
Public Hearing

before

SENATE ENVIRONMENT AND ENERGY COMMITTEE

*"Testimony on issues surrounding the operation and
closure of Fenimore Landfill in Roxbury Township, Morris County"*

LOCATION: Committee Room 4
State House Annex
Trenton, New Jersey

DATE: May 30, 2013
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Bob Smith, Chair
Senator Linda R. Greenstein, Vice Chair
Senator Jim Whelan
Senator Christopher "Kip" Bateman
Senator Jennifer Beck



ALSO PRESENT:

Judith L. Horowitz
Michael R. Molimock
*Office of Legislative Services
Committee Aides*

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*Senate Majority
Committee Aide*

Brian Alpert
*Senate Republican
Committee Aide*

***Hearing Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey***



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**SENATE ENVIRONMENT
AND ENERGY COMMITTEE**
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**REVISED
PUBLIC HEARING NOTICE**

The Senate Environment and Energy Committee will hold a public hearing on Thursday, May 30, 2013 at 10:00 AM in *Committee Room 4, 1st Floor, State House Annex, Trenton, New Jersey.

The public may address comments and questions to Judith L. Horowitz or Michael R. Molimock, Committee Aides, or make bill status and scheduling inquiries to Valarie Jackson, Secretary, at (609)847-3855, fax (609)292-0561, or e-mail: OLSAideSEN@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.

The committee will hear testimony on issues surrounding the operation and closure of Fenimore Landfill in Roxbury Township, Morris County.

Issued 5/22/13

* Revised 5/23/2013 – room changed to Committee Room 4

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SENATOR BOB SMITH (Chair): Could everyone please take their seats?

Good morning. Welcome to the New Jersey Senate Environment and Energy Committee.

Today we are conducting a hearing on the Fenimore Landfill, in Roxbury Township, with an eye toward working with Senator Bucco who has a very significant piece of legislation concerning the Landfill. The point of today's hearing is to get all the issues on the table so that when we do go forward with that legislation we've covered it all.

At this point we have a number of people who have signed up. If you want to testify, the way in which you get on the list of people to testify is to fill out slips indicating who you are and that you'd like to testify, or that you don't need to testify but just indicating where you stand. So if anybody needs to do that, see the Sergeants at Arms, who have the badges on, who are around the room.

I would tell everybody in the room that we want to hear everybody's point of view. I would ask, however, that when you give testimony, you try to be on target and also give us information that some prior speaker hasn't already given us.

At this time, I'd like to call forward Senator Bucco; Senator Pennacchio; and also the Mayor of Roxbury, Mr. Fred Hall; and the Chief of Police, Mr. James Simonetti, as a panel. And I will start with Senator Bucco to introduce the topic for the Committee.

S E N A T O R A N T H O N Y R. B U C C O: Thank you, Mr. Chairman. And good morning to you and the Committee.

I want to thank you and Senator Sweeney for having this hearing on this bill. I'm a little disappointed though that we can't have a vote on it today, but I understand you want to get all the facts.

SENATOR SMITH: Right. And there is no perfect bill, Senator. We might need to make some changes.

SENATOR BUCCO: We'll make it perfect if it's not perfect. I assure you of that.

But I do want to thank you for having this hearing.

This is an important bill. It's a bill about the health of the residents of the Town of Roxbury. It's been going on for several months now -- almost seven months -- and it's becoming a problem when you have to take babies -- six-month-old babies out of the house because they can't breathe with the sulfur dioxide levels that are happening there. So this is the reason why I put the legislation through. DEP has tried to go to court with the developer and was not successful. But I feel that we must do something as a legislative body, protecting our citizens through this.

I thank Senator Pennacchio for being the co-sponsor of this bill, and also you, Senator Smith, for being a sponsor of the bill also. Because I know you also know the problems and the damages that these health conditions can cause to our residents. So I thank you.

Senator Pennacchio would like to say something also, if you don't mind.

SENATOR SMITH: Senator, absolutely.

SENATOR JOSEPH PENNACCHIO: Thank you, Mr. Chairman.

I would just like to echo Senator Bucco's remarks thanking you and thanking Senate President Sweeney for bringing this issue to light, albeit a little late. But we know, going forward, that our best intentions are still going to be with the people who are sitting behind us.

Quite literally, with no pun intended, Fenimore does not meet the smell test. The contract that was given out -- if we take a look at it -- and hopefully we'll have testimony on it today, calls for a certain amount in escrow. It's my understanding that that amount has never been met, even though some of the moneys that were required for that escrow are going to be coming in from the fill that was actually being imported. That fill that was imported is probably the crux of this problem that's going on right now. Why was it imported? Why was the whole project started? Quite frankly, I don't know. Hopefully we'll get some answers today.

It's a shame that at a time when we should be thinking about Little League and soccer, we have monitors that were just set up three weeks ago -- my understanding is. And those monitors -- if they reach a certain level -- of which those levels have been reached before with some of the gas that's output -- that they're going to cancel Little League games. So if for no other reason, we should take note of something like that, and we should keep that in the back of our minds -- that the peoples' health and safety are the paramount issues that are driving us here today.

Thank you, Chairman.

SENATOR SMITH: Thank you, Senator.

Mayor Hall, Mayor of Roxbury Township.

Mayor.

MAYOR FRED HALL: Thank you very much.

We want to thank everybody for their time today. Everybody has been instrumental in this, including the two gentlemen to my right; Senator Sweeney.

We want to implore-- We want to be able to express to you the issues that are happening within Roxbury Township. And these aren't issues that just happened yesterday. These are severe health and quality-of-life issues in the Township. We have been experiencing terrible scenarios within Roxbury Township since this has been opened. And we are really looking for the New Jersey DEP to take over this site. This is not being capped. We have odor issues that are permeating people's homes. We have odor issues causing people to have to wear -- kids have to wear masks going to school buses. We have odor issues that are affecting the livelihood of the people in the area, and we need to have this addressed.

I am just so emotional about this because I feel the entire system has failed Roxbury Township. We have tried the court system, and they just don't understand the magnitude of what is going on in Roxbury Township. We have people with severe problems who have restricted immune systems. They're having problems breathing. We have people who are having issues with their throats. This is a serious issue in Roxbury Township, and we really need your help.

Thank you.

SENATOR SMITH: Mayor, we are going to try and help out the people of Roxbury.

Let me ask, Mayor, did this Landfill ever come in for a site plan approval to reopen the Landfill?

MAYOR HALL: No.

SENATOR SMITH: Okay. I appreciate that comment.
Chief Simonetti.

CHIEF JAMES SIMONETTI: Good morning.

Thank you for giving me the opportunity to speak with you today.

In October 2012, I was tasked with the responsibility of choosing a route to allow trucks -- large tandems and commercial vehicles -- into Fenimore Landfill. Fenimore Landfill is a landfill that's circled by residential homes. Every road going into Fenimore is a residential road, which means two lanes each direction, small roads that are not used to large truck traffic. There is a four-ton limit on these roads which has to be forgotten about so these trucks can make their deliveries.

In the delivery, the trucks that are coming to the Landfill are overweight on a regular basis, which becomes a safety factor for the motoring public going through that area, the residents.

The high truck traffic volume that is filling this Landfill also creates a safety issue for-- It impacts on our pedestrians trying to walk to and from the neighborhoods, local parks that are in the area, bicycles -- people want to bicycle in their community. It has an affect on us.

The residents are rightfully complaining about the trucks coming into the site being safety issues -- overweight, uncovered, driving erratically -- which then impacts my police department by fielding the amount of phone calls and to serve our residents -- answering their complaints and going to their complaints. So all of my resources for law enforcement purposes are going toward this Landfill to handle complaints --

and legitimate complaints -- of the truck traffic and the quality of vehicles that are coming to and from there.

The New Jersey State Police commercial weigh team has assisted Roxbury Township, and they have a large documented violation list for the vehicles going to and from this location. So it's not just the residents' imagination.

We also experienced a couple of truck accidents -- overturned trucks that shut down municipal roads because the trucks are trying to utilize side roads to not be inspected by the weigh team. In the one accident, the truck contained materials that were considered hazardous, and it shut the road down for over 12 hours. And unfortunately, residents who lived in that area had no access in or out of their home that day.

And lastly, the increased complaints about the odor coming from the site: Although it's not a law enforcement problem, we answer the first call of a citizen's complaint. So our dispatch service is tied up answering these complaints. We're routing these calls trying to get them to the proper people to handle these complaints.

So I respectfully request you review the facts and statements provided to you today and properly close the Fenimore Landfill.

Thank you, sir.

SENATOR SMITH: Thank you, Chief.

Senator Bateman had a question.

SENATOR BATEMAN: Mr. Chairman, thank you very much.

This question is for the Mayor or the Chief -- and maybe you're not the appropriate individuals -- but do you know if, when they reopened

this, they applied to Morris County Freeholders for an amendment to the solid waste management plan?

CHIEF SIMONETTI: I don't believe they had to, sir.

MAYOR HALL: They didn't have to.

SENATOR BATEMAN: They didn't have to?

MAYOR HALL: No.

SENATOR BATEMAN: But they didn't come in for site plan approval either?

MAYOR HALL: No.

SENATOR BATEMAN: I thought they had to.

SENATOR SMITH: Senator Whelan, you had a question.

SENATOR WHELAN: Chief and Mayor, in October of '12, when you were given a directive to figure out the truck routes, was that-- First of all, that was pre-Sandy? I mean, Sandy was the very end of October.

CHIEF SIMONETTI: Yes.

SENATOR WHELAN: And was that for a reopening of the Landfill, or was that so trucks could get in and actually get this thing closed?

CHIEF SIMONETTI: That was for the reopening to bring in material. I mean, we didn't have input. There was no input. We didn't have my input, asking me what the effect would be on the safety of the community or any of that. So we were told they were coming; pick a route.

SENATOR WHELAN: So DEP essentially -- and this may be to you, Mayor -- said, "We're going to reopen this Landfill. Figure out how you get the trucks in and out."

MAYOR HALL: You have it exactly right, Senator Whelan. That's exactly the situation.

You have to understand, one size doesn't fit all for these landfills. This is a landfill that's surrounded by residential homes. So the roads leading up are local roads. It was a choice between two bad choices right off the bat. What we tried to do, as a township, to try to alleviate that was try to, after the fact, institute an alternate route to that particular site. We did all the design for that, but it hasn't been instituted as of yet.

SENATOR WHELAN: But I mean, even the alternate routes, from what the Chief has said, are going to go through some residential neighborhoods.

MAYOR HALL: The alternate route will come off of -- if you're familiar with Morris County at all -- will come off of Route 46 and go directly to the Landfill itself. So it will not utilize local traffic routes.

SENATOR WHELAN: What's the resistance to adopting that route?

MAYOR HALL: Well, we are trying to but, again, there are issues between the New Jersey DEP and the contractor as far as whether or not this developer is going to be allowed to move forward with a phase 2 of this *landfill closure*, as they call it. As a result of that, it has been held up. The developer isn't signing off on it.

SENATOR WHELAN: Whatever happened to common sense, Mr. Chairman?

SENATOR SMITH: Common sense is definitely at risk.

Mayor, thank you for your comments.

Let me ask that Mark Caputo, from the Roxbury Township Health Department; Patrick Tierney, from the Roxbury Township Public Schools come forward.

Mr. Tierney, you were kind enough to submit written testimony. The Senators do read what's given to them in writing. You can count on that. So I appreciate you giving us a little summary statement of what we should be considering.

Why don't we start with Mr. Tierney?

SUPERINTENDANT PATRICK TIERNEY, Ed.D.:
Thank you, Senators.

I appreciate the opportunity to speak before you this morning.

In summary, I've received numerous complaints from residents and students regarding the noxious odors that have emanated from the Fenimore Landfill over the past several months to the point where-- Like Mayor Hall stated prior, a lot of our bus stops are within Roxbury Township and within a one-mile radius of that Landfill.

To sum it up, we have over 950 of our 4,000 students who live within one mile of the Landfill. My concern, as an educator, is for the health and well-being of our children. And having them subject to the noxious odors and the possible ramifications of those effects-- I'm concerned that these children are being forced to take State assessments. And unfortunately, if they do not perform well on that, it will have dire consequences for them, their teachers, their principals, the District itself.

The bottom line is that the kids' safety is paramount. And because of the actions of an irresponsible contractor, in my opinion, the unfortunate residents of Roxbury are paying the price. So I implore you to

take action on this bill that's in front of you and to properly close and vent the Landfill, and ensure the children's safety and well-being are protected.

Thank you.

SENATOR SMITH: Thank you very much, Mr. Tierney.

We also received written testimony from Mr. Caputo, the Health Officer for Roxbury Township.

Again, Mr. Caputo, I'm going to ask you to focus your comments rather than read testimony.

M A R K C A P U T O: Thank you, Mr. Chair, respected Senators of this Committee. I appreciate the time in allowing me, as the Health Officer of Roxbury Township, to address this issue.

I want to thank Senators Bucco and Pennacchio for authoring this bill. It's sorely needed. As you can see by the folks behind me, there are serious health conditions that are taking place in the area of Fenimore Landfill.

Since this past October, my office has been besieged with complaints regarding rotten-egg like odors or typical landfill odors coming from the site. To date we've issued over 20 summonses which have been heard in municipal court. Those summonses are based on the New Jersey 1953 Public Health Nuisance Law. It does provide penalty relief, but the relief that we seek truly is specific performance. The site needs to be closed.

In my 27 years as a local health official, I'm really shocked to see the level of -- I hate to use the term -- *apathy* on the part of the DEP with regard to the residents in this area and the odors that are emanating from the site. But it truly is-- We don't-- If as the enforcement official I'm relegated to enforcing the 1953 Public Health Nuisance Law-- It's just not

quite enough. We need this bill to be passed to urge -- or to get this site cleaned up.

Hydrogen sulfide is a toxic gas heavier than air, typically generated from landfill operations. It's of particular concern for children as their air intake is at a lower height than adults -- children whose airways also are less in diameter with less surface area than adults, and can yield a higher detriment to their respiratory health.

New Jersey lacks general environmental standards. We have struggled in establishing standards for youth ball field closures. We've put some together. We've had some cooperation with the Department of Health on those standards. We implemented a green light/red light system to shut down the fields if it reaches a certain level. But that's only one piece.

