality to locality.

In addition, although a re-draft of New York's solid waste regulations is due soon from the State Department of Environmental Conservation (DEC),²⁹ its initially proposed revisions did not go far enough to prevent and deter illegal dumping.³⁰ DEC should ensure that the next set of regulations includes an electronic manifest system to track debris from its creation through its receipt at a legal collection site – this would make it more difficult for debris to be dumped illegally and potentially create electronic flags for DEC when a load of debris failed to be delivered appropriately.

3. Use New York's Market Power to Increase Recycling of Construction Materials

The Trump administration is decreasing support for environmental cleanup just as New York communities are experiencing increases in the illegal disposal of often-hazardous construction and demolition debris.³¹

Reducing the amount of construction and demolition debris that needs to be disposed of by increasing construction materials recycling is likely to reduce illegal dumping, lower costs for businesses, and create jobs in the materials recycling industry. Although some resources for construction materials recycling exist in the state, further development and expansion of recycling facilities and processes will help grow this industry.³²

By providing that a certain percentage of the debris generated by state projects be subject to recycling goals and considering construction and debris recycling compliance in state and local contracts, as in S.6275 (2017) sponsored by Senator Kaminsky, New York can use its significant market power to grow this important route to decreasing statewide construction and demolition debris.

4. Increase State Support for Local Prevention Programs To Reduce Illegal Garbage

New York State can also better support localities seeking to prevent the improper disposal of waste in their communities. Many proper channels exist throughout the state for the disposal of unwanted electronics and furniture, household chemicals, and other garbage generated by households and businesses.

Some state programs – including support for “disposal days” and outreach about proper disposal methods, including recycling – exist to help localities address and prevent the improper disposal of trash in vacant lots, streets, sidewalks, and other public areas. Reports from communities around the state show, however, that too often businesses and residents are not aware of proper disposal avenues, or have insufficient access to specialized disposal days or other programs, leading to improper disposal and the buildup of illegally disposed of waste.³³

As the Trump administration leaves environmental cleanup efforts behind, New York should ensure our state programs provide sufficient support to residents to eliminate illegal dumping grounds and prevent illegal waste disposal, especially of potentially hazardous items like household chemicals and electronics. Reducing the improper disposal of waste by better facilitating proper disposal will support local economic development and the revitalization of communities.

Recognizing the importance of this issue to communities across New York, state prevention programs to assist homeowners and small businesses dispose of garbage appropriately should be expanded in keeping with best practices in other states³⁴ as in S.6174 (2017) sponsored by Senator Squadron. In addition, existing state programs should be reviewed, as in S.6463 (2017) sponsored by Senator Addabbo, to ensure they are providing adequate assistance to communities facing the most significant problems.

PROPOSED LEGISLATION

- S.6466/Comrie – Enhanced Remedies for Environmental Cleanup
- S.6467/Stavisky – Enhanced Penalties for Commercial Violators
- S.6316/Brooks – Illegal Dumping Local Law Enforcement Grants
- S.6275/Kaminsky – Procurement Standards and Preference for Waste Diversion
- S6174/Squadron – Household and Small Business Waste Collection Events
- S.6463/Addabbo – Electronic Waste Recycling Task Force

¹ See Executive Office of the President of the United States; Office of Management and Budget. “Major Savings and Reforms: Budget of the U.S. Government Fiscal Year 2018.” Available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/msar.pdf> at 5, 89 (last accessed May 24, 2017); Halper, Evan. “The Environmental Protection Agency is targeted for some of Trump’s most brutal cuts.” *Los Angeles Times*. 16 March 2017. Available at <http://www.latimes.com/politics/washington/la-na-essential-washington-updates-a-dramatic-retreat-from-environmental-1489677751-htmstory.html>; United States Environmental Protection Agency. “Superfund.” Available at <https://www.epa.gov/superfund>; “Superfund Sites Work for Communities: How Superfund Redevelopment in EPA Region 2 Is Making a Difference in Communities.” *United States Environmental Protection Agency*. Nov. 2015. Available at <https://semsub.epa.gov/work/HQ/100000072.pdf> at 12; Barrett, Kelli. “Cleaning up: This \$25 billion industry generates 220,000 jobs.” *GreenBiz*. 5 Aug. 2015. Available at <https://www.greenbiz.com/article/cleaning-25-billion-industry-generates-220000-jobs>.

² See Executive Office of the President of the United States; Office of Management and Budget. “Major Savings and Reforms: Budget of the U.S. Government Fiscal Year 2018.” Available at <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/msar.pdf> at 5, 89 (last accessed May 24, 2017); Halper, Evan. “The Environmental Protection Agency is targeted for some of Trump’s most brutal cuts.” *Los Angeles Times*. 16 March 2017. Available at <http://www.latimes.com/politics/washington/la-na-essential-washington-updates-a-dramatic-retreat-from-environmental-1489677751-htmstory.html>.

³ See *id.*

⁴ This number includes sites currently appearing on the federal Superfund National Priorities List. United States Environmental Project Agency, Superfund. National Priorities List (NPL) Sites - by state. <https://www.epa.gov/superfund/national-priorities-list-npl-sites-state#NY>.

⁵ See United States Environmental Project Agency, Superfund. National Priorities List (NPL) Sites - by state. <https://www.epa.gov/superfund/national-priorities-list-npl-sites-state#NY>; see also “Map: Environmental cleanup sites on Long Island.” *Newsday*. Available at <http://data.newsday.com/long-island/data/water/superfund>.

