

Committee Meeting

of

SENATE ENVIRONMENT COMMITTEE
ASSEMBLY ENVIRONMENT AND SOLID WASTE COMMITTEE
Senate Committee Substitute for Senate No. 1897
Assembly Committee Substitute for Assembly No. 2962

*(Establishes licensed site professional program of
site remediation and makes various changes to site remediation laws)*

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

DATE: February 26, 2009
2:00 p.m.

MEMBERS OF COMMITTEES PRESENT:

Senator Bob Smith, Chair
Senator Jeff Van Drew, Vice Chair
Senator James Beach
Senator Robert M. Gordon
Senator Christopher "Kip" Bateman
Senator Andrew R. Ciesla

Assemblyman John F. McKeon, Chair
Assemblyman Reed Gusciora, Vice Chair
Assemblyman Peter J. Barnes III
Assemblyman Matthew W. Milam
Assemblyman John E. Rooney
Assemblywoman Valerie Vainieri Huttle
Assemblyman Daniel M. Van Pelt



ALSO PRESENT:

Judith L. Horowitz
Algis P. Matioska
Carrie Anne Calvo-Hahn
*Office of Legislative Services
Committee Aides*

Kevil Duhon
Senate Majority
Kate McDonnell
*Assembly Majority
Committee Aides*

John Hutchison
Senate Republican
Thea M. Sheridan
*Assembly Republican
Committee Aides*

***Meeting Recorded and Transcribed by
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ASSEMBLYMAN JOHN F. McKEON (Co-Chair): Welcome to everyone, and thank you for accommodating us. Obviously, with the number of witnesses, and crowd, and the unprecedented Joint Committee for a matter for action, this was a better facility for us. So we all apologize about the delay in getting started.

Can we have a roll call?

MS. CALVO-HAHN (Committee Aide): Yes.
Assemblyman Van Pelt.

ASSEMBLYMAN VAN PELT: Here.

MS. CALVO-HAHN: Assemblyman Rooney.

ASSEMBLYMAN ROONEY: Here.

MS. CALVO-HAHN: Assemblywoman Huttle.

ASSEMBLYWOMAN VAINIERI HUTTLE: Here.

MS. CALVO-HAHN: Assemblyman Milam.

ASSEMBLYMAN MILAM: Here.

MS. CALVO-HAHN: Assemblyman Barnes.

ASSEMBLYMAN BARNES: Here.

MS. CALVO-HAHN: Assemblyman Gusciora.

ASSEMBLYMAN GUSCIORA: Here.

MS. CALVO-HAHN: Chairman McKeon.

ASSEMBLYMAN McKEON: Present.

SENATOR BOB SMITH (Co-Chair): Can we have a roll call on the Senate side?

MS. HOROWITZ (Committee Aide): Senator Smith.

SENATOR SMITH: Present.

MS. HOROWITZ: Senator Van Drew is present.

Senator Beach.

SENATOR BEACH: Here.

MS. HOROWITZ: Senator Gordon.

SENATOR GORDON: Here.

MS. HOROWITZ: Senator Bateman.

SENATOR BATEMAN: Here.

MS. HOROWITZ: Senator Ciesla.

SENATOR CIESLA: Here.

ASSEMBLYMAN McKEON: Mr. Chairman, first and foremost, on behalf of my colleagues in the Assembly, thank you for inviting us to be part of this Joint and historic Committee hearing today.

I have to start in complementing you for an effort that was gargantuan, to say the least, as it relates to the amount of time, effort, and judicious reasoning I think that went into this. I think it's a 107-page piece of legislation.

What we had talked about, for all who are here, is after we have the Deputy (*sic*) Commissioner speak to start things off, we will open it to those who have signed up as witnesses. We're going to maintain a very strict time limitation of five minutes. So for all of you who may have given us written testimony, we appreciate that. We always take that into consideration, and it will be part of the record. So please time your statements to the point that you know you'll have five minutes of time.

And we do that well-knowing that this process has been ongoing for close to two years now. And I don't think there's anybody in the audience that hasn't had the opportunity to speak to either one of the

two of us, or many of the members of the Committees, or staff on multiple, multiple occasions.

So with that, Senator Smith, perhaps you can lead us off with a few words.

SENATOR SMITH: Sure.

Chairman McKeon, thank you for your kind comments. What we have today in front of us -- in front of both Committees -- is the product of two-and-a-half years of very hard work by the DEP, by the two Committees, by the Office of Legislative Services, by the partisan staff. Everybody's worked together. We've had so many hearings that it's not in our ability to count them at this point. There's been stakeholder groups.

And I think at the end of the day, Chairman McKeon, we have here a very, very balanced bill. It will be protective of New Jersey's environment, the health of our citizens, and at the same time help us get to the finish line in getting these thousands of contaminated sites cleaned up in an expeditious way.

With that, and your indulgence, we'll ask Deputy Commissioner Kropp to give us a little introduction and to warm us up to the topic.

ASSISTANT COMMISSIONER IRENE KROPP:

Thank you.

Good afternoon, everybody.

Thank you to Chairman Smith, Chairman McKeon for all the work that we've done together in the last two-and-a-half years. And thanks to all the members of the Committees who have been gracious in listening to me and talking with me. And especially thanks to all the legislative staff,

including Judy and Kevil, who have really had their way -- working extremely hard.

I want to talk very briefly -- and I will be within the five minutes, I promise -- very briefly about the bill, what it does and doesn't do; and what I see moving forward.

To debunk some of what I think are rumors floating around with regard to the bill, I want to just talk about what I believe, after two-and-a-half years of working closely with the bill, what it does and what it doesn't do.

It's very important to note for everyone here that this bill does not lower cleanup standards or lessen any cleanups that the Department would do. In fact, the bill strengthens DEP's enforcement capabilities. It provides for greater protection at schools, childcare facilities, and residential housing. It furthers our ability to require cleanups to unrestricted standards in those cases. It prohibits those types of developments on landfills that require leachate or methane collection. It does allow us for some flexibility when -- in a situation of developing a school -- you can't put it on an unrestricted standard. It allows us some flexibility to meet presumptive standards or alternate presumptive standards. So, again, it strengthens what we have today.

It does not privatize, it does not deregulate, it does not eliminate DEP enforcement or limit our review to only 10 percent of submittals that come in the door. The bill does ensure DEP review of all documents, something that we do not do now. It does provide for greater protection at the most contaminated sites. It does provide for greater protection at the most recalcitrant sites. It's very clear on who is

recalcitrant. It does not change the role of DEP staff. It merely lays out a different business process for how we review documents. It absolutely reinforces the polluter-pays concept, and it strengthens it not only in the Spill Act, but in the release of grant funds to municipalities under the HDSRF program.

The bill does not change the fact that, right now, consultants are paid by clients. It does hold those consultants to a higher standard of performance. It does hold them accountable for their work. It does, for the very first time, allow enforcement action to be taken against consultants who violate site remediation laws and regulations. It also holds those consultants to a strict code of ethics.

I understand that the bill creates a climate of change among many parties. All stakeholders, in fact, are subject to this change. Many DEP staff are rightfully nervous because of fear, through fearmongering, that they will lose their jobs. That is not the case. Change is sometimes good, sometimes necessary, and sometimes absolutely critical for survival. In this case, it is critical to both the environment and economic survival of New Jersey that this bill be passed today.

Not only are we dealing with an existing backlog that slows the economy and hurts the environment. But as you all know, we are on the brink of economic disaster to the degree that we now have a new American Recovery and Reinvestment Act that will provide billions of dollars to New Jersey in hopes of economy recovery.

What many may not know is that the Site Remediation Program, my staff, will be playing a major role in this process in New Jersey. Site Remediation staff will be involved in many of the economic stimulus

projects: the Transit Hudson River Tunnel, the Port Authority bridge, DOT projects, Schools Development Authority projects, Environmental Infrastructure Trust projects. We will be involved in all of those projects moving forward. We will be directly overseeing the expenditure of Federal moneys that will be spent on brownfield grant projects, leaking underground storage tank grant projects, and Superfund projects.

As you are all well aware, tight timeframes are in the American Recovery and Reinvestment Act. And you're aware that these mandates on Federal agencies to oversee these expenditures are very, very, very tight. We need to get the money out the door, into contractors' hands, and spent quickly.

I have fought for this legislation under the pressure that we were facing two-and-a-half years ago. The pressure has only increased based on the current economy. I know that the State Legislature understands what's best for New Jersey as a whole. I'm optimistic that this new program will provide the DEP with the opportunity that we need to meet the challenges that lie ahead and that are just around the corner. Because this money needs to be spent soon.

I am certain that the environmental protections that are now strengthened in this bill exist for us, for the residents of New Jersey, and for the future residents of New Jersey. I challenge anyone who does not fully support the legislation, that both of you Chairmen have proposed, to provide a solution that will equally position us for economic recovery ahead while ensuring this greater degree of environmental protection.

ASSEMBLYMAN McKEON: Thank you very, very much.

If you could stay with us, if you wouldn't mind, just in case there are points of clarification. We're going to hope to avoid a lot of questions and interplay.

Dave Pringle, from the New Jersey Environmental Federation.

Dave, you look like Mickey Rivers walking up to the plate there. What was that?

DAVID PRINGLE: I'd like for the Assembly to run for reelection this year on more than this bill (indiscernible) -- or permanent extension and a bankrupt Green Acres. So it's not a happy day for the environment in New Jersey.

I distributed our testimony yesterday. And we also support the testimony you'll hear and has been submitted by our colleagues from the South Jersey Environmental Justice Alliance, South Jersey Legal Services, Ironbound, and many others.

I am more than happy to meet the challenge that Irene just laid to you. Amend this legislation, narrow the universe so that when you're taking on something like 20,000 sites all at once, as a total overhaul of three major environmental laws and about 12 regulations, where the DEP currently doesn't have the ability to process information-- You're asking them to turn overnight. That can't be done. Narrow the universe, at least initially, to the least problematic sites to ensure this gets done right.

The oversight in this legislation is much less than the oversight in Massachusetts. There's twice as many audits in the Massachusetts program as is proposed in this legislation. In Massachusetts, they found in the audits they did do that 50 percent of the sites had violations. There is an inherent conflict of interest when you're having the folks doing the

cleanups signing off on the cleanups. So, yes, consultants are paid by the responsible parties, but they weren't paid to sign off on the cleanups the way it occurs in this legislation.

Each successive version of this bill has gotten weaker. Yes, there are some things in there that strengthen the law from current situation. But with each iteration of this bill, those protections have gotten weaker and weaker. For example, I thought it was in this morning's version -- I've been told it was in Friday's version -- it was the first time it appeared, regardless of when it appeared -- to eliminate the provision that you could only have a weaker cleanup for a school, daycare, or home when it was physically or technologically impractical. To make it flat-out *impractical* brings in costs. That's a significant weakening of what had been a protection in this legislation.

I could go-- The licensed site professional board is controlled by the folks who are regulating. It doesn't make sense. And we urge that this bill be held until you can narrow the universe to make it be a pilot project to make sure we get it right; to greatly strengthen the community, and public oversight, and government oversight in this legislation; and to require, not just permit, greater cleanups at schools, daycares, playgrounds, and ball fields.

SENATOR SMITH: Thank you for your comments.

David Brogan, Mike Egerton, NJBIA and the State Chamber of Commerce.

DAVID BROGAN: Thank you, Mr. Chairmen.

My name is David Brogan. I'm Vice President of Environmental Policy at the New Jersey Business and Industry Association.

We were part of the stakeholder group that has worked on the licensed site professional program, the site remediation program overhaul over the last two years -- two-and-a-half years.

We support S-1897. And the licensed site professional program is the only viable option that we've seen to reform site remediation in the State of New Jersey. We have 20,000 known contaminated sites. That number is growing. The number of case managers has gone down. And the only viable solution is to basically harness the power of the private sector and provide more authority for them to process those sites.

And the one thing that occurred time and time again is that the oversight has gone down. And realistically, DEP inspects every document that comes through under this bill. There's an increased -- higher code of conduct, higher code of ethics for the licensed site professionals than there is now, civil and criminal penalties that didn't exist before.

We've worked very hard on this. And I want to thank both you and all the members of the Committees, as well as Irene Kropp for her work on this. But again, I think when we're looking at -- and I'll keep this brief -- when we're looking at trying to tackle this problem, there really is no other viable solution.

So with that, I'll turn it over to Mike.

MICHAEL E G E N T O N: Thank you, Chairmen.

And the same thing, I'm going to keep it sort of like an Academy Award speech. I just wanted to thank you, Chairmen, for your leadership, for the hard work that Irene has done -- and actually put up with us in so many reiterations of this legislation.

As I told you before, Chairman, I was -- about, I guess, 10 or 11 years ago, when we worked on the brownfields bill with your predecessor, Senator McNamara, we went through this type of scenario as well. And I recognize the hard work that you've done, that staff has done, Judy's time in this legislation. We really appreciate it.

The State Chamber, as you know, embarked on a benchmarking study about three years ago, and we called for an LSP program and said you should look at Massachusetts. You've done that. We're happy with the changes that have been made.

Obviously, there are a couple of things that we could always tweak to make it an even much better bill. But considering all the different stakeholders, we appreciate the hard work and, again, the time and effort that Irene and the Department has spent on this bill. We just wanted to say thank you.

MR. BROGAN: Mr. Chairman, if I may ask one quick question: We've been, as discussed-- We have seen a large number of our amendments to this bill. There's one section, Section 27, that deals with direct oversight that I'd just like to bring up for your consideration. Under that section, there was a specific timeframe for the remedial investigation to be completed before a responsible party swept into direct oversight.

We have concerns about that, because the Department already has the authority to create any timeframe it wants for any stage of a cleanup. And by having a statutory timeframe, there may be a situation where you have a site, they're working with the Department, everything is going smoothly, but it's taking a certain period of time. And that would trigger, then, direct oversight. And the Department may not, in fact, want

to take direct oversight. And the only way they could deal with this is by violating the provisions of the law. So we would ask that that section be deleted, if possible, only because the Department already has the ability, under this bill, to establish any timeframe it wants for any step of the process.

SENATOR SMITH: We're happy that you're concerned. (laughter) That is a good thing. And that shows some of the balance.

That was a very deliberate provision in the bill. One of our problems in New Jersey is that a lot of the sites have been warehoused. And we want strict time limits to get these things cleaned up.

Irene, do you have any comment?

ASSISTANT COMMISSIONER KROPP: I understand the concern. I do understand, after meeting with staff -- and just for the record, we have a lot of staff working on provisions of how to implement this bill right now -- that the mandatory timeframe could, theoretically, trump the 10 and 5 -- the RI investigation piece. It's okay to be in there. It's okay to lose it, for all intents and purposes. I think mandatory timeframes may make Mr. Brogan a little more nervous.

SENATOR SMITH: Good.

ASSEMBLYMAN McKEON: Thank you, both.

Kara Seymour, New Jersey Sierra Club.

K A R A S E Y M O U R: Good afternoon.

I also submitted a written statement from our Director, Jeff Tittel. But I'll just highlight a couple of points in that statement.

Our main concern with this bill is the lack of oversight that will inevitably occur once private consultants are in charge of cleaning up some

of New Jersey's most toxic sites. We believe this lack of oversight will put our communities at risk.

We don't think outsourcing is the solution to this problem. And we believe it will result in disaster for the people of New Jersey, putting toxins in our water sources and placing our communities at risk.

As proposed, under this LSP program, the DEP will review just a fraction of the paperwork in conjunction with the cleanup of toxic sites and will not conduct audits. Rather, the audits will be in the hands of the licensed site professional board, which is made up of the very professionals they're intended to police.

Instead of removing the toxic materials from the sites, we're concerned that private consultants will be more inclined to offer superficial remedies. We don't think that that approach is beneficial. In fact, we think it will exacerbate the problem and be detrimental to the health and environment in New Jersey.

Under this proposal, the private consultant will not be held responsible after the cleanup. We think that is wrong, and we believe that the private consultants must have insurance to protect the site's future owner and the taxpayers as a whole.

To combat that, we take issue with the covenant not to sue, putting the State on the hook for future problems. We agree that the Site Remediation Program must be fixed, but we do not think outsourcing is the solution.

Thank you.

SENATOR SMITH: Thank you.

ASSEMBLYMAN McKEON: Thank you.

SENATOR SMITH: Mike McGuinness, NAIOP.

M I C H A E L M c G U I N N E S S: Thank you, Senator Smith, Assemblyman McKeon.

I just want to express our support for the bill. It's about time that action was taken on it. We think that it will do a lot to help revitalize areas that have been vacant, underutilized, and prone to increasing crime -- just to get them back on the payroll, get some jobs into those areas.

So, again, we do support it with the changes as proposed.

Thank you.

ASSEMBLYMAN McKEON: Thank you very much.

Mike Pisauero, New Jersey Environmental Lobby.

M I C H A E L L. P I S A U R O J R., E S Q.: Thank you very much, Mr. Chairmen and Committee members.

I represent the New Jersey Environmental Lobby. We are against this bill.

Some things-- The bill does have some good points. There are some provisions that may allow for greater protection -- the resident stake (indiscernible) and schools. That is good. I think those protections may end up being exclusionary, as I will discuss in a few moments.

Also, we've requested on multiple occasions that playgrounds, recreational facilities where our children are there playing, getting dirty, getting in the dirt are also afforded those protections. That's not in the bill. And I focus on children, because children are developing. Their brains are developing, their neuromuscular systems are developing. They are most susceptible to pollution. Levels that you and I may find safe and adequate may -- are actually harmful for children, because their bodies are using

materials that they're getting from the environment and are incorporating them in their bodies. So that is one area of weakness.

This bill is, in part, based on a Massachusetts model. In taking a look at the Massachusetts model, I think you will find the program is inadequate to really, truly protect the environment and the economy. Fast cleanups that have to be redone over and over again aren't really efficient and economic motivators.