The other piece is general environmental exposure levels. New Jersey has none. We've been struggling trying to come up with levels that are appropriate and reasonable.

Again, passage of this bill will address all that by simply empowering the State to close the site.

In conclusion, the public health and safety is the primary basis for this immediate legislative action sought. There is no doubt that the risk to public health is increased by the activities taking place at the Fenimore site. The Fenimore site is very unique in that it's not the typical landfill like Edgeboro or Hackensack-Meadowlands where there are miles of meadows or swamp to buffer the odors. These folks are literally next door to this site.

The appropriate safeguards and remediation measures that have been in place with the brownfields process seem to have failed. And passage of this bill will certainly move this site to the proper remediation for the betterment of the health and safety of the residents in the area.

Thank you.

SENATOR SMITH: Thank you, Mr. Caputo.

For all future witnesses, let me just remind you that you want to indicate your name, your affiliation, even your address is fine. We are taking-- This is a hearing, and we are taking a record of the hearing which will be printed and shared with all 120 members of the Legislature. So we want to make sure that you've identified yourself at the front of your testimony.

Thank you, both, for your testimony.

Let me ask some of the residents to come forward as a panel. First, Debbie O'Brien. Ms. O'Brien was kind enough to give us written testimony; then Linda Keane -- I hope I'm saying it properly, K-E-A-N-E, who, again, was kind enough to give us written testimony; and then finally we received joint testimony from Frank Marino Jr. and Kathleen Marino. I ask that the family pick one representative and come on up. Let's get a panel of three residents up here and hear what you have to say.

I have to warn you, there are only three seats.

L I N D A K E A N E: He'll stay with me.

SENATOR SMITH: All right, he'll sit on your lap. That's fine. And you are?

MS. KEANE: My name is Linda Keane. I live at 6 Melville Court.

SENATOR SMITH: Okay. How about Debbie O'Brien? Are you here? (affirmative response)

How about one of the two Marinos? Are you here? (affirmative response)

Mr. Marino, if you'd join the panel we'd appreciate that.

Mayor, I'm going to have to move you over a little bit.

Whoever would like to start.

D E B O R A H E. O' B R I E N: I'm Debbie O'Brien. I live at 140 Whisper Way, Ledgewood, New Jersey.

I'm just basically going to give a brief synopsis of what the Landfill has done to me and my son.

We moved to Ledgewood in February of 2010. We had no idea that the wheels were in motion for the Landfill to open. We would never have purchased if we did.

Since the Landfill has opened we have been experiencing headaches, nausea, upset stomachs, chronic dry-burning eyes, insomnia, severe asthma attacks; I've been having throat constrictions, anxiety, depression, irritability, and I've actually become paranoid of the government and Mr. Bernardi for all the obnoxious, upset letters I've been sending over this whole situation. My real estate that I bought in Roxbury already plummeted down \$60,000 -- more than what I paid for it two-and-a-half years ago. If we have to do any family functions or milestones like my son's 8th grade graduation, we have to leave town because we know the stench rolls in. It rolls in every day in my development between 4:00 a.m. and 6:00 a.m., and it takes hours, and it lingers in my home. We can't even enjoy our home. We have to pack up and leave constantly -- every

weekend, any time. I can't even escape it if I'm going to the gym, grocery store, anywhere. It's all over my town. We're just begging you to please shut it down.

Thank you.

SENATOR SMITH: Thank you.

MS. KEANE: I'm Linda Keane. I live at 6 Melville Court, in the Poet's Peak development.

Since November of 2012, my children, as well as 900 other public school children, have been exposed to toxic odors in their homes, at their bus stops, and en route to school. My entire family -- including my husband and I, and my three children -- has experienced headaches, nausea, and respiratory issues for months -- all signs of H₂S exposure.

The odors come and go, but the threat of them is always there. We can't plan anything. The odors dictate everything we do in life. It dictates when and where my kids can play; it dictates if we can do yard work, if we can exercise. It even dictates what I cook for dinner because I can no longer grill when the odor comes through. We can't invite friends over to play outside. I can't plan outdoor events with my family. I'm too embarrassed to host holidays anymore because the smell always seems to show up. We can't open our windows to get fresh air because fresh air does not exist up on Mooney Mountain anymore.

In front of you is my son Steven. He's 9 years old. Since the age of 2, Steven has had three to four asthma attacks a year, all very well documented. There has been a lot of baseline testing available. Starting in January, Steven had a two-week period where he had an asthma attack every day at school for the first time, after being exposed to fumes at his bus

stop or en route to school. I actually kept a diary at my doctor's request, and I can tell you DEP case numbers for every asthma attack that he had -- with case numbers -- either at my home, at his bus stop, or at neighbors' homes en route to school. At one point, Steven's breathing capacity dropped 10 percent in less than a week. He was put on a dose of six days of Prednisone, which is an oral steroid. After the sixth day, he finally stabilized. He remains on Albuterol and a very high dosage of Flovent twice a day. The Albuterol makes him jumpy, it makes him hyper, and it makes him shake all over. When he's taking Albuterol, it's very difficult for him to concentrate in school. He has lost time in the classroom; he has lost gym, recess; and he has lost time at recreational sports. My son was part of the Early Intervention Program. He has been receiving physical and occupational therapy from the State of New Jersey since he was 2 years old, and he is missing activity that is essential to his health.

No one knows what will happen to my children in the future. There is no long-term testing on the results of H₂S poisoning on children, because children have never been exposed to this before. Mr. or Mrs. Bernardi -- whoever is the owner of the site -- has little regard for human life; refuses to do anything to help the residents. In fact, his idea is to keep us hostage, refusing to make any changes unless he is given permits to finish this project. We cannot live like this any longer. It has been going on for months. Our children aren't safe.

I leave you with one big question. I'd like to know: What is the value of a childhood in the State of New Jersey? What the DEP told us is that what has been dumped there as of December will smell for the next

10 years. In 10 years, Steven will be 19 years old. His childhood will be over.

That's all I have to say.

Thank you.

SENATOR SMITH: We appreciate your comments. They really do hit home.

I would like to say that your son is a very well-behaved young man.

MS. KEANE: Thank you.

SENATOR SMITH: Questions from Senator Beck.

SENATOR BECK: It's really not a question. It's just absolutely unconscionable. I mean, we've only taken testimony from four people, and it's just unbelievable. And I hope that we can advance the Senator's bill, because I can't agree with you more. Nobody should have to live the way you guys are living. It's beyond words.

SENATOR SMITH: Thank you, Senator.

Mr. Marino.

F R A N K J. M A R I N O J R.: Hi, my name is Frank Marino. I live in Roxbury with my wife Kate and my two children, Andrew and Amanda.

I have lived in the Poet's Peak section of Roxbury for 13 years. And not until November of 2012 was there ever any smell at my home from the Fenimore Landfill. The Fenimore Landfill was completely wooded. You would drive down Mountain Road, and you wouldn't even know it was there. It looked like a forest. And what happened last year was they cut down all the trees, and they started this process again.

I've had the DEP out to my house many times, and they've taken readings up to 15 parts per billion. Many people in our neighborhood and down Mountain Road have had much higher readings than that. But 15 parts per billion is a very strong rotten-egg smell. And it burns your eyes, your nose, and throat. It's caused my wife nausea, stress; property devaluation, embarrassment, as Linda said. My children want to have birthday parties at their house. My children are concerned -- are they going to be able to go outside and play volleyball or play basketball -- because they don't know if it's going to smell that day or not.

It's really loss of use of our yard; our children being able to go outside and play basketball, kick a soccer ball around; opening our windows. It's just become a part of life where-- You know, the kids will just say, "I think I smell it." And then they open the front door and, "Oh, yes, the smell is here again." It's just become something we've been living with that none of us want to live with any longer.

There have been times when my-- My son can see the bus stop from his house. He's had to wait in the house for the bus to arrive before he can run to the bus, because he didn't want to stand at the bus stop. And the kids who are standing at the bus stop are all covering their faces. They're standing there for five minutes and suffering.

In conclusion, I recommend that the Bucco bill be taken up by the Senate and that the State approve funding, provide oversight and timely remediation of the Fenimore Landfill.

Thank you.

SENATOR SMITH: Thank you, Mr. Marino and all the citizens who came today. We will hear from more citizens shortly.

Our next panel will be Jeff Tittel of the Sierra Club, Elliott Ruga of New Jersey Highlands Coalition, and Bill Kibler from the Raritan Headwaters Association. If all three would come forward.

J E F F T I T T E L: Thank you.

I appreciate you having this hearing.

SENATOR SMITH: Just for the tape, again announce who you are so that it gets into the transcript.

MR. TITTEL: Jeff Tittel, Director, New Jersey Sierra Club.

I want to thank you for having this hearing because I think it highlights a problem here where it's a tragedy, but it's a problem in other parts of the state as well.

And the reason we're here is because for the average person, and even someone like myself, putting solar on a landfill sounds better than putting it on a farm field. It's one of those things that sounds like a positive. But the problem we have in this state is that we don't close landfills anymore. We reopen them in the name of closing them, which is sort of like an oxymoron of eating a banana split for your diet or fighting for peace. You can go down the list. And that's been a real problem.

I'll tell you that part of the problem is this body and the front office, because every day people in New Jersey are paying money on their property taxes for tipping fees. And part of the tipping fee money goes for landfill closure. That money has been constantly diverted by one administration after another. This current year there was supposed to be \$10 million in the State budget to close landfills. That money was diverted to balance the budget. They're taking another \$5 million for next year coming up.

One hundred million dollars or more has been diverted out of those funds in the last decade. And what's happened? We have this disaster that's affecting people's lives and health here in Roxbury, in the headwaters of a key stream in the Highlands above water supply intakes near wells. This site is near an important well field as well. So whatever comes off this site and gets in the ground can impact that well.

And if we didn't learn from the EnCap debacle-- We keep doing it over. I'll just do a quick history. EnCap was a site in the Meadowlands where we decided -- because, again, they stole the \$50 million for closing landfills in the Meadowlands to balance the budget back then -- that we were going to close it and develop this site -- put housing on it -- even though the DEP's own reports showed that if you built housing on it, it would sink and cause catastrophic collapse.

Anyway, under the name of closing they brought in 1.5 million cubic yards of toxic dredge spoils. The State of New Jersey lost more than \$50 million in trying to remediate that site. When they opened up that landfill cap that was on there to bring in all the dredge spoil, it sent a stink so bad. I happened to be with Lisa Jackson at the time. We were up by the Meadowlands. She called DEP and sent enforcement right out.

What I don't understand -- besides the fact that we need to put the money that we currently are paying out of our own pockets to close these landfills, and this Landfill in particular -- what I don't understand is: Why isn't the DEP here explaining why they don't put a Spill Act directive in place and take jurisdiction of this site under current law and start closing it? Under New Jersey law, the DEP has a right, when there is a toxic site that is a threat to the public, to go in there, start the remediation, and bill

the property owner and the responsible party triple damages. Why aren't they doing it? Why do we need to pass legislation?

We support this legislation, and we want it to go forward. But we also think we need to make it broader as well because there are other places around the state where we're doing the same thing. Luckily some of those sites are not in as populated an area with so many kids. But it's still going to happen time after time again. What DEP did more than 10 years ago was-- When they realized they didn't have the money to close the landfills, they thought they would just turn them into garbage dumps. "We'll reopen them and close them."

Under the DEP rules for landfill closure, not only can you bring in contaminated dredge spoils and put in a cap-- In the case of EnCap, the cap itself didn't even fit the State standards. It was actually porous and allowed rainwater to get in that would actually cause groundwater contamination. You can bring in what's called *dirty dirt*. That's dirt that's contaminated with hydrocarbons from underground storage tanks. You can bring in construction debris, including C&D, which not only gives you the smell, but can also contain wood that contains chromium and arsenic. You can also bring in cement that has asbestos and even low levels of PCBs. It's the same thing in the dredge spoils -- dioxins and PCBs.

We need to change that policy, and this Legislature can do it. But this Legislature should also be demanding DEP should be there right now and start this remediation work while this law is going forward.

Thank you very much.

SENATOR SMITH: Mr. Tittel, you've been in this business a long time. Have you had the opportunity to take a look at the closure and post-closure plan approval for this Landfill?

MR. TITTEL: Only recently. And, again, it's not a closure. It's really a reopening.

SENATOR SMITH: It's really a reopening of the Landfill.

MR. TITTEL: It's a reopening.

SENATOR SMITH: Or a new landfill.

MR. TITTEL: It's really a new landfill. And it actually has more stuff coming in that may be more hazardous than was in the old landfill which had problems.

SENATOR SMITH: Based on your experience, we were provided with closure and post-closure plan approval which says that, "The DEP hereby approves the solid waste closure and post-closure plan, and the closure and post-closure financial plan with conditions as set forth in the attached document." And the attached document goes through a list of what was submitted to the DEP. Item 1, which is "Disruption Permit/Closure Plan Application of Former Sanitary Landfill," listed as, "Initial submittal incomplete." Then drawings: "Former Sanitary Landfill Closure Plan. Initial submittal incomplete." Then it lists some items that are final. Then it says, "Document entitled, 'Protocol for Accepting Materials at the Fenimore Landfill Closure, Township of Roxbury.' Initial submittal incomplete." Then Item 11: Grading plan drawings numbered blah, blah, blah, blah, blah. "Incomplete." Item 18: Financial Assurance Plan dated September 6, 2011. "Initial submittal incomplete." Item 19:

Questions concerning the financial plan. "Incomplete." Item 20: A response to the request for information on the financial plan. "Incomplete."

Have you ever seen an approval granted for, in effect, the reopening of a landfill with so many incomplete items of information?

MR. TITTEL: Unfortunately, EnCap was the other one that was similar. And I'm not here to defend DEP. Their mentality is, "Well, we don't have the money to close it, so we have to do something." We end up taking something that's bad, and we make it 100 times worse. We take something that is a problem and turn it into a nightmare. And I think that's what you see here. And they should be called in on that because, quite frankly, if any of us did that -- if we were putting a deck on our house or a driveway, we would be skewered for it. And I think this is one of the key problems.

I will be kind of honest -- and some people may not like this -- but when you tend to turn the DEP's philosophy from environmental protection into the department of expediting permits, that's what happens. That's why having transparency, public input, and reviews are so important.

