
Joint Committee Meeting

of

ASSEMBLY JUDICIARY COMMITTEE AND ASSEMBLY ENVIRONMENT AND SOLID WASTE COMMITTEE

"Testimony from invited individuals, including representatives of the New Jersey Department of Environmental Protection, concerning the use and disposal of contaminated concrete materials at redevelopment sites in Mercer, Middlesex and Ocean counties from the Ford Motor Company site in Edison Township, Middlesex County"

LOCATION: Committee Room 15
State House Annex
Trenton, New Jersey

DATE: June 1, 2006
12:00 p.m.

MEMBERS OF COMMITTEES PRESENT:

Assemblywoman Linda R. Greenstein, Co-Chair
Assemblyman John F. McKeon, Co-Chair
Assemblyman Reed Gusciora, Co-Vice Chair
Assemblyman Robert M. Gordon, Co-Vice Chair
Assemblywoman Nellie Pou
Assemblyman Bill Baroni
Assemblyman Christopher J. Connors
Assemblyman Charles T. Epps Jr.
Assemblyman Louis M. Manzo
Assemblyman Larry Chatzidakis



ALSO PRESENT:

Rafaela Garcia
Carrie Ann Calvo-Hahn
*Office of Legislative Services
Committee Aides*

Kate McDonnell
Assembly Majority
Committee Aide

Mary C. Beaumont
Thea A. Sheridan
*Assembly Republican
Committee Aides*

***Meeting Recorded and Transcribed by
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ASSEMBLYWOMAN LINDA R. GREENSTEIN (Co-Chair): It's safe to say good afternoon, by five minutes or so. So good afternoon to everybody.

This is a Joint Committee meeting of the Judiciary Committee -- of the Assembly -- and the Environment Committee. And both Assemblyman McKeon and I have extremely brief opening statements, just to lay the groundwork of the purpose of this. From my perspective, the purpose of this is to look into what may be needed in the way of legislative reform of the New Jersey Department of Environmental Protection, and also of the processes that they oversee in terms of Site Remediation programs. And I think we'll hear about other kinds of procedural changes that might be necessary.

I want to read two or three short quotes from Commissioner Jackson. One of them she made in April of '06, after the recent situation of PCBs being found in concrete aggregate fill from the closing down of the Ford Motor Company. This is a quote: "We need to go back to having the authority to demand a more rigorous cleanup. We need to assure ourselves, and more importantly the public, that in our rush to redevelop we're not too quick to leave materials in place."

It appears that in the 1990s -- this is not a quote anymore -- DEP lost some of its power to make owners of property and developers remove polluted soil. And laws that were meant to streamline decision making and to promote redevelopment, which certainly had excellent intentions, may have had some unintended consequences, as shown by some of the recent situations with the PCBs and the W.R. Grace plant in Hamilton. And that's one reason why I have a particular interest. Some of

these situations took place in Hamilton, which is a major part of the 14th Legislative District, and it's something that we have a real interest in.

So I'm looking forward to hearing the testimony of the various players and to seeing what might be done in the future to see that these things don't happen again.

Thank you.

ASSEMBLYMAN JOHN F. McKEON (Co-Chair):
Chairwoman, thank you very much. Thank you, Chairwoman.

First and foremost, I'd just like to acknowledge the presence of Assemblyman Chatzidakis, Assemblyman Manzo, and Vice-Chairman Gordon. I know other members of my Committee, with the busy day that we have, are on their way and will be here.

I appreciate, Chairperson, your leadership on this issue. All of us have grave concern with respect to where the ball was dropped; but this isn't going to be about pointing fingers, as much as it's going to be about learning about the mistakes of the past so they're not recreated in the future. So in the similar way that we were able to look at the Grace situation in Hamilton, and from that, from this Committee, sprung legislative initiatives to prevent that type of circumstance in the future. We too look forward to getting information and, coming from this, ways to improve for the entire state.

Madam Chairperson, thank you.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

The first witness that we'll call will be Assistant Commissioner Irene Kropp, and anybody else who is with her from the DEP.

Good afternoon. It's good to see you.

I know that with you -- why don't you identify yourself, sir, as well?

Make sure it shows red when you speak. (referring to PA microphone)

ASSISTANT COMMISSIONER IRENE KROPP:
Can you hear me?

ASSEMBLYWOMAN GREENSTEIN: Yes.

ASSISTANT COMMISSIONER KROPP: Okay, great.

ASSEMBLYWOMAN GREENSTEIN: As long as it shows red, you're good. (referring to PA microphone)

ASSISTANT COMMISSIONER KROPP: Sure.

Good afternoon. And thank you, Chairman McKeon and Chairwoman Greenstein, for the opportunity to provide testimony today regarding the use of contaminated concrete materials at redevelopment sites in several counties in New Jersey.

Please allow me to introduce myself. I'm the recent Assistant Commissioner to the Site Remediation and Waste Management Program, Irene Kropp. And with me today I have Frank Coolick, who is the Administrator of the Solid and Hazardous Waste Management Program; and Tom Cozzi, who is the Director of the Division of Remediation Management and Response.

Before proceeding with the specifics on the use of recycled concrete aggregate -- or RCA, as it is referred to in the regulated community -- I would like to provide you with a brief background on RCA and the Department's oversight of this material. The Department regulates the processing of RCA through the approval of Class B recycling facilities.

These facilities receive and process Class B recyclable materials such as concrete. The Department does not regulate the use of RCA after it is processed at an authorized facility, as it is then considered a product and not a waste. Between 1995 and 2004, an average of 3.9 million tons, as asphalt, concrete, and other inert building materials such as block and brick, were reported as recycled in New Jersey annually.

For Calendar Year 2004 alone, the total amount of RCA reported was 4.6 million tons. Over 90 percent of this total was reported as recycled at DEP-approved, Class B recycling centers. Not all material is processed at permitted facilities, which I will discuss shortly. Sources of recycled concrete are primarily through the demolition of residential structures; the demolition of commercial and industrial structures; utility construction or repair; the repair and placement of concrete walks, retaining walls, and roadways. As such, about 10 percent of the RCA produced comes from DOT, the Department of Transportation.

There are environmental and economical benefits of recycling concrete, according to the U.S. EPA in a 2004 model for calculating the environmental benefits, especially energy savings and greenhouse gas omission savings. The recycling of approximately 4.6 million tons of concrete resulted in the reduction of 42,000 metric tons of carbon equivalent and a net energy saving of recycling of 2.1 million BTUs, equivalent to removing 30,000 cars from use, for the year 2004. Additionally, the recycling of concrete aggregate saves significant amount of landfill capacity.

During the process of demolition, contractors can separate all the different materials that can be separated on-site, and dispose of or

recycle it accordingly. Those materials include concrete, wood, metal, brick, block, asphalt, and dirt. Depending upon the volume of material, the contractor may bring in a crushing machine on-site, or transport the separated materials to Department-regulated, Class B recycling centers for further processing. RCA from regulated facilities may be delivered to New Jersey and markets directly as a product in commerce.

It is important to note that regulated recycling facilities are currently not required to sample incoming or outgoing material. Currently, there are over 70 facilities approved to process concrete in the state. Class B facilities receiving and processing Class B recyclable materials, such as concrete, operate on a permanent basis; must be included in the district's solid waste management plan, specifically for the types of materials they process; they must undergo Department review prior to approval, and receive frequent inspections by the Department's compliance and enforcement program.

By rule, any demolition material processed at an approved Class B recycling center is considered clean fill. Unless the material is going off-site for disposal in a landfill, or to a permitted Class B facility, the contractor, or the owner of a property where the demolition occurs, would need to obtain a form of recycling authorization from the Department for the processing of demolition materials into end products. These authorizations may be in two forms: a limited Class B approval or an exemption from the full Class B approval process.

The limited Class B recycling approvals allow a contractor to process the material for a finite amount of time. This approval does not require county plan approval, and the application requirements are

somewhat reduced. Currently, there are only four sites with limited approvals in New Jersey.

There are also three different types of exemptions that can be obtained. In 2005, 45 notifications of exemption activities were filed with the Department. The vast majority of the exempt recycling activity reports received thus far are from municipalities, which only engage in the temporary storage of materials prior to transport to a Class B recycling center. Our recycling exemptions, when originally created, were in response to needs identified by utility contractors and municipalities, not larger demolition of industrial properties.

The materials going to a Class B facility or covered by either the limited approval or exemption is considered a source-separated recyclable and is not considered a waste. If the material is contaminated above residential standards, then the material is considered a waste, and should be handled accordingly.

The Department can approve the use of RCA above residential standards through its beneficial use determination program, or called a *BUD*, which is defined in the solid waste regulations. The BUD approval process is not necessary for clean material. It is important to note that the Department does not regulate the demolition of buildings, so the Department is not aware of when buildings are routinely being demolished or when demolition waste is leaving a construction site. In redevelopment and/or remediation cases, where the Department may have some involvement, the demolition of the buildings or structures on-site may precede the remediation of the site.

Such was the case in the Ford Motor Company. So let me briefly discuss that case, as well as the situation in Trenton, where RCA was used during construction at the Martin Luther King site -- school. Ford approached the Department for approvals to reuse some of their demolition waste, on-site, as part of an ongoing cleanup of the Ford Plant in Edison. Under current regulation, if the samples Ford collected contained less than 0.49 parts per million for PCBs, which is the soil residential standard for PCBs, those materials from the building demolition could be reused on-site without any restrictions or further oversight from the Site Remediation Program.

Before the buildings were demolished, Ford took 23 samples, and all of the samples but one was below residential standards for PCBs. The area above residential standards was removed and disposed of in accordance with Department regulations. Ford proceeded with the demolition of its buildings on-site and separated them into 100-cubic-yard piles. And there were approximately 849 piles. After demolition, all piles were sampled again and identified in three separate categories, based on the results of the PCB findings. Any pile with greater than two-part per million PCBs -- that's the unrestricted standard -- was to be disposed of off-site. If a pile had PCB concentrations between 0.49 part per million and less than two part per million, the nonresidential standard, the material could be potentially reused at a commercial or industrial site. This would require a beneficial use determination, or a BUD, from the Department before the materials left the site. Piles with samples resulting in less than 0.49 parts per million of PCBs -- again the residential soil standard -- could have been used on- or off-site without any type of restriction.

Because of concerns raised by the developer in this case, Ford and the DEP agreed to only allow materials with nondetect samples for PCBs to be used on-site. Currently, the Department is continuing its investigation of the Ford Motor Company; Edgewood Properties, which was a developer, and its contractors. So I cannot go into any further details about the case.

The Department is still working closely with Ford, however, on the cleanup plans for the Ford site in Edison, as well as the 10 sites where RCA material was deposited. Local and county officials are being kept apprised of the status of the site cleanups, which are currently underway. Additionally, the Department has participated in five public hearings, and Ford has worked with the Edison Health Department to alleviate the concerns of residents in close proximity to the Edison site, and has conducted additional sampling at adjacent sites. All samples from the residential properties and the adjacent playground were nondetect for PCBs.

I'll also discuss a similar situation that occurred in Trenton. The New Jersey Schools Construction Corp., SCC, funded construction of a new school on the Trenton Board of Education's property, at 401 Brunswick Avenue, in Trenton. The construction area is situated between two existing schools. In June 2004, at the request of SCC, the New Jersey Department of Environmental Protection, with its representatives, visited the site to address a proposed pesticide remediation. However, subsequent sampling and analysis indicated there was no contamination of the pesticides. In February of 2004, SCC awarded the contract for construction of the new school. Subsequently, the contractor received information that

the soil at the site was structurally unsuitable for the planned building foundation.

The soil at the site had to be excavated and suitable material returned to the site prior to construction of the building. The excavation began in August 2004 and continued through late December 2004. The contract called for the importation of virgin material. At some time during the construction, the fill material imported to the site was replaced or augmented with RCA, recycled concrete aggregate. The RCA originated from an out-of-state facility.

In April 2005, site investigation of RCA began, and the DEP became aware of the presence of contamination at that time. The SCC issued a stop work order to their contractor, and all construction activities were halted in May 2005 for issues related to the importation of RCA.

In September 2005, the DEP issued a directive to the SCC mandating measures be implemented to secure the site, prevent fugitive dust migration, and implement a remedial investigation.