I've submitted comments based upon the bill that was in effect on February 2. At the back of that, I attached a copy of a Massachusetts DEP report. Of the RAOs, 50 percent of them had to have more work or were invalidated. Batting 500 baseball makes you an all-star and a top earner. A 50-50 in chance of having a real cleanup for our children and our families -- I don't know that that is a risk that we want to take.

A 2006 Law Review article that looked at the Massachusetts program found some very interesting things. It found that audits indicate that LSPs routinely permit deviations from state regulations, sometimes creating serious risks to health and the environment. Massachusetts has a three-level audit program. That third level, which is the most serious, is random as well as targeted, but finds 75 percent of those sites audited have violations.

Also, in Section 47 of this bill, it provides that properties that are residences and daycares should be cleaned up to an unrestricted or presumptive remedy. That is very good. It has in there an exception, "Unless it is impractical." The Massachusetts experience finds that only 32 percent of the sites there get cleaned up to the unrestricted level, because

the remainder of those sites -- those 67 percent -- are impractical to do. And a lot of that is because of economics.

The oversight in-- We have over 20,000 sites. Each site will generate hundreds if not thousands of documents. DEP's reviewing of only 10 percent -- giving a good look at only 10 percent of those documents is not sufficient. DEP may request the LSP Board to do an audit. There's nothing in the bill that requires the LSP Board to actually act upon that audit request by DEP. The LSP Board can say no.

Also, there is no provision in the LSP bill that if an LSP Board member is looking to audit one of his coworkers that LSP member has to recuse himself. That seems to me to be common sense. You don't want coworkers auditing each other.

Another aspect: The Government Accounting Office did a report looking at the nation's Superfund sites. And they found that the EPA had serious problems ensuring financial--

SENATOR SMITH: Thirty-second warning.

MR. PISAURO: --financial surety from its responsible parties. If the Federal government can't go after people with all its resources to make sure sites are cleaned up because of bankruptcies and restructurings, we need to make sure that those sites that are not cleaned up to an unrestricted level -- we have financial assurances so that people are protected.

And lastly, because of the LSPs, the RAOs operate as a covenant not to sue. When the DEP cannot independently verify that the work has been done and has been done adequately, institutional controls are in and the engineering controls were put in properly and are operating,

binding the hands of the State by a private contractor paid by the responsible party seems to be a constitutional issue.

Thank you.

ASSEMBLYMAN McKEON: Thank you, Michael.

SENATOR SMITH: Thank you, Mike.

Irene, this bill, as I understand, is tougher than anything we have in the law now with regard to schools and daycares -- that you now have the ability to have hotspots removed, as opposed to the existing legislation -- the existing law -- that allows pave and wave to occur. Am I correct in that? Are the school children of our state at risk or are they in a safer condition as a result of this?

ASSISTANT COMMISSIONER KROPP: Under this bill, I definitely believe that they are afforded greater protection. And I absolutely respect Mike's concerns with regard to school children, especially in playgrounds and recreational facilities.

Just point blank, right now we allow municipalities to get HDSRF grant moneys to clean up recreational facilities to unrestricted standards. So we are supportive of that type of a concept. We have presumptive remedies in here -- the ability to establish presumptive remedies in here. I understand that everybody in the audience doesn't know what the Department is doing with regard to presumptive remedies, but the presumptive remedies that we are putting together do not just deal with the school, and the paved parking lot, and the building itself, but the playgrounds and the recreational facilities. I think down the road, when people actually get to see the guidelines that we have proposed, as well as the regulations for presumptive remedies, they will understand that we are

trying to protect playgrounds as well as recreational facilities, schools, daycares, housing under the bill.

Just one other really quick point as-- Senator Madden, and Assemblyman Moriarty, and Assemblywoman Love have legislation out there to amend the Kiddie Kollege bill. That will greatly expand protections for future residential and properties associated with residential, schools, and daycares. So I think that we have the environmentalists' concerns covered there.

SENATOR SMITH: Great.

ASSEMBLYMAN McKEON: Thank you very much.

Nick DeRose and Steve Senior, LSP Coalition.

Good afternoon.

N I C H O L A S D e R O S E: And good afternoon, Senator Smith and Assemblyman McKeon.

Thank you, and thank you to the members of the Senate and Assembly Environment Committees for providing this opportunity to testify on the anticipated legislation to establish an environmental licensed site professional program to conduct site remediation in New Jersey.

I know many of you know me from previous meetings. But for everyone's sake, my name is Nick DeRose. I'm a professional geologist who's worked in the field of environmental consulting in New Jersey for almost 30 years. I'm here on behalf of the LSP Consultant Coalition, which was formed specifically in response to this legislation. It includes 33 member consulting firms in the State of New Jersey. Those member firms represent small practitioners, large national firms with a significant presence

in New Jersey, 1,500 professionals working in the environmental consulting field, and over 4,000 employees working in the State of New Jersey.

The LSP Consultant Coalition supports the enactment of the Site Remediation Reform Act, and we feel privileged to have been able to participate in this extraordinary process that has allowed for comment and input from all stakeholders, in an open and transparent manner, to arrive at the current version of the bill before you today.

I would also, and the Coalition in total, would be remiss in not acknowledging the work of Irene and her staff, and the open dialogue that she has granted to go deep into some of the technical and regulatory concerns that we've had.

Before I go further, however, I feel it's my obligation to point out some frustration with continued misrepresentation of the legislation. These misrepresentations can continue to mislead the public regarding the experience and effectiveness of the Massachusetts LSP program. First, there were false statements that the Massachusetts LSP board had not taken any enforcement actions against LSPs in the state when, in fact, there's a history of rigorous enforcement, and license suspensions and revocations by the LSP board. They are visible on the LSP board's Web site.

More recently and, in fact, just in previous testimony regarding Massachusetts' audit program, statements regarding problems found in audits done on Level 3 sites have been discussed. What is not explained is that the tier -- the Level 3 sites, excuse me, are a very small subset of all sites that are first screened by Massachusetts DEP.

In 2007, out of thousands of sites subject to the Massachusetts DEP review, only 40 went to Level 3. We talk about 50-50, we talk about

78 percent. In total, of the thousands of sites submitted, we're really talking about tenths, or hundredths, of a percent.

Or as summarized by one Massachusetts LSP whom I asked about this -- he said, "The proportion of LSP -- of Level 3 audits is miniscule to the number of audits in total number of LSPs -- sites LSPs work on and make filings for." Massachusetts has a rigorous auditing program that has demonstrated over time that an LSP program works. The current bill includes an even more rigorous audit program than in Massachusetts.

This bill does represent important reform that leaves in place New Jersey's conservative and strict cleanup standards. I also ask you to bear in mind that I am here as a consultant. And we were not folks who initiated this legislative action. We responded to it. And in that response, we have crafted our input to the best that we could, hearing that this bill--

SENATOR SMITH: Thirty-second warning.

MR. DeROSE: Okay. Thank you.

We still have cleanup standards in the State that are not being reformed. And we don't suggest that they should be -- we respect the intent of this Committee not to take that on. But those cleanup standards will protect the public, just as they have. And they will set New Jersey on a very high bar with respect to other states that do have more liberal cleanup standards.

To finish up here, we believe that the bill will be successful. We believe that with this program, we can have a groundswell of increased sites that will come forward into the remediation program. We believe

there is pent up interest and demand on all sides. We look forward to seeing that and revitalizing New Jersey's remediation program.

SENATOR SMITH: Thank you.

Is that another 30 seconds?

ASSEMBLYMAN McKEON: We don't have a ruling on this. I'd like to go to the rules committee. (laughter) We would have stopped your colleague at two-and-a-half if we--

STEVEN T. SENIOR, ESQ.: I won't need five minutes.

ASSEMBLYMAN McKEON: All right, we'll let you go.

MR. SENIOR: Thank you, Chairman.

I just want to add a couple of points to what Nick has said. And as he has indicated, our Coalition of consultants supports the bill.

I was a participant -- direct participant in the stakeholder process over the last two-and-a-half years. There are many compromises, as you well know, in this legislation. It's not perfect, certainly from our perspective. And there are some things that we remain concerned about.

As the Senator indicated when Mr. Brogan was speaking, there are still plenty of folks who are nervous about this bill. The LSPs are certainly among them. They're nervous about whether they can get insurance and whether they can get it at an affordable cost. They're nervous about performing their services. Some have said, "We're going to have to be overly conservative to protect our licenses." They're nervous about being sued whether or not they perform their services properly.

We've suggested, and we've offered specific language, to provide them with a safe harbor from liability, not from being sued, if they're not negligent; meaning, if they perform their services properly. It's

something that exists in the Spill Act for certain professionals in this area. It's something that exists in other State laws. We feel it's appropriate in the circumstance where you're putting all of these obligations on a licensed site professional. So we hope that you will consider that.

Thank you.

ASSEMBLYMAN McKEON: Thank you very, very much.

MR. DeROSE: Two points that I just want to--

SENATOR SMITH: No.

ASSEMBLYMAN McKEON: You know what? Thank you very much.

Mr. Jones, South Jersey Environmental Justice Alliance.

ROY L. JONES: Good afternoon.

My name is Roy Jones. I'm the Co-Chair of the South Jersey Environmental Justice Alliance, and I'm also part of a statewide environmental justice alliance organization. And I want to--

Some of the comments I heard from-- Well, some comments we've heard-- You ladies and men have had an opportunity to weigh our comments that have gone on the record and the evidence that we're going to present to you, versus the conversations that may be put out here as to a fact or not.

So if you actually asked the question: why site-- This legislation should absolutely protect the health, and safety, and welfare of children -- especially sites where schools are going to be built, daycare centers are going to be built, and recreational centers. You want to ask yourself that question: Why should this legislation absolutely protect the health and welfare of children? And you have to-- As you look at this

legislation, you want to ask that question. And then you want to balance that question against those who have a financial interest in seeing this bill work or passed -- in terms of the consultants, not the legislators -- and those who are here in the interest of children and want to see the interest of children protected. I think you ought to weigh that and see-- I think you're going to see a vast difference.

But if you ask that question and you answer it, the reason why this bill should absolutely protect children: because children are absolutely powerless when it comes to this issue of toxic sites, and contaminated sites, and things that actually compromise the health and welfare of children in schools, and daycare centers, and recreational centers where these children are residing.

So as we look at this legislation, then we can affirmatively say that this legislation does not fully protect the health, safety, and welfare of children. It absolutely does not do that. And one of the things that this bill allows to occur is that the practice of capping sites is continued under this particular reform legislation. The use of caps is continued under this legislation.

And so what is the problem with caps? Well, first of all, in New Jersey, there's an obsession with caps with LSP-type folks. They have an obsession with it. And one of the-- This is what a writer said about this -- he said in New Jersey, there are 540 sites that use caps. And this was a research -- actually an article in the *Bergen Record* in 2007. This was a reporter -- Alex Nussbaum -- saying that in New Jersey we have 540 sites that use caps. We need to look further and ask the DEP actually, "As of

this day, how many sites use caps?" And I'm going to go into this issue of why caps are a problem.

And so this is what the writer says. The writer maintained that, "Developers love caps because they save millions when they don't have to dig up contamination and haul it away." And at a hearing in 2006, Commissioner Jackson said this: "Developers pursue the cheapest solutions in order to get quick profits." This is the former DEP Commissioner, now U.S. EPA Commissioner, saying this to this. Maybe some of you, in 2006 -- that these LSP people and developers that they work for -- which, by the way, is an absolute conflict of interest -- that you would actually take their--

SENATOR SMITH: Thirty-second warning.

MR. JONES: Okay. I wanted to give you some examples -- and I'm going to leave my report with you -- of egregious examples of caps. One is the early childhood educational center in Camden. It's built on a landfill. These kids go there that are educationally and health impaired. And there's a KROC Center on a landfill that's 90 acres in dimension. They're going to build a community center, recreation center on this site. The site is 75 percent not cleaned up. And the DEP and LSP people have allowed such a situation to occur in the State of New Jersey -- where 3,000 children and 1,000 adults a year are going to be on this site, being exposed to contamination that exists on the whole site. So I want you to imagine a landfill--

ASSEMBLYMAN McKEON: I'm going to ask you--

MR. JONES: I'll be finished in a second.

I want you to imagine a landfill 90 acres long, 35 years in the making, a community center on it, with 3,000 kids -- a daycare center and

all kinds of other activities for kids. I want you to imagine a 90-acre site -- a community center that's on the one-tenth of the site that's going to be cleaned up, and the other 90 percent is completely contaminated. And these kids are going to be exposed to this contamination each day.

This is what the LSP and the DEP allowed. And this is why we must stop this practice of capping sites and allowing the wolf to watch the hens.

Thank you.

ASSEMBLYMAN McKEON: Thank you, Mr. Jones. We appreciate your passion.

Jorge Berkowitz, Environmental Business Council.

Irene, would you mind just responding to a couple of things, because I'm inherently uncomfortable thinking anything we're doing whatsoever is putting children at risk in the state.

ASSISTANT COMMISSIONER KROPP: I respect Mr. Jones' comments. Commissioner Jackson -- former Commissioner Jackson was very much involved with the development of the KROC Center in Camden. The Camden community received a grant from the Salvation Army to a tune of millions of dollars -- that I do not recall at this particular point in time. Camden community leaders and Redevelopment Authority, perhaps -- I don't remember the exact individuals -- made the decision as to the location.

The Department -- and for the record, no LSPs -- but the Department itself undertook remediation at the landfill, knowing that the center was going to be located there. We did a massive soil removal action using public funds. We ensured that the location of the facility was not

directly on the landfill but off to one side. I agree, it might not be the most perfect place to put a community center. But one of the biggest complaints and concerns with urban communities -- and that goes to any location of a school, a daycare center, etc. -- is it's an urban community. A lot of the urban communities have historic fill issues. So we have gone out of our way with all the appropriate members in Camden -- and there has been a lot of public outreach and outreach to the community -- to ensure the safeguards of the children and the individuals.

ASSEMBLYMAN McKEON: Jorge.

J O R G E H. B E R K O W I T Z, Ph.D.: Thank you, Mr. Chairman.

Chairman Smith, Chairman McKeon, members of the Committee, my name is Jorge Berkowitz. I'm a Senior Associate with Langan Engineering. I'm here providing testimony on behalf of the Environmental Business Council of the Commerce and Industry Association of New Jersey, representing over 100 environmental companies in the state.

I've been at this for nearly two-and-a-half years. I've been in on the original stakeholders process. I've been involved in commenting on the legislation. And I appreciate the opportunity to provide this testimony.

This bill addresses complex issues. Therefore, it is easy to misunderstand or misrepresent the precepts on which the proposed legislation is based. Unfortunately, some have chosen to conveniently misinform the public with cutely worded barbs, half-truths rather than full-truths. And the public is left wondering about the worthiness of this legislation.

So let's attempt to be clear. The Site Remediation Program is in crisis. Environmental contamination is left to linger and exacerbate

because of the inability to deal with these sites in a timely manner. The faster sites are addressed, the more environmental contamination is mitigated, the better off the environment. While the program authorizing well-qualified environmental professionals to remediate sites is controversial and different in New Jersey, we would submit that Massachusetts has 15 years of experience proving that a program of intense nurturing, intense care can work and will work.

Let's take a look at who is supporting this legislation. The Governor of the State of New Jersey, who suggests that it's an important element in stimulating economic growth for the State; the Commissioner of the Department of Environmental Protection, the chief environmental regulator for the State of New Jersey; Assistant Commissioner for Site Remediation Irene Kropp, one of the most knowledgeable, respected professionals to ever hold that position, a dedicated civil servant for her entire life -- her entire professional career I should say; and U.S. EPA Administrator Lisa Jackson, the highest ranking environmental official in the country, started -- initiated this program. Further, this bill is co-sponsored by two legislators who have an impeccable record for supporting strong environmental legislation. These individuals are notable, as is their support. And I would submit that none of these individuals would casually support a program as important as this one without assurance and safeguards that it can be done right.

Let's take a look at some of those safeguards. This bill is one which will allow New Jersey to readvance to the forefront of the science and technologies involved in site remediation, and not be mired in archaic, Byzantine procedures that are embraced in the technical regulations. This

bill, for the first time in our state, formally creates a profession for site remediation scientists, a bill which mandates a code of professional behavior and ethics where one previously did not exist. The bill creates, for the first time, severe sanctions, even the loss of the ability to practice in the State of New Jersey, as well as criminal penalties for violations of ethical or professional misconduct. The bill requires, for the first time, an environmental professional to prove their regulatory and technical comprehension of the field before they are allowed to practice in New Jersey. This is a bill that has strategic regulatory involvement on behalf of DEP for all sites. And this is a bill which has a fair and balanced process which will judge the performance of the licensed site remediation professional, allow for appropriate sanctions and penalties, and is a process that can be triggered by any person in the State of New Jersey.

The public needs to understand that this bill was created to assure a high level of professionalism. This bill is one which requires and has had serious debate. Quick, clever, but inaccurate sound bytes do nothing to add to the discourse.

On behalf of EBC, I want to commend your leadership, Senator Smith, Assemblyman McKeon, Assistant Commissioner Kropp. We support this bill. Is this bill perfect? No. Is this bill good? Yes.

Thank you very much.

ASSEMBLYMAN McKEON: Jorge, you still have a couple of minutes if you want to continue. (laughter)

DR. BERKOWITZ: Sure. I can go on for a couple more if you'd like.

SENATOR SMITH: Just for the record, the League of Municipalities weighed in, and they are in favor, but they don't wish to give any testimony.

The next one will be Adam Liebttag, from the CWA Local 1034, in opposition.

Mr. Liebttag.

A D A M L I E B T A G: Thank you.

Unfortunately, I can not be so effusive in my thank yous and congratulations.