We have this big rush today that -- environmental protection and environmental reviews are red tape and they're a hindrance to business; we need to streamline and cut all of that-- And these are the kinds of things that happen. That's why you need to make sure you have responsible people going through these plans. There should have been a public hearing on this landfill plan. There should have been -- it should have been submitted to the Town Council and the Planning Board. We should have had -- DEP -- had public hearings in the town so that people could review it

instead of just rubber-stamping stuff that isn't worth the paper it's written on. And then you end up having this kind of crisis. It's despicable.

SENATOR SMITH: Appreciate the comments.

Senator Greenstein.

SENATOR GREENSTEIN: Thank you.

Jeff, this is reminding me very much of what happened in Hamilton Township and, I'm sure, so many other places years ago. Hamilton, as you know, is in my district. We had all these problems with asbestos and closing companies. It's just the same story with a couple of different names in there.

And among the many culprits is always DEP. It doesn't matter who is there, who heads the agency. They don't seem to do what they're supposed to be doing. I did not know that they were allowed to go in-- They're using the excuse that they're in the middle of a lawsuit here. But they could certainly go in and begin to remediate, based on what I'm hearing from you. They are allowed, under their--

MR. TITTEL: Absolutely.

SENATOR GREENSTEIN: And that's absolutely what they should be doing. They didn't do it in the earlier case and, I'm sure, in many others. And I think it's just terrible. I would use the same word as Senator Beck: despicable. It's absolutely despicable.

SENATOR SMITH: Thank you, Senator.

Elliott Ruga, New Jersey Highlands Coalition.

ELLIOTT RUGA: Thank you, Senator.

This situation is confounding. Despite this site being in the Highlands preservation area -- a place near and dear to your heart; despite

this operator having to pass muster with the Highlands Council to deem it a redevelopment area -- and that approval came with conditions; despite having met approval with the Morris County Soil Conservation District; despite having a fully executed administrative consent order and, as you mentioned, an approved pre-closure and post-closure plan -- a rogue operator, who the *New York Times* has reported is a convicted felon, has been operating for eight months now, dumping God knows what into this site, having uncapped a naturally stabilized former landfill, creating a new landfill. What's being dumped, we know, stinks, but that's all we know. And today they have amassed \$463,000 in DEP fines, about \$40,000 in municipal fines, and 15 notices of violation since October of 2011. And this is still going on today.

Senator, thank you for having this fact-finding session. Because a lot is coming to the surface. We don't know how this can happen. The people of Roxbury need relief. And I'm sure you will do whatever needs to be done.

Thank you.

SENATOR SMITH: Thank you, Mr. Ruga.

Bill Kibler, Raritan Headwaters Association.

BILL KIBLER: Thank you, Senator.

I'm Bill Kibler, Raritan Headwaters Association.

I realize we're a long way away from each other, but I'm hopeful this map will help clarify a couple of things that I want to discuss.

Our 470-square-mile watershed includes parts of Morris, Somerset, and Hunterdon County. It includes two of the three largest reservoirs in the State of New Jersey -- Spruce Run and Round Valley. It

includes the north and south branches of the Raritan River. And unfortunately it includes the Fenimore dump.

I guess I'd like to start with a small nit-pick point. Let's be clear: This is not a landfill. It is a dump. The term *landfill* suggests some level of engineering design and some level of construction standard that was met. That has never been met at Fenimore and continues not to be met to this day, as you explained, Mr. Chairman, with the closure. In this particular case, someone dug a hole, someone threw garbage in the hole, and someone threw dirt on the garbage, and now someone is throwing more garbage on top of the dirt. So what we have is a dump.

An abandoned dump isn't necessarily unique. What makes this particular abandoned dump unique is that it is upstream of the drinking water supply of 1.5 million people. You've heard about air pollution issues and the concerns of the neighbors already. I won't go through those again.

I did want to talk about water issues, which is why I brought the map with me today. The Raritan Headwaters Association has been conducting stream monitoring in our watershed for 24 years now. We have a total of 57 monitoring sites. Last year we added a monitoring site approximately 200 to 300 yards downstream of the Fenimore dump, upstream of Ledgewood Park, because we were concerned about the impact that the dump was having on surface water.

We use a DEP- and EPA-approved protocol which measures biologic conditions in the stream and results in something called the *New Jersey Impairment Score*. The ideal score, the maximum score is 30, the minimum score is zero. In a headwaters area in the Highlands, in my watershed, I would expect to see scores very close to 30. Last year, this site

-- just downstream of the Fenimore dump -- scored 18 which, in New Jersey Impairment Score terms, means it is moderately impaired.

The term *moderately impaired* may not scare you because it doesn't sound all that terrible. I'd like to give you some context. If you look at the map, you will see the blue dots. Those represent-- What you're looking at is the outline of my watershed. The blue dots represent our monitoring locations. Of the 57 sites that we monitor, last year there was one site that got a lower score than the Fenimore dump -- one. There is a site that we monitor every year -- and have been monitoring for 20 years -- 200 yards downstream of the Clinton Township Wastewater Treatment Plant that has never gotten a score as low as the one Ledgewood Brook got this year. So we are deeply concerned about the impact of this dump on surface water quality.

Now, you may well ask yourself -- and the public may ask themselves -- why do I care about little, tiny Ledgewood Brook way up there in Roxbury? The answer, Senator Smith, is because you are drinking that water. Senator Bateman, so are you, as are most of your constituents.

SENATOR BATEMAN: That explains a lot.

MR. KIBLER: Ledgewood Brook eventually drains into the south branch of the Raritan River, which collects water from Spruce Run Reservoir. No one here is getting their water from those two reservoirs. The outtakes are actually down near where the north branch and south branch come together. So when we have conditions like this in my watershed, they impact not just the people in Roxbury who we've heard from today, but these issues are impacting 1.5 million people outside my watershed -- your constituents.

Our concern is to see that the Landfill be properly closed, which is not happening currently. We have some specific issues with the bill as it's been drafted -- some things I would like to see addressed. The one that I think, frankly, is most important is-- I would appreciate it if the Legislature would require a public process that results in a proper site characterization and an appropriate remedial action plan for this site, and long-term monitoring for the site afterward. That plan should be consistent with the intent of the Highlands Act, which is to protect, restore, and enhance the resources of the Highlands.

The other issue I would like to mention is that DEP has a habit, in my experience, of holding public hearings at 2:00 on a Thursday afternoon in Trenton, which is grossly inconvenient for those of us who don't live in Trenton. So I would appreciate if the bill would also require that DEP hold its public hearings in Roxbury at a time and date that's convenient for the public -- for the people in Roxbury Township and for the other stakeholders to attend and provide their input.

Thank you, Senator.

SENATOR SMITH: Thank you, Mr. Kibler.

Our next witness is Matthew Fredericks. Mr. Fredericks is the attorney for Strategic Environmental Partners, LLC, the operator of the Landfill.

If you pull up a Chair, Mr. Fredericks-- For the information of the public, and I think the Committee as well -- although the Committee probably has this -- we received a package from Mr. Fredericks of about 100 pages. The cover letter from Mr. Fredericks dated May 29 indicates his client's objections to either the bill or the current situation. They are

summarized as, “The bill lacks the provision for just compensation to SEP. The bill is void for vagueness. Number 3: SEP is capping the Landfill with its own money.”

Attached to that letter are a set of 40 paragraphs of what Mr. Fredericks believes to be the facts. And attached to that are Exhibits A through F.

Exhibit A is the Closure and Post-Closure Plan approval.

Exhibit B is correspondence from Senator Bucco to the New Jersey DEP, which asked a series of questions to the DEP. It’s approximately 40 questions which I thought were -- terrific letter -- described the process and what’s going on.

Exhibit C appears to be a PowerPoint presentation, Solid and Hazardous Waste Management Programs, dated Thursday, July 26, 2012.

Exhibit D is correspondence to Mr. Ken Kloo, New Jersey DEP Site Remediation and Brownfields section, from Brian Horne, President of SLRD Company and Mullica Hill, LLC, concerning the escrow. And there’s an attached DEP letter in the matter of the request of Henry Harris to withdraw funds from the statutory escrow accounts, which is a final order saying it’s okay to take the escrow of about \$582,000.

Exhibit E is correspondence to Robert Confer, Chief of the Bureau of Landfill and Hazardous Waste Permitting, from Matthew Fredericks concerning the financial aspects of that closure. And there’s correspondence from Wolfgang Skacel to Richard Bernardi, Strategic Environmental Partners, terminating an administrative consent order for the Fenimore Landfill.

And Exhibit F is correspondence to the Honorable Deanne Wilson, Presiding Chancery Court Judge in Morris County, from TRC signed by John Trela, Principal and Senior Vice President of TRC National Environmental Sector, concerning hydrogen sulfide concentrations.

And then Exhibit G is correspondence to Richard Bernardi from Robert Confer, Chief of the Bureau of Landfill and Hazardous Waste Permitting, concerning the site regrading plan. And there's another letter to Richard Confer, Chief, Department of Environmental Protection, Bureau of Landfill and Hazardous Waste Permitting, from T&M Associates, concerning the site regrading plan.

Exhibit H is correspondence from Stephen Pearlman to Mike Winka, Director of Clean Energy Program, concerning placing Fenimore Landfill in the queue for solar project incentives. That's August 10, 2012.

Mr. Fredericks, first let me say thank you for sending all that information. It was most helpful in attempting to evaluate this situation. We do have it. Every member of the Committee will have it. It will be attached to the transcript for the hearing, so the world will have this information as well.

I think the value of you being here is that I know there are questions that the Senators would like to ask. Because I am the Chairman, I get a chance to ask them first.

SENATOR BATEMAN: Just one comment, might I, Mr. Chairman?

SENATOR SMITH: Yes, sir, Senator.

SENATOR BATEMAN: Thank you, Mr. Chair.

I've had an opportunity to review Mr. Fredericks' packet. It's quite extensive. I would hope that he would focus his testimony today on the bill before us. This is not a forum for him to advocate his--

SENATOR SMITH: It's questions. We don't need testimony on 100 pages. We all have the ability to read.

SENATOR BATEMAN: It's not the proper forum to litigate.

SENATOR SMITH: But we have read them and we have questions.

SENATOR BATEMAN: Go ahead.

SENATOR SMITH: Number one, can you tell me what SEP paid for the Fenimore Landfill?

MATTHEW M. FREDERICKS, ESQ.: Yes.

First, Matthew Fredericks, on behalf of Strategic Environmental Partners.

Strategic Environmental Partners entered into a contract to purchase the property from the former owner for the sum of \$1 million.

SENATOR SMITH: Okay.

MR. FREDERICKS: And a mortgage was taken by the former owner of the property against the property.

SENATOR SMITH: So there actually wasn't very much in the way of cash. It was a mortgage. The way in which it was paid for was a mortgage going back to the prior owner.

MR. FREDERICKS: That's correct, Senator. I believe that the mortgage amount was \$950,000, meaning that Strategic paid the former owner \$50,000 with a provision to make future payments.

SENATOR SMITH: Okay. As I read the administrative consent order, it referred to 1.2 million cubic yards of top cover to close the Landfill. Am I correct in that figure -- the 1.2 million cubic yards?

MR. FREDERICKS: Yes, Senator.

SENATOR SMITH: Can you tell me what the current tipping fee is for demolition debris -- whatever waste was being brought to the Landfill?

MR. FREDERICKS: Senator, I do not know that. There is currently no C&D screening being accepted at the property. As of, I believe, March 8, Strategic Environmental Partners stopped taking C&D screenings as a result of the multiple hearings we had in front of Judge Wilson in the Morris County Chancery Court.

In December of 2012, the DEP had applied to the Court for an order commanding SEP to cease accepting C&D screenings on the basis of the allegation that the C&D screenings were the source of the odor complaints. In March of this year, SEP voluntarily ceased accepting C&D screenings. So there is currently no tipping fee for that. But I'm not aware of the tipping fees for any of the material that Strategic has brought in.

SENATOR SMITH: Are you aware of any tipping fees that landfills are permitted to collect with regard to the disposal of waste?

MR. FREDERICKS: If your question seeks the dollar amount, no, I'm not.

SENATOR SMITH: Okay. Let me ask staff if they could see if they could find out what the current range of tipping fees is.

MR. FREDERICKS: I can tell you, Senator, that as part of the application process, SEP submitted to the Department estimates from its

engineer. SEP was using Birdsall Services Group, specifically Mr. Bashar Assadi, who is widely considered to be an expert at landfill closures. As part of the application process, Mr. Assadi assembled the requested information from the DEP, which included projections of tipping fees so that the Department could gauge and evaluate the financial analysis of it.

SENATOR SMITH: I didn't see that in the materials. Do you remember what his projected revenue was?

MR. FREDERICKS: I would be more than happy to give that to you. That is part of another portion of the application. I just provided to the Committee the actual permit -- the closure plan. But, no, I don't recall what the estimated revenue was.

SENATOR SMITH: But it's a publicly available document in the DEP, correct?

MR. FREDERICKS: Absolutely, 100 percent.

SENATOR SMITH: Let's see if we can get a copy of that.

MR. FREDERICKS: I would be happy to provide it.

SENATOR SMITH: Do you have a cost associated with the actual cost of closure?

MR. FREDERICKS: Yes.

SENATOR SMITH: What is it?

MR. FREDERICKS: The estimated projected cost was between \$18 million and \$23 million for the actual capping of the Landfill and post-capping monitoring. There is a 30-year post-capping monitoring period.

SENATOR SMITH: Do you have any idea of what the delta is -- the difference between the cost of closure and the revenues that were to be received?

MR. FREDERICKS: I don't know the exact figure, but I know there was a delta between the projected revenue from fill material. However, the model for this Landfill closure included projected income from the sale of solar energy after the solar installation was completed. And that was-- From that revenue, Strategic Environmental Partners would exceed the cost of the closure. So when you combine the tipping fee income with the solar income, that's how the project would be profitable.

SENATOR SMITH: What was the anticipated revenue from solar?

MR. FREDERICKS: Over the 30 years-- I apologize again. I apologize for not having that information. I can e-mail it to you as soon as I get back to my office. I have that information from Birdsall Services Group. It was provided to the DEP, and it is a public document. It was provided, I believe, in 2011 to the Department.

SENATOR SMITH: You're aware that in 2011 to 2012, that solar renewable energy credit incentives tanked? It went right into the sewer because we were producing so much solar in New Jersey. How could this project have been economically feasible?

