

Testimony HB 281 -E Law.pdf

Uploaded by: Elizabeth Law

Position: FWA

A toxic site attains National Priority List Superfund Site status because the scientists in the EPA determine that the site is hazardous enough to public health that funds are provided for its cleanup.

There are 26 NPL Superfund Sites in Maryland. This state is growing in population and as less development land is available, more areas that were disregarded because of a proximity to a Superfund Site will be considered for housing.

It is outrageous that in a homebuyer may or may not learn about that the “dream home” they are buying is in dangerous proximity to such a site. The current method of disclosing is sadly lacking in transparency because it is provided at the time of closing on a sale or “contract”.

When closing on a contract the buyer is deluged with a flood of papers all demanding immediate review and signature. The MARYLAND RESIDENTIAL PROPERTY DISCLOSURE AND DISCLAIMER STATEMENT is supplied during this rush at closing. Only on page 3 do we see:

14. Are there any hazardous or regulated materials (including, but not limited to, licensed landfills, asbestos, radon gas, lead-based paint, underground storage tanks, or other contamination) on the property?

Yes No Unknown

If yes, specify below

Comments: _____

How easy is it to miss this information during closing on the contract? How easy is it for the seller to misrepresent intentionally or unintentionally the level of environmental hazard? What is the enforcement or oversight to ensure that these few lines are even completed?

The purpose of Bills HB 0281 and SB 0485 is to improve the process by increasing transparency by which homebuyers are provided information crucial to deciding if the property is safe for their families.

These bills will provide notice to the homebuyer at the time of “earnest money deposit”, or initial down payment is provided. That gives the buyer time to digest the information, go to the appropriate EPA website to learn about their particular site and then to decide whether to close on the deal (sale of contact).

Ft. Detrick Area B – From World War II through the Vietnam era, Ft. Detrick in Frederick Maryland conducted research in weapons of mass destruction (WMD) of both a biological and chemical nature. Debris from the experiments were deposited in unlined pits in an area called “Area B” . Poor if any records were kept. Eventually when mitigation was initiated it was determined to be too dangerous to remove most of the contamination. The pits were merely capped and thereafter monitored. Eventually, water leaching from the unlined pits contaminated the groundwater. It is the contaminated groundwater that is the EPA Superfund Site (“the plume”). This plume has flowed beyond the fort boundaries and into neighborhoods and Carroll Creek. Currently a developer wishes to build townhouses where the Army Corps of Engineers has found contaminated groundwater testing beyond acceptable measures for human safety.

Is this situation serious enough to warrant notification to the people who wish to buy these townhouses that their home is in proximity to an EPA NPL Superfund Site?

I believe they deserve to know this information and I ask you to approve Bills HB281 and SB 495.

Thank you.

Elizabeth Law

Testimony HB 281-Elizabeth Law.pdf

Uploaded by: Elizabeth Law

Position: FWA

Passing HB 281 and SB 495 – Residential Property – Sales Contract – Disclosures will ensure fairness and transparency for the home buyer.

A toxic site attains National Priority List Superfund Site status because the scientists in the EPA determine that the site is hazardous enough to public health that funds are provided for its cleanup.

There are 26 NPL Superfund Sites in Maryland. This state is growing in population and as less development land is available, more areas that were disregarded because of a proximity to a Superfund Site will be considered for housing.

It is outrageous that a homebuyer may or may not learn about that the “dream home” they are buying is in dangerous proximity to such a site. The current method of disclosing is sadly lacking in transparency because it is provided at the time of closing on a sale or “contract”.

When closing on a contract the buyer is deluged with a flood of papers all demanding immediate review and signature. The MARYLAND RESIDENTIAL PROPERTY DISCLOSURE AND DISCLAIMER STATEMENT is supplied during this rush at closing. Only on page 3 do we see:

14. Are there any hazardous or regulated materials (including, but not limited to, licensed landfills, asbestos, radon gas, lead-based paint, underground storage tanks, or other contamination) on the property?

Yes No Unknown

If yes, specify below

Comments: _____

How easy is it to miss this information during closing on the contract? How easy is it for the seller to misrepresent intentionally or unintentionally the level of environmental hazard? What is the enforcement or oversight to ensure that these few lines are even completed?

The purpose of Bills HB 0281 and SB 0485 is to improve the process by increasing transparency by which homebuyers are provided information crucial to deciding if the property is safe for their families.

These bills will provide notice to the homebuyer at the time of “earnest money deposit”, or initial down payment is provided. That gives the buyer time to digest the information, go to the appropriate EPA website to learn about their particular site and then to decide whether to close on the deal (sale of contact).