⁶ See, e.g., Map: Environmental cleanup sites on Long Island.” *Newsday*. Available at <http://data.newsday.com/long-island/data/water/superfund> (showing over 260 state-and federally-designated cleanup sites on Long Island alone); Lyons, Brendan. “EPA pursues Superfund status for Hoosick Falls.” *Times Union*. 7 Sept. 2016. Available at <http://www.timesunion.com/local/article/Hoosick-Falls-declared-federal-Superfund-site-9207653.php>; Kern-Jedrychowska, Ewa. “Dumping Ground Angers Neighbors of Shuttered Queens Sports Authority.” *DNainfo*. 15 Aug. 2016. Available at <https://www.dnainfo.com/new-york/20160815/forest-hills/dumping-ground-angers-neighbors-of-shuttered-queens-sports-authority>; Gannon, Michael. “New cans to tackle litter and dumping.” *Queens Chronicle*. 23 July 2015. Available at http://www.qchron.com/editions/eastern/new-cans-to-tackle-litter-and-dumping/article_2395258a-b451-5534-ae16-bb7bbf18338e.html; Barbera, Russ. “Love Canal site is target of illegal dumping.” *WIVB 4*. 23 April 2014. Available at <http://wivb.com/2014/04/23/love-canal-dump-target-of-illegal-dumping/>.

⁷ United States Environmental Protection Agency, Basic Information about Cleanups, <https://www.epa.gov/cleanups/basic-information-about-cleanups#superfund>.

⁸ Barrett, Kelli. “Cleaning up: This \$25 billion industry generates 220,000 jobs.” *GreenBiz*. 5 Aug. 2015. Available at <https://www.greenbiz.com/article/cleaning-25-billion-industry-generates-220000-jobs>.

⁹ “Superfund Sites Work for Communities: How Superfund Redevelopment in EPA Region 2 Is Making a Difference in Communities.” *United States Environmental Protection Agency*. Nov. 2015. Available at <https://semsub.epa.gov/work/HQ/100000072.pdf> at 12.

¹⁰ See, e.g., “Unpoisoning the Well: 7 Ways New York Can Better Protect Your Drinking Water.” *New York State Senate Democratic Policy Group*. 16 Feb. 2017. Available at <https://www.scribd.com/document/339432628/Unpoisoning-the-Well-7-Ways-New-York-Can-Better-Protect-Your-Drinking-Water>.

¹¹ Barrios, Jennifer. “Islip Town files \$4M racketeering suit over dumping at park.” *Newsday*. 6 May 2016. Available at <http://www.newsday.com/long-island/suffolk/islip-town-files-4m-racketeering-suit-over-dumping-at-park-1.11771254>; Thorne, Kristin. “Cleanup Begins at Toxic Roberto Clemente Park in Brentwood.” *ABC 7 NY*. 24 Sept. 2014. Available at <http://abc7ny.com/news/cleanup-begins-at-toxic-roberto-clemente-park-in-brentwood/321553/>.

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- ²⁰ See “Two Sentenced in New York State for Dumping Thousands of Tons of Asbestos in Violation of the Clean Water Act.” *The United States Department of Justice, Office of Public Affairs*. 2 Aug. 2013. Available at <https://www.justice.gov/opa/pr/two-sentenced-new-york-state-dumping-thousands-tons-asbestos-violation-clean-water-act>.
- ²¹ See NJ Stat Ann 58:10-23.11f a.(2)
- ²² NJ Stat Ann 58:10-23.11f a.(1); 35 P.S. § 6020.507; MA Gen. Laws Chapter 21E, Section 5(e); NJ Stat Ann 58:10-23.11f a.(3)
- ²³ NJ Stat Ann 58:10-23.11f d; 35 P.S. § 6020.509.
- ²⁴ See, e.g., En. Con. §§ 71-2703, 71-2705.
- ²⁵ See Connecticut Department of Energy & Environmental Protection. Help Put an End to Illegal Dumping. Available at http://www.ct.gov/deep/cwp/view.asp?a=2718&q=325498&depNav_GID=1646; Connecticut General Statutes Sec. 22a-226 (\$25k); Sec. 22a-250a; CGS § 22a-250 (h); CGS Sec. 22a-255/ Vehicle confiscation is also used in New York City. See Rizzi, Nicholas. “City Cracking Down on Illegal Dumpers in Staten Island.” *DNAINFO*. 15 March 2016. Available at <https://www.dnainfo.com/new-york/20160315/travis/city-cracking-down-on-illegal-dumpers-staten-island>.
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- ²⁹ New York State Department of Environmental Conservation. Solid Waste Management Facilities (Part 360), Proposed Regulations, <http://www.dec.ny.gov/regulations/81768.html>.
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- ³¹ See above notes 11 to 16 and surrounding text.

³² See, e.g., United States Environmental Protection Agency. “State of the Practice for Construction and Demolition Material Recycling.” Actionable Science for Communities Program. Summary available at https://www.epa.gov/sites/production/files/2016-11/documents/shc_3.63_poster_39.pdf.

³³ See, e.g., Kern-Jedrychowska, Ewa. “Dumping Ground Angers Neighbors of Shuttered Queens Sports Authority.” *DNAinfo*. 15 Aug. 2016. Available at <https://www.dnainfo.com/new-york/20160815/forest-hills/dumping-ground-angers-neighbors-of-shuttered-queens-sports-authority>; Gannon, Michael. “New cans to tackle litter and dumping.” *Queens Chronicle*. 23 July 2015. Available at http://www.qchron.com/editions/eastern/new-cans-to-tackle-litter-and-dumping/article_2395258a-b451-5534-ae16-bb7bbf18338e.html.

³⁴ See, e.g., CalRecycle. “Illegal Dumping Resources Toolbox: Prevention, Alternative Waste Collection and Recycling Programs.” Available at <http://www.calrecycle.ca.gov/IllegalDump/Prevention/default.htm#Alternative>.