CWA 1034 represents the rank and file technical professionals, scientists, case managers, and others who work in the Site Remediation Program, and they are opposed to this bill, as is the union.

I have sheets of petitions that have been signed by those employees opposing this legislation not only on the grounds that it is privatization, but on the grounds that they deal with these contractors, these consultants, and these site cleanups every day. And they have deep, deep concerns about the lack of oversight and the deregulation that this bill represents. They're concerned about the low audit threshold of 10 percent. That is a fact that is in this bill. That means that as many as 18,000 cases will not be audited. And that's a pretty staggering number.

What this bill does is give the entire universe of sites over to LSPs. It is not a phase-in, it is not a pilot program. At one point during the debate and the stakeholder process, there was discussion of a smaller universe of sites -- being homeowner oil tanks. That has gone by the wayside. This is all in. This bill is 20,000 sites to LSPs, a very low audit threshold. And we're deeply, deeply opposed and deeply concerned about

the impact this bill will have on the future of site remediation and the potential problems that we will uncover after the site is certified as clean.

Thank you.

And I was not able to get my testimony distributed beforehand, so I will leave it up here and someone can help me with that.

Thank you.

ASSEMBLYMAN McKEON: Thank you very, very much.

Olga Pomar, from South Jersey Legal Services.

O L G A P O M A R, ESQ.: Thank you very much for the opportunity to address the Committee.

I submitted comments, that are much more detailed than my testimony will be, by e-mail two days ago. But I am leaving another copy here to make sure they'll be part of the record.

I work at South Jersey Legal Services, which is a legal services program that provides assistance to low-income communities and individuals. As such, I've worked with many community groups who are concerned about pollution contamination in urban, low-income areas -- what are often known as EJ communities.

As I'm sure this Committee is aware, site remediation is a huge environmental justice issue because it is my clients who live with the most prevalent contamination -- kids who play on contaminated dirt and historic fill; homes that are built on unsafe polluted land; industry that surrounds residential areas, schools, and daycares.

So it is our concern that when site remediation is done that it be done in a way that is truly protective of health. Everybody agrees the Site Remediation Program is not working and that the remedies that are

being used -- the capping, the controls -- don't adequately protect people who are living in these contaminated environments, and that the sites aren't being cleaned up.

We also recognize that the DEP and the drafters of this legislation did put provisions in this bill that do create, supposedly, more protective remedies and certain authority to the DEP to make sure that cleanups are done correctly. Unfortunately, however, from looking at the bill -- and my comments address this in specific detail -- the bill creates a system where DEP can't effectively exercise this authority to require more protective remedies, to make sure that if someone uses presumptive remedies these presumptive remedies are safe, to make sure that toxic hotspots are removed. Because the DEP is taken out of the process of these sites. There is no requirement that the DEP look at a remedial action work plan before the remedy is implemented and make sure that these supposedly more protective remedies are being used.

The bill also has a lot of very vague language. Presumptive, or alternative, or unrestricted use remedies can be used. It doesn't clearly mandate that unrestricted use remedies are always the preferred choice and there should be the burden on the party doing the remediation to show that they can't meet that standard before they can use a less protective remedy.

But under the system that this bill proposes, DEP is going to be sitting on the sidelines. And while it has theoretically this authority to require these remedies, it won't even know what's happening with the 18,000, 19,000 sites that it's not directly overseeing.

So I support the positions some other people have taken that to do this outsourcing on the least toxic sites, the least complex sites, the sites

that don't involve the kinds of uses that we all recognize need greater protection, could be a way to make the DEP operate more effectively and could be an effective way to avoid professionals. But to turn over all of these sites and relinquish DEP oversight would really make it impossible for the DEP to do the good things that this bill authorizes it to do.

It will also make it more difficult for the DEP to exercise its authority now, for example, of their alternate soil standards proposed -- not meeting the regular soil remediation standards but proposing an alternate site-specific standard. Well, it used to be that the party had to prove to the DEP that this standard was safe. If the DEP is out of the mix, then how is -- how are we going to have any assurance that these alternate soil standards are being designed and used properly?

So it's a concern that there isn't much provision for the public to be involved, for the public to oversee the process. There is no provision that anyone be directly accountable to the public and the community because it's in the hands of the LSPs.

Finally, I have known, from reviewing many sites -- the files of many contaminated sites at DEP -- that a lot of the delay in processing these sites is because these very consultants who are now going to have full authority over the cleanup submit incomplete documents, don't provide full site investigations, haven't done as much delineation of the contamination as they should, and the DEP caseworkers are on their backs telling them, "No, you have to do more testing; and, no, you have to do a more protective remedy; and, no, what you've proposed isn't good enough." So we are now saying the very parties that may have done inadequate

investigation, inadequate cleanup, now can certify that the site is thoroughly safe without that DEP oversight.

So I will stop now. I will leave my comments.

ASSEMBLYMAN McKEON: Thank you very much.

SENATOR SMITH: I think just one or two comments are in order.

First of all, we have put into the bill the technical assistance grants for community service organizations to have some resources to help in terms of watchdogging the sites. And I'm trying to remember our provision on the public input. We do have a public input provision.

Irene, do you remember what it was?

ASSISTANT COMMISSIONER KROPP: We've expanded public input underneath the direct oversight cases. So there's expanded public input there.

With regard to Olga's comment, with regard to who would be held accountable, the entire intent of this bill is to hold the LSPs accountable. And at Olga's request, we've put in a provision that made it clear that even the public could hold the LSPs accountable. So people will be held accountable moving forward.

Just a couple more real quick points.

SENATOR SMITH: Please.

ASSISTANT COMMISSIONER KROPP: With regard to only doing a pilot for the low-priority cases, we have been doing pilots for the low-priority cases for over the last year-and-a-half. Through legislation and through rules, all underground -- unregulated heating oil tanks are now being handled through an LSP approach, and it has been greatly successful.

However, clearly it is not helping with the overall issues. So the pilot is way passed us, and it's working, and it's working very well.

With regard to mandating unrestricted use, I could mandate unrestricted use, but for all intents and purposes, you'd get absolutely no development in urban communities, especially for schools and daycare facilities. And with regard to the audit -- we're only going to audit 10 percent. I keep hearing that. That is not the case. We are going to be reviewing every single document. We had a series of triggers that will require additional audit and review. One of those triggers is, absolutely, sites that are in EJ communities. Although the words *environmental justice* is not there, it's clear that was what our intent was.

So we'll be looking at more cases, we'll be auditing more cases. Environmental justice is a reason that we'd be auditing more cases. And the 10 percent was just a safeguard to make sure that the Department never fell behind in a certain number of document reviews -- not case reviews, the number of documents that come in the door every single year. Ten percent of the documents have to be reviewed.

SENATOR SMITH: Thank you.

Andrew Robins, New Jersey Builders Association.

A N D R E W B. R O B I N S, E S Q.: Thank you.

We, too, have been involved in the stakeholder process, going back many years. We have always strongly supported the concept of the licensed site remediation professional program. And in our prepared testimony, which I will not read, we note that we strongly support this bill.

We do so not because it encourages brownfield development. In fact, it creates more obstacles for brownfield development. It does not

increase the incentives for brownfield development. In fact, in some places it makes -- it pulls back from the incentives that are there now. It's not that it lessens the standards when you're building residential development on a contaminated site. In fact, it increases the standards and creates presumptive remedies -- is another impediment to getting those sites cleaned up.

We strongly support the bill because our goal all along has been to get a system that works. It's not a question of pro-development or pro-industry. It's either pro-it-works or pro-it-doesn't. And for that, we commend the Committee Chairs, the Committees, Committee staff, and more particularly Assistant Commissioner Kropp and her staff in working with us and other interested parties to try to develop a bill where the system can work. And that's the critical aspect that we have pushed for and we continue to push for.

And we look forward to the opportunity to work with--
(microphone malfunction due to cellular phone ringing)

ASSEMBLYMAN McKEON: That was Jeff Tittel calling in from California. (laughter)

MR. ROBINS: He has my direct line. (laughter) -- to make sure it works to get sites cleaned up. Because our members, the builders, not only clean up sites and provide the capital to get it done, but they also provide the capital to people who are doing the work themselves. And we want to make sure the sites are clean when it goes through the process.

And the changes that have been put in to this date have made that plan much more workable. And I'd like to focus on one particular aspect, and that is the multiple changes that have been put into the bill to

make sure that the liability protections available today for people who receive no further action letters also carry forward in this bill to people who receive response action outcomes. Because in the investment community, that's the critical aspect. Are the liability protections -- if you do it right -- are they going to still be there? And the changes that have been put in the bill -- and there are many. Many changes have been put in to make sure that happens -- are there now. And we recognize that, we commend that, and we think it is a positive development.

But there is one aspect that it doesn't address, and that is the tremendously long and complex learning curve that the investment community has to go through to recognize that NFA, today, is the RAO of tomorrow. And the bill has the pieces in there. But assembling those pieces and walking them through -- I don't know how many notes and comments I have of each section that's in there -- is a cumbersome process. So we would like the Committees to consider adding in their Committee statement a notation -- and it's in our prepared testimony -- that the liability protections currently available for no further action letters carry forward in this bill to be available for RAOs. That's a critical aspect. Because otherwise, even though the economic recovery is going to take some time, the learning curves for the investment community -- now, I've been doing this for over two decades -- their learning curve is five to 10, sometimes longer. It's only now that some banks wanted to get letters of nonapplicability that Irene doesn't have the staff to be able to provide anymore. That curve is critical, and that's the particular aspect that we have at this point -- to make sure that that message gets through, and a Committee statement could accomplish that.

Thank you.

ASSEMBLYMAN McKEON: Thank you very, very much.

Kim Thompson-Gaddy, of North Jersey Environmental; and
Cynthia Mellon, of Ironbound Community center (*sic*).

You both have five each. I'm just going to call you together.

Kim, you can lead us off.

KIM THOMPSON - GADDY: Thank you.

My name is Kim Gaddy. I represent the North Jersey Environmental Justice Alliance. I am the Co-Chair of the New Jersey DEP Environmental Justice Advisory Council. I am a member of the DEP Permit Efficiency Task Force, and I am a Commissioner of the Essex County Environmental Commission. I am also a mother of three children who suffer from asthma. And I live in the City of Newark, where in stark contrast to New Jersey's top per capita income -- ranking nationwide -- over one-third of Newark's population live in poverty. Newark is also disproportionately overburdened with harmful polluting facilities, traffic, and poor housing stock. So I am here because the communities I represent are victims of these environmental injustices.

In addition to supporting the comments of NJEF, NJEL, Olga, Roy, Sierra, Jane, and Cynthia, I wanted to provide my own local and personal perspective. I understand the goal of the bill is to get better and faster cleanup, but it falls very short. Contaminated sites in the communities that North Jersey Environmental Justice Alliance represents -- like Newark, Linden, Jersey City, and Elizabeth, to name a few -- are an eyesore, a drag on taxpayers, and they threaten the public health of all of the residents.

They only exist because of irresponsible polluters. And the current draft of the bill gives more power with less oversight to those who made the mess, have not cleaned up this mess, and now have a financial incentive to do as little as possible. This is very, very problematic.

The bill does not provide the necessary assurances that sites slated for schools, daycares, and housing are cleaned up to-- The current assurances in the bill do not apply to playgrounds, as was stated before, and ball fields, despite our request. Our children are more susceptible to the effects of pollution than we are and thus need extra protection to ensure they stay healthy as they grow.

I especially urge you to withhold your support for this bill until the universe of sites that can be privatized is narrowed -- areas of environmental injustice especially should not be privatized; restore the polluter-pay 5 percent provisions to provide an incentive for greater cleanup, as well as provide New Jersey DEP and communities resources to clean up abandoned sites; and watchdog polluters, developers, and their hired guns. Strengthen the provisions affecting the level of cleanups where kids live, work, and play. And strengthen the enforcement provisions -- more auditing and higher penalties.

I also just would like to say that the New Jersey Environmental Justice Alliance is an alliance of New Jersey-based organizations and individuals working together to identify, prevent, and reduce and/or eliminate environmental injustices that exist in communities of color and low-income communities. Environmental justice is the fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income, with respect to the development, implementation, and

enforcement of environmental laws, regulations, and policies. And that's all we ask for -- is fair treatment -- and I don't see it in this bill.

Thank you.

ASSEMBLYMAN McKEON: Thank you very much.

Ms. Mellon.

CYNTHIA MELLON: My name is Cynthia Mellon, and I am the Environmental Justice Organizer for the Ironbound Community Corporation, a community-based, nonprofit organization in the Ironbound Community in Newark's East Ward. I am also a resident of the Ironbound.

We represent a very densely populated and diverse community with more than 50,000 people. The Ironbound has historically been an industrial and residential community. Because of our industrial past, we face the daunting challenge of dealing with many former industrial sites that are contaminated and often abandoned in close proximity to homes, schools, and playgrounds. According to the New Jersey Department of Environmental Protection, Ironbound has close to 100 documented brownfield sites.

We thank the Legislature for taking on this important issue, which is intended to prevent tragic accidents that can harm public health and the environment. Our primary concern with the proposed bill is the level of public oversight of the cleanups, which has a tremendous impact on the outcome of cleanup efforts.

There are many contaminated sites in our community. Most of them are in densely populated areas close to sensitive populations in homes, recreation spaces, schools, and daycare centers. We fear that absent adequate oversight from the DEP or opportunities for public participation,

private entities and responsible parties will not be held accountable for complete and safe cleanups.

One of our main concerns is focused on the issue of using engineering and institutional controls, such as caps, for cleanups at residential homes. In our community, we've seen many former industrial sites redeveloped into two- and three-family homes with these caps in place as the restricted-use remedial actions. Although caps are cheaper and easier to implement, they pose a potential risk to current and future homeowners. Immigrant homeowners often do not understand the deed restrictions put in place by these remedial actions. And we have seen instances where homeowners break the (indiscernible) caps in their properties, for example, to plant gardens. There are also incidents where tenants, rather than owners, are living in a house with no knowledge of the deed restrictions related to the cap. And they have broken the caps for landscaping and gardening without understanding about the underlying contamination.

We're concerned about the long-term liability of these caps. For example, what happens when the home changes hands 20 years after the cap was put in place or if the home goes into foreclosure? At that point in time, who is ultimately responsible for maintaining the integrity of the cap?

We therefore strongly urge you to consider giving greater authority and guidance to DEP in cases where more protective remedies are in order, at sites that potentially pose higher public health risks such as residential developments, schools, or active recreation sites.

This legislation takes a step toward addressing this issue by creating a category of sites for which more than capping with minimal

controls is required. It does not go far enough in promoting unrestricted use remedial actions or provide a mechanism to give DEP sufficient oversight to ensure that such remedies are implemented.

Finally, the bill contains very few provisions for public participation in the site remediation process. We believe very strongly that the involvement and input of the people most directly affected by contaminated sites -- by that we mean residents, workers, community-based organizations, and local officials -- is vitally important. The bill should incorporate a process for notifying and involving the public in the site remediation processes, and it should explicitly provide a complaint process by which any concerned person can request an investigation by the LSP Board or by the DEP -- in particular LSP -- or the remediation of a particular contaminated site.

Thank you for your consideration of these comments.

ASSEMBLYMAN McKEON: Thank you very much for your testimony, both of you.

Tony Russo, of the Site Remediation Industry Network.

Now, that's marked conditional support, although that would be an opposite to a long conversation we had yesterday.

T O N Y R U S S O: I'd like to clarify that.

First, I want to thank the Committee and the Chairmen for the opportunity to come back and present some more views.

My name is Tony Russo, and I represent companies, that are truly responsible companies, that really don't have a financial axe to grind in this process, but rather they have one goal, and that's to clean up these

sites, protect the public, protect the environment, and put these sites back into beneficial use.

We understand that the problem exists that there are 20,000 cases backlogged. And we commend the Department for initiating this LSP concept. And I want to be on record to support the licensing of site professionals.

The bill before you today is much improved, and I want to thank Senator Smith and the DEP for their leadership in taking out the taxes and the limits on self-guarantees. So we've definitely seen an improvement. So we don't want to be seen as not supporting a fix to the program.

But we're down to one issue and one issue only, and that's Section 27, which is the direct oversight section, in the sense -- and you've heard it in prior testimony. We need certainty and predictability in this section. Nobody is arguing that recalcitrant sites should be taken over by the DEP. And if I could just address Senator Smith's concern about warehousing of sites, that's going to be taken care of by the remediation timeframes. And we've said on a few occasions that we want to see a list of who these warehoused sites are. If they're there, let's call them out, let's label the recalcitrant, and get them out of the way.

The problem with this section is, it goes beyond recalcitrants. The fact is, there's a criteria in the bill that basically says, "If you fail to complete your remedial investigation within five years of enactment, you're deemed a recalcitrant. You're in that *shall* category. Your site is taken over by the Department." And what I mean by that is, the Department controls the money and the remedy selection. So the responsible party is cast aside.

Think about that from a business community standpoint in the sense that there's no certainty there.

And then you have the *may* section that says there are several criteria that basically say that, "If you have an impact to a natural resource, maybe the Department is going to come in and take control of your site," *maybe*. The reason why we're in the cleanup program is that we have an impact to a natural resource.

So we need to clarify this language. We're almost there. Again, industry wants to support this fix to the program. We have one more need, one more section that needs to be addressed. And we hope that, at the end of the day, that section is clarified to avoid the possibility of being back before these two Committees two years from now seeking amendments.

So here's an opportunity to get it right from the start.

Again, two words I keep hearing from our members all the time are *predictability* and *certainty*. And we don't have that in this section. And I think we could just fix it.

Thank you very much.