One such Superfund Site is Ft. Detrick Area B:

From World War II through the Vietnam era, Ft. Detrick in Frederick Maryland conducted research in weapons of mass destruction (WMD) of both a biological and chemical nature. Debris from the experiments were deposited in unlined pits in an area called “Area B”. Poor if any records were kept. Eventually when mitigation was initiated it was determined to be too dangerous to remove most of the contamination. The pits were merely capped and thereafter monitored. Eventually, water leaching from the unlined pits contaminated the groundwater. It is the contaminated groundwater that is the EPA Superfund Site (“the plume”). This plume has flowed beyond the fort boundaries and into existing

neighborhoods and Carroll Creek as well as open land being developed. Currently a developer wishes to build townhouses where the Army Corps of Engineers has found contaminated groundwater testing beyond acceptable measures for human safety.

Is this situation serious enough to warrant notification to the people who wish to buy these townhouses that their home is in proximity to an EPA NPL Superfund Site? Is it fair to give sufficient information that a decision can be made based on facts?

I believe the home buyer deserves to know this information and I ask you to approve Bills HB281 and SB 495.

Thank you.

Elizabeth Law

written testimony for house bill 281.pdf

Uploaded by: Jen Peppe Hahn

Position: FWA

Hello,

My name is Jen Peppe Hahn and I grew up in close proximity to Fort Detrick. My elementary school was across the road from Fort Detrick's Area B. I grew up in the 70's playing in the nearby seeps and springs. Ft Detrick suspected that contamination from their unlined landfills had traveled off site and into the groundwater and in the 90's some of those springs were tested for contamination. They found thousands of parts per billion of TCE, a known carcinogen. When I was 12, I was diagnosed with Hodgkin's Disease.

<https://cumulis.epa.gov/supercpad/cursites/csinfo.cfm?id=0304606>

Years later while I was undergoing my second cancer diagnosis, a friend told me that the health department and Fort Detrick were holding a public meeting in town. Area B Groundwater had been put on the National Priorities List as a Superfund Site the year before and members of the community wanted a cancer cluster investigation. I asked my then 400 and some friends on FaceBook, "who went to my elementary school during a five year period in the 70's had cancer before they were 25, or knew a peer that had died young from cancer." I had 24 responses in two days.

I joined the technical advisory committee at the health department and we brainstormed on how to do a relevant cancer cluster study. Sadly, most cancer clusters are never proven. You not only need how many were sick, but also a denominator, ie out of how many were exposed. There was no easy way to obtain this and then turn it into a cohort study.

The Maryland State Health department did end up doing a study using a data-set from a specific number of years for which they had official cancer incidence data set. Environmental cancers can take years to manifest. The exposures of my elementary school peers would have occurred in the 70's, and the cancers of my classmates in the 80's and early 90's. The data Maryland used was from the 2000's because that is all they had officially collected in a data base because Maryland is not a part of the SEER (Surveillance, Epidemiology, and End Result Registry) and Maryland's Cancer Registry was not adopted until years after all the exposures. Bottom line is to examine exposure to incident, they did not have the appropriate data to look at the relevant window.

The outlier cluster from my elementary school was not proven or disproven.

Not enough data, does not mean there was no issue. (If you would like to see more about the cancer cluster investigation surrounding the Fort Detrick contamination, The Johns Hopkins Bloomberg School of Public Health did a video series which you can view here if interested:

<http://www.jhsph.edu/cancerclusterinvestigations>

The first page has: An Inside Look at a Potential Cancer Cluster: Community Impacts and Challenges for Public Health Investigators. A link to "interviews" can be found under that title and will take you to you tube.)

I decided instead of spending decades to prove a cluster, my efforts would be better spent trying to help this not happen to anyone else ever again by bringing an awareness to the known

contamination left in the unlined landfills and seeping into our groundwater from Fort Detrick's Area B. This is what has brought me to you today.

The contamination has not respected the Ft Detrick fence line. TCE and PCE are known carcinogens. Drinking water maximum contaminant levels (MCL) of TCE and PCE are 5part per billion (ppb). They Army found levels of TCE along their fence line at 15,000ppb. One foot on the other side of this fence is owned by a developer with approved plans to build townhomes, with no clear effective disclosure protocol written into law for this magnitude and quality of contamination.

This area is now all on city water as opposed to well water so no one is drinking or bathing in it anymore, however, TCE and PCE are volatile organic compounds which cause vapor intrusion risks to these homes.