MR. FREDERICKS: The projections were over the 30 years, and they were conservative estimates from the engineer. The projections showed that with the combination of tipping fees and solar sales -- even with the depressed market -- would enable the project to generate sufficient income to complete the closure.

SENATOR SMITH: Why was the figure of 1.2 million cubic yards used as the quantity of material to close the Landfill? That seems like an enormous quantity of waste.

MR. FREDERICKS: I believe that was the amount that was deemed sufficient to raise the property to a level that would accommodate the solar installation. The property is somewhat on the side of a hill, and so the idea was that in order to level it out, you had to bring in that quantity of fill material to create a level grade on which to install the solar panels.

SENATOR SMITH: Did the DEP take the position throughout these negotiations that any revenue received would have to be utilized for the Landfill closure?

MR. FREDERICKS: Yes, it did.

SENATOR SMITH: How could your client believe that this would ever be economically feasible if all the money would go for closure?

MR. FREDERICKS: I'm sorry, I don't understand.

SENATOR SMITH: If the DEP took the position from Day 1 that all revenue received from receiving waste at this reopened landfill extensively for cover, extensively to close it -- all revenue would go into a closure fund -- how could this ever be financially feasible for your client?

MR. FREDERICKS: Well, eventually, once all of the revenue required to cap the Landfill was spent -- anything after that would belong to Strategic Environmental.

SENATOR SMITH: Did you ever raise your objections to the DEP that this was an unfeasible financial plan?

MR. FREDERICKS: I was not involved with the application. I became involved with the project in 2012 after the capping project had begun. But I am aware that the initial negotiations between Strategic and the DEP -- and this is the subject of written negotiations between the parties -- required Strategic Environmental to deposit with the Department

an escrow of 15 percent of the tipping fees, which is the percentage that the DEP has applied to other landfill sites. For example, the Malanka Landfill in Secaucus, New Jersey, operated even before it had a closure plan -- before it had an approved closure plan. It was permitted to bring in almost a half-a-million cubic yards of fill material. After its closure plan was approved, it was approved for a 15 percent escrow. The DEP was discussing with Strategic -- and, again, I wasn't a party to those discussions, but I'm aware of the documents evidencing these discussions -- that Strategic would also be required to deposit 15 percent of its income.

SENATOR SMITH: So you think you're being treated unfairly.

MR. FREDERICKS: Well, we think that a requirement for a 100 percent escrow is outside of the regulations. One of the problems that we have here is that the Department, by its own admission, has never adopted regulation. It has avoided its agency duty to adopt rules applicable to pre-1982 landfills. That term is used for landfills that stopped operating before the Closure Act was adopted on January 1, 1982. Sometimes the DEP calls these dumps or landfills *legacy landfills*. The Closure Act, by its expressed language, only applies to landfills operating on and after January 1, 1982.

SENATOR SMITH: Why would your client buy a landfill where he didn't know what his responsibilities would be? Buying your argument that there weren't pre-1982 closure requirements, why would he buy a landfill not knowing what his obligations would be as the new owner of the property?

MR. FREDERICKS: He bought it with the expectation that he could work with the DEP to develop the property for solar energy.

SENATOR SMITH: And he had no approval to put up those solar panels at that point, correct?

MR. FREDERICKS: That's correct. He went about expending and investing substantial sums of money into the property to--

SENATOR SMITH: Is it your opinion that your client was required to go before the Roxbury Township Planning Board to receive a site plan review?

MR. FREDERICKS: No, it's not.

SENATOR SMITH: Mr. Ruga, from the Highlands Coalition, indicated that the *New York Times* had an article wherein Mr. Richard Bernardi is named as a felon. Is he correct in that assertion?

MR. FREDERICKS: He is correct that there was a *New York Times* article that documented the very interesting case of Mr. Bernardi's charge in, I believe, 1996 of bribery. He was found by a jury to be not guilty of bribery. He was found to be guilty of conspiracy to bribe a public official. He was then sentenced by a judge who had an obligation to recuse himself prior to the sentencing. I'm sure the Committee is not interested at the moment to hear-- I'd be more than happy to discuss it.

SENATOR SMITH: I'm actually interested in one essential fact. Is he a convicted felon or not?

MR. FREDERICKS: He was convicted of conspiracy to bribe a public official.

SENATOR SMITH: Is that a felony?

MR. FREDERICKS: Yes, I believe it is.

SENATOR SMITH: Okay. So he is a convicted felon.

In New Jersey, we have a process called the A-901 process, which is supposed to apply to anybody within the solid waste industry. Did Mr. Bernardi go through the 901 process?

MR. FREDERICKS: Yes, I believe he did. And I believe the DEP is on record as saying that they thoroughly vetted Mr. Bernardi's background and were satisfied that he was qualified to receive a permit. However, I do want to make--

SENATOR SMITH: I thought that was the Attorney General who does the 901 process.

SENATOR BATEMAN: They do. It's from the Attorney General.

SENATOR SMITH: Did he go through the 901 process with the Attorney General of New Jersey?

MR. FREDERICKS: I'm sorry, I don't know whether that's true. I don't know.

SENATOR SMITH: Would you send us any information on that point? We would like to know whether the 901 process is working or not.

MR. FREDERICKS: I will. I would like to make one distinction for the Committee. Strategic Environmental Partners is an LLC licensed in New Jersey, and the sole member of the LLC is Marilyn Bernardi. (audience reacts) And I recognize what the perception of my comment is. I'm just making that statement as a matter of fact -- that Mr. Bernardi is not, in fact, a member of the LLC. I understand that statement will be construed and the gallery will laugh. But I feel it's necessary in as

much as the question is: Did Mr. Bernardi personally go through the A-901 process? I don't know that. But I just want to clarify.

SENATOR SMITH: Did Mrs. Bernardi go through it?

MR. FREDERICKS: I'm not aware of that either.

SENATOR SMITH: That may be a breakdown in our system among many others.

Questions from Senators?

SENATOR WHELAN: Mr. Chairman.

SENATOR SMITH: Senator Whelan.

SENATOR WHELAN: Let me just follow up on that point. Mr. Bernardi, in his role at Strategic Environmental Partners-- We were just handed a letter here with Strategic Environmental Partners dated January 19, 2011, to the Roxbury residents that was signed by Richard Bernardi. It's not signed by Marilyn. I don't know if it's productive, with all due respect, to sort of play the shell game of who--

MR. FREDERICKS: I'm not attempting to do that in any form or fashion. The question that I was asked was with regard to whether Mr. Bernardi had gone through the A-901 process. I was simply pointing out that the applicant in these applications was Strategic Environmental Partners, LLC, of which Mr. Bernardi is not a member. I don't deny the existence of that letter, nor do I deny that other letters may exist where Mr. Bernardi represents himself as a representative of the company. I'm not in any way trying to play a shell game. The facts are the facts. I'm not distorting them in any way.

SENATOR WHELAN: Let me come to the letter you sent to us yesterday. I'm troubled a little bit. On Page 5 of the letter, Item 21, it

states that John Trela's report concluded that he could not make a finding that the levels of hydrogen sulfide gas reportedly emanating from the Landfill constitute an eminent threat to public health. Is that the position of Strategic Environmental Partners and yourself? These odors are not an eminent threat to public health?

MR. FREDERICKS: Yes, it is.

SENATOR WHELAN: Okay. Now, the Health Department of Roxbury -- we heard from Mark Caputo, the Health Officer, who is saying public health and safety is the primary basis for the immediate legislative action sought. So you're saying he is wrong and there isn't a public health threat here?

MR. FREDERICKS: I'm saying that John Trela's report correctly and accurately determined that there was no imminent health threat, which was what Judge Wilson was trying to find out when she retained -- when the Court asked John Trela to get involved.

SENATOR WHELAN: Okay. In light of what we heard from parents today, in terms of their children having asthma attacks and not being able to stand at the bus stop for school -- which is, frankly, part of the socialization of the school process. I happen to be a school teacher in my day job. That's what kids do; they hang at the bus stop and see their friends, and so on. You can't do that in Roxbury apparently.

In light of that, we're still saying that it's not any kind of imminent threat?

MR. FREDERICKS: The Township of Roxbury has installed monitors around the town. I've reviewed the monitoring results. What I see is that the overwhelming majority of data that is taken on a 15-minute

interval basis every day since, I believe, January -- maybe I'm wrong about that, February or March. In the last few months they've had monitors around the town taking measurements of hydrogen sulfide gas every 15 minutes. The overwhelming majority of that data indicates that every 15 minutes the readings taken show that the readings are below the 8 parts per billion threshold for human detection, with spikes at certain times.

I heard testimony that there is a 4:00 to 6:00 a.m. period when it comes into certain neighborhoods. That's been consistent with other testimony that we've heard. We had a trial in the Roxbury Municipal Court. The testimony has been consistent.

I can tell you that the monitoring results show that the majority of the readings are below the threshold for human detection. And all of the results are below the threshold for a health hazard. There are spikes that rise above it momentarily. But OSHA has a standard for an 8-hour work day, 40 hours a week, I believe, of 10 parts per billion, meaning that a worker could work in an environment with hydrogen sulfide gas 40 hours a week and not have a problem.

I'm not, in any way, arguing with or contesting any of the testimony that the Committee has heard. Whether or not it's a health hazard -- we believe the answer is no.

SENATOR WHELAN: You're right, Senator Beck, this is -- I don't know what word you used -- outrageous, despicable.

These folks didn't pull their kids out of school today to come down here on a holiday.

I don't know what to say, Mr. Chairman. I'm not usually at a loss for words. Let's get passed the BS -- to clean this up a little bit -- and

let's get down to the real issue here which -- and let's not deny that there is--

SENATOR SMITH: Senator Bateman, a question?

SENATOR BATEMAN: It's not really a question, Mr. Chairman.

I appreciate Senator Whelan's comments.

I appreciate you doing this. I think it's very important that we have this hearing.

Senator Bucco and Senator Pennacchio here -- the residents have brought their kids down here. We need to take action. I would like to, at this point -- and I know, Mr. Chairman -- I believe you're with us -- I would like to make a motion that at our next Committee we vote on this bill. I think we should be voting on it today. I would like to make the motion pursuant to rule 12:3. (applause)

We have a responsibility to act.

SENATOR SMITH: We do.

SENATOR BECK: I'll second that motion.

SENATOR SMITH: And we also have a responsibility to do laws that will stand judicial scrutiny. I have an OLS memo saying there are some constitutional issues that have to be fixed. Rather than release a defective bill that will be overturned in the court, let us fix it and do it right.

SENATOR BATEMAN: Well, we can't do it today.

SENATOR SMITH: And let's do it quickly. We can't do it today.

SENATOR BATEMAN: Because it's a hearing. But we could do it at our next meeting. We could get these issues resolved.

SENATOR SMITH: We are going to move very expeditiously on this. This is an outrageous situation. On the other hand, let's do it right. You know the Hippocratic Oath: Do no harm. (laughter) Passing a bill that gives residents hope that the problem is solved only to have it overturned by a court is a loser for everybody. So let's fix it right, and we will take care of it.

Senator Bateman, are you done with your questions?

SENATOR BATEMAN: I made a motion, and I think it was seconded, Mr. Chair.

SENATOR SMITH: And as the Chairman, I'm disallowing it because it's not in the best interest of the people of Roxbury. Let's do the correct bill.

SENATOR BATEMAN: Do we have a vote on that?

SENATOR SMITH: No, actually you don't.

SENATOR BATEMAN: I thought you had to have a vote to at least table a motion.

SENATOR SMITH: No, you don't. The Chairman makes the decision.

Senator Greenstein.

SENATOR GREENSTEIN: I wanted to ask you -- Mr. Fredericks, is it? Fredericks--

MR. FREDERICKS: Fredericks, yes.

SENATOR GREENSTEIN: --about this report. I see it's here as Exhibit F, and the report is from TRC -- that this Mr. Trela wrote this report.

First, I know that the Court asked for the report. One question is: Who paid for the report?

MR. FREDERICKS: The report was provided without a fee to the Court.

SENATOR GREENSTEIN: Without fee.

And what were Mr. Trela's qualifications?

MR. FREDERICKS: Mr. Trela was asked by Judge Wilson, because Judge Wilson had experience with Mr. Trela and TRC as an expert on environmental matters I don't know how many times. But she was the party who selected Mr. Trela. He did provide, I believe, his CV, which is not provided here. But there was not any party that challenged his qualification as an expert. And as a matter of fact, prior to his selection, Judge Wilson asked if there were any objections to his qualifications, or whether there were any conflicts, or whether there were any other objections. And the DEP, SEP, and the Township of Roxbury all agreed that we would accept the findings and conclusion of John Trela.

SENATOR GREENSTEIN: But he was picked because the judge had a prior -- she had worked with him before.

MR. FREDERICKS: Yes.

SENATOR GREENSTEIN: That's all I wanted to know on that.

Now, it does say here in the report, although the measured hydrogen sulfide concentrations do not appear to be an imminent health threat to the residents, it's apparent that the emissions from the Landfill constitute a nuisance and are interfering with the residents' use and enjoyment of their property. So at least he felt it rose to that level.

Now, you did mention earlier that the-- What were the concentrations that have been generally found in that area of hydrogen sulfide?

MR. FREDERICKS: When you say "in that area" I just don't--

SENATOR GREENSTEIN: Well, wherever they're monitoring there.

MR. FREDERICKS: I'm sure that someone from the Township of Roxbury can speak better to that. I know that it's on their website, and that's how I get it. They have, I believe, five monitoring posts. They have them in various areas around town. Sometimes it fluctuates. Sometimes there's--

SENATOR GREENSTEIN: Do you know what the range is?

MR. FREDERICKS: Well, I know that it ranges from zero, because there are hours when it's zero, and then sometimes it goes up to-- Again, I'm sure someone could correct me. The highest reading I think I've seen has been in the 40 parts per billion. (audience reacts) But I could be wrong about that.

SENATOR GREENSTEIN: Well, if there is somebody else who can testify on that afterwards, I would like to know.

MR. FREDERICKS: Absolutely.