SENATOR SMITH: Respectfully, that is certainty. If you don't get the job done, we're taking over the site. And the industry may not like that, but that's one of the problems in New Jersey. There are too many ways for these things to go on forever. There has to be an end date. And you're going to know, the property owners are going to know, the responsible parties are going to know there's an end date. If you don't get your investigation done within that end date-- And the actual time limits are, I think, unbelievably liberal. But there is an end date. There is a certainty. This is as certain as death and taxes. Your industry needs to

know that, or property owners who are responsible parties need to know that. The actual language is--

MR. RUSSO: It's five years from enactment for a remedial investigation.

SENATOR SMITH: Yes, you have to complete the remedial investigation, not the cleanup. You have to complete the remedial investigation of the entire contaminated site "10 years after discovery of a discharge at the site, and has failed to complete the remedial investigation of the entire contaminated site within five years after the date of enactment." Isn't 15 years enough?

MR. RUSSO: If I could just respond, Senator, it seems like to the lay person that 15 years is enough. And I'm not a remediation professional.

SENATOR SMITH: It's enough.

MR. RUSSO: But I've been told by some of our members that there are complexities involved. These are large sites. They have hundreds of area of concern. It takes time. So I guess the point I'm trying to make here is, I'm in agreement with you that you should set those timeframes and work it out that way. And if they don't meet those timeframes, they become recalcitrant. By putting the label right in the bill to say that you have five years to complete your remedial investigation, I think, doesn't appreciate the fact that these are very complicated issues and very complicated sites. And more importantly, it's the *may* section. That *may* section, that impact to sediments-- Again, certainty and predictability. We ought to know the rules of the game before we start playing it. And I need to go back to our members and say, "Here's your certainty and

predictability.” And I think if this passes with that language as is, I think you’re going to create a lot of uncertainty as far as are they going to lose control of their sites.

SENATOR SMITH: Irene, any comment you’d like to make on this?

ASSISTANT COMMISSIONER KROPP: I guess I’m less concerned about Tony’s members than I am about the residents of the State of New Jersey and the environment. So I do agree that 10 years, plus five years, to complete a remedial investigation -- not a cleanup -- from my perspective, with my 26 years in the Department, is enough time to complete a remedial investigation.

With regard to impact to sediments, we put it in the *may* category because a lot of sites may impact sediments, but there are sites out there that have very serious impacts to river sediments, the Passaic River being one. So I think that the *may* gave us some flexibility. The *shall* -- 15 years to complete a remedial investigation only is not a deal breaker.

ASSEMBLYMAN McKEON: Thank you very much.

Thank you, Tony.

We have three more witnesses.

Richard Katz, of Pennjersey Environmental; and Denise Patel, of New Jersey Work Environment Council. You’ll both get your five minutes.

My comment, as you’re coming up, as to what Tony’s point is -- and what the Commissioner said -- this whole movement had its genesis in DEP, indicating that they saw the gargantuan nature of this task as one they would never be able to dig out of. So to think they’re going to misuse

discretion in getting back involved as to what they're looking to dig out to begin with -- I just think is a concern that's nonexistent.

Richard.

RICHARD J. KATZ: Thank you.

Good afternoon.

My name is Richard Katz. I'm the President of the Pennjersey Environmental Consulting.

By way of introduction, I was employed by the New Jersey DEP over a period of 13 years. For the past 22 years, I've worked as an environmental consultant dealing with remediation projects.

I'd like to focus on some of the broader issues rather than the specifics I've been hearing today.

The problems confronting the Site Remediation Program are of its own making. For the past 35 years, I have watched the DEP bury itself in layer upon layer of intertwined requirements that have left the working staff with less and less discretionary power to evaluate and close cases.

The DEP claims that the current backlog is caused by substandard submissions. In part, that's true. But in truth, the majority of the issues raised in notices of deficiency stem from the failure or inability of the DEP staff to read the information submitted and/or from requirements imposed haphazardly that go beyond the minimum requirements of the tech regs, and/or simple nitpicking.

Now the Department is looking to the consultant community for a bailout. However, the planned licensed site remediation professional program is inherently unworkable. It attempts to squeeze the square peg of the Massachusetts model into the round hole of the New Jersey regulatory

structure. There are simply too many differences between the two frameworks for the program to be an effective solution.

First, the Massachusetts regulatory structure and the LSP program largely developed together. Even so, it took from three to five years before the two groups could overcome the basic distrust and begin to work together. Given the much more mature New Jersey structure, and the additional 15 years of animus, it's likely that the accommodation time will be substantially longer.

Second, when the Massachusetts LSP program was started in 1993, their backlog was 1,800 cases, less than one-tenth of those facing New Jersey. In the past 15 years, the 500 or so LSPs in Massachusetts have issued some 25,000 response action outlooks. Using simple arithmetic, that comes to around three RAOs per LSP per year. Presuming that New Jersey can come up with a similar number of qualified LSRPs, it would then take until the year 2023 to clear the current backlog, during which time another 13,000 or so cases would have been initiated. And that timing ignores the extended adaptation period to develop a useful working relationship between DEP personnel and LSRPs.

Third, Massachusetts uses a risk-based model that allows considerable leeway in approaching, identifying, and rectifying contamination. The New Jersey system is highly proscriptive, requiring investigation and delineation of virtually every molecule of contamination before a site can be declared environmentally acceptable. This practice leaves no room for professional judgement.

So while looking to this program to provide itself with cover for its own actions, the DEP is showing extreme distrust of the presumptive

LSRPs. By the very nature of the case closure process, where an LSRP will issue an RAO rather than a no further action letter, there is an aura of lowered value placed on the RAO as compared to an NFA. Given the three-year period during which the agency can choose to audit an RAO, there can be no sense of closure for responsible parties, lenders, or any other parties to a transaction while the sword of Damocles hangs over the head of the LSRP.

Finally, with the LSRP forced to stand in the shoes of the DEP, there will be no one to serve as an advocate for the responsible parties, clearly viewed by the agency as *irresponsible* parties. It's been my experience that the majority of people required to remediate properties are not the ones who created the contamination or, if responsible, did so inadvertently, rather than with intent to defile the environment. They tend to be inheritors, purchasers, innocent parties, and others who have become involved in investigating and remediating problems either through their voluntary investigation or through regulatory stricture, and should be entitled to representation.

There are a number of alternatives to the LSRP program: let the DEP hire sufficient staff to conduct reviews within a timeframe that does not unduly delay business activities; hire consultants to work directly for and with the case management teams as manpower extenders; or develop a small and highly select group of LSRPs to serve as the reviewing party, standing in the footsteps of the DEP, either individually or in panels, and allow the majority of consultants to continue to represent their clients.

My unscientific survey of a number of DEP case managers and working-level supervisors has not found a single individual who doesn't hate the program.

SENATOR SMITH: Thirty-second warning.

MR. KATZ: Similarly, there is little or no support for the LSRP concept among consultants, although I've found their attempts to gear up for the program somewhat reassuring.

The bottom line appears to be that we are being asked to stand in the DEP's shoes, but those shoes are nailed to the floor and the Department reserves the right to knot the laces.

I hope you will consider these matters and reconsider this legislation before releasing it from Committee.

I apologize for the two second delay.

ASSEMBLYMAN McKEON: Thank you, sir, very much.

The last witness we have is John Cannel, from the New Jersey Law Revision Commission.

J O H N M. C A N N E L: Thank you for hearing me today.

SENATOR SMITH: John, if I could shorten your five minutes. You had a request in to us about whether or not the bill should be amended to have a certain deed restriction provision.

MR. CANNEL: Yes.

SENATOR SMITH: We're studying that. It will not be included in this bill. We'll take a look at it and see if it's meritorious for another bill.

MR. CANNEL: Thank you.

SENATOR SMITH: Thank you.

ASSEMBLYMAN McKEON: Senator Smith, thank you very much.

I'll just finish by making a record of who else has signed in with no need to testify.

SENATOR SMITH: Oh, you missed Jane Nogaki.

ASSEMBLYMAN McKEON: Oh, Jane, yes, I called you before, and I didn't see that you came up. So I thought maybe you had left.

JANE NOGAKI: Oh, I didn't hear my name called.

ASSEMBLYMAN McKEON: Because you were riveted so much by the excitement of the-- (laughter)

MS. NOGAKI: I didn't hear my name called.

Denise Patel, from Work Environment Council is here as well.

Good afternoon.

My name is Jane Nogaki. I represent the Coalition Against Toxics, a local group in Burlington, County. We've had experience as a grassroots group with various Superfund and toxic waste sites in the Evesham area, but also in Camden County for the Gems Landfill.

I know that each and every one of you have not one but several sites in your town that are undergoing cleanup. And so it affects every person in this group.

What I want to mention is a couple of deficiencies that we see in the bill. While it gives DEP more power, and rightly so, to exact higher levels of cleanup, there are undermining provisions that allow what's called *alternative remedial standards* or *alternative remedies*, which totally undercut the ability to have a higher level of cleanup for residences, schools, and daycares. And it's up to the site professional to propose this and DEP to

approve it. But really the burden is on the DEP to disprove it. How do they disprove that a remedy is not going to be acceptable? And so the bill needs to be more explicit. But it's up to the LSP to make that determination or that justification of why they can't clean up to a residential standard. After all, that's what this bill is elevating; and the acknowledgment that schools, daycare centers, residences, and recreation sites should have the highest standard of cleanup -- and health-based cleanup, and unrestricted use.

And so I think that all these provisions that allow alternative remedies, alternative standards-- You know, not meeting the standard, using a lesser standard, and showing that it's protective -- it's hypothetical. When we enacted -- the DEP enacted standards, those are the standards that should be met. An alternative is just a way of saying, "I'm not going to meet the standard. It's going to cost too much or it's impossible to get everything out." That really isn't acceptable. When the Department sets standards that are health-based, those are the standards that should be met. And I understand that in certain industrial areas you'll never get to clean. But absent knowing what those presumptive remedies are, how they're going to address groundwater contamination, how they're going to address volatile organics, we don't have a comfort level with this whole ability of an LSP to prove -- to presume, or predict, or assume that an alternative remedy is going to be as protective.

It's not. Two hundred parts per million of lead left in the ground is not as protective as 100. And so the general public gets this. And we don't buy the idea that an alternative remedy is going to work. The alternative remedy is usually a cap. It leaves the groundwater

contamination there, leaves soil contamination there. It's really unacceptable.

The other thing that we are disappointed with is that there was a 5 percent funding mechanism that was in the original bill that's been removed. That was a funding mechanism that was going to supply money for TAG grants and for assurances that if a cleanup measure failed this fund would be able to be used to rectify that. We suggest that that surcharge should be restored. It was in the version of the bill that was February 6. And it was a polluter-pay provision. And we would like to see that reinstated to help pay for TAG grants that allow reputable licensed site professionals to be hired by community groups and municipalities to help oversee cleanups and make sure that it comes out right.

The other thing that's basically flawed about this bill is that the oversight and privatization is basically a conflict, because the LSP is working for a private party, not the DEP. And so we think that this inherent conflict could be overcome by Senator Smith's suggestion -- actually that was on April 15 -- and Assemblyman Rooney's proposed amendment that would make sure that there was an escrow account that's paid for through the DEP so that the LSP is not working for a private party but he's, in essence, paid for by the DEP.

Senator Smith, you had said if we are not actually paying them, we, the State of New Jersey, are not actually the employer. I'm worried about the ethical firewall that's been broken, because a professional may be subject to some influence or pressure from the applicant to get paid. This inherent contradiction is very troubling to us. It's why we have government agencies to oversee cleanups, not private individuals.

ASSEMBLYMAN McKEON: Okay. Thank you very much.
Senator Smith.

SENATOR SMITH: I have to do a couple of quick comments.

I changed my position on the escrow account because of the Massachusetts bill. It worked there without the professionals being tainted. And I also changed my position because we put in both civil penalties, loss of license, and criminal penalties for the professionals. So I believe the citizens of the State of New Jersey are well protected.

Two other comments: There is-- We did-- While we took out the 5 percent, on the 1 percent money there is provision there for technical assistance grants to local communities who may be fighting a particular project. So that grant provision is still in the bill.

And then finally, I think you're reading the bill incorrectly, Jane. On Page 92, Section 10 -- this is with regard to the presumptive remedies. The bill says, "If the person responsible for conducting the remediation demonstrates to the Department that an alternative remedy would be equally protective over time" -- that's the presumptive remedy -- "then the alternative remedy for the site that is protective of the public health and safety may be proposed for review and approval by the Department." So if you're going to come up with something that's different than what the Department says is a presumptive remedy -- presumptive remedy is synonymous for digging it out, digging out the hotspots -- you're going to have to prove to the Department that it's as good or better. So the comment that the Department has to prove it in the reverse is not true. It is the responsible party or the cleanup party that has to prove to the Department that it's an acceptable alternative.

MS. NOGAKI: Well, it's just in that Section 10 on Page 92 -- it says, "the use of an unrestricted use remedial action or a presumptive remedy is impractical due to conditions of the site," the person can propose the alternative remedy -- just *impractical*. What's the burden of impractical?

SENATOR SMITH: They have the ability to propose it. The Department doesn't have to accept. The Department is not going to accept an alternative that is not as protective of the public health as their presumptive remedy, which is the dig out. They may have something else. I have no idea what it might be, but we're not giving away anything in that section.

MS. NOGAKI: Well, it just needs to be very explicit that the burden is on the LSP to provide this.

SENATOR SMITH: I think it says that now.

ASSEMBLYMAN McKEON: Ms. Patel, you get the final word, if you choose to.

D E N I S E P A T E L: Thank you very much.

I'm Denise Patel, with the New Jersey Work Environment Council. We're a coalition of 70 labor community environmental organizations working across the State of New Jersey.

A lot of what I was going to say has been said, so I will keep it short. We do agree with the testimony provided by the New Jersey Environmental Federation, the Sierra Club, Communications Workers, and the Environmental Justice Alliances.

On behalf of the Work Environment Council, we do believe that this responsibility should be held by the DEP, and the whole process shouldn't be privatized. But since we are moving forward in that direction,

the bill does have serious problems, and you've heard a lot about them already today. And I just wanted to make two points from some of the things that I heard today.

One was that Assistant Commissioner Kropp alluded to a bill to make the Kiddie Kollege legislation stronger, and that would be the mechanism by which DEP is assuring that kids would be protected from these toxic sites. I don't think that it makes a lot of sense to move forward with this bill while the other one hasn't been passed yet. We need to make sure that there are no loopholes when it comes to kids in making sure that toxic sites are cleaned up.

In addition, we also heard from some industry folks and a lot of people who are -- who have created these toxic sites -- that they're truly concerned about cleaning them up and that they want to ensure that we have a safe and healthy environment. If that was truly the case, I don't think we would be in a situation where there are 20,000 toxic sites still across New Jersey. And I think there needs to be stricter oversight of the LSP program. And as it's proposed, it needs to be a little bit stronger. The audits need to be more rigorous, and we need to make sure that there are no loopholes in cleaning up these sites. Because these are the places where we live, these are the places where we work, and these are the places where our kids play.

So thank you very much for giving me the opportunity to speak, and letting all of us speak during the hearing.

ASSEMBLYMAN McKEON: Thank you very much, Ms. Patel.

And thanks to all of the witnesses for their learned testimony today.

For the record, John Maxwell, from the New Jersey Petroleum Council, is in favor; Evan Piscitelli is here from UTCA, in favor; Joseph Simonetta, from Public Strategies for the New Jersey Society of Professional Engineers, in favor; Christina Genovese, from the Chamber of Commerce Southern New Jersey, in favor; Michael Cerra, League of Municipalities, in favor; and Eric Orlando, IMTT, in favor. Many of those witnesses were good enough to give us written testimony.

Senator Smith, I understand that you're going to move first, and then we'll move on the Assembly side.

SENATOR SMITH: Sure.

First of all, there are no amendments to the bill with the exception of technical amendments. We have the Assembly Committee Substitute, and I understand there is one awkward phrase that has to be -- yes, we're doing the Substitute. There's one awkward phrase -- that 10 and 5. We have to make sure that it's very clear in the English language so that everyone knows what the intent is.

Beyond that, there are no changes. Correct?

All right, on the -- starting with the Senate Environment Committee.

I guess we could take a vote. And as we're taking a vote, you can make your comments, unless somebody feels the need to make comments prior to the vote.

If not, can I have a motion to release?

SENATOR VAN DREW: I move it.

SENATOR SMITH: Moved to release.

SENATOR GORDON: Second.

SENATOR SMITH: And seconded by Senator Gordon.

MS. HOROWITZ: On Senate Bill 1897, the Senate Committee Substitute, Senator Ciesla.

SENATOR CIESLA: Yes.

MS. HOROWITZ: Senator Bateman.

SENATOR BATEMAN: Yes.

MS. HOROWITZ: Senator Gordon.

SENATOR GORDON: Yes.

MS. HOROWITZ: Senator Beach.

SENATOR BEACH: Yes.

MS. HOROWITZ: Senator Van Drew.

SENATOR VAN DREW: Just a quick comment. I just truly want to compliment Senator Smith, Assemblyman McKeon, Irene Kropp.

Somebody -- I think it was you, Assemblyman -- said this was a gargantuan undertaking. I think that is the word, *gargantuan*. And no piece of legislation is perfect. But what certainly wasn't perfect was the site remediation process. We were in crisis. This has many or most of the answers that we truly need. And I'm not going to detail one by one what I think is so good about the bill.

Everybody will have a concern or two. That shows that obviously it was a difficult issue. It also shows that it's a very good piece of legislation.

Often, as I've been involved in government for almost 20 years now, I have, at times, felt that the answer or the cure put us in a worse

situation. That is absolutely not the case with this piece of legislation. I truly believe that the answer and the cure puts us in a much, much better place.

Congratulations to you, Irene; to your staff; Senator, Assemblyman -- to both of you.

MS. HOROWITZ: Senator Smith.

SENATOR SMITH: Just one or two comments. (laughter)

MS. HOROWITZ: Say yes.