In October 2005, a supplemental directive was issued. The second directive mandated that SCC initiate plans for the removal of the RCA from all locations on the site and to study alternatives to remediate the RCA beneath the partially constructed building. An extensive investigation of the location and depth of the RCA on this site has been completed. As a result of the investigation, a removal plan has been developed for the demolition of the partially constructed building and the excavation of the RCA material. And that removal plan is on priority review at this time.

So based on these situations, the Department has identified some program weaknesses and changes that need to be made. The Department is currently developing education and outreach materials that will be distributed to Class B recyclers, as well as be posted on the Department's Web page, to inform all parties involved in the generation and use of RCA of the Department's sampling and use criteria for these recycled materials. The Department is also developing guidance requiring the sample (*sic*) and analysis of concrete, and concrete processing fines at all New Jersey demolition and construction sites that have DEP oversight.

The Department has reached out to the concrete recycling industry, as in considering conducting a joint study on the issues of demolition concrete in RCA. In order to strengthen our solid waste and recycling rules, as part of our 2007 readoption, the Department will propose to tighten the availability of limited approvals and exemption, and to impose requirements to improve the oversight as to where and how the material is used.

We are actively reviewing other states' oversight and regulations of this material to determine if their approaches are different than ours, and if so, should the Department consider regulatory or legislative changes consistent with other state efforts. From an enforcement perspective, the Department will issue enforcement and compliance advisories, clarifying the regulatory requirements for the processing and use of RCA. The Department has historically conducted unannounced compliance inspections at Class B recycling facilities. As a result of this and other events, the Department has applied closer scrutiny of materials received at these sites. The Department uses an enforcement blotter, which

is a Web site, and is expanding its use to include inspections, to better inform local governments what and where we have conducted inspections in the last 14 days.

The Site Remediation and Waste Management program is also working on a public participation rule, which will be proposed this Summer, to increase community and local government awareness of ongoing remediation at contaminated sites.

I want to thank you again for the opportunity to provide testimony at the joint hearing, and we are available to answer any questions that you may have.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

I do want to announce that, in terms of the Judiciary Committee, we have Assemblywoman Pou, Assemblyman Gusciora, and Assemblyman Baroni, and Assemblyman Connors here today as well.

ASSEMBLYMAN McKEON: Without -- to interrupt you, Assemblyman Epps has walked in during the testimony, and we appreciate his participation.

ASSEMBLYWOMAN GREENSTEIN: Yes.

Thank you all very much for being here.

I think we agreed I'm going to ask a couple of questions, then I'm sure Assemblyman McKeon will have some as well.

You did an excellent job, and we really appreciate your testimony of laying out what happened here as best you can, given the litigation right now. But how would you describe where the breakdown in either communications or regulation -- and when I say breakdown in regulation, I mean need for new regulations or regulations that weren't

followed -- where did that take place in this process that led to what happened at the Ford plant? How do you analyze the situation in terms of where the problem areas were?

ASSISTANT COMMISSIONER KROPP: Is this on?
(referring to PA microphone)

I guess one part, I would have to say, is I believe that the regulations are not as clear as they need to be. And that's one of the reasons that when we do reproposal we'll make them clearer. But also, also limit where the use of this limited approval or exemption process can be used. I think there were some problems in that area.

ASSEMBLYWOMAN GREENSTEIN: Before you go further, can you -- I know you did explain this, but could you just briefly re-explain the exemption process and the limited approval, and how that happened here? What that was, exactly?

ASSISTANT COMMISSIONER KROPP: Okay. For a limited approval -- so there's Class B recycling facilities that are fully permitted. And then you can get a limited approval, which allows a contractor to process the material for a finite amount of time. Like, if it's a six-months project where they're demoing a building and they have to process it on-site -- so that was the limited approvals. Then there are three exemptions. The first exemption applies to cases where materials are processed and used on-site where the demolition occurs. The second exemption is applicable to when the contractor can process the materials on-site, and then use them at other construction sites that the same contractor is working on -- and that was the situation in the Ford site.

ASSEMBLYWOMAN GREENSTEIN: And how do you think that the regulations need to be tightened up? Where do you think they're unclear?

ASSISTANT COMMISSIONER KROPP: I think that we would want to in two areas. We would want to make it more clear with regards to when a beneficial use determination is required. You have to come into the Department to get that. What happens when contamination is in between the residential and nonrestrictive standard -- make it clear when that material can be used and how. And then, also, maybe tighten these exemptions up more.

I think that one of the things that we would be looking to do is, if the recycled concrete aggregate exceeds the residential standard, maybe restrict the fact that that material could only be used under roadways, under buildings, and under parking lots.

ASSEMBLYWOMAN GREENSTEIN: What exists right now, in terms of that? Do we have any differences between what can be done under a day-care center or under housing, as opposed to an industrial facility?

I think you have to keep pressing it each time. (referring to PA microphone) That's what I do.

ASSEMBLYWOMAN GREENSTEIN: I noticed. Sorry.

F R A N K W. C O O L I C K: Actually, just to clarify, when material comes from what I'll call an *authorized facility* -- an authorized facility being either a Class B, a limited approval, or somebody that has an exemption -- the presumption is the material is not contaminated at all. And so the oversight of the use in that material doesn't exist at all right now. In other

words, when they process the material, the presumption is that, one, it wasn't contaminated to begin with, and it can be used as clean fill.

When we initially adopted these rules, the intent was, for the most part, deal with-- Especially utility contractors came to the Department and said, "We're tearing a road up. We've got to put a sewer line in. We've got to put an electrical line in. We're tearing up a sidewalk" -- generally small jobs -- "what's the harm in putting that material back in the hole where they came from." Or if -- utility contractors are somewhat unique in that they don't necessarily go onto one site. It's either down the road or it's some length, sometimes. And technically, it goes through different sites but it's one project. And so the intent was to allow those folks to reuse that material sort of from where it came from.

Unfortunately, when the regulation was written, it was written in such a way that allowed any contractor dealing with a particular site to use it on that site or any site under his control. And so we think we need to strengthen that wording to get back to the original intent of a very limited kind of job. And certainly the intent was not to allow a contractor demoing an industrial site to take that material, then use it at residential sites where he may have been building houses on. And so, those are the areas we are looking at to make sure that the restrictions are applied to what I'll call a *very limited type of activity*.

ASSEMBLYWOMAN GREENSTEIN: Can you speak -- although it's-- Well, it's somewhat -- indirectly relates to this. Can you speak to the issue of permanent remedies versus capping? Can you explain what those mean and how that -- you may see a need for any change in that area?

T H O M A S C O Z Z I: Currently, a permanent remedy would more relate to removing all the contaminant soil down to our -- what we now consider residential standards, residential criteria.

ASSEMBLYWOMAN GREENSTEIN: So that would even be true in an industrial area -- that you'd remove all of it down to that standard?

MR. COZZI: For a permanent remedy, yes, an industrial area -- if you wanted to make it a permanent remedy and not have any restrictions, you would have to remove it to our unrestricted use standards, residential standards. So that would also have to occur there.

ASSEMBLYWOMAN GREENSTEIN: Where does that exist right now, or does it exist right now? Where do we use permanent remedies, where do we use capping right now?

MR. COZZI: Right now, the way our regulations are written, when the responsible party is doing remediation, all they have to do is propose a remedy to the Department that is protective of human health and the environment. So if a site -- if somebody is cleaning up a site and they propose a cap or they propose some sort of remedy that we consider protective -- of groundwater, protective of the environment, protective of human health -- it's kind of our obligation to approve the remedy.

There are instances where, if you're a property owner and you've been impacted by a spill or contamination, it has in the laws that if you do not want a deed notice on your property -- which would have to occur in these other situations -- you're allowed not to have that. That provision is in there, and it would create a situation where the responsible party would have to clean it up to an unrestricted use, residential standard.

ASSISTANT COMMISSIONER KROPP: And just to follow up on that, the ability for the Department to dictate a permanent remedy at a site was removed in the Brownfields and Contaminated Site Redevelopment Act in 1998. Commissioner Jackson has asked us to revisit that legislation and take a look at whether there would be instances when the Department should have the ability to dictate that a permanent remedy be implemented. Such situations would be similar to what we were talking about here in the situations of schools, day-care centers, sensitive populations, or residential areas.

ASSEMBLYWOMAN GREENSTEIN: And what about the whole issue of oversight, in a sense? Obviously, you will never have the personnel to be out at 18,000 potentially contaminated sites. I don't think the taxpayers would support that -- and it's probably not necessary at each and every site because there are different situations. But the issue of how oversight takes place is clearly important. If you are letting the remedy be chosen by the responsible party, do you feel -- or does the Department feel, I should say -- that the oversight right now is adequate, or is that something the Commissioner is wanting to take a look at?

ASSISTANT COMMISSIONER KROPP: I think there are limited situations, again, where we may want to have more of a say in the remedies that are being analyzed. There might be a situation where a remedy comes into the Department, and whereas we do not have the opportunity now, if it is protective, to say we would like you to look at different options, I think that is something that we would like to consider in the future to increase our ability to look at remedial alternatives.

MR. COZZI: If I could just add to that also. We rely on certifications from an agent of the companies or responsible parties that are doing the cleanup, and that certification, if not accurate or it turns out something was not correct on its certification -- then we have legal avenues to pursue folks.

ASSEMBLYWOMAN GREENSTEIN: Do you think it's a good idea-- I know Hamilton, for example, has put forth an ordinance and has passed something recently to allow the towns to -- or to say that the town should look at all fill that's coming in. Do you think there should be more municipal responsibility, in that regard, to take a look at what's coming into the town, to really trace the path of all the fill that's coming in? And do you think towns should be more involved? I know we -- in a discussion we had recently, you talked about county involvement, in terms of electronically monitoring certain things. Can you speak to that?

MR. COOLICK: Yes. If a town has the resources, it's certainly a good way for somebody who is knowledgeable about what's going on in their town-- I mean, the theory being that if the dirt is coming from someplace else in a town, the town would know where that dirt is coming from, would know the history of that particular site. But when it's coming in from outside of town, they would have limited knowledge. It's a good idea. It's obviously a resource issue for a lot of folks, in terms of the time and the money it may take to review the results of whatever is being required from folks who are bringing fill from outside of town.

And there's a number of areas in the state where fill is a big deal in terms of being able to get, because the town is so developed there's not a lot of fill available in a particular area. So some towns are almost forced, in

situations, to bring fill from the outside, if you will. Is it a good idea? Yes. But it is -- it could be a resource issue for some areas.

ASSEMBLYWOMAN GREENSTEIN: I'm going to stop now, because I know there's lots of other people, but I'll have more questions later.

Thank you.

ASSEMBLYMAN McKEON: Chairperson, we're happy to defer to your Committee before we'll pick up here.

ASSEMBLYWOMAN GREENSTEIN: Assemblyman Baroni.

ASSEMBLYMAN BARONI: Thank you very much. And your presentation is very helpful, as have been your public hearings -- that you have taken a lot of time to come out. I know, in Chairwoman Greenstein's and my district, or our district, we have a number of sites that are in your presentation today. And the science and the technology you discussed has been very helpful.

If I could, I'd like to ask some questions about communication. Before we discuss any specific project, could you help me with the-- I'll give you the following hypothetical, if I could, Assistant Commissioner: There is an anonymous tip, hypothetically, to the Department of Environmental Protection that says that a certain type of fill is actually contaminated. That call comes in to a responsible party within the Department. What happens?

ASSISTANT COMMISSIONER KROPP: That type of call, if it was just-- There's two types, I guess. If it appears to be an illegal activity or it appears to be a natural spill, sometimes people call the local regional field office, our compliance and enforcement office, or they'll call the 1-877-

WARN-DEP hotline. The people at the hotline then send it to the right agency within the Department for investigation. In some cases, we also delegate to the county environmental health agencies so that they can go out and do an investigation, because they're so much closer to the source.

So if they go out and they find that there is some sort of illegal activity, our compliance and enforcement program or the (indiscernible) agency would take action. If we go out and discover that there is actually an emergency response required, we will take that emergency response action and also issue directives as needed.

My understanding from the existing regulations is that if it's an emergency response action, we automatically contact the municipal clerk and the county health department.