The EPA rule of thumb is that any TCE or PCE above 5ppb within 100 feet in any direction of a structure poses a potential risk. The EPA uses what they call a VISL (Vapor Intrusion Screening Calculator) as a guide. According to the EPA, "this tool provides screening level concentrations for groundwater, soil gas, ...near source to assist Agency staff with making vapor intrusion screening levels based on initial data." The only certain way to know if it is a risk is to test the structure.

What we do know right this moment is that Frederick City Planning Department gave Master Plan Approval for townhomes to be built where we now know the VISL data shows indisputable, clear, vapor intrusion potential. This means TCE has the potential to come into these homes through foundations and directly effect the health of the occupants.

What we don't know is how this information is legally mandated to be disclosed and explained coherently to potential current and future homebuyers.

The Maryland Real Estate 10-702 Disclosure and Disclaimer form exempts first time home purchases. The Army is still in a remedial investigation phase and has not submitted an official final report. The Frederick City and County disclosure forms list other overlay districts to be aware of during the purchasing process, but Frederick City has not completed an overlay district for the Superfund plume locations.

There needs to be universal protocol in Maryland that alerts potential buyers of proximity to Superfund sites and related contamination so that they can make informed decisions pertaining to risk before purchasing land or homes that pose an exposure risk to their family.

The aforementioned townhomes will be built with vapor intrusion barriers, paid for by the Army. Even so, laws need to be written requiring **INFORMED CONSENT** from the realtors to the buyer so that they enter into the transaction with a clear understanding of the **material facts** necessary to complete their due diligence.

This bill guarantees this right by law.

HB 281_realtors_fwa.pdf

Uploaded by: William Castelli

Position: FWA



House Bill 281 – Residential Property – Sales Contracts - Disclosures

Position: Support with Amendment

Maryland REALTORS® support HB 281 with an important amendment to conform the legislation to other disclosure legislation passed by the Maryland General Assembly.

HB 281 seeks to ensure that homebuyers receive information about locations on the National Priorities List (so called Superfund sites). Superfund sites are contaminated with hazardous waste. Federal law, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), authorizes EPA to clean these sites and helps fund the cleanup. EPA also maintains the Superfund Enterprise Management System (EMS) which is a repository of information on these sites and is accessible online.

The REALTOR® amendment make two notable changes. First, it would make the disclosure a buyer notice rather than the responsibility of the seller to disclose this information. If a property is impacted by a Superfund site, existing Maryland law already requires the owner of the property to specifically disclose that fact to the buyer under Maryland's Property Condition Disclosure Law.

The REALTOR® amendment requires the base real estate contract to contain a buyer notice about the EMS so buyers can explore nearby Superfund sites for themselves. As drafted, the legislation only requires the disclosure of sites within a half mile (which can be hard for a seller to determine). The REALTOR® amendment would allow a buyer to view any sites regardless of their distance from the property and regardless of whether the site has been determined to be actionable. The vast majority of sites listed on the EMS in Maryland are not designated Superfund sites.

The second major change in the amendment is to ensure that if the information about EMS is not given to the buyer before the buyer enters into a contract with a seller that the buyer would have right to rescind five days after receiving the information about EMS.

The Legislature has passed other legislation that follows the model outlined in the REALTOR® amendment and with these changes, the Maryland REALTORS® support HB 218.

**For more information contact lisa.mays@mdrealtor.org or
christa.mcgee@mdrealtor.org**

**HB 281 – Residential Property – Sales Contracts - Disclosures
REALTOR® Amendment**

AMENDMENT #1

On page 1, strike lines 17 through line 4 on page 2 and substitute:

§ 10-713. SUPERFUND SITE DISCLOSURE

“SUPERFUND ENTERPRISE MANAGEMENT SYSTEM” DEFINED

(A) IN THIS SECTION, “SUPERFUND ENTERPRISE MANAGEMENT SYSTEM” MEANS THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY’S SUPERFUND ENTERPRISE MANAGEMENT SYSTEM

APPLICATION OF SECTION

(B) THIS SECTION APPLIES ONLY TO THE SALE OF RESIDENTIAL REAL PROPERTY.

NOTICE

(C) A CONTRACT FOR THE SALE OF REAL PROPERTY SHALL INCLUDE, THE FOLLOWING BUYER NOTICE IN THE CONTRACT:

“NOTICE ON SUPERFUND HAZARDOUS WASTE SITES

A PURCHASER OF REAL PROPERTY IS ADVISED TO ACCESS THE WEBSITE OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY’S SUPERFUND ENTERPRISE MANAGEMENT SYSTEM TO DETERMINE IF A SUPERFUND HAZARDOUS WASTE SITE IS LOCATED NEAR THE PROPERTY.”.