SENATOR SMITH: I should just say yes and let it go at that.

But I have to publicly acknowledge the work of Irene Kropp and her staff, which was unbelievable.

And if Al Porroni is listening, Judy Horowitz deserves a raise. (laughter) Al, are you listening out there?

ASSEMBLYMAN McKEON: I hear through the grapevine he's in South Beach. I don't want to throw him under the bus. (laughter)

SENATOR SMITH: Well, I hope it's in -- and we're taking a transcript. I hope it goes into the record. Because Judy has gone way above the call of duty on this.

And, Kevil, I don't know if you still have a marriage as a result of this piece of legislation. I know how hard you worked on it as well.

I think the bill goes a long way to solving a real problem in the State of New Jersey. And we didn't start from scratch. We started with the Massachusetts program, which has been in effect since 1993. Somebody was incorrect in their testimony. We had the Massachusetts people down here. They had an over 20,000 case backlog in 1993. And now they're at the point where they have 4,000 cases coming in every year, 4,000 cases

going out every year, sites are cleaned up properly and safely, and the LSPs act responsibly. Mike Pisauro's testimony convinced me of that, when he tells me that there were some revoked RAOs and there was discipline to LSPs. That tells me that's a program that's working, not evidence to the contrary.

The other thing -- and I kept on hearing it in the testimony, but I don't know how many times we can say it. This is more protective of children than anything we have in the law now. Right now, you literally can pave and wave. And now, for sites that are going to be used residentially, for schools, or for daycares, the DEP can now set the standard for the remedy. And that means they're going to have the responsible party take out the contaminated substance. That's something that's not available under New Jersey law now. That is a dramatic improvement in the environmental law of the State.

And then the comment that people are going to do whatever they want to do is just not true. Forget all the penalties to the LSPs and the liability of the responsible party. At the end of the day, the DEP is still going to be supervising the 400 to 500 most complicated and difficult sites in the State of New Jersey. And those sites that are of a lesser impact on the environment -- it's only proper that LSPs do this so that we get our state cleaned up and back on the economic rolls in generating taxes, and jobs, and whatever.

So I think this is a very good bill. We've heard a lot about: it's imperfect. Those are the comments we want to hear. If everybody's happy, "John McKeon, and Bob Smith, and these two Committees did the wrong

thing.” When we hear some grouching, we’ve done the right thing. So I’m really thrilled to vote yes and release it on the Senate side.

ASSEMBLYMAN McKEON: Thank you, Senator Smith.

I’ll entertain a motion on the Assembly Committee.

ASSEMBLYMAN GUSCIORA: I’ll move it.

ASSEMBLYMAN McKEON: Moved and seconded.

Kevil, did you just join the Assembly? (laughter)

SENATOR SMITH: (indiscernible) a clarification.

ASSEMBLYMAN McKEON: You know what? You’re right.

Excuse me.

And we do have a motion and second.

Commissioner, could you please set forth the clarification? We talked about it offline, and we wanted to publicly get something clarified for the record.

ASSISTANT COMMISSIONER KROPP: And this goes to Mr. Brogan’s and Mr. Russo’s concerns previously.

In Section 27a(3), where we talk about the need to conduct a remedial investigation within a certain timeframe-- If you think about today -- or let’s just say March 1 the bill is enacted. You would have had to have been in the system for 10 years prior to March 1 doing a remedial investigation. And then you have an additional five years to complete your remedial investigation. And if you don’t get it done within that 15-year total timeframe, that’s when the Department would take over the cleanup at the site. So you’ve been in the system for 10 years, the bill’s been enacted -- or greater than 10 years -- the bill’s been enacted. You have another five full years to just complete the remedial investigation. If it

doesn't happen within that 15-year total is when direct oversight would ensue.

There was confusion that it was only five years from the enactment, and it didn't include people who have been in the system already for a very long time.

ASSEMBLYMAN McKEON: Thank you very much, Commissioner. Thanks for that clarification.

There's a motion that's been seconded to approve the Substitute to be released from Committee.

Can I have a roll call?

MS. CALVO-HAHN: Yes. On the motion to release the proposed Assembly Committee Substitute for A-2962, identical to the Senate Committee Substitute, Assemblyman Van Pelt.

ASSEMBLYMAN VAN PELT: Yes.

MS. CALVO-HAHN: Thank you.

Assemblyman Rooney.

ASSEMBLYMAN ROONEY: I think this is a first that I've seen where you have a vote before there's any discussion by the Committee. And, frankly, I have to tell you that I resent it. There have been many meetings. I've been at almost every meeting. And to do this without discussion by the Committee members, I think, is unfair and it's probably unethical.

ASSEMBLYMAN McKEON: John, excuse me. I'm going to use the prerogative of the Chair to tell you that I have a track record of six years of treating you with the utmost respect and dignity. If you would like

to discuss this bill, we will give you every opportunity. Please, so take that opportunity now.

ASSEMBLYMAN ROONEY: I don't think it's proper to discuss the bill while it's being voted on. I think the proper time for discussion is prior to the vote. And that has been the practice of every Committee I've ever served on for almost 26 years. In May it will be 26 years that I'm down here. This is the first time this has ever happened. So I would have liked to have seen it being done--

ASSEMBLYMAN McKEON: Well, I appreciate you accusing me of unethical behavior. That having been said, say what you would like to say and vote.

ASSEMBLYMAN ROONEY: I would have preferred to see this being done with the democratic, small *d*, type of procedure.

I did have an amendment. I wanted to discuss that potential amendment. It wasn't something of my making. It was something that was given to me by my site professional in my town. His concern -- and he's done many of these--

ASSEMBLYMAN McKEON: You're welcome to discuss your amendment, and the Committee will consider it, and we'll vote in a Democratic, big *D*, way to see how it goes.

ASSEMBLYMAN ROONEY: I only want to tell you what the background-- It was not my amendment. The amendment was from a prospective licensed site professional. Basically what he said was he did not like the idea of this bill.

ASSEMBLYMAN McKEON: Is he elected to the Legislature? It's his amendment or yours?

ASSEMBLYMAN ROONEY: If you'll let me continue, Mr. Chairman.

ASSEMBLYMAN McKEON: Okay.

ASSEMBLYMAN ROONEY: What he said was that this put him in a position, and every licensed site professional in a position, where he would be pretty well-- It would be a possible site -- a possible conflict of interest, a perceived conflict of interest -- the fact that he wasn't being paid by the Department, he was being paid by the PRP, the potential responsible party. He did not like that position. A lot of the other licensed -- well the prospective licensed site professionals are going to be put into that position. All I'm saying is that the amendment would have dealt with that particular issue. And I believe that the environmentalists also told you that that is their preference -- that it did not look like the professional was being hired by the PRP.

That's the position of my bill. I've had many, many experiences. I know this is a good policy. I am going to vote in favor of this particular bill. It's about time we did something. In my own town, I have two sites. One of them, this year, will be 10 years old. And what's happened is, because of the overload in the Department-- And this is municipal sites. This is where the municipality actually foreclosed for tax purposes. We didn't have to clean it up, but we started immediately, in 1999, to get the site cleaned up. And what's happened is, because of the overload in DEP, this has dragged on for 10 years. It's about time that we took care of that particular issue. The bill does it. That's why I'm going to vote for it.

But I think it needed some more discussion. It needs that particular amendment to allow the site professionals not to have a potential conflict of interest.

I'm not going to offer the amendment at this time, because I don't think it's proper, after the bill is passed. Basically, that's not the time. I'll offer it on the floor in the next session. But, again, I would appreciate, again, being given some respect, as you have in the past. I admit, very definitely, you have given me respect in the past. And I'm surprised and shocked that this happened today.

Thank you.

My vote is yes.

ASSEMBLYMAN McKEON: Notwithstanding my rage, I will allow you to have the persons who put forward the bill to withdraw that and to allow you to put forward the amendment now if you would like to.

Do you want to have that opportunity? I'll ask the movers to withdraw that, and we'll start again.

ASSEMBLYMAN ROONEY: I don't think that's necessary at this time. I'll put it forth on the floor.

Thank you.

ASSEMBLYMAN McKEON: Okay.

Thank you for your yes vote.

MS. CALVO-HAHN: Assemblywoman Huttle.

ASSEMBLYWOMAN VAINIERI HUTTLE: Thank you, Mr. Chairman.

I think it was about a year-and-a-half ago that we sat here, and I sat next to my colleague John Rooney, and we did have much discussion on this piece of legislation.

Quite frankly, about a year-and-a-half ago I did have some skepticism on the bill. As we moved forward with the due diligence of Irene, DEP, and this Committee, some of my fears have been allayed, I will say. I think the cost of inaction and the continuing status quo is more alarming than not voting for this bill.

LSPs will be licensed, they will be professional. If there are any areas of illegalities, there will be penalties -- harsh penalties -- which places the safeguards in this bill. I am also concerned with the schools, daycares, residences, and recreational sites. Again, there are safeguards in oversight with the DEP in this bill.

But I will say that today we are taking a new and bold step in the way we manage environmental cleanup in this state. And I will also say that I pledge to the environmental groups here today, and all the stakeholders, that this Committee will certainly continue to watch this program in its implementation. Because if we are not satisfied, I can assure you that we will not hesitate to voice our opposition with another piece of legislation.

With that being said, Mr. Chairman, I will vote yes for this bill.

ASSEMBLYMAN McKEON: Thank you very much.

MS. CALVO-HAHN: Assemblyman Milam.

ASSEMBLYMAN MILAM: Just real quick, I do want to acknowledge the hard work that went into this by Chairman Smith,

Chairman McKeon, and of course the staff on both the Senate and Assembly side, and of course Irene's hard work as well.

I had a numerous amount of questions that have been answered to my satisfaction -- the concerns of job loss; and, in turn, it's actually job creation. I'm very appreciative of the hard work. I think the State of New Jersey is on its way to becoming a cleaner state.

Having said that, I vote yes.

MS. CALVO-HAHN: Thank you.

Assemblyman Barnes.

ASSEMBLYMAN BARNES: Yes.

MS. CALVO-HAHN: Assemblyman Gusciora.

ASSEMBLYMAN GUSCIORA: I just wanted to congratulate the two Chairmen, the Solomons, who I know have put a number of hours in this process, as well as Irene, and all the stakeholders. And I know it's been a painstaking process. And I've certainly enjoyed my little, limited participation.

But nonetheless, I know, Mr. Chairmen, you both have worked very hard, as well as the staff, and that there was that whole opportunity for input.

That said, having the luxury of coming from Princeton, we always dream of what could be. And we'd all like to live in the most ideal world. At the same time, I also understand that the financial restraints of the State -- what would happen if -- what we would need to increase the budget to do this through the State, and how many more people we would need to hire to fulfill what we'd all like to accomplish. That is just not a possibility, and this is our only route. And so while it's not a perfect bill,

it's a great start. And at the end of the day, it's going to clean up a lot of the waste sites that are throughout the state, particularly in the urban districts and the ones that I represent. We're just a block away from the Magic Marker site. And look how many years that has taken to clean up.

So I look forward to the day when we have more cleanups in the state. And while it's not the most ideal provision, it's the best possible way we're going to get through this maze.

And while I congratulate you -- I think you did a great job -- I'm going to vote yes.

MS. CALVO-HAHN: Thank you.

Chairman McKeon.

ASSEMBLYMAN McKEON: Thank you very much.

That leaves me.

Let me take another two minutes of everybody's time and get back to the thank yous.

First and foremost, to the stakeholders. All of you were very civil, very informational in this long and arduous process. And I appreciate all of your consummate professionalism. It certainly helped me and helped us get to a much better place. So thank you for that.

To the DEP professionals: Irene, you've gotten much plaudits, but you had a great team, much of which is sitting behind you, who worked equally as hard. And I appreciate all of them.

To our nonpartisan staff: Judy, I'm always afraid to talk to you, as I'll be the one responsible for you quitting, which would be a disaster. (laughter) So thank you.

And, Carrie, you are always a delight. And thank you.

Kate, you were involved not only in the housing issue and all that had gone with that, but then you got stuck with LSPs, so you get a double star. You've done a wonderful job.

And my own Ron, who really immersed himself in all of this -- I thank you.

Senator Smith and all my colleagues, it's so much fun to be with many of you again. And I appreciate all the hard work that you do.

And, Senator Smith, you've always been my role model for six years now. You do an incredible job, and in this, more than ever. And as we both maybe shared off camera, I feel as strongly about this bill as I did about the Highlands. It's just as important.

I also tell you that, when you think about what we're doing -- the bipartisan nature of what happened-- I was kidding with Thea before about the prospect that this might even be on consent on the Assembly side -- maybe not with what John's feelings are. But at the end of the day, bipartisan is an important way to move forward. And we're moving in a way of public/private partnerships. That's the future of how we provide the services that are essential to the people in this state.

When Lisa Jackson first became Commissioner there were 3,500 employees at DEP. There are now 3,000. Knowing the climate that we live in, as much as we -- God forbid anybody else loses their jobs at DEP. I would never want to see that. But knowing the climate we're in, there's going to be less. There's not going to be more. And just saying that we're going to hire another thousand individuals to clean up this backlog is just not realistic, not the solution, and not what's going to happen.

And I guess, just in my own view, I'm still uncomfortable, and have been for two years, to be in a different stated place from where my friends in the environmental community are. And I just think the difference here is that in certain regulations, inertia with the environment can be a good thing -- because the trees stay there, or things don't happen to mess with the natural environment that you never can take back what you do.

But this is different. These are 20,000 preexisting sites that lie in all the contaminants, and in fallow and unusable property that would just be allowed to continue to exist for many, many years, and decades into the future, but for this action today.

And I also say to all of you, that it's clear to me that at some point in time, just as it has under the past system, that there will be a site where there will be a mistake made. That's inevitable. But when you weigh that against the 19,999 that are going to get up to speed in a short period of time, what we're doing today has a great -- I hope -- level of wisdom about it.

So I appreciate everybody from the bottom of my heart. And I think this is the kind of thing as to what we're all here for and why it's meaningful to us to serve in the way that we are.

So thanks to all of the public servants involved in this. And I look forward, as the process continues.

I vote yes.

SENATOR SMITH: Meeting adjourned.

(MEETING CONCLUDED)

APPENDIX

New Jersey Business & Industry Association



GOVERNMENT AFFAIRS TEAM

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Senior Vice President

Sara Bluhm
Assistant Vice President
Energy & Federal Affairs

David Brogan
Vice President
Environmental Policy &
Small Business Issues

Christopher Emigholz
Director
Education &
Workforce Development

Arthur Maurice
First Vice President
Economic Development &
Taxation

Frank Robinson
First Vice President
Grassroots &
Transportation

John Rogers, Esq.
Vice President
Human Resource Issues

Christine Stearns, Esq.
Vice President
Health & Legal Affairs

TO: Members of the Senate and Assembly Environment Committees

FROM: David Brogan, Vice President, NJBIA

DATE: February 26, 2009

RE: NJBIA Position on S-1897/A-2962 SCS -- Licensed Site Professional Bill

The New Jersey Business and Industry Association (NJBIA), which represents nearly 23,000 businesses in the State of New Jersey, appreciates the opportunity to express our **SUPPORT** for S-1897/A-2962, sponsored by Senators Smith and Oroho, and Assemblymen McKeon and Cryan respectively. S-1897/A-2962 would establish a Licensed Site Professional (LSP) Program in the State of New Jersey, in an effort to address the growing backlog of contaminated sites. We would urge the committee members to vote **“YES”** on this bill when it comes before the joint committee on February 26, 2009.

As an association, NJBIA represents the largest number of interested parties that will be affected by any change to the State’s Site Remediation Program (SRP). They include responsible parties, developers, engineers, consultants and other property owners. As such, in reviewing this bill, NJBIA must take into consideration the potential impact to all parties.

For the past two years, NJBIA has been part of a stakeholder group tasked with providing input on the reform of the State's Site Remediation Program. One component of that reform was the concept of a Licensed Site Professional (LSP) program. With over 20,000 known contaminated sites and diminishing resources for the State Department of Environmental Protection, NJBIA supports the concept of allowing LSP's to take on more responsibility in an effort to make the Site Remediation Program more efficient and effective.

While there is no perfect bill, and we still have some outstanding issues of concern, we believe the legislation provides the only viable solution to tackle the overwhelming number of contaminated sites in our State. Cleaning up these sites will not only benefit our environment and overall quality of life, such action is a critical component of the State's economic development efforts.

As stated above, on behalf of the nearly 23,000 members of the NJBIA, I would like to express our **SUPPORT** for S-1897/A-2962 and urge the committee members to vote **“YES”** on this bill when it comes before the joint committee on February 26, 2009.

We appreciate the opportunity to express our position on this important piece of legislation. Should you have any questions or need further information, please contact me at 609-393-7707, extension 236.

REPRESENTING 23,000 NEW JERSEY BUSINESSES



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NEW JERSEY CHAPTER

145 West Hanover St., Trenton, NJ 08618
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www.SierraClub.org/NJ

- **Instead of removing toxic materials from these sites, more polluters will “pave and wave” – essentially place an asphalt cap overtop the hazardous materials.** According to every scientific study, these types of controls will fail. Caps will crack from the weight of buildings. Sewer lines have the potential to destroy the cap, unleashing toxic materials and gasses. Since there will be no real oversight, houses or apartments can be built on top of these sites.
- **The polluter will not be held responsible after cleanup.** The responsible party will not be required to have insurance and it is not mandated to establish an escrow account to protect the site’s future owner if more contamination is later found. It will be up to the homeowner or the taxpayer to clean up the additional pollutants, not the polluters or the developer.
- **The state is planning to add a covenant not to sue.** Once the site is deemed clean by the private consultant, the state will give up its right to sue the polluters if additional toxic waste is uncovered. The bill does not require licensed professionals to be subject to pay to play restrictions. It also eliminates Technical Assistance Grants, which are provided to towns to help them clean up contaminated sites.