ASSEMBLYMAN BARONI: Help me with, a second -- for your regulatory definition -- and please, correct me, if it's statutory -- what is an emergency situation? I mean, I'm not a scientist, so if you can help me as sort of a layperson, what does that word mean?

ASSISTANT COMMISSIONER KROPP: Primarily, it means something that needs to be taken care of immediately. Examples are the tanker spills.

ASSEMBLYMAN BARONI: Okay. Something's on fire, or something's--

ASSISTANT COMMISSIONER KROPP: Fires with corroding drums on the side of the road -- that type of action. What would not fall into that would be my neighbor's building a dock in an illegal area or there's garbage cans on the side of the road with litter.

ASSEMBLYMAN BARONI: Now help me again, as a nonscientist, help me between those two points -- because I get something is on fire, there's an oil leak into a creek, I get that. That makes sense to me. I also understand my neighbor is putting up an illegal deck, and maybe it's wetlands and I just don't like my neighbor. I get that too. But what about the middle. Something is not on fire, but say, hypothetically, there's contaminated soil being put into a location. Where does that fall on the whole emergency scale?

ASSISTANT COMMISSIONER KROPP: It would not be considered an emergency normally, because the risks associated with contaminated soil would be like a 10 to the minus-seven health risk -- a long-term health risk.

ASSEMBLYMAN BARONI: And how would you know that?

ASSISTANT COMMISSIONER KROPP: It's not something that's immediate. Our standards are based on that. Usually the contaminants are--

ASSEMBLYMAN BARONI: No, what I'm saying, how would you know that standard?

ASSISTANT COMMISSIONER KROPP: You wouldn't know until you actually went out and took samples. They'd look around, take a sample.

ASSEMBLYMAN BARONI: So you send somebody out there to dig the new series of soil samples. And they come back to the office, and then they say, "Well, this is not an emergency."

ASSISTANT COMMISSIONER KROPP: It might exceed a standard, but it's not at a level that would require action. It's not corrosive, flammable.

ASSEMBLYMAN BARONI: Not call the Fire Department?

ASSISTANT COMMISSIONER KROPP: Right.

ASSEMBLYMAN BARONI: Right. All right. So now we're in this middle category and we have this thing -- and it's bad, and it may violate a standard, but it's not an emergency.

ASSISTANT COMMISSIONER KROPP: That's correct.

ASSEMBLYMAN BARONI: Then what happens, or what's supposed to happen from a communication perspective?

ASSISTANT COMMISSIONER KROPP: A communication perspective? We're supposed to contact the, I believe, municipal clerk -- which may be wrong.

ASSEMBLYMAN BARONI: So you call the municipal clerk's office? But there is a municipal official that you call?

ASSISTANT COMMISSIONER KROPP: We fax usually, or send a letter.

ASSEMBLYMAN BARONI: Oh, you send a fax.

ASSISTANT COMMISSIONER KROPP: I don't believe we call the municipal clerk's office, no.

ASSEMBLYMAN BARONI: So when you get a contaminated soil location, you just sort of send a fax?

ASSISTANT COMMISSIONER KROPP: I don't remember off the top of my head. I'd have to go back and look at the regulations, but

we do not treat it as an emergency response. We do not call anyone. We do not go in to take immediate action.

ASSEMBLYMAN BARONI: Let's hope they don't run out of paper in the fax machine that day.

Let's talk specifically about the site in my hometown of Hamilton. My understanding from the facts -- and I understand there's an ongoing investigation, so any information that you're unable to provide, because counsel has advised you of that, I understand. It is my understanding, however, that this process that you were just able to help me through, to make me understand a little bit better-- In October of 2005, you all knew. It wasn't an emergency, nothing was on fire, and it wasn't a deck. So we had this contaminated soil that you just described, in the hypothetical, that falls into a -- beyond the standard, but it's bad. So October 2005, you knew, right? Did you send a fax?

ASSISTANT COMMISSIONER KROPP: I hate to say this, but I was not around at the time, so I--

ASSEMBLYMAN BARONI: Oh, but that's fair. That's fair.

ASSISTANT COMMISSIONER KROPP: I actually do not know the exact actions. I know that the compliance and enforcement program sent an inspector or assigned it to an inspector, and they did contact the case manager in the Site Remediation Program. My understanding is because Ford was acting on the situation and there was a responsible party who was prompted to act and was agreeing to act, that no other emergency-type actions took place, and no other contact, that I'm aware of.

ASSEMBLYMAN BARONI: And it is an extraordinarily reasonable response with the change of administrations, and that's extraordinarily reasonable. And maybe you don't have the answer today -- and maybe you could provide it to us at some point -- but I'd be interested to know, since we now know there's a standard that -- sort of the fax rule, whether you were -- not you. Forgive me. Plural you. The Department was supposed to have Ford do the fax?

ASSISTANT COMMISSIONER KROPP: No. The Department would contact--

ASSEMBLYMAN BARONI: So you're still going to do the fax. The Department of Environment Protection is still responsible for telling the municipal clerk in my hometown, and in the other towns, that we have a problem. It's not on fire, but we have a problem. Can you find out when that fax went out, because I'd love to see it?

MR. COZZI: In the American Standard case, when the Site Remediation Program became aware of it, I believe a letter was sent to, I think it was, the local health department -- your health department in January of -- past October.

ASSEMBLYMAN BARONI: October, November '05?

MR. COZZI: When you're talking about October of '05--

ASSEMBLYMAN BARONI: Right.

MR. COZZI: --I think we copied them when we became aware that it was from the Ford plant site. And American Standard is also a cleanup in our program.

ASSEMBLYMAN BARONI: Right.

MR. COZZI: A letter was generated and sent in January.

ASSEMBLYMAN BARONI: So forgive me again, I'm just trying to figure it all out here. Some of the neighbors over in the neighborhood there as well-- In October 2005, you have, I guess in legal terms, reasonable belief that there is a standard that has been violated. It's not an oil spill, but it's more than somebody putting a deck up. October 2005? And to your knowledge, the first communication with an official government agency in the town was in January?

MR. COZZI: To my knowledge, yes. But I think the enforcement folks--

ASSEMBLYMAN BARONI: Was the fax machine broken?

MR. COZZI: Can I just say, the enforcement folks had gone out in October and they -- believe they were investigating, as Assistant Commissioner Kropp said, and then we were pulled in around December, mid-December. We looked into the situation and did go to address it with Ford, and sent information to the--

ASSISTANT COMMISSIONER KROPP: I think, to cut to the chase -- I understand your line of questioning -- and one of the things that we are doing is proposing new public participation, public notification rules that will be proposed this Summer, to get at some of the issues and some of the mistakes that were made in this case and in other cases in the past.

ASSEMBLYMAN BARONI: And I'm grateful for that. I know the effort that's gone into that. And I don't want you to take my line of questions as, sort of, anything personal. I would recommend two things, if I might. If I want to put a deck up in the back of my house, to use your example, I've got to tell my neighbors within 100 yards, or whatever it is. I would suggest that you all do the same thing. And a lot of folks in Cornell

Heights and lot of folks in my neighborhood may not have a fax machine, so I urge the use of the United States postal service.

And second, I know you're going to go through this notification process and you're going to go through a rule-making process that we all understand. But in the interim, the next time something's not an oil spill and it's not a deck, maybe don't wait -- and that's not you. But the process could be sped up in anticipation of public participation. Let's not wait until public participation rules are noticed and finalized before we do that.

One final question -- I will get off the issue of notification.

ASSISTANT COMMISSIONER KROPP: Assemblyman, can I just add one other--

ASSEMBLYMAN BARONI: Please, of course.

ASSISTANT COMMISSIONER KROPP: --is that we do have guidance material that we're about to post on the Internet, that we're asking RPs to look at, that will allow them to follow the intent of the public participation and notification rules prior to the final adoption.

ASSEMBLYMAN BARONI: Wonderful.

One question. I don't -- and maybe-- I know we're going to have -- we have a representative of Concrete and Aggregate, who's -- they've been very helpful to understanding all this. But part of this is the -- I understand. You find this material. It's in the ground. You look it up. You do soil samples. We have a problem. I get that. But to get from Edison to Hamilton, I've looked at a map. There's only a certain number of ways you can go -- and certainly the number of trucks. And they had to have gone through Edison, New Brunswick, North Brunswick, South Brunswick, Plainsboro, West Windsor, Lawrence Township, and Hamilton.

Has anybody -- because it's in trucks, right? From my understanding, from talking to one of our colleagues in our caucus who used to run a trucking business -- said it would often be just sort of trucked in open trucks, because it's not contaminated -- that they thought -- so this stuff was out, sort of flying around. Did anybody tell the health departments or the municipal clerks in any of the towns on the corridors where this material was trucked through, that they may want to take a look at schools and day-care centers along the route?

MR. COZZI: I could take a shot at that. We did take a look at that, we did think about that. The levels that we were talking about for PCBs were extremely low. If some dust were to get out of the truck, some minor amount, it would be diluted and it would be of a level that we would believe would not be a concern.

ASSEMBLYMAN BARONI: But nobody checked?

MR. COZZI: Whether we went out and checked, exactly, all that, no.

ASSEMBLYMAN BARONI: Thank you, Madam Chairman.

ASSEMBLYWOMAN GREENSTEIN: I want to add one thing. I saw -- I guess this goes back to March or April -- it's a directive from the DEP about how the cleanup would take place. And there was reference to a special truck washing system that would be used, and a dust-control management plan, and an air sampling plan. So they did try to set into place some special cleanup standards. Whether those are used in all cases, I don't know, but these were for the Ford site.

ASSEMBLYMAN BARONI: Going forward?

ASSEMBLYWOMAN GREENSTEIN: No, no. This was actually put forth before the cleanup took place for Ford to follow.

ASSEMBLYMAN BARONI: For the cleanup -- no, I completely understand that. But I'm talking about the initial trucking from Ford to Hamilton.

ASSEMBLYWOMAN GREENSTEIN: Oh, initial.

Yes. And that's a good question. I wondered -- and I don't know if you know this -- has the trucking industry any special standards for the transporting of this material?

ASSISTANT COMMISSIONER KROPP: Considering that it's not considered a waste and it was considered a product at the time, the only standards would be like DOT, health and safety, public health standards.

ASSEMBLYWOMAN GREENSTEIN: So the key is obviously to catch it and to know whether there's any danger in the material.

ASSEMBLYMAN BARONI: Right. Is there any thought now, as you continue to go through the, perhaps, talking-- And obviously, I'm focusing on the towns in my district. But the other -- I mean, Brick Township, for goodness sakes, the number of towns that this material had to go through to get to Brick Township, straight through Monmouth County. I know our colleague, Mike Panter, is going to be interested in that. Has there been any thought whatsoever of at least communicating with the municipalities? I'm sure they read it in the newspaper -- it has been in all the papers -- but any formal communication with the municipal governments or the municipal health departments in these towns?

MR. COZZI: We (indiscernible) with Brick Township on the sites where the material's in Brick Township.

ASSEMBLYMAN BARONI: No. I get your-- And I know you're working hard on it. I get your talking to Brick Township, but what about Manalapan, Marlboro, Freehold Township, Freehold Borough -- the towns on Route 9 to get there? Is there any communications with the towns through which this material initially went, that maybe they should take a look and see what, if anything, happened?

ASSISTANT COMMISSIONER KROPP: We have not--

ASSEMBLYMAN BARONI: Because if anybody's ever driven down Route 1, I don't know how many windshields have suffered greatly because of stuff flying off trucks on Route 1.

ASSISTANT COMMISSIONER KROPP: We have not contacted the health departments in those municipalities or counties to specifically ask them if they wanted to go out and look at dirt that might have fallen on the side of the road. I don't know that they, either, would have the resources to do that, especially at this late time.

ASSEMBLYMAN BARONI: Maybe we could send them a fax.
Thank you, Chairwoman.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Anybody else like to make any comments or questions -- or ask any questions of these witnesses?

ASSEMBLYMAN McKEON: Oh, yes.

And, by the way, when we defer from now on, it's limited to 10 minutes. (laughter)

ASSEMBLYWOMAN GREENSTEIN: You got it.

ASSEMBLYMAN BARONI: Sorry, Chairman.