SENATOR GREENSTEIN: In this report, they refer to 25 parts per billion. I don't know if that means -- this is on Page 4--

MR. FREDERICKS: At that time, the highest reading that was provided by the DEP-- See, the history was that the DEP provided a report to Judge Wilson indicating that in the DEP's position, the hydrogen sulfide gas was emanating from the C&D screenings at the Landfill, and that was

the source of the odors. In response to that report, Judge Wilson (*a*) went out to the site, visited it, walked around the Landfill on the fill material and in the neighborhoods surrounding it. And she commissioned John Trela to do the report. At that time, the report that Mr. Trela reviewed from the DEP indicated the highest measurement of hydrogen sulfide -- and, again, this was back in December, so this was before the monitors were installed. But as of -- in December, the highest reading was 25, and that was taken directly on the fill material itself.

SENATOR GREENSTEIN: There's a point I want to make here. You said a little bit earlier that you thought the levels there -- I think you used the words "would not have been detectable by people," or something like that, which is clearly not the case.

MR. FREDERICKS: No, I said that the vast majority of readings -- and, again, these readings are four per hour. They give them every 15 minutes. So you can see it over the time. You can see on the 23rd, at 2:30, at 2:45, at 3:00. And you can see what each reading was. And as I acknowledged, some of those readings spiked very high. But the vast majority of them are low.

SENATOR GREENSTEIN: What reading of parts per billion is discernible by people, do you think?

MR. FREDERICKS: Well, I don't think-- My understanding-- I'm not an engineer and I'm not a scientist. But my understanding from Mr. Bashar Assadi, who is the engineer-- He advised me that the threshold for detection by the human nose is 8 parts per billion.

SENATOR GREENSTEIN: Eight?

MR. FREDERICKS: Yes.

SENATOR GREENSTEIN: Okay. Because they're finding 25 here. And they're saying that New York, for example, has 10 parts per billion, which seems logical based on what the gentleman told you. California has 30 parts per billion. And then it says the CDC allows 70 parts per billion. So the New York standard is 10, and that seems pretty reasonable. Does New Jersey have a standard?

MR. FREDERICKS: I don't believe New Jersey has a standard. I think there was already testimony about that. But what you have to just bear in mind is that-- My understanding is that those standards are not for very short-term exposure. They're more for long-term exposure.

SENATOR GREENSTEIN: Okay. It just seems to me, given the levels that have been found there that we know about so far, it definitely is causing problems in terms of people who are living there. Now, while it may not be a carcinogen as this report states, it's still causing health problems, respiratory problems, and that sort of thing. So as far as I'm concerned, it's a very serious health problem. (applause) I don't just define that as *carcinogen*, which this report seems to do.

MR. FREDERICKS: I would like, if I may, to address some of the things that SEP and the DEP have been working on in terms of addressing the odor complaints.

SENATOR SMITH: I'd ask that you hold that because we have specific questions.

Just for the residents of Roxbury who traveled down here today with your children, the correct bill will be released on June 13. We're going to address the Roxbury and the Landfill situation on that date rather than you leave with the impression that somehow this Committee is resistive to

solving the problem. You are being dumped on in the worst possible way and we in the State Legislature are not going to allow that to continue. But we're not going to release a bad bill that will be overturned by a judge. So we're going to do the right bill on June 13. You are welcome to come down and see that hearing as well. But don't go away with any misimpression that somehow we're not taking this as seriously as it should be taken.

Senator Beck.

SENATOR BECK: Thank you.

Having read through some of the documentation Matt provided to us, I think it highlights a couple of areas, Chairman, that we may want to address in our amendments.

When I went through the timeline, it's late in 2011 that SEP begins its work. Early 2012 DEP notifies them that they're not in compliance with their closure plan. Then they say-- And then DEP says, "Hey, you need to put money into an escrow." SEP says, "No way. We're not doing it." And DEP, on May 21, is in court trying to close them down.

SENATOR SMITH: Yes.

SENATOR BECK: But they're not successful. The Court stops them from doing it.

SENATOR SMITH: But they already let the horse out of the barn. That was the problem.

SENATOR BECK: Right. Whatever representations were made to them that they, at some point, felt comfortable with, they suddenly did not feel comfortable and took the aggressive move of trying to close them down. And on May 21 they were denied. That was the first of two times they tried to close them down. They tried to revoke their plan.

They've refused to provide them with a permit for phase two. So I think DEP has taken action. They're the ones who brought in the State Police to check every single truck. So they have taken action. But apparently it's not enough. I mean, we really need to revisit the authority and role of DEP if they're doing all of this and are still not able to succeed. Maybe as a Committee we need to reexamine the purview.

SENATOR SMITH: Yes.

SENATOR BECK: Because as I said, on two separate occasions they've tried to close them down, issued restraining orders, denied their permits for phase two, tried to revoke their closure plans, and have still not been able to stop this.

SENATOR SMITH: Right, but after they gave them the administrative consent order approval without having the financial assurance plan locked down.

SENATOR BECK: And I'm not saying that was not-- Clearly it was an error to even give them approval for the ACO. I don't know what their thinking was at that moment in time.

SENATOR SMITH: Shame on them.

SENATOR BECK: I wasn't part of that conversation. But certainly since that time they have taken steps, and we should make sure they have additional authority since what they've done hasn't been able to stop these folks

SENATOR SMITH: Great.

SENATOR BECK: I do just want to -- Matt, to your point--

Channel 12 did a nice job last night sort of looking into this investigative report. And one of the things they revealed is that on the

mortgage document, Mr. Bernardi is listed as the managing partner. So the semantics of saying, "Oh, no, it's his wife," is sort of ridiculous. Not only that, but Mr. Bernardi is the one who signed the ACO. So you really can't say he is not involved. He is involved.

MR. FREDERICKS: I didn't say he wasn't involved.

SENATOR BECK: We all know he is in a significant way.

MR. FREDERICKS: No one has said he's not involved.

SENATOR BECK: And God bless you for taking on this case. I don't understand why you would. (laughter) I don't know why you would because what's happening to these folks in Roxbury is really horrendous. And maybe the technical nature of OSHA says this isn't a health hazard, but clearly it's a health hazard when you have 100-something people show up at a hearing on a Thursday morning, missing their days of work, and taking kids out of school. Clearly there is a huge problem here, and we're going to address it. We're going to fix it. (applause)

SENATOR SMITH: Good. I think we had all the Senators' questions.

Mr. Fredericks, you're excused.

MR. FREDERICKS: I would like to--

SENATOR SMITH: Thank you.

I would like to call up Roxbury Township Manager, Chris Raths.

MR. FREDERICKS: Chairman, may I please have additional time to comment on what Strategic Environmental Partners has done in response to the odor complaints? I appreciate that there are a lot of people--

SENATOR SMITH: If you can do it in 60 seconds. The problem is, we have a session today. So we're trying to give all-- If you noticed, we gave every particular sector -- whether it was citizens, governmental officials, environmental groups, and the Landfill operator a chance to speak. There are many, many citizens who want to speak today. We have a caucus that starts at 12:00 and a session that starts at 2:00. So you have 60 seconds.

MR. FREDERICKS: Thank you.

SENATOR SMITH: Somebody get the clock out.

MR. FREDERICKS: SEP has been repeatedly frustrated by the DEP in its efforts to address the issue of hydrogen sulfide emissions. The reason that the DEP claims the hydrogen sulfide emissions exists is because of the design approved by the DEP. And they won't let SEP do anything to correct it. SEP has been in court asking repeatedly to let us do something about it, and they have repeatedly frustrated our efforts to do something about it.

With respect to this bill and whether the DEP would assume control, the DEP would have to do the same thing that SEP is doing, which is to truck in material. They would have to travel on the same roads past the same residences. So allowing the DEP to do exactly what SEP is doing now with its own private money seems to be misguided and wasteful of taxpayer money.

SENATOR SMITH: Thank you for your comments.

Chris Rath, Roxbury Township Manager.

C H R I S T O P H E R R A T H S: Thank you very much, members of the Committee. Thank you very much for this august body hearing us

today. This is an extremely important issue that you're hearing from the residents. I'm not going to be lengthy.

I do like the opportunity to come back after Mr. Fredericks because I think we can provide you some clarification and some additional information based on what he has provided you.

The fact of the matter is that this DEP approval-- DEP was the sole authority to approve this facility under the Landfill Closure Act. None of the normal landuse processes usually provided -- the opportunity for a community-- Did Roxbury Township have any of that opportunity in this matter? This is, again, a closure. DEP is responsible for the closure.

No Township approvals were needed in this matter whatsoever other than the solar farm. And you heard here today the idea that this was going to be a solar energy facility. The fact of the matter is that Roxbury Township has yet to hear or see any significant solar plans so that we can provide those the proper approvals, in the proper bodies to approve. In fact, in order to connect to the closest power lines, the SEP corporation would have to come across Roxbury Township property. We've never been approached with the idea of coming across Roxbury Township with any type of right-of-way, lease, or anything under those lines.

SENATOR SMITH: Mr. Raths, are you suggesting that the plan of the SEP to put in solar was never really a plan? That it was used as a justification to reopen the Landfill?

MR. RATHS: I will say this: If it was really a plan at one time, it was not fermented into a plan that could be approved by any possible body within the Township. And that is a requirement. The Township does

have site plan approval over the solar farm and we have not yet received that.

I would also like to say that in regard to your questions as to the material value and 1.2 million cubic yards, we have, depending on the type of material that's being accepted under the ACO plan -- we estimate a value as high as \$12 million on the material coming in. Again, it depends on the type of material. The quote you received today about \$18 million to close the plan-- That is under a normal closure plan. That is when you're intent and purpose is to close the facility, not to operate a construction demolition acceptance site. And that's what we have here.

Under a normal closure plan, you are presented a plan and the plan is actually implemented -- that includes a leachate system, that includes a gas denning system. Although those plans have been submitted to the DEP, they've been deemed deficient. Any person on this Committee could look at those plans and deem it deficient. It doesn't take an engineer-- Given the simplicity of the plans, it takes no engineer to look at them to see that they were insufficient.

In addition to the numbers that you're hearing -- and there will be additional testimony from the residents today in regard to the parts per billion on the monitors. Roxbury Township currently has two monitors. At any given time, those monitors are ranging from 6 -- up to 6 parts per billion, except for at times mostly during the evening and mostly early morning when the children are on the school buses or when the residents are trying to enjoy their evenings after a long, hard day at work. Those can go up to 120 parts per billion. You heard 30 parts per billion. The report you got was done in January. What you're seeing today are up to 120 parts

per billion. You're going to hear testimony here today from the residents about their eyes watering, their throats, their children. It is real. We live in that township. We get it. We understand it. My staff gets it constantly. We get hundreds of e-mails a day about this situation. The Health Department, the Police Department, our Public Works have done an admirable job. But the fact of the matter is this is the responsibility of the State. They got their approvals through the State, and the State needs to take action. The State needs to work on this bill. They need to bring this bill forward. They need to take oversight of this site. And they need to resolve this issue for the citizens of Roxbury.

That's all I have to say.

SENATOR SMITH: Thank you, Mr. Rath.

Let me call three citizens: Denise Squires, Jeff Schutz, and Christine Volz.

DENISE SQUIRES: Good morning.

My name is Denise Squires, and I am an 8-and-a-half-year resident of Ledgewood. I reside in my home with my husband and two children ages 4-and-a-half and 1.

I want to just note here that our home is over a mile away from the Fenimore Landfill. We do not border it. I think it's noteworthy to just state my proximity. The driving distance is almost two miles, and point to point is about a mile.

Since November, landfill gas has been permeating our home on a regular basis. To date I have contacted the DEP on 25 separate occasions. Many of those calls resulted in an inspector visiting my home within 24 hours. Many of these inspections have included the use of a hydrogen

sulfide monitor both inside and outside of my home. The gas has been detected inside and outside of my home. Inside is as high as 6 parts per billion, but it's very, very powerful.

I have uprooted my children from our home on approximately 15 separate occasions, sometimes for days at a time and others for up to three weeks at a time. I've packed them up for an indeterminable period of time on an individual emergency basis when this happens. We are terrified of the thought of them breathing this and other possible undetermined gases in our home on a regular basis. When I leave, my husband stays behind to keep apprised of the situation at home.

I won't regale you with the list of government agents and officials I have contacted. It's in my testimony. But regardless of who I've called or who I've talked to, the response -- or lack thereof--

Nothing can stop this gas from entering our home. It presents currently worse than ever before. My 4-year-old son attends preschool and has missed approximately 41 days of school as a direct result of this Landfill. He is no longer allowed to sleep in his own bed due to his bedroom's proximity to our stairwell where the gas permeates, and it seems to dwell mostly in our stairwell. He's obviously very distraught about that.

My daughter is now 1 and has been breathing gas on a regular basis for half of her life. In December my daughter was due for one of her routine vaccines. Her pediatrician was not comfortable with administering that vaccine to her due to the fact that we don't know what else she's exposed to. Her vaccine was delayed for several months as a result of that. No medical professional can assure me of their safety ultimately because no studies have been done on children.

I'm unclear how we're expected to reside in our home when this toxic gas is continuing to permeate our house on a regular basis. It mostly permeates now in the middle of the night. We are literally pulled out of our sleep to this smell in our home. My 1-year-old daughter wakes up crying each time this happens during the middle of the night. Several weeks ago I had two DEP inspectors visit my home at 5:00 a.m. after we were awoken at 2:30 in the morning from it. Each night I place towels underneath my doors in a vain attempt to thwart this gas from entering the rooms. I even, one time, put duct tape around the doorway cracks in an attempt to stop this gas from getting into my house.

This has taken an enormous toll on my family. My children and I have lived out of a suitcase for a total of approximately 12 weeks if you add it all up -- out of our home, out of school, away from my husband. In addition to working full time, my husband needs to visit his wife and children 30 miles away whenever he wants to see us.

I come before you today as a lifelong resident of New Jersey, as a homeowner, as a taxpayer. But above all else I come before you today as a mother. And I implore you to intercede on our behalf by utilizing to the fullest extent the powers that are vested in you as governing officials of this State and responding with the sense of urgency this situation requires, please.

Thank you.

SENATOR SMITH: Thank you, Ms. Squires.

Jeff Schutz.

J E F F R E Y S C H U T Z: Hi, my name is Jeff Schutz. I live on Melville Court, in Roxbury.

Like many other people here today, the Fenimore Landfill has become a fixture in our everyday life. Much like Denise just said, I have an 8-month-old daughter at home. She's lived her whole life being exposed to the gases coming from this Landfill. There has been some testimony today about OSHA exposure limits for healthy adults. We're talking about infants. There are no studies on this. There is no way to gauge what long-term affects there will be because it hasn't done-- So my daughter is a living lab experiment on what this is doing to them.