We believe this bill in its current form violates federal laws CIRCLA and RCRA. The LSPs are not acting on behalf of the state they are acting instead of the state. On CIRCLA these are contaminated superfund sites could be included. You are removing due process from citizens and proper state oversight with this legislation. We believe it violates RCRA because the DEP is supposed to carry out the function of RCRA under the memorandum of agreement not outside contractors who are not accountable to the people of New Jersey.

The Sierra Club supports the redevelopment of brown fields but we believe those sites must be properly cleaned to protect public health and safety. If not, it will not only endanger the people who live and work there, but undermine the future efforts to bring appropriate development to brown fields.

The program needs to be fixed. DEP professionals should have the power to pick the remedies for cleaning up these sites. Public input in cleanup selection and redevelopment is essential. TAG grants should be restored and polluters must be required to have insurance. A privatized program should only be permitted in the cleanup of sites that exhibit small amounts of contamination, such as heating oil tanks. In that case, LSPs should be paid for by the polluters via escrow but monitored by the DEP.

As it stands now bill S1897/A2962 will allow the privatized cleanup of any site, even the most polluted in the state. It's worse than the fox guarding the henhouse; it's the fox also certifying that the henhouse is safe. Kill this bill before it kills us.

Sierra Club: For Our Families, For Our Future

6x

“The 2009 – Site Remediation Reform Legislation Will not Protect Children at Proposed Sites for Schools, Day Care, and Recreational Centers”

Prepared by:
Roy L. Jones
Co-Chair and Coordinator
South Jersey Environmental Justice Alliance
NJ Healthy Schools Network

Date: February 26, 2009

Submitted to:
State and Assembly
Environmental Committee
Trenton, NJ

Harrison Avenue Landfill Site
(90 Acres)

KROC Center
(12 Acre KROC Center)



The proposed KROC Center includes day care center, indoor/outdoor recreational areas, after-school center, art center, and town hall plaza.

I. Introduction

Why Site Remediation Legislation should absolutely protect the health, safety, and welfare of children on sites proposed for schools, daycare centers, and recreational facilities.

The short answer is that “Children are powerless against many dangers in school and out, and they look to adults for protection. However, decisions that adults make frequently endanger our nation’s children. New schools are being built on or near chemically-contaminated land or near industrial facilities that release toxic emissions that contaminate the air children breath, the water they drink, and the soil they play in.”

(Comments from Lois Gibbs – Love Canal Leader, Executive Director Center for Health Environment and Justice – Oct 1, 2002)

In terms of the legislation before the committee, it will not fully protect the health, safety and welfare of children on sites proposed for schools, daycare centers, and recreational facilities. One major flaw in the legislation is that it allows the use of CAPS as an institutional control mechanism to manage contamination on polluted sites.

In New Jersey, not only has the clean-up of contaminated sites been an issue, but the use of CAPS is at best a questionable practice.

II. How widespread are the use of CAPS?

According to staff writer, Alex Nussbaum of the Berger Record CAPS was used at 540 sites statewide. The writer maintained that “Developers love CAPS because they save millions when they don’t have to dig up contamination and haul it away.” At a hearing in 2006, DEP Commissioner Jackson even said **“that developers pursue the cheapest solutions in order to quickly get a profit.”**

Children are more vulnerable to contaminants than adults and irreversible harm can occur. When public schools are built on contaminated land there is a potential source of chemical exposure and the use of CAPS does not represent the highest level of protection for children.

III. Health Effects, Environmental Exposure & Children

Many medical and scientific studies show that:

1. Children are more vulnerable to pollutants than adults
2. In New Jersey, children health is deteriorating
3. Children are completely defenseless to toxins because they have weaker immune systems, with immature body organs and tissues

Therefore, children are the first casualties from toxic exposure.

IV. Examples of Site Remediation Failures

- specific to schools, recreational facilities and commercial development (existing & new facilities)

The Bergen Record article of 2007 indicates 14 schools used CAPS. In other articles about schools and contaminated sites, at least one reporter indicated that over 100 schools have been built on contaminated sites.

1. Early Childhood Education Center (ECDC) – Camden, NJ
 - a. Built on former landfill industrial site and surrounded by other contaminated sites
 - b. School for special education and health / learning-impaired children
 - c. Arsenic found at site 10,000 times national standard
 - d. CAP used as an institutional control remedy
 - e. Facility houses: 400 children and approx. 85 adults
2. KROC Community Center – Camden, NJ
 - a. Harrison Ave. Landfill
 - b. Site served as a municipal landfill for 35 years (1952-1971)
 - c. KROC Center consists of 12 acres of an 85-90 acre site – which means 72 acres that surround center still a landfill, etc.
 - d. Is still a source of ground water contamination
 - e. CAPS also used
 - f. KROC Center to host: daycare center, indoor / outdoor recreational facilities, town plaza, family service center, and school programs
 - g. Over 3000 children and 1000 adults will use facility each year.
 - h. Landfill near other industrial facilities
3. Martin Luther King School – Trenton, NJ
 - a. New school had to be torn down because site contained contaminated soils – after construction found
 - b. Nearly \$24 million spent to rebuild school second time
4. Kiddie Kollege Daycare Center – Franklinville, NJ
 - a. Mercury contamination – spawned Kiddie Kollege law
 - b. Issue led to lawsuits and new state legislation to protect children in daycare centers
5. Meadowlands Development – Encap Fiasco
 - a. Commercial / residential development
 - b. Multiple abuse-site remediation / clean-up/investigations
6. Vailsbury Middle School – Newark City, NJ (existing school, 2008)
 - a. Vapor intrusion occurred when fumes from contaminated soil or ground water seeped through cracks and holds in foundation / slabs of buildings and accumulated in basements, crawl spaces, or occupied areas
 - b. Sampling revealed highest levels of PCE, TCE in soil beneath cafeteria
 - c. Indoor air results revealed PCE and benzene at their highest levels in cafeteria

7. Report title: *Toxic Schools Crisis in New Jersey* – May 2008 / Nov. 2008
Report prepared by South Jersey Environmental Justice Alliance (SJEJA)
listed up to 49 schools in the state either build on or near contaminated sites

**HEALTH EFFECTS:Harrison Ave. Landfill
Site(Brownfield/Superfund) Certain Toxins/Chemicals Found at Site**

Cholorbenzene

<http://www.weblakes.com/toxic/CHLOROBENZENE.HTML>

1. In children
 - a. Unconsciousness
 - b. Cyanotic and muscle spasms
 - c. Can recover completely
2. In adults
 - a. Acute
 - i. Narcosis
 - ii. Restlessness
 - iii. Tremors
 - iv. Muscle spasms
 - b. Chronic
 - i. Neurotoxiocity- numbness, cyanosis, hyperesthesia (increased sensation), muscle spasms
 - ii. Headaches
 - iii. Irritation of mucosa of upper respiratory tract and eyes
 - iv. CNS, liver, and kidney damage

Dicholorbenzenes (child and adult exposure effects similar)

<http://www.atsdr.cdc.gov/tfacts10.html#bookmark05>

1. Inhalation
 - a. Burning and tearing of eyes
 - b. Coughing
 - c. Difficulty breathing
 - d. Upset stomach
 - e. Dizziness
 - f. Headaches
 - g. Harmful to liver
2. Ingestion
 - a. Skin blotches
 - b. Anemia
 - c. Harmful to kidney, blood, thyroid, pituitary, and liver

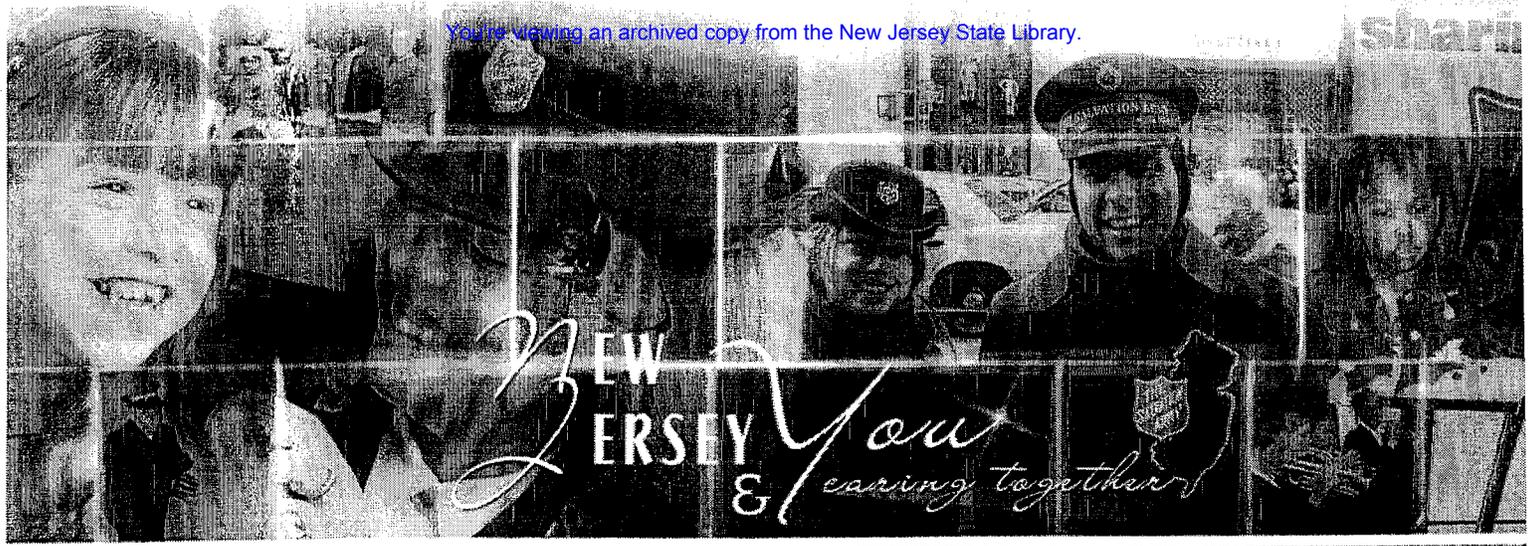
Industrial Chemical Waste: Effects on Children vs. Adults

<http://www.ncchem.com/ChemicalWastes.htm>

- will have heavier exposures than adults to any toxicants that are present in water, food, or air (based on pound-for-pound body weight & metabolism)
- ability to metabolize, detoxify, and excrete many toxicants is different from that of adults
- in some instances, children are actually better able than adults to deal with environmental toxins, but more commonly they are less able to deal with toxic chemicals and thus are more vulnerable to them

1. In children

- a. Respiratory Impairment
 - i. Asthma
 - ii. Pneumonia
 - iii. Other respiratory infections
- b. Childhood Cancers
 - i. Leukemia
 - ii. Brain cancer
 - iii. Wilm's tumor (of the kidney)
 - iv. Testicular cancer
- c. Neurodevelopmental Impairments
 - i. Learning disabilities
 - ii. Mental retardation
 - iii. Dyslexia
 - iv. ADHD
 - v. Autism
- d. Reproductive Impairment
 - i. Hypospadias (birth defect where urethra opening is located on the underside of the penis, instead of at the tip of the penile head)
 - ii. Testicular cancer
 - iii. Early puberty
 - iv. Early menarche (beginning of menstrual cycle)



THE SALVATION ARMY - NEW JERSEY DIVISION

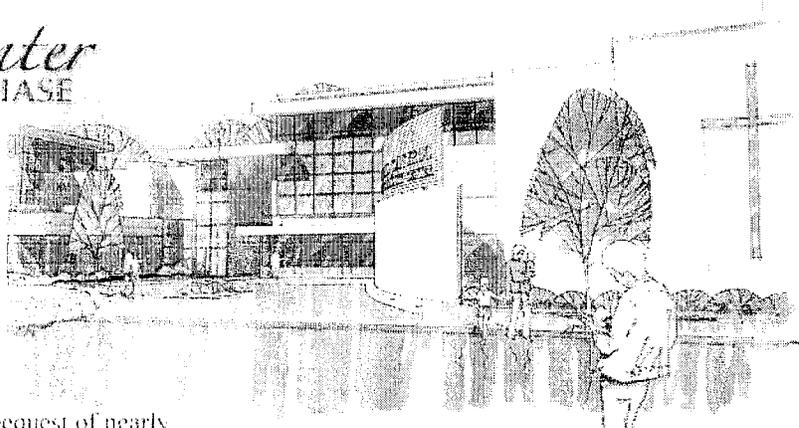
VOL 13, NO 2

SPRING 2008

ONE STEP CLOSER Camden Kroc Center MOVES INTO FINAL DESIGN PHASE

The Camden Ray and Joan Kroc Corps Community Center has moved one step closer to construction. Camden Kroc Center Administrator, Major Paul Cain, has announced that the project is moving into the final design phase. "We're very pleased with all that's been accomplished toward the completion of the project" Cain said. "We're on track for a ground-breaking in late 2008".

In January 2004, it was announced that The Salvation Army USA would be receiving a historic bequest of nearly \$1.6 billion from the estate of Mrs. Joan Kroc, whose husband Ray Kroc founded McDonald's. Following a rigorous, competitive application development process, Camden was chosen as one of eight locations in The Salvation Army USA's Eastern Territory to receive funding for the construction and operation of a Ray and Joan Kroc Corps Community Center. The Camden Kroc project will receive a total of \$54 million; \$27 million for the construction of the facility and \$27 million to partially fund an operational endowment.



Major Cain states, "It is important to note that it was not Mrs. Kroc's intent to provide 100% of the required funding, but rather to challenge the local community to provide matching funds and invest in and take responsibility for the success of the Center.

We will need to expand our local fund-raising efforts and embark upon a campaign later this year to secure an additional \$10-15 million in endowment funds to meet the Kroc Challenge."

KROC CENTER TO INCLUDE

A Family Enrichment Center to offer low-cost, high-quality child day care; after-school programs; family enrichment programs; parenting and child development education; a teen center; and senior citizens programs

A Learning and Technology Center to include a library resource center; computer/technology access and training; and multipurpose classrooms. Programs may include GED courses; literacy programs for adults and families; life skills workshops; English as a Second Language; after-school education and tutoring; and work force development.

Visual and Performing Arts Theater programs to include public performances, exhibits, movies, receptions; music and choral education; arts and crafts education; special youth,

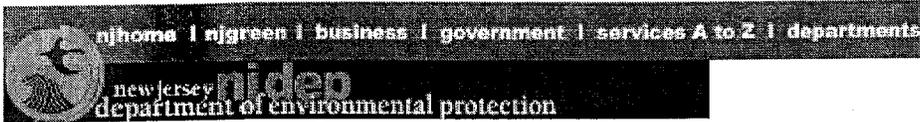
adult and senior theatre programs; and dance education programs.

A Town Plaza to include a community gathering and reception area, along with a coffee shop and information booth.

An Aquatic Center to offer opportunities for lap/competition, family/leisure swimming and therapeutic services for rehabilitative needs. Program opportunities will include lifeguard certification, swim lessons and training, swim meets and an indoor water park.

A Recreation Center to include a wellness center offering services (e.g., a fitness center, educational programs, aerobics classes, personal training and group classes); instruction in a variety of sports; league play; a gymnasium for basketball and volleyball; and senior recreation.

**For more information and to see architectural renderings, please go to our website:
www.camden.salarmykroc.org**



site remediation program

[srp home](#) | [njdep home](#)

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Vailsburg Middle School

Newark City, Essex County
PI# G000004877
25 February 2009

[PDF Version of this site info sheet](#) [13 Kb]

Overview

The New Jersey Department of Environmental Protection (DEP) began remedial activities on July 28, 2008 to address potential impacts to the former Vailsburg Middle School from vapor intrusion. Vapor intrusion occurs when fumes from contaminated soil or ground water seep through cracks and holes in foundations or slabs of buildings and accumulate in basements, crawl spaces or occupied areas. DEP initiated this remediation after elevated levels of benzene, tetrachloroethene (PCE) and trichloroethene (TCE) were detected in ground water, soil gas and indoor air samples collected by the Getty Service Station located across the street from the school. The Getty Service Station is not believed to be the source of the PCE and TCE in ground water.

History

In January 2008, **soil gas** and **indoor air** sampling was conducted by Getty at various locations on the school grounds including the cafeteria/kitchen and several classrooms. During the soil gas testing, samples of the air from the soil below the building foundation were collected and analyzed for volatile organic compounds (VOCs). The indoor air sampling measured levels of VOCs present in the air inside the building.

The January **soil gas** samples revealed the highest levels of PCE and TCE in the soil beneath the cafeteria. These results were $895 \mu\text{g}/\text{m}^3$ of PCE and $1090 \mu\text{g}/\text{m}^3$ of TCE. These results exceed the Soil Gas Screening Levels of $34 \mu\text{g}/\text{m}^3$ and $27 \mu\text{g}/\text{m}^3$, respectively. Please note, however, that soil gas is air underneath the building, and would not be the air that a person would be breathing while in the building or standing outside in the parking lot. **Indoor air** results revealed PCE and benzene at their highest levels in the cafeteria where PCE measured at $5.6 \mu\text{g}/\text{m}^3$ and benzene at $3.2 \mu\text{g}/\text{m}^3$, which exceeded the Indoor Air Screening levels of $3 \mu\text{g}/\text{m}^3$ and $2 \mu\text{g}/\text{m}^3$, respectively. TCE was not detected in the indoor air. An exceedence of air screening levels does not necessarily mean that a building is unsafe, rather an exceedence of screening levels is cause for further evaluation, and if necessary, remediation.