ASSEMBLYMAN McKEON: I appreciate your line of questioning. Certainly Assemblyman Baroni notices something very important -- and hopefully, collectively, from this Committee -- as I think the Assistant Commissioner would recognize is something that needs to change.

I'm going to defer to my Committee to see if there are any questions, per se.

Assemblyman Manzo.

ASSEMBLYMAN MANZO: Yes. I want to pick up on the point of -- I noticed in some of the reports that were given us that you're saying that the onus should not be put on the recycling facility for ascertaining whether the fill they've received is clean or not, because it would sort of, I guess, impact the amount of small contractors bringing fill in to be dropped off to be recycled. And then your setting up a process which deals with the fact that you considered something that's going to a site as cleaned, as if everybody was on the up and up. And I've found, not only in this instance, but when you look at the chromium fiasco, for example -- that my district is living through -- that there's a problem inherent in our system which basically allows developers, responsible parties to pick the engineer, the consultant, who then sort of has the job of representing to the agency that their problem isn't as big or bad as the agency thinks. And they figure a way out to say, "You know what? This material which you think is at this parts per million or is so bad, isn't. Here it is." And then they submit, to the Department, consultant reports, lab reports, and data; and sometimes it's okay and it's looked at.

And my position, in looking at this and having worked in the environmental field, is that perhaps that system needs to change. That since agencies who look to -- or developers, responsible parties who look towards the agency for clearance, and have to spend money on consultants anyway -- that perhaps the registry for those consultants that they're going to choose, those environmental engineers, should be from within the Department. Not that you're going to hire people, but that they have to register with you. And when they want to say that this material is okay, they come to you and you select, on a rotating basis, the firm that's going to look at that material and that they're not, sort of, in cahoots with the company. But they're reporting back to you. I think we'd get a lot more truth in the system. We wouldn't get the fudging that goes on. Because even after you put the best regulations in place, which you're intending to do, if someone fudges -- if a consultant fudges for a responsible party or a developer who intends to develop a site on the material or on the representation of that material, we're back to square one.

So I would just-- Well, I'd appreciate your thoughts on what I'm proposing.

ASSISTANT COMMISSIONER KROPP: I guess -- I hear what you're saying. And one of the things that we have to balance on a daily basis in the Site Remediation Program is how much oversight and regulation versus getting sites to completion in terms of cleanup. We heard very loudly in the -- loud and clear, from Assemblyman Greenwald and the Budget Committee, that the Site Remediation Program is going to be a key player in the economic turnaround of the State of New Jersey, and that we need to take a hard, long look at our regulations, permitting, site

remediation, to make sure that we're streamlining and not putting in unnecessary, burdensome steps, while not jeopardizing compliance with the proper standards -- human health-based standards.

So I think that what we try to do, as you've noted, is to tighten our regulations to the greatest degree possible. (indiscernible) tech regs, soil regulations, groundwater regulations, to make sure that consultants know exactly what they have to do and what standards they have to comply with. We're hoping, with the implementation of our new grace period rules, enforcement rules -- this August, that they'll be adopted -- that we'll have a stronger hammer in terms of enforcement, when people come in the door and give us poor submissions or if they violate any violations associated with cleanup of contaminated sites.

So we're hoping that that enforcement tool will lead toward less -- desirable submittals, better consulting, and more compliance with the standards and regulations. But I think that for the Department to take on a new program of certifying consultants would be precedent setting, very difficult to achieve, potentially slow down cleanups, and I'm not sure exactly how we would actually do that or implement that program.

ASSEMBLYMAN MANZO: Well, my point was -- is that the company, or someone who is looking to you for an okay, is going to hire a consultant anyway.

ASSISTANT COMMISSIONER KROPP: Right.

ASSEMBLYMAN MANZO: The consultant already exists. We know that. My point is, since they already exist, how much trouble is it to the Department to just say, "Anyone who is in this business has to register with us." Instead of the company now going directly to the

consultant, they have to come to the Department, who just says, "Here's our registry. This one is now assigned to you. You're paying them, but you're reporting the data back to DEP, not to the company." Therefore, any of the criteria that you're looking for to approve, that you would know to ask questions about, is going to be more in line, in protecting the environment and speeding the process at the same time.

So we're solving two problems: Number one, without fast-track laws -- okay -- we're not hindering anyone from your backlog, because they're ultimately going to the same marketplace that they would in the first place. The only thing we're doing is we're changing the reporting mechanism, whereby someone who is working for a company feels the onus is on them to do as much as they can for that company to get around environmental laws, if you will, to achieve their goal. Your process is to protect the environment. And I'm saying the best way to do that is perhaps for you folks to be the person who is supplying, through a registry -- and nobody knows who they get -- the consultant.

MR. COZZI: Can I add something?

ASSEMBLYMAN MANZO: Yes.

MR. COZZI: The Department goes after the responsible party for a cleanup, although they hire a contractor to do the work. If the contractor messes up on a site, it's ultimately the responsible party -- the person who owns the property or is responsible for the cleanup -- that we go after. And I guess one concern I would have is if we did have a registry list, or whatever, even if the consultant submitted bad reports and that kind of thing, they're not-- We might be able to come up with a way where, if there is a board or something, that you could go after consultants and get them

off the list, or like a *P* license type of board, or something like that. But it's ultimately the party that is doing it, is responsible for the remediation -- is who we go after. So ultimately, if they're not doing the right thing and we review all their documents and all the reports, we wouldn't go after the consultant. We would go after the responsible party. It's their responsibility to make sure they have the right consultant doing the right job. And we have regs that they know they have to meet to do the right job.

ASSEMBLYMAN MANZO: In this instance here, or in the ones that have -- before, say, wasn't there a fact that some material that should have been removed from the site was actually left on the site?

MR. COZZI: I'm sorry. Which site are we talking about?

ASSEMBLYMAN MANZO: On the Ford site.

MR. COZZI: On the Ford site. You mean the material that was removed from the site?

ASSEMBLYMAN MANZO: Yes.

MR. COZZI: The material that was removed from the site -- how that happened, and why there was miscommunication, or how things--

ASSEMBLYMAN MANZO: I mean, we all knew it was contaminated when it left, right?

ASSISTANT COMMISSIONER KROPP: No. And that's part of the investigation that's ongoing that we're not permitted to speak about. But the materials at the Ford site were segregated into contaminated and clean piles, and they were supposed to be disposed of accordingly. How they ended up on clean sites, or development sites, is what's part of the investigation.

ASSEMBLYMAN MANZO: Thanks.

ASSISTANT COMMISSIONER KROPP: But we will, Assemblyman, look at this issue of registry for consultants.

ASSEMBLYMAN McKEON: Thank you, Assemblyman.

Vice Chairman?

ASSEMBLYMAN GORDON: Thank you, Mr. Chairman.

I would simply like to endorse Assemblyman Manzo's idea for registry of approved consultants. I'm from Bergen County, where we have another Ford Company debacle, as you know, whereby pink sludge emanating from the Mahwah Plant was dumped in the mountains and the surrounding countryside in -- on the New York side of the border, on the New Jersey side of the border. And as we discovered recently, contrary to consultants' reports, I believe to the EPA, the properties -- the sludge and the area wasn't properly cleaned up. And by the time it was discovered -- yes, you may be able to go after the responsible party, but people there have gotten sick. And so it just strikes me that there's a bigger problem here.

And I think Assemblyman Manzo was really right on point, that a consultant working for the producer of the waste is going to feel under some pressure to provide the answers that the client wants. And I think we really need to have disinterested parties that have the technical expertise. I think this is a bigger problem than we may think. And so I think it's worthy of a second look.

ASSISTANT COMMISSIONER KROPP: I agree. I agree. We will go back and look at that.

ASSEMBLYMAN McKEON: Any other members of the Committee?

ASSEMBLYWOMAN GREENSTEIN: We have
Assemblywoman Pou.

ASSEMBLYWOMAN POU: Thank you, Madam Chair, Mr.
Chairman.

Good afternoon, Assistant Commissioner and everyone here.

I'm interested in the discussion that's going on. And in fact, I'd like to, maybe, bring you to date with a recent situation, and just kind of ask you what maybe we might have learned from what occurred during the debacle or the mishaps of the Ford Company, on how-- If I may, to maybe use Assemblyman Baroni's hypothetical, kind of -- although this is in reality. What have we learned from the incident that you're describing and that occurred in the Ford Company to prevent what happened recently in the city of Paterson, with the freight train that derailed? And how are we making sure that supposedly the debris and, then too, the freight train is carrying what they referred to as *C* and *D* stuff, which is construction and debris? How do we know that the materials that they're carrying is, in fact, not contaminated, although quite honestly that's what they indicate -- that they're not supposed to be carrying and transporting this? But how do we ensure that the actual pickup of that material and the transportation of that material is, in fact, tested properly to ensure that it's not contaminated and, therefore, making sure that we don't find ourselves in a very similar situation that we had back in 2005?

MR. COOLICK: Actually, my limited knowledge of the railroad incident -- that material is, in fact, regulated waste. So it, in fact, may be contaminated, if you will. It's characterized as *C* and *D* waste, but that *C* and *D* waste could have some levels of contamination, depending

upon what was *C* and *D*, if you will. But it is -- that movement of that material was moved as waste.

Now, to the side to this, just so you are aware on -- this is a big issue for the Department, and there's a Federal preemption concerning what railroads can do. And in this state particularly, there is a number of facilities that have sprung up, that we would normally consider solid waste facilities, that the railroads are saying are railroads. And because of the Federal law, we don't have -- and the locals do not have -- approval rights over them. We have adopted regulations. We're in Federal Court. There's a long, involved issue between us and the railroads and the surface transportation board in terms of this particular issue. And what that railroad was carrying was, in fact, regulated waste. So, in fact, it could have levels of contamination in it.

ASSEMBLYWOMAN POU: Precisely that Federal exemption is what really prompted my wanting to kind of use this same situation, and use it -- the example of what occurred recently in Paterson. The fact that you're now taking a look at your regulations-- And I understand that the Federal regulation really supersedes that of the State and what we can do. But we can, in fact, through regulation -- is my understanding -- just make it all that much more -- I don't want to use the word *difficult* -- but make it all that much -- responsible on their part to ensure that the type of controls, limited as they may be, are in fact being pursued as heavily as possible within the State's DEP jurisdiction, so as to ensure that their mobility, if you will, or their ability to kind of develop overnight these type of structures in any of their property and the rail lines, are done -- but are done with a more responsible location.

This particular site was built in a very heavily residential area -- both residential, as well as business. And those are the kinds of things that we need to speak about and make it public, even though we may have some time to go before we can make any changes in terms of the Federal legislation. We're hoping that as a result of our discussion here today, as a result of some of the things that, sir, you've mentioned in terms of the State's involvement, that we are able to vocalize our concerns so that our Federal delegation is able to look, and listen, and perhaps do something more about it. Because otherwise, we may end up having some of the very similar situation, that happened in Hamilton Township, happening right in the city of Paterson as well. And clearly, that is something that is of great concern, considering the densely populated city that I'm talking about here.

So I'd like to just kind of bring that to your mind, because I think DEP-- I realize that there are certain restrictions, but we need to be a bit more vigilant on this issue than what we may have been in the past. And I recognize that your hands are tied, but we still need to put the pressure where necessary.

MR. COOLICK: We understand.

ASSEMBLYWOMAN POU: Thank you.

Thank you, Madam Chair, Mr. Chairman.

ASSEMBLYMAN McKEON: Thank you.

I just have one brief question. And for all Committee members, as we have much else to get through, we should probably try to press on. But my question goes in a little different direction, just regarding the 0.49 parts per million as it relates to PCB levels. Is that set by EPA or does the

State have the authority to change that? Do you find that necessary, to amend that at all, to make a less of a concentration?

MR. COZZI: The 0.49 number is actually a State of New Jersey DEP number.

ASSEMBLYMAN McKEON: How does that rank, if you know, with the remainder of such regulations throughout the State; or if EPA has a standard one?

MR. COZZI: How does it rank with EPA's number?

ASSEMBLYMAN McKEON: Yes.

MR. COZZI: I believe EPA's number is one. I think ours is more stringent for a residential scenario. And we're-- I'm sorry, yes.