We also know we're being exposed to hydrogen sulfide because of the characteristic odor. But I'm deeply concerned about what else we're being exposed to that we can't smell. That's why I'm urging the Committee today to take swift action to do what's best to protect the health and safety of Roxbury's residents.

Thank you.

SENATOR SMITH: Thank you, Mr. Schutz.

Christine Volz.

C H R I S T I N E V O L Z: Hi, I'm Christine Volz. I live at 7 Summit Lane, Succasunna, New Jersey.

I wasn't prepared to speak today, but there were a few small items that I wanted to cover. Roxbury Township, you may or may not know, has recently been elected -- prior to the Landfill situation -- one of America's 100 best communities. This is a huge honor for our town and has been. We've been very proud of that. That would have never happened this year. It was last year that we were elected that.

We also have an extremely diverse community, both ethnically and economically. The people you see before you do not represent all of

Roxbury Township. We have a huge township with a wonderful mix of diversity of people in the township.

Secondly, we're very concerned about the schools. Roxbury Township -- my husband ran for the Board of Ed to help improve Roxbury Township Schools and make them even better. One of the things I have to really point out is people move to Roxbury Township for the education. They move to Roxbury Township when they come from cities for the athletic prowess of the township. They move to Roxbury Township for the music program. Roxbury recently won an honor -- the Sudler Award, which is a huge honor -- the only school in Roxbury (*sic*) to do so. We have a very good reputation up until this time.

We have friends whose houses have been up for sale. And as soon as they have been disclosed -- the buyers have been disclosed about the situation in the Township, they back out. This happens all the time. You can ask these people behind me.

Again, I wasn't prepared to speak, but these are just a few points I wanted to cover.

Thank you.

SENATOR SMITH: Thank you very much.

Go ahead, Shannon.

SENATOR WHELAN: Shannon, excuse me.

Mr. Chairman, I apologize. I'm going to have to leave. But I want those who testify today -- that when we get this bill into shape to pass constitutional muster, it certainly has my support.

Thank you, Mr. Chairman.

SENATOR SMITH: Thank you.

Ms. Caccavella.

And I think other members of your family may have signed up as well.

SHANNON CACCAVELLA: My daughter did.

SENATOR SMITH: Okay. Go ahead.

MS. CACCAVELLA: She is present with me.

SENATOR SMITH: Sure.

MS. CACCAVELLA: Thank you.

My name is Shannon Caccavella, and I live at 32 Mountain Road, Ledgewood. My home is directly behind the Fenimore Landfill.

I wasn't really aware of what was going on in the Township until about November of last year. During the Thanksgiving weekend of 2012, the smell of rotten egg odor took over my home, my family, and my life. We have completely been consumed by this, and I'm very troubled and saddened to be here today.

When Mr. Fredericks was up here speaking about the monitors-- I would like to let you know that I am one of the residents who has a monitor system in my backyard. I have an orange monitor system that was put there, not by anyone else, but Roxbury Township to help monitor the levels of hydrogen sulfide. What I would like you to know is that alarms go off -- not on occasion -- daily and weekly, of the high levels of over 130 parts per billion in my home, in my yard.

We cannot live our life. We wake up in the middle of the night. We cannot use our yard, we cannot swim in our pool, and we cannot wait at the bus stop. I brought my daughter up here today because I wanted you to know, my daughter to know, and my son Christopher who is

here, that I am standing up as a Roxbury resident, fighting for my life, fighting for my home and the use of my property. I live on a very busy road. I do not have sidewalks. The Roxbury Public Schools provide transportation to and from school in my driveway because the road is so busy. I would like you to know that this is the mask that my daughter has to wear almost every day waiting for the Roxbury school bus. Back in December she became sickened with headaches. We were unaware of the headaches; this whole Fenimore Landfill project was all new to us. We were just beginning to learn the awful consequences that this project will have and has had on our community.

Back in December I started taking her to doctors. I've seen pediatricians who thought she had colds, sinus, other things. We next ended up in the ER for migraine headaches. We were sent to ear, nose, and throat specialists. We were sent to pediatric neurologists. We were tested. She was poked, she was prodded, she was blood tested, she's had CAT scans, she's had MRIs with and without contrast. Every doctor could not find anything wrong with her but our environment.

Who do I reach out to? I reach out to the New Jersey Department of Health. I've spoken with them at great lengths about the side affects of the H₂S omissions and how my neurologist has instructed me to chart her headaches daily -- when they happen, on a scale of 1 to 10, what she is doing. What I realized, thanks to the monitors put in my yard, as the smell intensified, as the meters started to alarm us that it was rising, her headaches became worse. I have to leave my home, which is supposed to be a safe environment for me, my husband, and my children. Home is where the heart is, home is where I'm supposed to feel safe, and home is

where I dread to be almost every day of my life. Is this the picture that we want to send to New Jersey of how we have to wait for school buses at 9 years old?

I just would like to add that I've done all the right things. I've contacted State officials, I've contacted the DEP, I've contacted my Township, I've contacted Mount Sinai Hospital -- the pediatric environmental consultants. I have done it all. And nobody is willing to step up and help us. And now we are faced with the Bucco bill that could help get this done now. We have been in the courts in front of Judge Wilson. She has instructed the Trela report -- which you all have read and referred to. She has instructed that only after the New Jersey DEP provided a report on January 7 that Judge Wilson demanded that they do, saying that we need help and we need the mitigation and the necessary steps taken that SEP has not followed. But the courts have been prolonged, they've been adjourned, she's been sick, they've been postponed. And now she's retired, and yet we have no court date. So for all these months we have suffered, she has suffered.

Where do I go? I work hard, I pay my bills, and I pay my taxes yet I need to move out this summer because if something is not done today -- not in six months or to wait for another hearing -- I can't stay there because she gets so ill. I don't know what to do.

So I submitted a testimony today of a couple of pages of what we have been through -- everything that anybody who has stood up here has described. We cannot grill. We cannot use our property. I cannot use a brand new swimming pool that I put in. I cannot entertain. And I cannot stand and wait for my public school bus transportation with my children.

So I want to thank you for allowing me to be here to testify and to show my children and my community that I am fighting for my life. And I hope and pray that you and everyone else who has the power to do something now will do so, so that we can continue to live and enjoy our homes that we work so hard for.

Thank you.

SENATOR SMITH: Senator Greenstein, do you have a question?

SENATOR GREENSTEIN: Yes.

I just wanted to double check something you said and something I see in the memo here. Did the problem with the hydrogen sulfide and the health problems begin pretty suddenly around November of 2012? Is that accurate?

MS. CACCAVELLA: No, they did not. We noticed the rotten egg smell on Thanksgiving weekend. Her headaches did not occur until about one week before Christmas. But during the time -- the weather, the cold, the snow -- we chalked it up to colds. And we have followed every avenue. I have documentation.

And just to let you know, with her doctors I didn't see this magic of connecting the dots until the Township provided the meters and the results -- and the accurate-- So if I, a non-environmental consultant person, can connect the dots, I don't understand how Judge Wilson could not, or the DEP could not connect the dots to help us.

SENATOR GREENSTEIN: So it did start around November -- Thanksgiving of '12.

MS. CACCAVELLA: Absolutely, yes.

SENATOR GREENSTEIN: And before that there were no such problems?

MS. CACCAVELLA: Absolutely, not.

I moved to Roxbury in August of 2002. I have lived there comfortably. I have explored the wooded area in the back yard often with children. I'm a den leader, a scout leader. I have explored it. There has never been a smell, a problem, or anything until this project by SEP started.

SENATOR GREENSTEIN: And the project-- There is information that I think came from Mr. Fredericks that it might have been from wood and other materials that were brought to the track from Hurricane Sandy clean-up operations. That's the information we have. It's a recent thing.

My only thought, my only comment at this point to be looked at is, if it's that recent, I don't know why that material can't be carted out. It isn't 20 years worth of material. It's a few months worth of material it seems to me. Now, I may be wrong. But just because you didn't have the problem prior to that -- you suddenly had it in November of '12-- That just seems like a situation that shouldn't be as difficult to remediate.

MS. CACCAVELLA: But we are talking about 1.2 cubic-- I mean, this is a lot. And if you-- I know that there are other members of the community here -- Bill Morrocco and Anthony Fiore -- who are excellent researchers and have documents that could probably answer that question better for you.

SENATOR GREENSTEIN: I'll seek that information. I would like to know more about that -- whoever here could help with that.

Thank you. I'm very sorry about the problem. I hope we can help.

MS. CACCAVELLA: And I want to thank you.

I felt like Mr. Fredericks did say -- I'm sorry, I don't want to quote him -- but I think I've heard today from various people that this is not a health risk or it might not be. The reports that we all look at are from the OSHA reports. The reports are demonstrated on adults, not children. They are with equipment and for short periods of time. So at 3:00 in the morning, when my meter in my yard is reading over 130 parts per billion and I wake up vomiting, and my children are gagging, and my daughter is crying, I have to close windows. But you can't escape it. You can't open a window, you can't close a window, and you can't put on your air conditioning. So where do I live this summer? School gets out in about three weeks. I don't know where to go, and I don't have the means, financially, to move my family for the summer to get out of the smell. So when I request immediate help and ask you to really take this seriously, I really mean it.

Thank you.

SENATOR SMITH: Thank you, Ms. Caccavella.

Let me ask Anthony Fiore, Olivia Denis, and Ashley Wyble to come forward.

Did I miss somebody? Who is the young man?

DREW BUSA: Drew Busa.

SENATOR SMITH: Oh, okay. Drew, I did ask you to come forward.

Let me just ask the other person to just sit in that Chair next to Senator Bucco.

Whoever would like to start can start.

MR. BUSA: All right.

Hello, my name is Drew Busa. I am 14 years old and I am--

SENATOR SMITH: Let me ask, Mr. Busa, did you give us that stuff? You gave us a copy of it, right?

MR. BUSA: Yes.

SENATOR SMITH: Don't read testimony. Tell us what you want to tell us. We're all ears. We'll read the written testimony.

MR. BUSA: All right. So I've lived here since I was 2 years old. And the smell has never been a problem up until November of this year.

Now, I have a story of when I was coming back from a bus trip with the ski club in January. We passed Buddy's, and we thought someone had passed gas on the bus. That wasn't the case. It was the smell. Because after I came home with my dad, we passed the same site, and we smelled it again.

This shows that the smell is going all over the town. It's not just in this mile radius. It's all over. And the smell affects everything. Within my house I have to-- We had to go and buy fans because we can no longer open the windows to let fresh air in. My guinea pig has suffered because it's no longer available -- the fresh air. Last year my guinea pig went out all the time, and this year I don't think that's going to be the case. My dogs have gained weight because I can't walk them outside anymore with this smell. They sit in the front hall looking out the windows,

dreaming of when they can go outside again. But I don't know when that day is going to come.

Thank you.

SENATOR SMITH: Thank you, Mr. Busa.

Ashley Wyble.

A S H L E Y W Y B L E: Hi, I'm Ashley. I'm 13, and I've lived in Poet's Peak my whole life right by the Landfill.

Like he said, it's never really been a problem. We used to go outside and go on hikes over the trails by our houses. And since November of last year no one has really gone outside. You don't see anybody playing sports outside anymore.

But there are a couple of things. I started a dog-walking business this year, and I don't know if I will be able to keep doing it because of all the smell. The dogs shouldn't be outside in that bad smell and neither should I.

It's just so excruciating to stand outside. You get nauseous. I had to go to the doctors, like, 10 times. They thought it was a flu at first, but it wasn't. It turns out it was just because how bad the smell was. And I don't know what -- I'm not that smart so I don't really know about that stuff. But I used to get so-- Last year I fell down the stairs at school and (indiscernible) because it was so bad. I couldn't even-- It's hard to think that such a peaceful environment -- you can't really get out of your house anymore. You want to go outside and explore but now you can't.

And I don't know what else to say. Thank you.

SENATOR SMITH: Thank you, Ashley, for coming down today.

Olivia Denis.

O L I V I A D E N I S: Hi, my name is Olivia Denis, and I live in Roxbury, New Jersey.

I can no longer stand at my bus stop anymore because of the Fenimore Landfill. It smells horrendous. I stay in my house until my bus comes. I can't walk out at all. It smells really bad. As soon as I open the door I smell the rotten egg smell, and I feel like I'm going to throw up. And I don't want to go to school because it smells really bad. Everywhere I go I smell it.

When the bus comes to my house and brings me to my house from school, I smell it. All my friends and I cover our mouths and noses because it smells horrendous. We don't know what to do. It smells really bad. We smell it every day. It's sickening. We don't like it at all.

When the Fenimore Landfill started I smelled a lot of really weird things. I saw trucks going by my house every day, and my mom didn't want me going near the street because she thought it was dangerous. She didn't know what was happening. She didn't know why they were there or what they were doing.

My brother is 5 years old. And whenever we go out -- like whenever my mom brings me to dance or something she -- like my brother is always asking what that smell is. And I don't know what to tell him because he's only 5 years old. I don't know how he's going to understand it or how he's going to feel about it. I don't know what to tell him or what to say.

I don't like the Fenimore Landfill. I want it to stop. It's sickening. No one likes it. The smell is excruciating. I just don't know what to say about it.

Thank you.

SENATOR SMITH: Thank you, Olivia.

Mr. Fiore.

ANTHONY FIORE: Good afternoon, Senator Smith, Committee.

Thank you for allowing me to speak before you today.

Thank you, Senator Bucco, for introducing the legislation.

Most of my testimony that I have prepared has already been covered by people's previous to mine. So in the interest of time, what I did want to discuss is that as you can clearly see here, the system has failed us.

SENATOR SMITH: Yes, it has.

MR. FIORE: The DEP is -- although they approved the project, they asserted their authority, they have taken zero responsibility when it comes to the concerns of the residents of Roxbury Township. The calls to them, the calls to the State Department of Health--

As you've heard, there are no hydrogen sulfide standards in the State of New Jersey. And the hydrogen sulfide standards that do exist that are out there don't apply to this situation. So I think it's time for us to start taking a really good look at that because as you've seen, the landfill and brownfields solar market -- or the amount of projects that are coming down the pike seem to be numerous. And that seems to be the new wave of the future. So the Fenimore Landfill, in my opinion-- There are many landfills like this in the State of New Jersey. And do we want to-- Does the Committee want to be here with the next landfill and the landfill after that?