Current Actions

The New Jersey Department of Health and Senior Services reviewed the indoor air data and concluded that the contaminant concentrations detected in the indoor air do not present any immediate health risk. However, to prevent the contaminated air detected in the soil gas from entering the building, DEP is installing a Perimeter Soil Vapor Extraction System. The system is designed to reduce the levels of TCE, PCE and benzene in the air below the slab by continuously venting the contaminated air beneath the building to the exterior of the structure.

Key Construction Activities

- Construction activities at the site began July 28, 2008. These activities were scheduled for the summer months for the safety of the children.
- Site activities at the school included excavation in the paved areas to allow for installation of the Perimeter Soil Vapor Extraction System (system).
- The system was operational on September 25, 2008. Although the Newark Public Schools chose not to renew their lease, the system remains operational as the owner of the property seeks either new tenants or a buyer.
- DEP resampled the indoor air and subslab soil gas on December 11 and 12, 2008 to ensure the system is reducing the levels and is working effectively. Results of this testing indicates that the system is working efficiently and the indoor air results reveal no exceedences of DEP's Residential Indoor Air Screening Levels for the contaminants of concern associated with the site. In addition, no background contaminants were detected in the six indoor air samples in excess of DEP's Residential Indoor Air Screening Levels.
- Most of the system is not visible because the equipment is primarily installed under the ground with the exception of a small garden shed used to house the above-ground equipment.

Off-site Investigation

In addition to remedial activities at the former Vailsburg Middle School, DEP initiated an off-site investigation in September 2008 to determine if vapor intrusion is occurring in buildings in the surrounding neighborhood. DEP sampled eight homes and results from these air samples indicate that vapor intrusion is not occurring at any of the homes tested.



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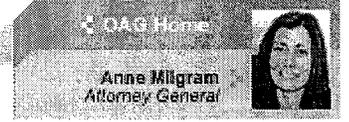
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Attorney General

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For Immediate Release:

February 19, 2008

For Further Information:

Lee Moore, OAG
609-292-4791
Larry Hanover, SDA
609-292-5502

Office of The Attorney General

- Anne Milgram, Attorney General

Attorney General Files Suit to Recover Cost of East Orange School Site Clean-Up

[Complaint](#) 280kb

TRENTON -- Attorney General Anne Milgram announced today that the state has filed a lawsuit in Superior Court seeking to recover the cost of cleaning up and restoring a contaminated property that is the site of a planned school for the arts in East Orange.

Filed on behalf of the New Jersey Schools Development Authority, the lawsuit focuses on contamination of an eight-acre property on North Arlington Avenue that once housed a dry cleaning business, Carriage Trade Cleaners. The property is currently the site of construction work on the East Orange school district's Cicely Tyson School of Performing Arts and Fine Arts. An SDA-funded project, the school is scheduled for completion in 2009.

According to the state's lawsuit, the property was contaminated over a period of years with tetrachloroethene (PCE), a chemical compound regularly used in dry cleaning, and required extensive clean-up and soil removal work that was paid for by the state. Named as defendants in the lawsuit are former property owners Joseph Marcantuone of Verona and Robert Gieson of Livingston and operator Sang Hak Shin of Paramus.

"We are seeking reimbursement from these defendants for what the state has had to spend to clean-up their property," Attorney General Milgram said. "Public dollars should not be used to clean up and restore properties contaminated by private industry."

Scott Weiner, chief executive officer of the SDA, said the lawsuit is part of an important initiative, launched in late 2006, to recover costs from responsible parties for environmental remediation, as well as for design errors and project delays.

"In collaboration with the Attorney General's Office, the SDA will continue an aggressive effort in 2008 to recover costs that rightfully should be paid by those who bear responsibility, not New Jersey taxpayers," said Weiner.

Also named as defendants in the state's lawsuit are JRM LLC d/b/a Carriage Trade Cleaners, of Paramus, and a variety of "ABC" corporations and individual "John Does." The ABC Corporations and John Doe defendants are owners, operators or parties otherwise in control of the Carriage Trade Property at the time of the discharge of hazardous waste who could not be identified by name as of the filing of the lawsuit on February 1, 2008.

28x

Attorney General Milgram noted that the lawsuit is being brought under the New Jersey Spill Compensation and Control Act. Under the Act, a governmental entity such as the state is exempt from liability for clean-up and removal costs related to pre-existing contamination at a property it acquires by eminent domain or condemnation for redevelopment purposes. The state's lawsuit notes that \$629,000 in SDA funding was used by East Orange to acquire the property via condemnation, and that a portion of that funding -- \$182,000 -- was ordered held in escrow by the court to cover the cost of any environmental remediation.

The lawsuit seeks to have the defendants held legally responsible for PCE contamination at the North Arlington Avenue property. It also asks that the \$182,000 being held in escrow be released to the state.

The Cicely Tyson School of Performing Arts and Fine Arts is a demonstration project proposed by the East Orange School District and the City of East Orange. The project features a new, 280,095-square-foot pre-K through grade 12 performing arts/music magnet school on a 12-acre campus within the city's Main Street redevelopment area. Students from the 100-year-old Washington School and the existing Cicely Tyson School will attend the school. A September 2009 opening is scheduled.

Demonstration projects are school facilities projects that incorporate community design features and are coordinated with wider community economic redevelopment. Six were authorized under the Educational Facilities Construction and Financing Act of 2000. The East Orange demonstration project is managed by the City of East Orange as the redevelopment entity and Joseph Jingoli & Son, Inc. as the redeveloper. Jingoli is also the construction manager/general contractor. The SDA provides 100 percent funding and oversight.

The SDA (then known as the SCC) awarded East Orange a grant for design and construction of the new school in December 2004. The Carriage Trade Cleaners property was subsequently acquired via condemnation, and a follow-up investigation revealed PCE contamination. The contaminated soil was excavated and properly disposed of in 2006. A subsequent consulting study found the remediation effort to have been sufficiently completed. The Department of Environmental Protection approved the consultant's Remedial Action Report on the site in March 2007.

DAG Michael McMahon, of the Division of Law's Cost Recovery and Natural Resource Damages section, handled the lawsuit on behalf of the state.

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AFL-CIO, CLC

Main Office
1 Lower Ferry Road
West Trenton, NJ 08628
P/ 609.530.0060
F/ 609.530.0638
E/ information@cwa1034.org

Southern District Office
451 N. Glassboro Road
Woodbury Heights, NJ 08097
P/ 856.853.1500
E/ 856.853.8932
E/ sodistrict@cwa1034.org

Mount Holly Office
26 High Street
P.O. Box 723
Mount Holly, NJ 08060

Branch Two Office
47 Maple Ave.
Flemington, NJ 08822
P/ 908.806.3411
F/ 908.806.9169
E/ cwalocal1035@sprintmail.com

Branch Three Office
Roosevelt Care Center
1 Roosevelt Drive
Edison, NJ 08837
P/ 732.321.6800
F/ 732.321.0036

Branch Four Office
58 First Avenue
Suite 202
Atlantic Highlands, NJ 07716
P/ 732.291.6014
F/ 732.291.6013

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**Comments on Re: SCS S1897 / A2962 (2.20.09 draft):
Bill is Fatally Flawed and Should Be Held**

Testimony of Adam Liebttag, Lead Staff Representative

On behalf of 16,000 members state-wide, including state, county and municipal workers, and on behalf of the members who work in the Site Remediation Program, CWA Local 1034 testifies **strongly against** this bill.

It may sound dramatic to say this bill is one of the worst degradations of environmental protection the DEP has ever suffered, but it is true.

There is no doubt that people say the Site Remediation Program is broken...but is the appropriate solution handing 20,000 contaminated sites to polluters and their consultants to clean up with less government oversight? The latest draft of the LSP bill is privatization and deregulation, and we reject the very concept of the bill.

However, in response to this latest draft, we testify to ask for the bill to be held until it addresses several critical issues.

There is a misperception that the Department supports the creation of this LSP bill, which is in fact not the case. Although the Administration and upper management at the Department supports this bill, it is important to understand that **the Department overall does not actually support this bill**. In fact, the vast majority **OPPOSE** this bill for the same reasons you hear from environmental advocacy, environmental justice, and labor groups today.

The environmental experts at the DEP – research scientists, geologists, case managers, Site Remediation enforcement and others – vehemently oppose the bill in its current form because they deal with cleanup of these sites every day and know what lies on the other side of passing this terrible legislation. The environmental experts who have been given the difficult task of overseeing cleanups, who are in the best position to know whether deregulating toxic site cleanups is wise, speak out against this legislation.

Again, although we reject the proposition of deregulation by privatizing environmental oversight, we find three major problems with this bill:

1. Consultants should not regulate themselves.

The DEP environmental experts and professionals know about their backlog better than anyone, and they know why the backlog exists and how it accumulated. They deal with poor quality submissions every day from consultants who do not sufficiently delineate plumes of contamination, who do not adequately sample a site, who propose shortened cleanups, and in some cases who submit falsified information. Based on their experience with these

CWA Local 1034 represents environmental professionals in the DEP, including the Site Remediation Program, whose work is deregulated and privatized by the LSP bill.

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consultants and these issues, I have over 150 signatures from rank and file DEP workers on petitions opposing this legislation.

The DEP is charged to protect the health of the hundreds of thousands of residents who live near the average of 30 contaminated sites in each town in New Jersey. They interact with consultants and responsible parties more than any of us in this room do, and they are scared and disturbed that this legislation enables bad actors to act badly, with less or zero oversight from the Department.

DEP case managers and other technical professionals deal with overbilling by consultants every day, with insufficient site plans, with faulty sampling data, and with falsified reports. DEP is not an obstacle to cleaning up these sites, it is fulfilling government's responsibility to oversee and ensure that the consultants do what they are supposed to do. Now, with this legislation, DEP will be handcuffed from the oversight necessary, and we will lose the assurance that someone is watching over the cleanup.

2. The LSP universe should be limited to least-dangerous clean up projects first

Neither the Department nor the State can point to how much money this legislation will cost, or how much money it would save. I have seen no analysis of financial impact or personnel impact to implementing this legislation. Even after months of debate between the various interests, no one has determined the real operational and budgetary impact of this bill.

During early discussion of this bill, the Department wanted to include the least complex, lowest contamination sites in the LSP program. These would be homeowner oil tanks and the like that are frustrating for the public, can delay the sale of a home, and are often made low priority compared to multimillion dollar commercial or brownfields redevelopment. If LSP is to go forward, these homeowner and low-level sites should be the test cases to determine if the program works, if there is adequate oversight by the Department, and how auditing works. Instead the bill proposed today is a wholesale deregulation that allows all 20,000 sites to be handled outside government oversight.

3. Auditing 10% of sites is not enough.

This bill puts as many as 20,000 contaminated sites into the hands of polluters and contractors for remediation. A 10% audit rate means that as 2,000 sites will have auditing by DEP - which is not the same as direct oversight or direction - and 18,000 sites will not be audited. This is an unacceptably low standard for auditing.

Auditing 10% of sites overseen by LSPs requires a suspension of disbelief that the public, the kids who learn or live or play near a contaminated site, the people who work in or near a site, that 90% of the LSP sites are cleaned up adequately. Given DEP's experience with existing consultant work, it is impossible to take it on faith.

The adage "don't let the perfect be the enemy of the good" doesn't apply to this bill. This legislation is not only imperfect, it isn't even good. Wholesale deregulation, privatizing DEP's authority over 20,000 sites - an average of 30 in each town - is unconscionable and the bill should be held. If it is not held, this legislation will create new public health hazards and more ticking time bomb sites where contamination is found after the fact. This is not the kind of "reform" Site Remediation needs.

**For more information, contact:
Adam Liebttag, CWA Local 1034**

phone (609) 530-0060

CWA Local 1034 represents environmental professionals in the DEP, including the Site Remediation Program, whose work is deregulated and privatized by the LSP bill.

**TO: ASSEMBLYMAN JOHN F. MCKEON, CHAIRMAN, SENATE
ENVIRONMENT AND SOLID WASTE COMMITTEE**
FROM: OLGA POMAR, SOUTH JERSEY LEGAL SERVICES
RE: SITE REMEDIATION LEGISLATION
DATE: FEBRUARY 24, 2009

I. INTRODUCTION

Please accept these written comments, provided upon the committee's request, to supplement the discussion of the Bill on February 9, 2009 and in anticipation of the public hearing to be held on February 26, 2009.

I am an attorney at South Jersey Legal Services, a private non-profit legal services program that provides free legal assistance to low-income persons in seven counties in southern New Jersey. Our office represents several community organizations concerned about environmental contamination in their neighborhoods, including the South Jersey Environmental Justice Alliance, a coalition group dealing with environmental justice and public health issues in predominately low income, African-American and Hispanic communities, including Camden City, throughout the southern section of the state.

There is general consensus that the DEP's site remediation program (SRP) is not functioning effectively, as sites are not being cleaned up in a timely manner and remediation is too often inadequate to be fully protective of public health. Environmental justice advocates welcome the legislature taking on this complex issue through this and other legislation intended to reform the SRP. They are greatly concerned, however, that this Bill proposes to transfer oversight and responsibility for the remediation of contaminated sites from the NJ DEP, the public agency charged with the mission of protecting human health and the environment, to private entities working on behalf of developers and responsible parties who are not accountable to the public and who have a direct financial interest in the clean-up. It is especially troubling because of the history in this state of inadequate investigation and clean-up done by some of these very same entities.

Thus, while this Bill contains some measures that could improve the effectiveness of the SRP — instituting permits for engineering and institutional controls, giving DEP authority to require unrestricted use and presumptive remedies at sites of particular concern, imposing timelines for clean-ups, establishing a ranking system for sites, and giving DEP greater authority to manage clean-up over a targeted universe of problem sites — these positive reforms are largely rendered meaningless if the DEP cannot effectively exercise its new authority under this new privatized system. Indeed, the Bill would greatly weaken DEP's ability to enforce existing laws and fulfill its mission to make sure that the public health and natural resources are protected. The specific provisions of the Bill which would make it virtually impossible for the DEP to exercise proper oversight over site clean-up are discussed in detail below, and some suggested revisions are proposed.

II. ENVIRONMENTAL JUSTICE CONCERNS

As the committee is aware, the issue of site remediation is of special concern to environmental justice advocates. The proliferation of contaminated sites in our urban communities, such as Camden City, Salem, Carneys Point, Perms Grove, Gloucester City, and Westville, has a significant effect upon health and quality of life. Many contaminated sites in these communities date back to the time that these cities were industrial centers. In more recent years, many of these cities became dumping grounds for undesirable, polluting uses which increased contamination levels. At the same time, the sites found in lower-income EJ communities tend to receive minimal attention and be allocated scant resources for remediation. It is imperative that the SRP be reformed so that these sites will be cleaned up quickly and to standards fully protective of public health.

III. LSP LICENSING AND OVERSIGHT

The Bill creates a structure through which the licensed site professionals (LSPs) are not only fully responsible for clean-up of sites, but are responsible for policing themselves in doing this work. At the same time, the oversight Board is given no resources to equip it to conduct adequate oversight. The Bill also does not provide sufficiently strong deterrents to ensure that LSPs comply with all ethical and technical requirements.

- The licensing board is too heavily weighted with LSPs, representing 6 out of 11 members. (Section 3(b), pp. 6-7).
 - *There should have more representation on the LSP Board from government officials, the environmental community, and other persons who have no financial stake in the system and a concern for public health and the environment.*
- The Bill imposes significant responsibility on the LSP Board to develop standards, approve and revoke licenses, investigate complaints, and perform audits. (Section 5, pp. 7-8). Not only does this create a system of self-regulation and self-policing, but the Bill does not allocate significant additional funding to provide staff and technical assistance to the LSP Board to perform these functions. Without such support, it is unfeasible to expect persons who are volunteering to serve on the Board and are presumably otherwise employed to be able to carry out all of these myriad functions.
 - *Some of the duties, including conducting audits, should be transferred to the DEP.*
 - *The Bill needs to allocate funding for technical staff and support for the Board if it is to assume these duties.*
- The Bill provides that an LSP shall not associate with a person in a business venture, if the LSP knows or should know that the person engages in fraudulent or dishonest business or professional practices regarding the professional responsibilities of a licensed site remediation professional (Section 15(p), p. 18). That language does not make it clear whether an LSP with a revoked license would still be able to do any work in New Jersey under another LSP's supervision.
 - *The Bill should state that if an LSP has had their license suspended or revoked, that LSP is barred from doing any environmental work in this state*

as an LSP, as an employee at an environmental firm which employs LSPs, as a consultant to another LSP, or any other capacity.

IV. DEP AUTHORITY AND OVERSIGHT OVER CLEAN-UP OF SITES

A. Bill does not authorize or require DEP to oversee remediation of contaminated sites, even sites requiring higher level of attention

The provisions addressing the role of the DEP in the remediation process are vague and provide for minimal involvement of the Department even for sites that are recognized as needing greater degree of attention.