ASSEMBLYMAN McKEON: Okay. I appreciate it. Maybe through legislative liaison, Mr. Hazen, we can take a look at that -- at least compare it to California and see where we are with other jurisdictions.

ASSEMBLYWOMAN GREENSTEIN: I did have just one more. I think none of the other members -- does anyone?

Go ahead.

ASSEMBLYMAN MANZO: I just wanted to comment on Assemblyman McKeon's point on standards and setting standards, and this goes back to my theory again. Again, if you remember the last time we were together with the Hamilton problem, the whole issue derived out of a consultant's erroneous report, okay, given to the firm he worked for to the DEP, which accepted it. And in the issue of standards, it's the same process. We now have a problem in Hudson County where we're debating a standard for chromium. The companies who polluted are ultimately involved in hiring all the consultants, all the experts, to present to the DEP

a report to say this is the standard. In the meantime, we have housing which was built above the standard now.

Now, if I'm the developer of that housing, I'm sure as well going to spend all the money I can on whatever consultant to say that the level of contamination that people are living on now is okay. And that's the problem. They should not be involved in funding the process. It's you guys who should be representing the consultant and then paying the registry the money so we could get an unbiased opinion.

ASSISTANT COMMISSIONER KROPP: I guess I would just like to say-- I hear what you're saying. But I would just like to maybe submit, through the Chair, a report from our Division of Science and Research that has analyzed all the reports out there for the chromium standards, so that you understand or see the fact that the Department has been independently evaluating the standards. We didn't just accept the standard from the responsible parties.

ASSEMBLYWOMAN GREENSTEIN: I just have two quick follow-ups, sort of last questions here, I guess. Just now, Assemblyman Manzo brought up what happened there in W.R. Grace -- the main point of problem was in 1994, when a consultant did a report based on what Grace told them, and DEP, through its process at the time, just sort of rubber-stamped that really, and just accepted it without going out and checking the site, didn't see other records related to the site. What's different now, if anything, that would make something like that not happen again?

MR. COZZI: That, like our cleanups now, were certified by a responsible party. And as you correctly pointed out, there was issues with that, and that's being pursued legally. And that part we can't talk about.

As far as what's done differently, I know we try the best we can to review consultant reports and make sure that we, as many times as we can, get out to a site. We don't always have the opportunity to do that, because we have a large number of cases. But I would say, as often as we can, we do encourage our folks to get out to the site, at least see the site and take a look at the situation.

ASSEMBLYWOMAN GREENSTEIN: From what I was told, you now have better information sharing. You're doing more of that. Because there apparently had been earlier documents there that showed asbestos, and it was just this '94 report that didn't. So, obviously, good information sharing could have prevented that.

ASSISTANT COMMISSIONER KROPP: Yes. Thank you very much.

Assemblywoman, one of the things that we have done in the last couple of years is developed an internal database, that we actually put reports out to the public on also, that will show you everything that's going on at a specific site -- regardless whether it's right-to-know information, DPCC, site cleanup, enforcement, wastewater, air, etc. -- to show that everyone in the Department has all the information needed to evaluate a site from a holistic perspective. And one of our goals was so that we made sure, in the future, the right hand always did know what the left hand was doing.

ASSEMBLYWOMAN GREENSTEIN: And my last question, if you could just do this briefly, is: How would you rate the cleanup efforts? We know the problems that lead up to the need for the cleanup -- those definitely need to be solved. We've heard a lot about it today. But how

would you rate the cleanup efforts by Ford, and how does the environmental community, in your opinion -- and I guess we'll ask them -- regard Ford's cleanup response? Should people be concerned in the community right now?

ASSISTANT COMMISSIONER KROPP: I guess I would say that I won't speak for the environmental community. I will speak for the Department's cleanup program, which is that Ford has been very aggressively working with us, submitting documents as required, forming cleanups as required. There's removal actions happening right now. They're communicating with the local officials and the local health departments, listening to the residents.

MR. COZZI: We meet with them every other week (indiscernible).

ASSEMBLYWOMAN GREENSTEIN: With the residents, you mean?

MR. COZZI: With Ford.

ASSISTANT COMMISSIONER KROPP: With Ford.

MR. COZZI: We're meeting with Ford. We're monitoring the progress.

ASSISTANT COMMISSIONER KROPP: So I think they've been extremely responsible, in this case, to take care of the problem.

ASSEMBLYWOMAN GREENSTEIN: What's the nature of your oversight of the cleanup and of the accountability? Is it another situation of just taking the company's word, or are you doing more to be certain that everything is being done right?

MR. COZZI: Yes. We have, in the instances of these 10 sites, plus the Ford site, have a -- what they call a *construction manager* out at the site monitoring it constantly -- progress monitoring, making sure the air monitoring is appropriate, and so forth. So we've had a physical body out there at every one of the cleanups.

ASSEMBLYWOMAN GREENSTEIN: Okay. Thank you very--

Anybody else? (no response)

Okay. Thank you very much. Thank you.

I'll call the people from Ford next. Mr. Holt and everybody else who is here with him.

Thank you.

And if you would introduce the people. And then also, do you have a prepared statement?

JON HOLT: Yes. It was passed out.

ASSEMBLYWOMAN GREENSTEIN: Okay.

I think you all have copies of it.

MR. HOLT: Good afternoon, Chairwoman Greenstein, Chairman McKeon, Committee members.

My name is Jon Holt. I'm with Holt and Germann Public Affairs. Today I'm representing the Ford Motor Company. I also serve as Ford's Community Relations Representative, here in New Jersey, on the cleanup efforts related to this issue.

With me is Todd Walton, who is Manager for Environmental Programs for Ford and for the remediation efforts at the former Edison assembly plant, and also he is heading up Ford's response to the recycled

concrete aggregate issue. And Tim Green, who is with the Office of General Counsel with Ford -- he is the in-house counsel, and is with us today.

I'd like to first make a few comments about the Edison remediation project, and it kind of goes to some of the comments made by the Chair and others here. I will then respond to the items listed in your May 30 letter concerning the recycled concrete aggregate issue.

Ford Motor Company takes its environmental responsibilities seriously and is committed to a complete and environmentally protective remediation of its former assembly facility in Edison, New Jersey. When Ford completes its remediation efforts, the Edison site will meet New Jersey DEP criteria for unrestricted use. This is very important, because it goes to the statement you made in the beginning from the Commissioner, saying we should have more rigorous cleanups at sites and not leave material behind. And that's exactly what we're doing at the Ford Edison plant.

Ford voluntarily decided that they were going to clean up this site to unrestricted use, which means once we hand it over to the developer, Hartz Mountain, they can do anything with it. It's not restricted. There's no deed restrictions. And that's something that's not always done with Brownfield sites, and we'd like to think that we're setting a good standard for what can be done with a Brownfield site. And we're very proud of the efforts that have been happening there.

And over the passed two years, Ford has worked closely with New Jersey DEP, Middlesex County, and Edison Township to provide information on our remediation plans and to obtain local and State county approvals.

Ford's demolition and excavation activities at the site have been carefully planned and monitored to assure there is no adverse impact to its neighbors or the environment. And I just used as an example-- We have here just two chapters of Ford's decommissioning project manual -- it's two pages -- it's small type, but it lays out-- And this is something that Ford has done for this site, and other decommissioning, to lay out to everyone, including contractors, what's expected to meet the standards of Ford.

Ford understands that NJDEP recently conducted independent sampling of the residential properties around the Edison site in response to the PCB issue. And it was found that there was no detection of any presence of PCB contamination on these properties. And again, this goes to the steps that we've taken at the site to make sure that we're controlling things at the site, controlling dust, and controlling the process so it's protective of the environment and the community.

Ford has also conducted community outreach to local officials and neighbors to keep them apprised of demolition and remediation activities. As demonstrated by its efforts at the Edison site, Ford Motor Company has a reputation of working cooperatively with various regulatory agencies on site remediation projects. It is continuing that cooperation as it works with local, State, and Federal officials to investigate and address issues relating to the handling of concrete demolition debris that was generated at the Edison work site.

I might add here that we also -- some of the comments made here about recycling and the importance of that-- And before I get into some of the prepared text here, I just want to reflect that this was all focused on how we could reuse material, and looking at the site and

deciding the best way to approach it. And with that decision to clean up the site to unrestricted use, we had a concrete slab to look at. And in looking at that, Ford went to DEP and the contractors went to DEP and said, "We have this slab and we'd like to reuse it," and went for the permits and the exemptions. And that process, again, is not done by every contractor. The option could have been made to just cap that site, leave the concrete slab in place, and put a deed restriction on it. And that would limit to how that site could be used.

Ford decided that they didn't want to do that, they wanted to go the unrestricted use so that site could be used by the community. So I think that's an important distinction.

ASSEMBLYWOMAN GREENSTEIN: Can I -- before you go--

MR. HOLT: Yes.

ASSEMBLYWOMAN GREENSTEIN: What was your reason for that decision at that point?

MR. HOLT: Well, it gave the best value for the site and also for the developers in giving the community options. It's up to the community to finally decide what zoning and what things they want on the site. But that was, again -- we were long-time residents of Edison and we thought that was something that was the best thing to do.

ASSEMBLYWOMAN GREENSTEIN: And had you just capped it at that point, none of -- this wouldn't have come out in a sense. You wouldn't have known some of that was in there -- the PCB.

MR. HOLT: Yes. That's speculation, but, I mean, it wouldn't have gone through the process it went through where we discovered some of the issues.

ASSEMBLYWOMAN GREENSTEIN: Yes.

MR. HOLT: So it's obvious to all who are aware of the situation that something went awry with the handling of some of the recycled concrete from the site. And we are still investigating what happened, but be assured that any mistake that may have occurred was not the result of a nod and a wink on Ford's part. And we are looking at what happened there very, very seriously.

We ask that you consider Ford's overall response in the handling of the concrete from the facility, including its remediation efforts. Notably, Ford did not attempt to drag the issue through the courts, but we sprang into action in the role of a good corporate citizen. Fortunately, the levels of PCBs found in the recycled concrete material are at very low levels and provide no imminent risk to site workers or the public. The NJDEP believes that the RCA material was transported and placed at construction sites without the proper permits and oversight by the Department. For this reason, it issued the administrative orders to Ford Motor Company, MIG/Alberici, and Edgewood Properties to remove the recycled concrete material from these sites.

Your May 30 letter asked Ford to provide information on, one, a timeline of events related to the recycled aggregate concrete, the actions Ford has taken to mitigate the situation, and what policies and methods Ford will enact or change as part of the lessons learned.

I'll first address the timeline. As you mentioned in your letter, Federal, State, county, and local government investigations are underway to determine the facts in the case. Ford is also investigating the facts as well. However, here's what we currently know about the timeline of events:

We know that in February of 2004, Ford land management awarded the plant decommissioning contract to Alberici.

February 27, the Edison Assembly Plant ceased operations.

July and August, Edison Township issues demolition permits. And we worked closely with the township in obtaining those permits.

In September, 2004, NJDEP receives Alberici's Notification of Exempt Recycling Activities--

ASSEMBLYWOMAN GREENSTEIN: Mr. Holt--

MR. HOLT: Yes.

ASSEMBLYWOMAN GREENSTEIN: --can I ask you, since it's all detailed in here--

MR. HOLT: Yes.

ASSEMBLYWOMAN GREENSTEIN: Is there a way you can summarize it -- just go to the high points of it?

MR. HOLT: Sure. We--

ASSEMBLYWOMAN GREENSTEIN: Because we can follow it in here as you say it, but just--

MR. HOLT: Sure.

We hired the contractor. And then we went to DEP to address the issues of the exemption for handling the concrete on the site. We did the sampling, as was explained by the DEP. We received the variance reuse, and then we processed the concrete so to be -- with that, with nondetect, could be used on-site. And then Edgewood Properties submitted an application to DEP to address issues for use of the other materials that had detections but were within the residential or commercial categories.

In August of 2005, on-site concrete crushing ended as a result of concerns raised about the material and its off-site use.

ASSEMBLYWOMAN GREENSTEIN: How was that found out or discovered, that the material had a problem?

MR. HOLT: Well, that's part of the investigation now. So, just that when it came to our attention and we realized there was an issue, we stopped the operations. And then we did our own investigations. And then, as discussed with the Department -- there was discussions with the Department, and that's outlined here to help you.