I urge the Committee to not only take action on the Fenimore Landfill, but in the interest of the citizens of the State of New Jersey.

I can also tell you outside of my testimony about the DEP-- I'm sorry, I have a lot of scribbled notes here. In terms of the construction and demolition material being received -- whether it was the Sandy event or not -- based on what I've seen-- As Mr. Fredericks stated, back in early March, I believe, construction and demolition debris were no longer received at the site. If it was known prior to March, why did they continue to receive that material? Wouldn't it behoove them as a good corporate citizen or a good neighbor of Roxbury Township to do so prior to March 8 when the smell first started? It's confounding to me. And I believe in either the closure plan or the ACO -- the section on odor control states that should an odor exist, the DEP should also be able to assert the authority that the type of material that's being accepted may need to change. And in this situation, it doesn't seem like that has been the case.

I implore you to take quick action, which it seems like is going to happen. I can't thank you all enough. It seems like we've really made a lot of progress here. We've been trying like heck to basically get our story out there so action can be taken by the people who have that authority. And it looks like that is going to happen.

Thank you.

SENATOR SMITH: Mr. Fiore, first off we do appreciate your comments. I think there are one or two things that have to be said.

One of the reasons we're not moving ahead with Senator Bucco's good attempt at trying to solve this is that the first thing that came across in the review is that it was vague. One of the great things about Mr.

Fredericks coming today is that in his cover letter, one of his biggest points is that the bill is void for vagueness, which is one of the principles that courts use when they evaluate the statutes. So what you're going to see on June 13 is a bill that is not vague, that's detailed -- says what's going to happen, how it's going to happen, how it's going to be paid for, etc., so that you don't have legislation that can be overturned. So I appreciate Senator Bucco starting the discussion. But the bill will also, hopefully, cover all landfills. Because this is not just the Fenimore Landfill problem. We have a DEP that is dysfunctional. If this is the result of what they're doing, they're absolutely dysfunctional. We need to have dramatic changes. So we're going to have a bill that will be comprehensive and detailed so that it is not attackable in a court as being void for vagueness.

We do appreciate your comments.

MR. FIORE: Thank you, sir.

SENATOR SMITH: Robert Peslak, Marios Poliviou, and William Morrocco, if you're present, we'd love to hear from you.

Whoever would like to start first just identify yourself for the record.

R O B E R T P E S L A K: My name is Robert Peslak. I live at 37 Emmans Road, Ledgewood. I've lived there for 21 years.

There is a little bit more going on here than just what Bernardi contributed to this Landfill.

My children and I have been drinking this water for 21 years. And in 2005, there was analytical data submitted to the DEP which included words like *moderately elevated*, *slightly above*, and *we believe*. This is not a scientific method to use these words. They're subjective.

I don't know if anything has affected the health of my children. But I will tell you, two weeks ago my wife had a complete hysterectomy with precancerous cells. Can I contribute it to that? I don't know. These things I will never know. We're only able to understand what the science we currently have allows us to understand. And we are by no means at the apex of that understanding.

I issued a letter to Judge Wilson in February appealing to her on behalf of myself and my family. I'd like to read it to you.

"Dear Judge Wilson. On December 12, 2011, a bill sponsored by Jim Whelan allowing solar fields to be installed on abandoned landfills was approved in a unanimous vote by the Senate 34 to zero. This law has directly or indirectly provided opportunists with a license to contaminate the air we breath and further violate the ecologically sensitive areas they claim to restore and protect.

"The physical manifestations of this accusation are fairly visible, and their impact will be long-lasting. The details are vast, and the repercussions will compound exponentially the longer projects like this are permitted to continue.

"I was in attendance at the last hearing regarding the issue with respect to the Fenimore Landfill. I listened intensively and could not help feeling patronized as I heard a list of unacceptable excuses given for the status of our government, it's agencies, and the individuals who represent them.

"Dr. Martin Luther King Jr. said, with conviction, 'It is hardly a moral act to encourage others patiently to accept the injustices which he, himself, does not endure.'

“I firmly believe the lack of control and sincere conviction has compromised the health and welfare of my family, our town, this nation, and God’s earth.

“Marcus Aurelius so eloquently stated, ‘It would be best never to have tasted deceit, hypocrisy, luxury, and pride.’ But the next best course would be despising these things -- to push away from the table. Is it not the corruption of your mind and soul that plague far more deadly than any pollution or contaminant in the air you breath? This plague attacks us only as animals, but that destroys our humanity.

“I have witnessed the frustration of the people in my community and see the psychological toll inflicted upon them. I appeal to you as one human being to another not to be the fuel which will further engulf our town in a government crisis of its own making while innocent people suffer. I have heard the truth in the silence of the courtroom. And it is quite apparent that the common folk is not devoid of intellect and deserves the happiness and protection promised them under our Constitution.”

I put this letter, along with another letter attached, to Senator Whelan, who-- Upon his exit I gave it to him -- that I sent with return register--

SENATOR SMITH: Mr. Peslak, one thing you need to know is that Mr. Whelan’s bill -- Senator Whelan’s bill--

MR. PESLAK: Yes, it is.

SENATOR SMITH: --dealt only with properly closed landfills. The problem with the Roxbury landfill is that it wasn’t closed. That was an

orphaned-- It was a landfill that did not have the correct closure. So his bill wouldn't have opened it up to--

MR. PESLAK: Yes, it did. This was opened under that premise.

SENATOR SMITH: Only after it properly closed. And the problem is that the person who owns it now is not properly closing it.

MR. PESLAK: Sir, can I finish reading the letter I wrote to Senator Whelan, please? May I?

SENATOR SMITH: Yes, please, go ahead.

MR. PESLAK: "Dear Senator Whelan. Enclosed is a letter that I composed to Judge Wilson regarding the content of this correspondence. I find that you are a conscious political supporter of renewable energy antithetical to the interest of my community and its environment. The bill you created -- and its ostensibly convincing argument -- has jeopardized my family directly. My responsibility to protect my family is not only fiduciary but is my purpose in life.

"I seriously question the motives in a dormant turned urgent status to close landfills. I believe, and it appears, that doing nothing, then reacting radically is the trend that has once again evoked a sense of helplessness and fear in the people of our nation.

"I anxiously await an explanation, not a defense, for the imputations that I have put before you. I find it unconscionable that lawmakers can explicate themselves behind the laws they created. And I also believe we will one day be held accountable for all our pretentious assertions.

“The truth, I believe, may or may not be evident from your perspective but nevertheless from my reality. I invite you on a hike in a little piece of paradise that once delineated nature from man’s interrogations so you too can see and smell firsthand the destruction this bill created.”

SENATOR SMITH: Thank you, Mr. Peslak.

Marios Poliviou.

Did I say that right, Mr. Poliviou?

MARIOS POLIVIOU: No one ever says that right. (laughter)

My name is Marios Poliviou. I live at 48 Lazarus Drive. I’m approximately 500 feet from the Landfill.

I think I’ve had approximately 50 calls to the DEP where the odor has been on my property, in my home. I have 12 to 14 verifications. So after that phone call was made, a DEP agent came out and, either with a meter or the sniff test, they said, “Yes, you’re right. It smells. It’s unbearable. We’re going to write it up.”

I have very similar testimony as everyone else. My kids are impacted, my family is impacted, my real estate value.

But I think this Committee has an opportunity -- and it seems that they’re going to take advantage of it -- to teach a very valuable life lesson that I think is the most important one, and that is accountability. A mistake was made and someone needs to be accountable for it. I believe that Senator Bucco’s bill wants to put that back in the hands of the Department that was accountable and let them right the wrong. And that’s what we’re here to implore you to do.

Thank you.

SENATOR SMITH: Thank you for your comments.

Mr. Morrocco.

WILLIAM A. MORROCCO: Good afternoon.

My name is Bill Morrocco. I have lived in the Poet's Peak development, which is located adjacent to the Landfill, for the past three-and-a-half years. I've also been visiting Roxbury family and friends for the past seven years.

I never had any issues until around November 2012, and that's when we started experiencing the rotten-egg odor. I'm a chemical engineer by trade. I immediately identified the odor as hydrogen sulfide. I have extensive experience designing hydrogen sulfide facilities, and I know how toxic the gas is. Hydrogen sulfide causes health effects in low concentrations such as you've heard today -- predominantly headaches, nausea, difficulty breathing for asthmatics. It's important to note it can also cause death.

I know we had discussed briefly-- I think there was a question from one of you folks on possibly some of the mitigation options. Someone said trucking the material out. And I just wanted to point out that according to my records, which have come from OPRA requests from the Township, approximately 360,000 cubic yards of material have been brought on site. This has covered 18 acres of the 56-acre site of Fenimore Landfill. And just to give you an idea of how much material that is, that would cover a football field piled high to about 70 feet. This is the result of approximately 50 to 100 dump trucks per day dumping material on that site for the past year. So it's not just the material that's been brought in since Hurricane Sandy or since November. This is material that has been

brought in from over a year ago. And if you're interested in how this process works, basically the C&D finds includes wallboard, and the wallboard contains sulfates. And as the sulfates are buried underground, in the absence of oxygen, bacteria starts to decompose the sulfates and generates hydrogen sulfide gas.

Now, according to a report on January 7 from the New Jersey DEP -- and this was mandated by Judge Wilson -- they have -- and I believe this was already mentioned by Mr. Fredericks -- measured concentrations in the community in excess of 25 parts per billion. But if you really look through the report, you will see that at the Landfill itself, they measured concentrations of 7,000 parts per billion, which is 7 parts per million.

Now, what does all this mean? Everyone who spoke is correct. There are no guidelines in the State of New Jersey for hydrogen sulfide. So what do we need to do? We need to default to the guidelines that we have at our disposal. And those are guidelines that are set by the U.S. EPA. The U.S. EPA has set an acute exposure limit of 30 parts per billion up to one half hour. That is an acute exposure, which means short-term. The U.S. EPA has also set a chronic exposure limit of 1 ppb. Chronic would be up to a lifetime of exposure. We are constantly exposed to this gas. If you look at the Township monitoring results, you will see that very rarely does it go to zero. And if it is at zero it's probably because the monitors have gone down. We have experienced levels in excess of 102 parts per billion, and these are well in excess of standards set by the EPA.

There are also other standards that have been set by the Agency of Toxic Substances and Disease Registry, and those range anywhere from 20 to 70 ppb. So these are the standards that we need to go by. We

cannot go by OSHA standards. I'm very familiar with OSHA standards, being a chemical engineer. OSHA standards are in a workplace. You have an employee who has volunteered to do the job. It is a healthy adult. And they have the appropriate respiratory protective equipment that they will wear all day to do the job, and that is assumed in those limits that are expressed by OSHA. OSHA limits do not pertain to children.

Lastly, I just want to make one comment about the Trela report. And although Dr. Trela's final assessment was that he didn't believe what we were being exposed to was a health risk, I just want to give you a very quick summary of how he came to those conclusions. And I think you will agree with me, if you read his report in detail -- Dr. Trela was not paid -- he spent no more than a weekend basically reviewing the information he had at his fingertips as of January 2013. And he did note the concentrations that we were being exposed to. He did note at the bottom of his report some of the standards that I have previously mentioned regarding the U.S. EPA. And I think he agrees that the levels are a threat to public health. However, he didn't feel that the exposure durations were long enough. And the only thing he had to go by, when you read his report, is that there were thousands of calls to the DEP, yet there were only about 100 or less than 100 verifications. And he felt that because of that information, his speculation was that the odors came and went so quick that the duration wasn't long enough.

What we have found since that is that the DEP was severely understaffed for this project. And what would happen is, residents would call -- they'd get flooded with calls. And most of the calls were not even answered. Some of the calls were answered. An agent would come to the

house with a monitor. It would be the next morning, it would be six hours later. So in light of that, we believe that the durations are long enough. We're the ones who are living through this. I can tell you personally that sometimes the odors last an entire weekend, and it's just awful.

So we're hoping that you can help us. We've done a lot of work. And until now no one has been able to move this in a positive direction.

Thank you very much.

SENATOR SMITH: One question for you: The guidelines that you mentioned from the EPA-- Has any state adopted those standards?

MR. MORROCCO: Yes, the state of California and the state of Maine are two that I know of.

SENATOR SMITH: All right. And if you find any other states, let us know, please.

MR. MORROCCO: Will do.

SENATOR SMITH: Okay. Thank you for your help.

Barbara Giaquinto, Sameer Jain, and Lawrence Cavallo.

BARBARA GIAQUINTO: Hi, I'm Barbara Giaquinto. I live on Mountain Road.

I don't want to talk too much about the smell. I think you have the idea. Yes, it does last for a whole weekend sometimes.

I've had headaches, nausea. My husband gets headaches and shortness of breath.

What I would like to speak to is, to just give you a little bit of my story through the whole process concerning the DEP.

This was a regulated area. It was supposed to be regulated by the DEP so that Mr. Bernardi had to actually send us letters saying that he needed to have hardship clauses so he could cut down all the trees. There are certain other people who have realized that he didn't have to cut down all those trees, yet the DEP let him cut all the trees down, larger than the sum that he needed to actually cap the Landfill.

I wanted to also address Mr. Fredericks -- when he said -- about how SEP addressed the smell. The DEP had asked SEP to cover the Landfill with dirt every day so that it wouldn't smell. But there was an argument in court in April where, because of the slopes of the Landfill, they couldn't cover it with dirt because it kept falling off. My request would be-- Why can't the DEP go in there, since they have the authority, and just push all the stuff down and cover it all up with dirt? Any reason? So that's a suggestion.

The other thing I wanted to say was to just bring attention to the character of Mr. Bernardi, which I think you already know. I am the one who gave you the letter. This letter, I believe, is a good letter showing that he is -- in my testimony, as I wrote-- I didn't think I'd be this nervous when I got up here. He wrote-- I believe that he is a con artist in the highest degree because if you read the bottom of the letter and where it turns the page, it says he has set up a website -- and he has the website there -- which he will update frequently to keep us informed every step of the way. He never updated the website. In fact, if you try to find that website now -- you go to our website, fenimorelandfill.com -- you can't even find it any longer. He said that he thinks our property values are going to

go up with this. I believe this was a cover up. This was the same day as our first Planning Board meeting. And he was covering his--

Just in closing, I want to say thank you so much for really listening to us.

