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**TO:** Mr. Sayar Lonial, Chair, Brooklyn Community Board 6  
**FROM:** Office of Rep. Nydia M. Velázquez  
**DATE:** March 14, 2018  
**RE:** Responses to questions on Superfund bill from CB6  
Economic/Waterfront/Community Development & Housing Committee

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1. **Question:** In section 5, define “Near” (by feet, within a zip code, business strip etc.).

**Answer:** For this legislation, the definition of “Near” with regard to an individual’s or business’s proximity to a Superfund site is left to the discretion of the Administrator of the Small Business Administration judging each site on a case-by-case basis. The test would be based on the impact on the business or tenant, rather than a prescribed distance. Additionally, there is no legal definition of near outlined in the Small Business Act (PL 85-536) or in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (PL 96-510), commonly known as the Superfund Act.

2. **Question:** For the Gowanus canal, what is the exact area and how far "out" does a business have to be to qualify?

**Answer:** The Gowanus Canal itself is a designated Superfund Site, and there are surrounding brownfield sites that contribute to its contamination that are not in-and-of-themselves the designated superfund site, yet figure in its remedy. For example, there may be businesses sitting on brownfield sites that need to move to accommodate the cleanup remedy. At the discretion of the Administrator, if a business is directly impacted by the superfund site or its remedial cleanup, and forced to move, the business or tenant can qualify for relief. It is important to note that not all businesses on surrounding brownfield sites that contribute to the contamination of the canal have to move. Instead, this bill provides relief for those businesses that would be required to move, at the discretion of the Administrator. In Gowanus, for example, Eastern Effects (270 Nevins Street), or the Gowanus Station Building (234 Butler Street), may be compelled to move, as the City implements an EPA-required remedy of an 8-million-gallon overflow tank.

3. **Question:** Why couldn't this be a grant?

**Answer:** Creating a grant program would be a separate bill in itself. In fact, the Congresswoman has attempted to convert the SBA Disaster Loan program into a grant program in the past. The reality is that in the current political environment, a grant-based system is looked down upon by the majority, making such legislation essentially unpassable. This Superfund bill is not only good policy to improve the program, it is also a realistic bill that could garner Republican support. Additionally, instead of a grant-based system with a limited amount of funding, all eligible individuals and concerns could receive the relief and not have to compete for a finite amount of funding.

4. **Question:** Business losses are part of a business. If business owners moved in without doing an assessment, why should taxes be burdened by their irresponsibility?

**Answer:** The purpose of this legislation is not to bail out negligent business owners; it is to enhance the funds in the Superfund Account by taxing the oil and gas industry – those mainly responsible for contamination of most sites – while also providing relief for displaced tenants and business owners not responsible. Individuals and concerns will qualify only if they are not the polluters and have been located at the site since before the Superfund designation. An individual must be a tenant or business owner located at the site BEFORE Superfund designation.

5. **Question:** Residents should also be given an opportunity to apply.

**Answer:** Based on this feedback, the bill is being revised to ensure that residents qualify under Sec 3 and Sec 4. The legislation revision will reflect the creation of a pilot program that would permit usage of the SBA Disaster Loan Program for homeowners, tenants, and residents, living on or adjacent to a Superfund site to the extent possible. For example, Sec. 4 will read: Pilot Disaster Loan Program for Relocation from a Superfund Site for Homeowners, Renters, and Small Business Concerns.

6. **Question:** Unless a business can show they were there *before* the Superfund site was established, they should not be entitled to apply.

**Answer:** Individuals will qualify only if they have been located at the site since before its Superfund designation. Additionally, no party responsible for the contamination would be eligible to apply. Below is the bill language in Section 3, subsection d, paragraph 1 that outlines how under CERCLA polluters do not qualify for this program:

*No amount shall be taken into account under subsection (a) by a person who under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is potentially liable with respect to the site described in subsection (c)(2).*

7. **Question:** Under what grounds was this tax reestablished? For instance, was it a last resort in response to businesses who demonstrated need or did the Congressional reps research expired taxes to reintroduce?

**Answer:** Reinstating this expired tax is the most effective way to provide immediate capital to the Superfund Account for orphan sites, administration of all sites, and help small business owners/tenants who are displaced. The tax was an essential component of the Superfund program when it is created and ensures that polluters pay for cleanups rather than taxpayers. Without the tax, cleanup funds for orphan sites come from the treasury, meaning taxpayers are footing the bill. The tax has before generated the highest amount the Superfund Account has ever procured, for example, \$3.8 Billion in 1996. We anticipate robust funding similar to this level will greatly benefit over 1300 Superfund sites around

the country. The grounds for reintroducing this tax is to help replenish the consistently decreasing Superfund Account, which has dropped by over \$2 billion over the last 20 years, while concurrently raising taxes on the highest polluting oil & gas institutions.

**8. Question:** What are the full qualifications to apply?

**Answer:** Businesses must be defined as small businesses by the SBA; qualification is the similar for the disaster loan program in addition to being displaced by the cleanup. Individuals and businesses will qualify only if they are not the polluting party, and have been located at the site since before its Superfund designation. Below is the bill language on Page 3, Subsection d, that outlines how under CERCLA polluters do not qualify for this program:

*No amount shall be taken into account under subsection (a) by a person who under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 is potentially liable with respect to the site described in subsection (c)(2).*

**9. Question:** Are there a percentage of businesses that have been surveyed based on qualifications in order to determine the amount of the fund?

**Answer:** No. This legislation as an opportunity to help in many known cases, and the best local example in my district are those being displaced at the Wolff-Alport site in Queens. (See attached November 9, 2017 letter on behalf of the businesses and residents at Wolff-Alport for details of that circumstance.)

**10. Question:** If the committee doesn't approve will the bill still be put forward?

**Answer:** Yes. The Congresswoman is enthusiastic to work with the Community Board and grateful for its time, engagement, and consideration. Your feedback is welcome. If there is any improvement that can be made to the bill language we can incorporate it. The Congresswoman plans to introduce this legislation around Earth Day (April 22<sup>nd</sup>) and would welcome Brooklyn Community Board 6 support in moving this legislation forward.

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Postscript note: Brooklyn Community Board 6 voted unanimously March 14, 2018 to support this legislation.