RIGHTS OF RESCISSION

(D)(1) A PURCHASER THAT RECEIVES THE NOTICE REQUIRED UNDER SUBSECTION (C) OF THIS SECTION ON OR BEFORE ENTERING INTO A CONTRACT OF SALE DOES NOT HAVE THE RIGHT TO RESCIND THE CONTRACT OF SALE BASED ON THE INFORMATION RECEIVED FROM THE VENDOR UNDER SUBSECTION (C) OF THIS SECTION.

(2)(I) A PURCHASER THAT DOES NOT RECEIVE THE NOTICE REQUIRED UNDER SUBSECTION (C) OF THIS SECTION ON OR BEFORE ENTERING INTO A CONTRACT OF SALE, ON WRITTEN NOTICE TO THE VENDOR OR THE VENDOR'S AGENT:

- 1. HAS THE UNCONDITIONAL RIGHT TO RESCIND THE CONTRACT AT ANY TIME BEFORE, OR WITHIN 5 DAYS AFTER, RECEIPT OF THE NOTICE REQUIRED UNDER SUBSECTION (C) OF THIS SECTION; AND**
- 2. IS ENTITLED TO THE IMMEDIATE RETURN OF ANY DEPOSITS MADE IN ACCORDANCE WITH THE CONTRACT.**

(II) THE RETURN OF ANY DEPOSITS HELD IN TRUST BY A LICENSED REAL ESTATE BROKER TO A PURCHASER UNDER SUBPARAGRAPH (I)2 OF THIS PARAGRAPH SHALL COMPLY WITH THE PROCEDURES SET FORTH IN § 17-505 OF THE BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE.

MBIA Letter of Opposition HB 281.pdf

Uploaded by: Lori Graf

Position: UNF

February 14, 2023

The Honorable Kumar P. Barve
Environment & Transportation Committee
House Office Building, Room 251,
6 Bladen St., Annapolis, MD, 21401

RE: Letter of Opposition HB 281 Residential Property - Sales Contracts - Disclosures

Dear Chairman Barve:

The Maryland Building Industry Association, representing 100,000 employees statewide, appreciates the opportunity to participate in the discussion surrounding **HB 281 Residential Property - Sales Contracts - Disclosures**. MBIA **Opposes** the Act in its current version.

This bill is designed to create needless apprehension regarding homes in a specific area. The required disclosure is not something homeowners can easily understand the reason for and is prone to opening up legal actions and disputes since this information may not be readily available to the realtor. This bill is likely to deter people from purchasing these homes and attach an unwarranted stigma to homes in a time when Maryland is there are currently 640 SEMs sites in the state of Maryland and it is the broadest category of SEM. This means that this would create a housing stigma on thousands of homes while Maryland is trying to supply a state wide 97,000 unit low income housing and 85,000 rental units over the next 10 years. Now is not the time to needlessly deter people from buying homes.

This requirement is especially egregious because if there is a problem at an existing superfund site there are already disclosure requirements in place. Meaning if this information is relevant to the homeowner they already have a legal right to be informed. The vast majority of these investigations show no contamination and are only added to the list as a site previously investigated creating an unfair stigma for no benefit.

For these reasons, MBIA respectfully requests the Committee give this measure an unfavorable report. Thank you for your consideration.

For more information about this position, please contact Lori Graf at 410-800-7327 or lgraf@marylandbuilders.org.

cc: Members of the House Environment & Transportation Committee

2023 HB 281 [2.10.23].pdf

Uploaded by: William O'Connell

Position: UNF



Real Property Section

To: Environment and Transportation Committee (House)
From: Legislative Committee of the Real Property Section Counsel
Date: February 10, 2023 [Hearing Date February 14, 2023]
Subject: **HB 281 –Residential Property - Sales Contracts - Disclosures**
Position: **Opposed**

The Real Property Section Counsel of the Maryland State Bar Association (MSBA) **opposes** House Bill 281 –Residential Property - Sales Contracts – Disclosures.

The bill requires that a residential contract of sale include a notice of the property is located within a half mile of a “site listed on the superfund enterprise management site”, but the failure to so does not provide any remedy to the purchaser.

As a practical matter, many homeowners may not know that they live within a half mile of a superfund site, and if there are no consequences of not providing the notice, what is the point of the proposed legislation.

Should the legislature believe this proposed law is a good idea, we think that “terminated or cancelled” would be a better choice of words that “voided” in section B. And thought should be given as to how the “half mile” is measured.

For these reasons, the Real Property Section Counsel of the MSBA **opposes HB 281** and asks for an **unfavorable report**. Thank you for your consideration.