So that leads up to the middle of 2005, and at least through the things that we did with DEP and working with the communities in trying to address the issue. And then in the Spring of this year it became publicly aware that there was this issue, and Ford responded to DEP's request in March for doing the response plans and the cleanup plans. And again, the whole timeline, as far as we know -- and again, many of these things, there are other things to fill in the blanks here that the other investigations are working on. But the important thing to realize is that when we did receive that order, on March 8, that Ford did respond, to develop the response plans; and we took the responsibility in doing that, even though the DEP order did go to the other contractors as well. We're spearheading that removal.

Second, in your letter you asked for information about the actions Ford has taken in response to the issue. As I mentioned specifically, the DEP orders required Ford, Alberici, and Edgewood Properties to develop response plans. And I'll run briefly through those response plans, because I know time is of the essence. But for each site, we're developing a

plan to identify and then remove the recycled concrete product. We have a health and safety plan; a dust-control plan; air monitoring before, during and after. We have meteorologist stations to record wind speed, so we know what's happening with wind; a truck cleaning process to make sure when the trucks leave the site that they're properly tarped and they're properly cleaned, so that we don't have any issues; oversight and approval by DEP before any material leaves the site; and then post-excavation sampling. And we're doing that now at the sites. And there's, attached to the testimony, an update of where we are on those sites.

ASSEMBLYWOMAN GREENSTEIN: Mr. Holt, in all of these sites, at the moment, you're under orders from DEP to remove all of the fill, no matter what the sampling amount is in the site, no matter how many PCBs are in the samples?

MR. HOLT: That's what the original order called for.

ASSEMBLYWOMAN GREENSTEIN: And that's the order you're under right now.

MR. HOLT: Yes. But each side -- we're looking at, individually, on time frames. But that's the order and that's the--

ASSEMBLYWOMAN GREENSTEIN: I just have a question. I mean, this is probably simplistic, and I know this is all being investigated. But the sense I have is that you went through your procedure, it appears, properly, and you put these things -- this is before, when the problem developed. You put things into piles according to, I guess -- I don't know -- certainly solid waste, and the nondangerous type, the beneficial reuse, whatever -- all the different categories. Somehow or other -- and this is what is being investigated -- these piles were mixed up. That seems like the

essence of the problem. Is that a too simplistic a view of what happened there? There was some mixing of the piles. Because you got to the point of separating it out, it seems. The reason I asked that is, I'm trying to figure out what might be done to prevent these problems in the future, from your perception.

T I M G R E E N, ESQ.: As we indicated before, because our investigation is ongoing, we don't know the full answer to that. We don't know whether the piles were mixed. We do know that efforts were made to segregate them based on the PCB levels we've discussed earlier -- the nondetect 0.49, 0.49 to 2.0 -- and efforts were made to handle them appropriately within what we thought was the correct application at that point in time.

ASSEMBLYWOMAN GREENSTEIN: Do you have any sense at all what might prevent these problems in the future, or do you have to await the results of this investigation to know that?

MR. GREEN: I think we need to wait until we get all the results in to firmly and fully make a reasoned decision on what to do.

I will say that some of the suggested improvements that the DEP outlined earlier would be helpful to us -- would have been helpful in this situation.

ASSEMBLYWOMAN GREENSTEIN: Do you have anything else?

MR. HOLT: Yes. I just wanted to address -- you asked about some of the proactive steps that Ford has taken. And also, we have done an outreach program with the community on each of these sites. We have a Web site, *concreteupdate.com*, that provides all the information to the public

on all the response plans and the background information. We've had public information meetings at Hamilton Township and at Edison Township that Ford facilitated. We've also -- we're putting ads in the paper notifying people when work is going to start. And this is all in response to DEP's request that we do this as part of the order.

I guess, also, the lessons learned -- Ford recognizes that it has a responsibility as a good corporate citizen to operate its business in a manner that protects both the environment and the health of its neighbors. While this obviously includes meeting all applicable regulatory requirements, it is sometimes necessary and appropriate, as in this case, to go beyond legal mandates, as we were addressing the Edison site.

Ford strives to be a leader in its handling of environmental matters, meeting all applicable regulatory requirements and going beyond such requirements when necessary, appropriate, and practical. That's why the circumstances at Edison are both disappointing and frustrating. Preventing similar situations in the future will require Ford to understand why and how its processes can be improved.

Ford has established a cross-functional team to learn from what happened at Edison so that we can adapt and improve our processes. The team's work has begun and is being conducted in parallel with various government investigations and, of course, with the cleanups of the sites themselves. We have also begun a thorough review of Ford's methods for decommissioning and demolishing plants to determine if any improvements can be made. Ford is committed to sharing its conclusions with this Committee, or these committees, when the review is complete.

As I mentioned in the beginning of my statement, Ford takes its environmental responsibilities seriously. I also mentioned that the company has a reputation of working cooperatively with government agencies. Ford has worked very hard to fully resolve this issue to NJDEP's satisfaction. Simply put, Ford is willing to work with the Legislature and New Jersey DEP to support our common goals of recycling concrete in an environmentally protective manner.

Thank you for your time and attention.

And Todd and I are available for any questions.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Questions? Questions by anyone? (no response)

ASSEMBLYMAN McKEON: Members of the Committee?

Assemblyman Manzo.

ASSEMBLYMAN MANZO: Thank you, gentlemen, for your statements today. And I think, basically, what you're going to find, at the end of the road, is you've been a victim probably of somebody down the road who was supposed to be taking material or bringing it to a facility on your behalf and never got there. I was wondering if your investigation went as far as to look over the receipts you've been given by the contractors you have hired, who were supposed to take material to certain places, and they never arrived there?

MR. GREEN: We are looking at every piece of paper we can get our hands on.

ASSEMBLYMAN MANZO: Well, that's probably the most valuable pieces of paper that you'll find.

ASSEMBLYMAN EPPS: Mr. Chairman, I don't have too many questions. I'm learning as a new member. But through the Chair, I heard you make a statement that there was a decision by you or your company to remove the slab. Is that correct?

Did you incorporate anybody else from municipalities, the people in the surrounding districts, that that might be a possibility -- that it might be contaminated, and you could have capped it in? Then your last statement was, "We thought by removing it, it would enhance the value of the property." Why would you want to enhance the property? Why would you want to do that? I guess that's my question -- that you didn't have consultation with everybody to come and--

MR. GREEN: We're still trying to figure out, as we go through all the documents, when notifications or discussions did take place with municipalities beforehand. We know that for purposes of getting certain permits, it's possible that discussions did take place about what was going to be happening at the building, what was going to be demolished, and what was going to be done.

ASSEMBLYMAN EPPS: I mean, if we'd have just left it there, we would have been safe. Is that correct?

MR. GREEN: Well, we wouldn't be in the situation we're in now, that's for certain. But on the other hand, the--

ASSEMBLYMAN EPPS: And the value would have been just a little bit lower, but at the same time you could have used the property for whatever we wanted to, based on the fact that it was capped.

MR. GREEN: It ultimately could not be used for residential use.

ASSEMBLYMAN EPPS: I see.

Thank you.

ASSEMBLYWOMAN GREENSTEIN: Assemblyman.

ASSEMBLYMAN BARONI: Thank you very much.

And I promise, Chairman McKeon -- I promise my questions will be slightly shorter, but--

Mr. Holt, your colleagues here--

ASSEMBLYMAN McKEON: If not, you could just fax them to them. (laughter)

ASSEMBLYMAN BARONI: I could. I'll just fax it. (laughter)

I don't mean to insult the fax industry today.

Mr. Holt, your colleagues here -- forgive me, I know you told us your name, and forgive me--

MR. GREEN: Tim Green.

MR. HOLT: It's Tim Green.

ASSEMBLYMAN BARONI: Mr. Green, you made a comment that I think is very intriguing -- I think a number of people noticed it. That when the leadership of the DEP, who just spoke -- and you said that some of their suggestions that they have laid out would have been very helpful to you had they been in effect prior. Which ones?

MR. GREEN: I'm trying to-- We don't have our arms fully around what happened. We don't know what everyone knew at that point in time. But I think it would certainly have helped us to have had a clear understanding of when you need to apply for the beneficial use determination, and also what to do with concrete that has low levels of PCB contamination. Again, fortunately, the concrete that got spread around had

very low levels of contamination, and it would be helpful to have a clearer guidance on exactly what we could have done in that situation.

ASSEMBLYWOMAN GREENSTEIN: Mr. Green, see if your light is on. (referring to PA microphone)

MR. HOLT: Yes, it is.

ASSEMBLYWOMAN GREENSTEIN: It is? Okay.

MR. HOLT: Yes.

ASSEMBLYMAN BARONI: Thank you, Mr. Green.

A completely different line of questions. I'm not sure, Mr. Holt, which one of you or your colleagues can help me with this. Part of this is visualization -- and my colleague, Assemblyman Epps, sort of helped with this question as well. I think any of us who live in central New Jersey have driven past the old Ford plant in Edison. It's a massive complex. It's really big. And you're going to break up the concrete slab and you're going to put things, as my colleague Chairwoman Greenstein said, put things into piles. So my understanding, at a sort of base level -- forget anything else that happened afterwards -- my understanding is you broke up the cement and you put things into piles. Is that right? Is my basic understanding correct? Tell me.

MR. HOLT: Yes, yes -- no.

ASSEMBLYMAN BARONI: You broke up things and you put things into piles, and you put things into *this is clean*, and *this is not so good*, and *this is really bad*. Is that right?

MR. HOLT: Well, you have to understand that under the exemption -- and Todd, you can come in on it -- but we were -- we had approval to use the material that had nondetect for anything.

ASSEMBLYMAN BARONI: Right.

MR. HOLT: PCBs specifically.

ASSEMBLYMAN BARONI: So you had the nondetect pile.

MR. HOLT: And so in order to do that, you do sampling; and we followed protocols to sample so we could determine which had nondetect. And then we did further sampling and put it into the categories of the 0.49 and 2.0 parts.

ASSEMBLYMAN BARONI: Because you had essentially three piles. You moved things from around the site into big piles. Was that -- is my -- the visual image that I'm-- Is that right?

MR. HOLT: Yes. I--

MR. GREEN: I think that is. Again, we're trying to piece together exactly what happened at which point in time.

ASSEMBLYMAN BARONI: But essentially that's what--

MR. GREEN: That is essentially our understanding.

ASSEMBLYMAN BARONI: So if I were to drive past, at one point--

I'm sorry. Go ahead, Mr. Green.

MR. GREEN: I just want to clarify again, the piles would be nondetect. Nondetect are just detect up to 0.49, to 2.0. And then everything above two was segregated separately and handled separately.

ASSEMBLYMAN BARONI: Okay, so you had four piles?

MR. GREEN: Again, we're trying to piece together exactly at what point in time--

ASSEMBLYMAN BARONI: Theoretically?

MR. GREEN: Yes. We had three piles that we're referring to -- items that are below 2.0.

ASSEMBLYMAN BARONI: Right. Okay.

So you have these big piles sitting out there on Route 1 in Edison. And then you obviously, from what we've heard before, are going to have people come and take material that they're going to use -- in this case, Edgewater (*sic*) -- or whatever -- is going to go -- some to Hamilton, some to Monroe Township, some to Brick Township. Correct me when -- I'm looking for the basic story line here. Tell me where I'm wrong. Some trucking operator would come in and would take material. Now here's my question -- and I understand this is still being investigated. I understand there's a lot of data. I understand there's a difference of opinion. I think some smart lawyers are in the angle to figure out what the difference of opinion is -- who took what when and who knew what when. Here's my question for you: Did nobody notice the pile of bad stuff getting smaller? We're talking, like, just to Hamilton -- I guess it was at one of our public hearings -- it was like 800 trucks. I'm not a trucker, but that's a big pile. Did nobody notice that it was getting smaller?

MR. GREEN: I don't know, because we haven't finished our investigation, who knew what at which point in time. I will say that everything that was going off-site was at 2.0 parts per million and lower, which is a very low level of PCB.