And I also want to thank the community members of Roxbury, because you guys are great talkers. And I really appreciate your expertise on things.

From the beginning of this I had bad feelings about it because this was supposed to be a wonderful thing. "We're closing the Landfill. It's so good for our environment." At the DEP meeting it was like a cat with its tail between its legs or a dog. There was nothing said about that. I even asked the question: What's the good of this? What good is going to come out of this? And someone said, "Well, methane gas will be released." That was the good they said. If this really was to cap a landfill and to make it a beautiful solar energy place, why didn't the people just say that then? That's why I thought it was a lie from the beginning.

So I don't have too much confidence in the DEP. But if they're willing to be able to close the dump, clean it up -- not just close it, it has to be cleaned up -- then I would ask you then to please, if you could, put the bill forward and vote on it. That would be great.

Thank you.

SENATOR SMITH: Thank you, Ms. Giaquinto.

Sameer Jain.

S A M E E R J A I N: Hi, I'm Sameer Jain. I am a 16-year-old high school sophomore at an engineering school specifically designed for the gifted in Morris County.

I go to school at 6:00 a.m. every morning, earlier than most public school students, because I am trying to get an expert education. I'm trying to get the best education that I can possibly get. However, I do witness the scents of this Landfill every morning along with my classmates who board the bus with me.

In addition, when I come back from school -- specifically in the wintertime when I was doing fencing, I came back from school at 6:00 p.m. every night or later, depending on the days we had meets. And I still smelled the smell.

As you can read in my testimony -- my written testimony -- I talk about an allergy attack. I don't want to waste your time with those details because I think you have sufficient evidence to suggest that there are health hazards because of the hydrogen sulfide that is being emitted by this Landfill.

Instead, I want to talk to you about the discussion I had with Congressman Frelinghuysen on Tuesday. Congressman Frelinghuysen came to my school to talk about the environment in general, and we talked about energy production. The Congressman had very strong remarks upon this topic where he did discuss that he was a member of the original group of people who capped this Landfill. And he did want me to point out that they spent an extensive amount of money -- an amount that I do not know because I don't have access to that knowledge, but I'm sure you can find out -- which says that the State of New Jersey, as well as Roxbury Township, spent an incredible amount of money to make sure that the safety of this community was put at the highest regard. We pride ourselves on the fact that we're one of the 100 best communities, because Roxbury,

to this point, has made sure that the safety of Poet's Peak and the rest of the residents is more important than whatever financial gains are necessary by the SEP corporation.

SEP came to Roxbury saying, "We're going to build a solar farm." And what we saw as an economist, if you looked at it, was a huge economic gain. A solar farm is great for energy production. Roxbury Township, Poet's Peak, is a very good site for that. However, the fact that we're reopening a landfill in order to do that has no justification considering the fact that we're not just paying more costs financially, we're also completely eliminating all the costs that Congressman Frelinghuysen and the group of people decades ago -- worked to make sure that Poet's Peak could develop a few years later.

In addition, just in simple microeconomics there is this concept of spillover costs, which SEP clearly shows is very evident. We're not just paying costs out of our pockets. My parents aren't just paying taxes for a reason-- These costs are now coming as health hazards, which are clearly evident by my community which is behind me right now asking you to take the knowledgeable steps.

So as a student right now, what I'm saying is-- I'm not going to bore you with the fact that there are health hazards. You understand that. What I want to say is, when you're creating this piece of legislation -- which I do feel you guys are supportive of -- I want to make sure that we understand that the department of energy (*sic*), and the State, and whatever government becomes responsible for looking over this corporation and making sure they do the right steps to make the health and safety of Roxbury the number one priority -- the health and safety of this state's

citizens -- whatever steps it takes are knowledgeable, with the correct amount of knowledge acquired about hydrogen sulfide. It seems that we don't have enough knowledge about it already. The states of California and Maine obviously did do research because it was important to them. And I think this situation shows that hydrogen sulfide emissions are extremely important to the Roxbury community and the State of New Jersey, and that our government funds should be allocated so that certifiable evidence can be proven.

Thank you for your time.

SENATOR SMITH: Thank you, Mr. Jain.

Mr. Cavallo.

LAWRENCE P. CAVALLLO: Good afternoon.

Thank you for allowing me to have this time with you.

I want to review a few things before I get started on my very short talk. To date, 18 acres has been filled with a total of 330 (*sic*) cubic yards of fill. If the Senate doesn't act, and this thing continues to be tied up in the court, what remains is an additional 42 acres, and another 755,000 cubic yards of fill that will go into that site.

There are 100 people here today. With considerably more fill going into that area, the next time you have a meeting, there might be 500 people back here, because it's just going to get worse. It's not going to get any better.

Another point I'd like to make is, several people have brought up OSHA standards for hydrogen sulfide. In every case, OSHA standards -- when they apply to the workplace. What happens after people leave the workplace is, they go home to fresh air -- to clean, fresh air. We don't have

that option. Those of us who live around the Landfill don't have that option. We come home to it. So we spend 16 hours a day exposed to it, not just the standard 8 hours a day.

Now, for my personal story. My family and I moved to New Jersey in 2007. We bought a house on Mountain Road right next to the Landfill in 2008. It's a beautiful home. I love the location, I love the town, I love the people I live with. It's a wonderful place to live.

What we did when we purchased our house was-- Having lost faith in the stock market, having lost a ton of money in 2000 and a lot more, more recent to that, we decided to invest in a home because real estate values-- During the move I did some research on home prices in New Jersey. The real estate values in New Jersey were bound to rebound, and we would recoup not only our initial investment, but hopefully make enough to help us retire.

Well, last October we had our house reappraised, and I lost almost 50 percent of the value of the home. So the DEPs reopening that Landfill has now condemned my wife and I to a life where we can no longer retire. That's it. It's over.

And the real disheartening fact here is that when I do pass and my wife passes, our debt is going to be incurred by my children. I can never afford to pay this house off. I can't sell it. I can't do anything with it. We're stuck.

Now, you heard a lot of people talking about the health affects of owning a home in the Ledgewood area of Roxbury. But very few have told you the emotional story about being condemned to a life of work and debt beyond our lives. That's what we're faced with. There is no

alternative. By the way, we don't have access to public water. My well is less than 100 feet from the Fenimore Landfill.

Thank you very much for your time.

SENATOR SMITH: Thank you, Mr. Cavallo.

Shelley Connell, from Roxbury, no need to testify.

David Peifer, Association of New Jersey Environmental Commissions; and Hanna Schultz.

Ms. Schultz, you were the first to the microphone, so you get first--

HANNA SCHULTZ: Hello. I'm Hanna Schultz.

I used to live right next to the Landfill, but we recently moved. We used to play all the time. We had trails going back very far to the -- right next to the Landfill. And we used to play all the time on it, go back and forth -- run back and forth. And we never smelled a thing.

When we were trying to sell our house, we almost had a buyer -- an offer. And they realized there was a Landfill back there, and they dropped the offer. So we had to wait about another year, and then we finally sold the house. And now we live right next to the high school. And we recently -- we smell it. Even though we are across the town, we smell the Landfill. And it's horrible. I have asthma. Whenever we go onto the mountain -- because I have friends up there, and I still see them -- it's horrible. I can barely breath. Sometimes I don't even smell it because I'm so immune to it. It's horrible, and I really just want it gone so we can just go back to normal life.

Thank you.

SENATOR SMITH: Thank you, Hanna.

David Peifer, from the Association of New Jersey Environmental Commissions.

D A V I D P E I F E R: Thank you, Mr. Chairman, members of the Committee.

My name is David Peifer. I am the Highlands Project Director for the Association of New Jersey Environmental Commissions.

I may be one of the few people in this room who actually saw that Landfill when it was operating in 1979. At that time there was abundant water pollution discharging into a public park. The Landfill was uncovered. There was waste visible at the surface all over the Landfill. Since that time, a fair amount of natural vegetation had taken place.

What I want to suggest to you today is that we have a real tragedy of errors that have accumulated over time. None of these people in this room should even have to be here. These people should be able to depend on their government to secure the minimum requirements of health, safety, and welfare.

One of the things that's been amazing to me is that this Landfill was allowed to sit since 1979. The Landfill Closure Act-- The DEP then subsequently evaluated the site as a Level C site, which was not exactly mother's milk, but yet it sat.

The project before you today is driven by the opportunity provided by solar siting on landfills. And I would suggest to you that the DEP's issuance of the administrative consent order was improper, was inaccurate, and was done without the knowledge of the residents or the local government.

What you're looking at is a series of errors. Another one is the Highlands Council's delineation of the site as a redevelopment area subject to a completed cleanup, in which they dodged a bullet of the clean up with the notion that in the Highlands Act, the cleanup of these facilities is exempt. And they have no jurisdiction. I would suggest to you that the Highlands Act -- particularly for projects in the preservation area -- needs to have some level of control over the DEP's behavior in these areas. This is a serious deficiency that we see here, and we will see it elsewhere in the Highlands.

Another thing to keep in mind here is the fact that once you start one of these things, they're very difficult to control. This was a difficult site. It was always a difficult site. It's in a narrow valley. There is water underneath it, there is bad air circulation, there is permeable soil. In the case of Combe Fill South -- which I was involved with for 18 years -- a superfund site in Chester and Washington townships -- the cleanup costs have exceeded \$35 million. That's a superfund site. To date, what we have discovered is that new contamination is constantly being found, even though the site is capped. The people around it are now being provided with a water system.

But the fact of the matter remains that this thing is a tragedy of errors. And legislation that you may propose needs to go beyond the Fenimore site. It needs to include the systemic problems that we have on our hands, some of which are legislative, some of which are regulatory, but some of which -- in this case in particular -- are managerial problems within the agency that is supposed to be protecting our environment.

I hope that you will produce a good bill. And we look forward to supporting it.

Thank you.

SENATOR SMITH: Thank you, Mr. Peifer.

That concludes the witnesses who signed up today. The testimony that you gave will help us craft a bill. And I think we'll deal with not only Roxbury and this Landfill, but all the landfills in the State of New Jersey similarly situated.

I have to say, after listening to everyone today, I think our DEP let us down terribly with regard to the allowance of the reopening this Landfill. I think the complaints listed today show a town and citizens who are being subjected to concentrations of hydrogen sulfide that are absolutely unacceptable from every possible point of view, whether it's quality of life or even health issues. I think we need a standard for hydrogen sulfide. And we also need a source of funding. We need the State to step up to the plate and do what it should do, and make this thing get resolved in the right way.

So June 13 we are going to, hopefully, have a bill that will deal with the details and specifics of how we get to the finish line and how we can not only solve Roxbury's problem, but other problems around the state that have been, I think, brought to the front burner today.

I want to thank Senator Bucco for bringing this issue to the attention of the Legislature.

Senator Bucco, did you want to add a word or two?

SENATOR BUCCO: Yes, Mr. Chairman.

Thank you, again, for having this hearing.

As you've heard from numerous people coming up here this whole morning and part of the afternoon here -- from the administration, from the citizens, from some of the school children who came up and told us what the problems are -- I look forward to seeing this bill move as quickly as possible.

SENATOR SMITH: Not this bill. Senator, the problem -- and I said this before as Senator Bateman attempted to push the bill out -- the bill is unconstitutional. It's void for vagueness. It doesn't have details. It doesn't say how you're going to pay for the cleanup. The bill will give the people of Roxbury an expectation that their problems are actually going to be legitimately solved, and they won't be. So that bill is not going to move. But a real bill that deals with the problem will move on June 13.

SENATOR BUCCO: Well, I would like to be the sponsor of that real bill, since it's my initiative to start this whole process going forward. And I'd be happy to work with you and the Committee to get a bill that OLS feels is constitutional. I'm surprised, with OLS' report, that it may not be constitutional since my request with OLS to draft the bill to address this problem-- They drafted it. I did not draft it. They should have made me aware, at that time, if it were not constitutional so that we could have made it constitutional, and maybe we could have passed the bill out of Committee today then.

SENATOR SMITH: By the way, one of the best things that happened was Mr. Fredericks came to the meeting. When you look at his letter -- his cover letter -- one of the first things he says is that the bill is unconstitutional. It's void for vagueness. That confirmed the other opinions which I've been receiving. But the real problem with the bill is it

just says the DEP will take it over. It doesn't say how you're going to fund it. This is not a free lunch. You have to find a pot of money that's going to clean it up. You need a hydrogen sulfide standard so the people in this area are protected.

The bill was a good attempt to bring the issue to the front burner of the Legislature, and I applaud you for that. But the bill would not solve the problem, and these people are not here because they want us to pass something so it just has a name on it -- "Close the Roxbury Landfill." They want something that is going to solve the problem. And that's what we're going to do. We appreciate your input on that bill. You'll have the opportunity to be a co-sponsor on the bill. We'd love to see--

SENATOR BUCCO: I'd like to be the sponsor of the bill since it's my initiative to begin with. And I'd be pleased to have you as co-sponsor.

SENATOR SMITH: Well, we'll give you the opportunity to participate.

I just wish that we hadn't had this grandstanding effort today to push a bill that doesn't have the details.

SENATOR BATEMAN: It's not grandstanding, Mr. Chairman. We move bills out of this Committee -- all due respect -- every Committee meeting that are not always perfect. And the process seems to work. Whether it's a Committee substitute of what comes out today or another bill on June 13-- We have passed bills out of your Committee, as long as I've been on this Committee, that have not been perfect. And the process has improved it. It's important that we act for these people. Whether it's your legislation that you want to introduce next week, or whether it's

Senator Bucco's, we have a responsibility as legislators, because these people-- There is a lot of blame to point around here, and these people -- what they've been through -- is hell, and it's not fair. It's not grandstanding. It's trying to act.

SENATOR SMITH: The biggest blame is the DEP for ever allowing this Landfill to reopen.

SENATOR BATEMAN: Let's act. Let's move forward.

SENATOR SMITH: The problem has to be solved.

SENATOR BUCCO: There have been bills that have been before many committees -- different committees in this Legislature that have been amended within committee to make them a perfect bill.

SENATOR BATEMAN: It happens every month.

SENATOR SMITH: I appreciate the comments.

Anything else?

SENATOR BATEMAN: I have nothing else.

SENATOR SMITH: The meeting is adjourned.

Thank you to the residents of Roxbury for coming down today.

(applause)

(HEARING CONCLUDED)