T O D D W A L T O N: Is this on? (referring to PA microphone)

I mean, you're characterizing it as bad stuff, but the pile is the material that would have met commercial standards. And I think it's in the

timeline, showing when the material that met the commercial standards was taken off-site.

ASSEMBLYMAN BARONI: No, and I understand that. I understand. That's what I mean. I in no way want to imply that Ford necessarily should have known that some of this was going to be put under houses, day-care centers, and a complex across the street from the senior citizens development in my district. I am not implying that in any way. Because maybe one of the parts of the process is you didn't obviously know where the trucks were going. I'm just trying to establish whether or not there was anyone on-site whose job it was to notice the pile getting smaller.

MR. WALTON: Well, I think the timeline indicates that the pile was getting smaller. Because the timeline shows that contractors were taking industrial/commercial material off-site.

I've got the wrong mike.

ASSEMBLYMAN BARONI: Say it again?

No, I understand that. And I also understand that Ford is in a position of having, in this literal instance -- you're being asked to answer questions -- not so from me, but from others -- that really should be answered by the people who took the material from your site, and took it and put it in my hometown. And I understand that that's not your fault. And I'm grateful for the fact that you've been so open.

And Mr. Holt, I give you personal credit, because you've reached out. I'm sure Mrs. Greenstein -- certainly to my office and Senator Inverso's office, very quickly on this. I'm grateful for that. I strongly urge you, to go back to my first round of questions, to possibly identify to the Department of Environmental Protection, and participate in their rule-

making process, of how the recommendations that they're going to make to improve the process could have made the folks in my hometown not as scared out of their minds as to what came into their community, and what went under a school in Trenton, or what went under a day-care center in West Windsor. And please participate in that process, because you may be the people who know best how this could have been fixed.

Thank you.

MR. HOLT: Good. We will make that commitment to you, and to the Committee, and to DEP to cooperate.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Questions from Committee members? Anybody else? (no response)

Okay. Thank you very much.

MR. HOLT: Thank you.

MR. GREEN: Thank you.

MR. WALTON: Thank you.

ASSEMBLYWOMAN GREENSTEIN: Next, I'll call Bill Layton. And after that I want to call Jeff Tittel -- I hope he's still here -- and Bill Wolfe.

Thank you.

And make sure it shows red. (referring to PA microphone)

And just identify yourself.

WILLIAM F. LAYTON: Thank you, Assemblywoman.

Thank you, Chairman and Chairwoman of the -- and members of the Committee, for providing me with the opportunity to speak a little

bit about Class B recycling and how it affects our industry, and some of the changes that you may be legislating and how that affects us.

My name is William Layton and I--

ASSEMBLYWOMAN GREENSTEIN: Is that on? (referring to PA microphone)

MR. LAYTON: Yes, it is.

ASSEMBLYWOMAN GREENSTEIN: Okay.

MR. LAYTON: My name is William Layton, and I am the Executive Director of New Jersey Concrete and Aggregate Association. The ready-mix concrete and aggregate industry in New Jersey is a \$2.2 billion industry. We employ over 15,000 people in the state that manufacture ready-mix concrete, sand, gravel, stone; as well as recycled material, such as the recycled concrete that we're discussing today during this hearing.

Like the Assistant Commissioner said earlier, we estimate that there's over 3.9 million tons of ready-mix concrete that is recycled in New Jersey. It's a pretty significant amount, considering 20 years ago it was probably less than 100,000 tons. This is approximately half of-- If you include the other construction materials, our members are responsible for recycling near 10 million tons, total, of construction materials -- that are recycled by our members.

The recycled concrete that is sold on the marketplace is normally sold at a cost of about \$6 a ton. This is approximately half of what it would cost if we were using virgin materials, such as the sandstone gravel that's produced in the northern and southern parts of the state. This is very important to keep in mind, considering the fact that the State of New Jersey is running low on these virgin resources. In fact, in over 35

years there has not been one single quarry permitted, nor has there been a sand gravel or stone operation permitted in the last 10 years. With the diminishing sources of virgin materials, recycled aggregate is becoming more and more critical to New Jersey's future. Without it, we would not be able to fix our roadways; build churches, schools; or rehabilitate our cities. Not to mention the fact that New Jersey will rely more on out-of-state resources, thus driving up construction costs by over 35 percent and increasing traffic congestion by, what we estimate, adding over 1.5 million new truckloads a year on to New Jersey's already overly congested roadways and State highways.

As I just mentioned, you can see the economic advantages, and we've talked a lot about some of the environmental advantages. But what I want to do is talk a little bit about before we had regulations in place and the state that New Jersey was in. Before the State set up the Class B regulations, construction debris, including concrete, were haphazardly dropped into streams, lakes, rivers, and wooded areas. Just drive through some areas of southern New Jersey and the remote areas of northern New Jersey and you're bound to see remnants of these old practices. This occurred because the economics and the hassle of bringing these materials to landfills were cost prohibitive. New Jersey, like other states around the country, realized that this was a big problem, so we began to recycle these materials and regulate.

Now New Jersey, over the last 15 or 20 years, is probably one of the leaders in the country when it comes to Class B recycling materials. By fostering recycling in New Jersey, our industry feels that the Department has helped to eliminate a lot of this illegal dumping, and we'd like to

continue in that direction. Contractors, local governments, and homeowners have all seen the benefit of recycling, and this is reflected in the amount of materials that are recycled at Class B facilities. Even with these behavioral changes, unfortunately, sometimes these materials do end up in the wrong places, such as is the case with the Ford Motor Company, as well as some of the other -- the school in Trenton.

We primarily believe that this is a case where some of the exemptions are too loosely written in the regulations. These exemptions allow the setting up of temporary crushers where the ready-mix concrete and other construction debris can be crushed and then reused at a site or taken to another site. The problem is, in a lot of cases you get these temporary crushers that set up. And they may be, as we talked about earlier, a limited-- They may be a limited permit. The guy will stay in operation for six months, and even beyond, and there's no way to really track that guy. So it's not just the Ford Motor Company -- that this problem can potentially exist -- it's all the unregulated areas that the State doesn't regulate now that potentially could create even bigger problems, I think, down the road, if the State doesn't do something to get a handle on this.

The guy sets up for six months, and then he turns around and he's just accepting materials from other places that he may be using for his job sites. So it's considered technically a reuse, and he's not reselling the product. And that's how these guys get around the exemptions.

ASSEMBLYWOMAN GREENSTEIN: So these are sort of fly-by-night type guys that are trying to do this work?

MR. LAYTON: Fly-by-night. We call them, in our industry, *fly-by-night demolition guys*, that are just out there. They are not qualified. They are not trained to handle these materials. They are not sure. They're only concern is just finding a place for these materials and it doesn't matter where it ends up. And unfortunately, we can't regulate everything.

ASSEMBLYWOMAN GREENSTEIN: What do you think is a way of trying to help solve this? You're saying it would be difficult to regulate all these fly-by-night guys, but what would be a potential solution for some of this?

MR. LAYTON: Well, I think one of the things that we'd like to maybe see, or one of the things that could potentially be helpful, is not allowing for the use of these temporary pieces of equipment, unless these operations go through the same regulatory process that a site that's gone through the regulatory process -- that's gone through getting the permitting and going through county and local approvals, DEP approvals. The regulations that exist now for Class B facilities are extremely overwhelming and only people with, I think, a lot of courage to invest in these types of operations are the ones going into it. Because the time period -- it sometimes can take two, two-and-a-half years, on a good day, if all the stars align, to open up a Class B recycling facility. So that's why the limited-use exemption is something that a lot of people go for, because they can operate for a long time underneath the purview of, "We are just here temporarily, and we're just reusing the material."

ASSEMBLYWOMAN GREENSTEIN: So these fly-by-night guys slip in under these limited permits, in a sense?

MR. LAYTON: I believe that's the case, yes.

ASSEMBLYWOMAN GREENSTEIN: Do you have any sense, from what we know at this point about this whole Ford situation, of what happened there?

MR. LAYTON: From what I've read in the newspapers and without talking to -- really having any discussions with the people from Ford, I really can't talk too much, because I'm not too sure with the specifics. The only thing I can say is that they were -- based on the way the exemptions are written now, in my eyes from seeing everything -- they were operating within the confines of what the regulations say now. But again, if we take a better look at these exemptions, I think that's really the way to address how and where and when, if this material is ever reused in an improper fashion. And again, this is potentially a regulated site. It's all the unregulated activities that are occurring from these fly-by-night, say, demolition contractors.

As I said before, New Jersey is probably one of the most regulated -- has probably some of the most stringent regulations on Class B facilities, right now, in the country. We have to deal with a number of different local and county approvals. We are inspected sometimes four to six times a year at our sites -- are inspected for -- to make sure we're in compliance with our permits.

And our thought and our goal all along has always been to-- We feel that any increased regulations or requirements on the industry will be devastating. It will take New Jersey back to where it was before we created this program. And it is really a success, and we should be patting ourselves on the back for the wonderful job we've done in encouraging people to recycle, especially with these materials. If you make recycling cost

prohibitive by overregulating it, people will choose not to recycle and they'll find other places for the materials like they did before. And we also have a landfill capacity issue in this state, and those materials are going to end up in those places. And that's the last place, I think, we want to encourage these materials to end up.

We do recognize the importance of a cost-efficient recycling program that provides the people with incentives to recycle, not punishes them financially. For these reasons, we have been working with the Department of Environmental Protection for, like, the last four months to come up with a study that identifies different concrete applications and which ones may contain PCBs. We feel that once we pinpoint potential sources, we can then come up with some best management practices to eliminate these materials from being reused for certain construction activities. And we think that by doing a study with the DEP and coming up with these practices, we can eliminate a lot of the issues that occur.

The problem in this industry is we sometimes will accept, literally, shovels of concrete. Like a guy will take a -- he may take a step off his patio and put a couple of shovels worth of concrete in his trunk, and he has no place to put it. He doesn't want it on his property, and he's not going to put it on the curb, so he brings it to a Class B recycling facility. And we accept it and crush it, and then it's sold in the fair marketplace. So to create a situation in which that guy who wants to bring a couple shovels full of concrete -- to require him, or require the facility accepting it, to test for PCBs -- which those tests could be extremely costly. We're talking from hundreds of dollars to thousands of dollars. The guy with the shovel worth of concrete is not going to want to pay \$500 to drop off two shovels worth

of concrete. He's going to find a place in his town or someplace else where he can just dump it, if it's on the side of the road or wherever. That's where it's going to go, and that's what was occurring beforehand.

So we don't think it's feasible, nor is it economically attractive, for the testing of these -- for every single kind of material or every single ounce of material that comes into the site to be tested. Mandating that this material is tested will pass greater costs on to the recycler and will ultimately lead to, we feel, the demise of the Class B recycling program. Such testing will cost from hundreds to thousands of dollars, as I mentioned. And there's no way that the local homeowner or the local small contractor is going to be bringing it to a recycling facility.

We do think, however, that not all testing is a bad idea. We think that, in some cases, material testing is very positive and can give a state the greatest bang for its buck. The State should look at the landowner or person in charge of demolition at these large cleanup sites, and they should ask for certifications and require certifications in testing the materials prior to being reused at another location or shipped to a Class B recycling facility. We don't believe that this is occurring now, and we think that the State could cut down a lot on some of these practices. We feel that this will give the State the opportunity to tackle the largest sites in the state that are most likely contaminated with PCBs.

And that's all I have today. Thank you again for letting me testify.

ASSEMBLYWOMAN GREENSTEIN: Thank you very much for -- I think it was a good exposition.

Any questions?

ASSEMBLYMAN McKEON: Chairperson, I'm going to turn to my Committee, because we've got about five minutes before we need to get downstairs.

No questions on this side? (no response)

ASSEMBLYWOMAN GREENSTEIN: Questions anybody?
(no response) Okay.

I really appreciate the input.

We're about to lose a number of members of the Committee. I only show Jeff Tittel and Bill Wolfe. Is there anybody else here to testify?
(no response)

Okay. Because I do want to get their testimony on the record.

MR. LAYTON: Thanks again, Assemblywoman. Thank you.

ASSEMBLYWOMAN GREENSTEIN: Thank you very much.
And I'm glad that you're working with DEP on these changes.

MR. LAYTON: Yes. Thank you.

ASSEMBLYWOMAN GREENSTEIN: Why don't we have Jeff--

J E F F T I T T E L: I'll be brief, because I've got to get to your Committee too. (laughter)

ASSEMBLYWOMAN GREENSTEIN: Yes, that's right. So I think you're all leaving at the same time.

MR. TITTEL: But I wanted to start off and say one thing. And I do want to thank this Committee for holding these hearings, because it helps bring to light what is probably New Jersey's dirtiest and most horrific secret -- which is what's happening all across the state when it comes to development on what we call *brownfields*. We used to call them

contaminated sites, and we're trying to make it nicer, but they still are contaminated sites, they still are polluted sites.

And I want to make one suggestion for the future. I think that, even though we're rushed today -- and part of me would like to have equal time to DEP, because I disagree with a lot of what they say -- there's more spin there than on an old 78 rpm record. (laughter) And because there's really serious problems and serious need for reforms, I would like to say that we should have other hearings: one up in Ringwood, because I can tell you how Ford lied and covered up there for decades, because I was chair of the Environmental Commission in that town and I watched it. I'd like to see a hearing focusing on Jersey City and the chromium, where we have people being put in harm's way on a daily basis, where the Federal standard and the Federal courts say one thing and the State of New Jersey says something else, where we see massive development going on and we see what we consider violations of Federal statute, as well as a Federal court decree, putting more people in harm's way.

What I am most concerned about is that we are creating a system in New Jersey, as we turn brownfields into gold. And all that glitters isn't gold. In Jersey City, it's chrome that glitters, and it's all over the place, unfortunately. But as we join this, we're throwing out what was supposed to be one of the most important laws ever passed in New Jersey, which was the Spill Act, which was cleaning up contaminated sites. And as we're rushing forward with billions of dollars of new construction, it comes down to two things: Who's going to pay to clean up those places so that people can live there safely? Will it be the responsible parties, or will we build on these sites by capping them, knowing that all caps will fail, whether it's

through vapor intrusion or through cracking? And then the taxpayers are going to be spending hundreds of millions of dollars trying to fix these sites, putting people in harm's way -- especially children, who are the most vulnerable. Or are we going to go back now and say, "Look, we rushed forward back in the '90s, when we went from -- to the ISRA standard, where we went to this voluntary cleanup program where everything gets cleaned up to an industrial standard. And then somebody else down the road passes the buck, under the voluntary cleanup program, to what happens to it next."

We're seeing residential housing going on these sites. And this isn't the only place. I can take you up into Bergen County and go look at the end cap site, where the cap itself has -- is a gold mine for the developer, because they're bringing in construction debris -- what's called *dirty dirt*, which are soils that are filled with hydrocarbons from underground storage tanks -- they're bringing in dredged soils with dioxin from Newark Bay; and then they're going to put 2,000 units of housing on top of it, even though DEP's own internal documents are concerned that the weight of those buildings will cause that cap to crack, and will cause vapor intrusion and, potentially, even calamity to those buildings that are going in a high density.

These are the things that we see throughout the state. We see, up in Weehawken, where they're putting \$3 million condos. And the only thing that I see positive is, in the past we only stuck poor people on contaminated sites. Now we're sticking rich people -- and maybe that's our equalization, because now we're building \$3 million condos on the waterfront and we see chromium coming up through the sidewalks. We see,

in other parts of the state, schools -- whether here in Trenton with the Martin Luther King School -- but that same guy has contracts to do things at 40 other sites.

This could be one of the most horrific issues that this board, and these two Committees, and this Legislature face, because it's really about the future of our state, and it's really about protecting people and keeping them out of harm's way. There is just so many issues that I can talk about where we're not going after contaminated groundwater, and it's bubbling up into people's basements, because we're giving No Further Action letters into the voluntary cleanup program. We've given out more than 11,000 of them all over the state. But yet, according to EPA, there are 3,500 sites in New Jersey that are continuing leaking into groundwater. Many of them have been given NFAs by the State. Others have been given something even worse, which is CEAs, or Categorical Exemption Area. We've had areas next to wells in the city of Camden that are off-limits for new wells. Yet we got a well field in the middle of it because of contaminated groundwater, and we're not requiring the responsible party to clean up that groundwater. And yet we're now going to build thousands of units of housing on top of those sites with contaminated groundwater, with contaminated soils, putting people in harm's way.

And I can go on, but I think that my point is that we need to really spend time on this issue. There's a lot that needs to be done. Because, quite frankly, it's really the purpose of the government to protect the innocent. And what we're doing is, we're setting up a system where the innocent aren't going to be protected, that we may be creating future Love Canals out there -- with people living on top of them, not next to them.

And so what I wanted to talk about real briefly is just some quick ideas for reform, and I'll give more papers and I'll talk a little more. But first I wanted to start off with the testing issue. I completely agree with you, but I would set it up a little differently, where DEP sets up an escrow account paid into by the RP, and then DEP hires some people off of that list.

When I was up in Ringwood with the Ford site there, in the DEP field notes there was a report from a DEP staff person saying that the consultant for Ford was taking groundwater samples with buckets, which means it is all evaporating out when you have volatile organic chemicals coming up through the water. I just wanted to give you that as an example of where we see the problems. And maybe -- because there's a no-test, no-tell philosophy by a lot of consultants, if there are games that can be played where they can get around standards by underreporting things, by doing certain tricks as they take their samples.

Real quickly, because I've got to run, we need to eliminate the cost test that weighs -- the cost test on the cleanup plans. Because basically, what we're doing now is that the responsible party takes the cheapest plan possible versus the most responsible plan. We're not looking at future uses to a site. If it's going to be a restricted site, then the zoning can never change -- that it has to be restricted. And we're not doing that. We need to mandate permanent cleanups for any sites that are in highly dense residential areas or where we're going to be putting residential housing on it. We cannot allow housing to go uncapped. We must require real groundwater cleanups. We must be able to open up No Further Action letters a lot easier. We need to structure the program around a

precautionary principle where standards are developed to be protective of the public, as well as protection of wildlife and ecology. And we really need to be able to go out there and revoke cleanups that aren't working, get rid of some of these MOAs that are out there, and do them with legally binding consent orders and Spill Act directives.

And I can go on and on. But the other point, that I just wanted to end with, is that we also need to get the public involved. Because the citizens in those communities have a right to know what's happening in their neighborhoods and what's happening to them, whether it's on the side where they're dumping the stuff or on the side where they're taking it away. But they need to be actively involved in not only the cleanup plan, but what happens to the sites as far as development. And I think that's a critical part -- is to bring the public back to public participation, so that we don't have any more W.R. *dis*Grace's in Hamilton, and so on down the list that you can go through.

And I just wanted to end with that, saying, "You have a big job ahead." We'd like to work with you. I've got tons of ideas and, quite frankly, I think that the program has been a failure, and that we need to fix the laws and fix the programs to protect the public.

Thank you.

ASSEMBLYWOMAN GREENSTEIN: Jeff, I agree with you. We knew this was going to be a rather abbreviated hearing, and I knew we were going to go way over. And clearly, it's only the first step in looking at a massive issue. We did want to focus, as we did, on the Ford issue, but certainly it's a jumping-off point to so many of the problems. And I'm sure we'll continue the discussion.

MR. TITTEL: Thank you.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

Bill Wolfe.

B I L L W O L F E: Bill Wolfe, Director of a group called PEER.

ASSEMBLYWOMAN GREENSTEIN: I just want to tell you, I think the environmental-- anyone who can stay--

Are you able to stay, Assemblyman?

ASSEMBLYMAN EPPS: Well, our Chairman already left.

ASSEMBLYMAN MANZO: Our Chairman left.

ASSEMBLYWOMAN GREENSTEIN: Oh, that's right. You're all-- They're all on Environment. But I'm going to stay to hear, because I think -- is Bill the last piece of testimony here? So I'll be here.

ASSEMBLYMAN EPPS: Will it be as brief as Mr. Tittel, or were you--

MR. WOLFE: I'll be much briefer and much more concise.

ASSEMBLYMAN EPPS: Well, we'll wait then.

ASSEMBLYMAN MANZO: Yes.

ASSEMBLYWOMAN GREENSTEIN: Okay.

Go ahead.

MR. WOLFE: Okay. Here's the deal.

I spent 13 years at DEP. I can puncture the spin, as Jeff calls it. I spent--

ASSEMBLYWOMAN GREENSTEIN: Make sure your light's on too. And also, what's the name of the group that you're part of now?

MR. WOLFE: Leave it red? (referring to PA microphone)

Public Employees for Environmental Responsibility. We're a national alliance of professionals in state and Federal agencies who believe in environmental ethics and government accountability. That's our mission.

I've prepared written testimony. I have very specific -- since you're legislators -- very specific areas of law that were changed in 1993 and 1995, '97. I was on Senator McNamara's Brownfields Task Force and did some of his dirty damage that we're living with now. So I know exactly where the skeletons are buried. And I've had a dozen specific areas of law that have been amended, that are in the attachments to my written testimony. I've gotten 10 specific recommendations as to where you can amend law to remedy the problem and prevent what we've seen in the past. And I'll leave you with three points:

One, in order to understand fully what went on, you can't look at recycled concrete and the recycling regulations. You have to take a step back and look at the Site Remediation Program as a whole. Okay?

Number two, that program was changed by law, by this Legislature twice, with the specific intent of privatizing decision-making, reducing cleanup costs, scaling back DEP's review powers and jurisdiction and authorities comprehensively. So this is not an unintentional consequence. This was an affirmative policy of the Legislature, and it needs to be reexamined. And we need to go back and bring the pendulum back to protecting the public interest.

Number three is that the Ford situation was not an anomaly. It is the rule -- it is the rule. And the miscommunications were not communications. The agency's hands are tied. The statute prohibits them

from doing certain things, and vests the polluters and the developers with the power to make the decisions that are public decision. All right?

Now, historically, DEP made the remedy selection. That changed, and that authority has been vested solely with the responsible party. Historically, the DEP had an option to compel a permanent remedy that Ford voluntarily-- The irony here is that Ford voluntarily took on the right thing -- and did the right thing. Something that DEP doesn't even have the power to compel them to do. That's very important.

Number three (*sic*), the public, which is perceived as hysterical and a barrier to economic development, was intentionally cut out of the process. All right? So I wanted to talk to the Assemblyman about some of the notification issues that he has. If you put an awning at a gas station, you have more public participation -- you get a notice, the property owners; you have a planning board review. If you're cleaning up hundreds of thousands of gallons of contaminated benzene that's flowing into somebody's basement and well, there is no public review -- none whatsoever. People need to know that. You have to remedy that statutorily. You cannot rely on DEP.

And in closing, just -- because I realize we're way over time -- is in the '80s, when garbage was washing up on the beaches and the public was outraged, the Legislature didn't sit back and say, "Oh, DEP, go make rules and solve the problem. We'll wait another five years and then you'll put out something that's half-baked." The Legislature took the bull by the horn and passed the Regulated Medical Waste Management Act that put in place a comprehensive scheme to affirmatively track all forms of medical waste, to say this is not acceptable in the State of New Jersey.

We need to do the same thing with this program. The public trust in government that I've seen in dozens of hearings on this issue is at a boiling point. We're losing credibility in government and public service, and it's not worth it to save a few bucks off of Ford's bottom line.

Thanks.

ASSEMBLYWOMAN GREENSTEIN: Thank you.

And I do want to say, Bill, that I appreciate the information that you provide, and I think there's a lot of good information there.

MR. WOLFE: I'd like to be a resource. I can work with the OLS staff, and I'd love to.

ASSEMBLYWOMAN GREENSTEIN: Actually, I think we had a question.

ASSEMBLYWOMAN ASSEMBLYMAN GORDON: No, not a question. I just wanted to thank you for your comments. I think you've raised some really important issues. I, for one, would hope that this Committee undertakes a comprehensive review of these programs. We appreciate your input and we look forward to working with you.

And at this point, Madam Chair, I think the Environment Committee is going to need to withdraw.

ASSEMBLYWOMAN GREENSTEIN: Yes, thank you all very much.

ASSEMBLYMAN GORDON: Thank you.

ASSEMBLYWOMAN GREENSTEIN: Thank you all.

And thank you all in the audience.

(MEETING CONCLUDED)