- The Bill requires DEP to “inspect all documents” (Section 21(a), p. 26). It is not clear what that inspection entails and whether it is sufficient to ensure that proper submissions are made.
- The Bill gives a list of categories of sites for which the DEP “shall perform additional review of any document” or “review performance of remediation” (Section 21(b), pp. 26-27). The recognition that these types of sites deserve additional attention is positive; the requirement is so vague, however, as to not provide any assurance that the DEP’s oversight will be timely or meaningful. The Bill does not specify which documents must be reviewed or when. A site clean-up may generate hundreds of documents, but this provision could be satisfied by reviewing only one or two of these documents.
 - *At the very least, the Bill should require DEP to review the Remedial Workplan which outlines the investigation of the site and proposes a remedy, before the remedial workplan is implemented, so that DEP can discover potential problems before it is too late.*
 - *The categories of sites in this list should be expanded to include all residential development, active recreation sites (ballfields, playgrounds, community centers), and any other sites where additional review is warranted, such as sites involving presumptive remedies and use of alternative remediation standards.*
- The Bill also lists categories of sites where DEP “may” perform additional review (Section 21(a) and (c), pp. 26-27). This provision suffers from the same lack of specificity as to what and when would be reviewed. Most of the categories of sites listed present sufficient concerns that additional review should be required, rather than allowed. The use of “may” also implies that DEP does not have authority to conduct additional review if the site does not meet any one of these specific definitions.
 - *Subsections 3, 6, 7, 8, 9, 10, and 11 should be moved from the “may review” to the “shall review” category*
 - *An additional subsection should be added to enable DEP to review “any site where the DEP determines in its discretion that additional review is warranted”*

- The Bill requires DEP to review only a minimum of 10% of all documents submitted by LSPs. (Section 21(f), p. 27). Since one site may generate hundreds of documents, this level of review is virtually meaningless. The Bill also does not make clear whether the additional document review DEP is required to conduct pursuant to Section 26(b) counts toward the 10% minimum. If it does, then only a miniscule percentage of documents will ever be reviewed and sites not falling within the categories enumerated in Section 26 will be subject to no review at all.
 - *The Bill should make clear that this section requires review of additional documents besides those reviewed under the categories listed in Section 26*
 - *The percentage of documents reviewed should be raised to a minimum of 20%.*
 - The Bill prohibits DEP from auditing sites if more than 3 years have passed since the LSP issued a Response Action Outcome (RAO) except under limited circumstances. (Section 25, p. 28). It is not clear why DEP is restricted from conducting any audit it determines in its discretion to be warranted.
 - *This provision should be deleted.*
- B. DEP is given broader authority to oversee complex sites but only a very limited universe of sites could come under DEP control

One of the more significant and positive measures of the Bill is the new authority given to DEP "to undertake direct oversight over remediation (Section 27, pp. 28-31). The provision is too limited in scope, however, to have significant impact on the effectiveness of the SRP.

- Under Section 27(a), the DEP is required to take over sites only if there is significant delay by the responsible party in cleaning up the site subsequent to the enactment of this Bill. Therefore, this provision will not be triggered for at least 5 years, even though there is already a large universe of contaminated sites that have languished for decades.
 - *DEP should be required, or at least allowed, to take over remediation of sites that are presently in violation of DEP enforcement orders, or at the very least, sites that are not brought into compliance within a short period of time of the enactment of this legislation.*
 - *The universe of sites should be expanded to include complex sites that are determined to be of the highest ranking in terms of potential danger to public health and the environment.*
 - Section 27(b) of the Bill allows DEP to undertake direct oversight over a narrowly defined universe of sites. This is again a positive element of the Bill but very limited in its scope.
 - *Subsection 4 should be moved from Section 27(b) to 27(a), requiring DEP direct oversight*
 - *Additional categories should be added to give DEP more flexibility to take over complex sites when warranted.*
- C. The Bill give DEP new authority to require more protective remedies but does not establish a sufficiently clear and strong preference for use of unrestricted use

remedies at sites where there is most risk of exposure for vulnerable populations, such as residences, schools, day cares, and active recreation sites.

A major flaw of the SRP is that responsible parties can easily avoid meeting clean-up standards by the use of engineering and institutional controls such as caps and Classification Exception Areas (CEAs). Since such "restricted use remedial actions" and "limited restricted use remedial actions" are typically cheaper and easier to implement, they are almost always the remedy of choice of the party conducting remediation. As LSPs will be working for and paid by the entities cleaning up the site, they will also have a direct incentive to satisfy their client by using this less expensive, less cumbersome, "pave and wave" approach. These controls can fail, however, causing danger of exposure. In addition, they require continuous monitoring, and leave contaminants in place that may eventually spread off-site. The DEP has noted these problems and has sought greater statutory authority to mandate more protective remedies at sites which potentially pose higher public health risks.

This legislation takes a step toward addressing this issue by creating a category of sites for which more than capping with minimal controls is required, but does not go far enough in promoting "unrestricted use remedial actions," nor does it provide any mechanism to give DEP sufficient oversight to see that such remedies are implemented.

- The Bill creates few financial or other incentives to use unrestricted use remedies. Section 25, p. 74 frees an entity that is implementing an unrestricted use remedy from creating a remediation funding source, but extends the exception to entities that are implementing a limited restricted use remedy as well.
 - *The reference to "limited restricted use remedies" should be deleted or some other provision designed to create a distinction in the way these two remedies are treated.*
 - *More incentives are needed to encourage use of unrestricted use remedies.*
- The Bill retains the statutory language that unrestricted use remedial actions and limited restricted use remedial actions shall be preferred over restricted use remedial actions (Section 47(g) (1), p. 89). A limited restricted use remedy is less desirable, however, than an unrestricted use remedy, as it allows contamination to remain on site, requiring ongoing monitoring and posing the risk of eventual spread of a contaminant plume.
 - *The Bill should read that unrestricted use remedial actions are preferred over both limited restricted use remedial actions and restricted use remedial actions, and that limited restricted use remedial actions are preferred over restricted use remedial actions.*
- The Bill contains a new provision that designates certain categories of sites as requiring use of an unrestricted use remedial action, a presumptive remedy or an alternative remedy, in specific, residential development, child care centers, schools, or another purpose that involves use by a sensitive population. (Section 47(g)(1), p. 89) This represents a significant reform in the SRP. However, unrestricted use remedies should be preferred over presumptive remedies. Also, the universe of sites is too narrow.

Finally, there is no mechanism for DEP to ensure that these more protective remedies are being implemented, as discussed above.

- *The Bill should provide that the use of an unrestricted use remedial action will be required unless the entity conducting the remediation can demonstrate that such remedial action is unfeasible due to the specific conditions and the proposed uses at the site, in which case the DEP may approve the use of a presumptive remedy.*
- *The Bill should require DEP review and approval at the very least of the Remedial Action Workplan before the implementation of the remedy for these categories of sites.*
- *The category of sites should be expanded to include active recreation sites.*

D. The Bill creates new authority for DEP to impose more protective “presumptive remedies” for residences, schools, and day cares, but provides insufficient guidance and no mechanism for DEP to enforce this authority

- “Presumptive remedy” is not expressly defined in the Bill. The definitions section, Section 23, p. 70, only makes reference to Section 47(g) (10). That Section merely authorizes and requires DEP to establish presumptive remedies taking certain factors into account. (Section 47(g) (10), pp. 91-92). The Bill does not make clear how presumptive remedies will be different than unrestricted use remedies, other than allowing use of controls where there is historic fill, nor does it make clear how presumptive remedies would differ from typical restricted use remedies.
 - *The Bill should specify that presumptive remedies are to be more protective than other restricted use and limited restricted use remedies.*
 - *The Bill should make clear that presumptive remedies are to be used only when it is demonstrated that an unrestricted use remedy is unfeasible.*
- Presumptive remedies are required only for a narrow universe of sites, in specific, residences, child care centers, and schools. (Section 47(g) (10), p. 91).
 - *The category should be expanded to include active recreation sites and other purposes that involve use by a sensitive population.*
- The Bill presupposes that DEP can design presumptive remedies that will give sufficient guidance to an LSP to determine which presumptive remedy is applicable. The factors listed to be used by DEP to develop the remedies, however, seem very site specific. (Section 47(g) (10), p. 91). Without ongoing communication and guidance from the DEP, there would be considerable uncertainty about whether a particular remedy is acceptable, but, as previously discussed, the Bill only allows DEP to review documents for these sites without requiring any specific review or pre-approvals.
 - *The Bill should require DEP to review and pre-approve at the very least the Remedial Action Workplan before remediation is done at a site requiring use of presumptive remedies.*

- The Bill allows a party conducting the remediation to propose, for DEP review and approval, an alternative remedy would be equally protective over time as a presumptive remedy, if it can show that a presumptive remedy is impracticable. (Section 47(g) (10), pp. 91-92). It is not clear how the party would obtain DEP review and approval because, as discussed above, there is no requirement that DEP have ongoing oversight over these sites.
 - *The Bill should require DEP to review and pre-approve at the very least the Remedial Action Workplan before remediation is done at a site where an alternative remedy has been proposed.*

- The Bill appears to recognize that there is a great risk that an LSP will conduct a clean-up without properly applying presumptive remedies, but rather than protecting against this from occurring, it creates a huge loophole — the Bill states that DEP cannot invalidate an RAO if a presumptive remedy was not used but the DEP determines that the remedial action used is as protective. (Section 22, p. 28). Since RAOs are issued after the completion of the remediation, this provision presupposes that DEP will not have reviewed or pre-approved the remediation plan. Invalidation of a remedial action at that late stage would likely result in huge delays and added costs, which would place pressure upon DEP not to invalidate the remedy except under the most extreme circumstances. Furthermore, it is known that DEP has frequently approved minimal capping and use of controls as protective of health. Because of these factors, this provision creates an incentive to use alternatives to presumptive remedy without first seeking DEP approval.
 - *This language should be deleted.*

- E. The Bill creates new authority for DEP to require “hot spot” removal, but does not provide any mechanism for DEP to enforce this authority.

- Section 47(g) (2), p. 90, authorizes the DEP to require treatment or removal of contaminated material that would pose an acute health or safety hazard in the event of a failure of an engineering control. This appears to be a very significant reform in the law, but unfortunately it may end up being meaningless, as it is unclear how DEP could enforce this provision if it does not review site remediation documents to determine whether such “hot spots” exist. In addition, even if an LSP identifies the issue and considers hot spot removal, it appears there is no clear guidance as to what level of contamination would pose an acute hazard. The provision therefore could create uncertainty for LSPs and parties conducting remediation.
 - *The Bill should require DEP to promulgate a guidance specifying, for each contaminant, what amount and/or level of concentration cannot be left on site. In situations where there has not been sufficient research to determine exactly what levels of acute exposure creates a health risk, DEP must set protective standards according to the best information available, erring on the side of caution.*
 - *The Bill should, at the very least, require LSPs to report to DEP the presence of hot spots and should require DEP review of site investigation reports for sites which pose greatest public health risk, including*

residences, day cares, schools, and active recreation areas, to determine whether hot spots are present.

F. The Bill directly undermines the authority given in the statute to DEP to approve and/or oversee and monitor clean-up strategies involving alternative soil standards and historic fill.

- The statute in its present form allows a party conducting remediation to submit to the department a request to use an alternative soil remediation standard in lieu of the DEP's established standards. (Section 47(f)(1), pp. 87-88). The party conducting the remediation has the burden of showing that the alternative standard will be protective of health. (pp. 87-88). The statute requires that DEP review and approve any such proposed alternative standards. The Bill does not alter this language, but it creates an inconsistency because it erodes the DEP's authority to review and approve the use of alternative standards. Pursuant to the Bill, LSPs would make decisions regarding remedy selection without ongoing DEP review and approval, and the Bill does not create a special review and approval process if alternative standards are proposed. On the contrary, the Bill only allows, rather than requires, DEP to conduct "additional review of documents" if alternative soil standards have been proposed, and even then, it only requires DEP to review 10% of all documents submitted for all sites in a year, making it extremely unlikely that alternative standard sites will receive any meaningful review.

- *The Bill should clarify in Section 21, pp. 26-27 that the DEP must review and approval of documents proposing use of alternative soil standards.*
- *The Bill should add further clarification in Section 47(f) (1) to specify that despite the delegation of authority to LSPs under this statute, use of alternative standards nevertheless requires DEP review and approval.*

- The statute in its current form, allows an entity conducting remediation to demonstrate to the satisfaction of the DEP that certain contaminated material constitutes "historic fill." (Section 47(h), p. 91). If DEP determines that it is historic fill, there is a rebuttable presumption that the department shall not require any person to remove or treat the fill material; that presumption can be overcome, however, by DEP showing by a preponderance of evidence that engineering and institutional controls would not be effective (p. 91). The Bill does not change this language, but it makes it impossible for DEP to exercise its authority in accordance with this statutory provision. The Bill does not require any DEP review of sites involving classification historic fill. With the DEP no longer involved in overseeing and approving remediation documents, there would be no way for DEP to determine whether materials were properly classified as historic fill. Furthermore, if DEP is not involved in overseeing the remediation, there is no opportunity for DEP to challenge the presumption that the material does not need to be treated or removed. What was intended as a presumption would therefore in reality become an absolute rule.

- *The Bill must require, in Section 21, that the DEP review and approve the classification of material as historic fill and that it determine whether*

engineering and institutional controls are appropriate before the remediation is commenced.

- *The Bill should also specify in Section 47(h) that despite the delegation of authority to LSPs under this statute, classification of historic fill and use of engineering and institutional controls require DEP review and approval.*

- G. The Bill improperly delegates DEP authority by deeming an RAO issued by a private entity to have the same legal effect as a covenant not to sue issued by the DEP.

The Bill states that if an LSP issues an RAO to a person responsible for conducting a remediation, the person shall be deemed, by operation of law, to have received a covenant not to sue from the DEP. (Section 31, p. 34). This provision is problematic for several reasons. The DEP would be being prevented from pursuing legal remedies against a party based upon certifications by a private entity employed by that party and without requirement of any review by any state official. There may be various legal impediments to such abdication of state functions and responsibilities. Furthermore, with DEP taken out of the process, the new procedures may create uncertainty about the effectiveness of clean-ups and impede approvals and funding for projects, as well as making development on contaminated sites less marketable. These issues underscore the potential pitfalls of delegating so much authority to LSPs and potentially deterring site clean-up.

V. OTHER ISSUES

- The Bill contains very few provisions about public participation and input into the site remediation process. It is unclear how the Bill will affect the newly promulgated regulations regarding public participation in site remediation, which presuppose that the DEP will be actively involved in the process rather than delegating most of its authority to LSPs. It is critical to inform, involve, and obtain the input of persons most directly affected by the contaminated site, including residents, workers, community-based organizations, and local officials. The Bill contains a provision for technical assistance grants to nonprofit groups to evaluate remediation methods and monitor site conditions at specific sites of public concern in the local community, a provision which EJ advocates strongly support, but contains no specifics about these grants (Section 51(c)(2), p. 102).
 - *The Bill should incorporate a process for notifying and involving the public in the site remediation process*
 - *The Bill should expressly provide for a complaint process by which any concerned person can request an investigation by the LSP Board and by the DEP of a particular LSP or of the remediation of a particular contaminated site.*
 - *The Bill should provide for DEP review, monitoring, and intervention in site remediation process when warranted based upon community input.*
 - *The Bill should allocate adequate funding for technical assistance grants and require DEP to establish a program for administering these grants within one year of the enactment of the legislation.*

- The Bill requires DEP to establish a ranking system for contaminated sites and to provide public access to information about the sites on its website. (Section 39, p. 67) This is a positive improvement in the law, as it is now virtually impossible to obtain any information about the nature and extent of contamination at a site without going through an OPRA review of the file. The law does not specify how the ranking system will be used.
 - *The Bill should provide that the ranking system should be used to guide the DEP in determining the level of DEP oversight needed, the extent of public input and participation, and the allocation of resources to investigation and clean-up.*

- The Bill reforms the law by imposing a new prohibition against constructing single family residences, schools, or child care facilities on a landfill if it requires reliance on engineering controls. (Section 47(g) (12), p. 92). This is a significant and positive step, but the categories of sites should be expanded.
 - *The Bill should also prohibit construction of any residences and any active recreation sites (playgrounds, ballfields, and community centers) on former landfills.*

Thank you for consideration of these comments.



**Chamber of Commerce
Southern New Jersey**
Where Business Grows

MEMORANDUM

TO: Members of the Senate Environment Committee and
Assembly Environment and Solid Waste Committee

FROM: Christina M. Genovese, Manager, Government Relations

RE: **S-1897 (Smith) / A-2962 (McKeon)**
Site Remediation Reform and Licensed Site Professional Bill

DATE: February 26, 2009

The Chamber of Commerce Southern New Jersey would like to express our support for the **Site Remediation Reform and Licensed Site Professional Bill, S-1897 (Smith) / A-2962 (McKeon)**. The Chamber's members include companies that own and/or operate facilities at properties undergoing cleanups, businesses seeking to purchase or sell Brownfield properties and consultants and contractors hired to perform the work necessary to complete cleanup activities and prepare the required reports documenting their efforts.

The Chamber believes that the current Site Remediation Program is broken and needs to be fixed. We applaud the New Jersey Department of Environmental Protection (NJDEP) for setting up a Stakeholder process to study the reasons why and to develop suggested reforms. We also appreciate Senator Smith and Assemblyman McKeon taking the initiative to propose much needed reform legislation.

The Chamber has reviewed the most recent version of the bill and is supportive of many of the changes that have been made. However, we would like to respectfully offer the following suggestions on how this legislation can be improved further:

- **Section 19** - Under the new permitting program for engineering and institutional controls, there is a new financial assurance requirement. The Chamber would like to suggest language be added to create a self guarantee option as well.
- **Section 21** - There is no process for the LSRP to find out if NJDEP has decided to review the report and no time limit to NJDEP's review. The bill allows the LSRP to continue work while NJDEP "reviews" a submission, but why would an LSRP do so if they know NJDEP is reviewing it and may require a change? If they stop work to await NJDEP review, they may run afoul of the "mandatory timeframes." This section needs some further clarity.



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- In **section 21, subsection c.**, NJDEP has the ability to "review" any case with groundwater contamination (under c (4)) and virtually any other case (under subsection c(10) or (11)). The Chamber feels this is inconsistent with the purpose of LSRP review.
- **Section 25** - Response Action Outcomes (RAOs) may be audited by NJDEP up to 3 years after they are issued and under certain circumstances after that period. This creates uncertainty surrounding the issuance of an RAO for up to 3 years and in some cases longer. The Chamber believes this period should be shortened. Also, for those circumstances that could trigger an audit after the 3 year period, there should be a limited time frame after the triggering event within which the audit must be done.
- **Section 27** - The circumstances under which NJDEP "shall" undertake direct oversight still a concern. For example, a single failure to meet a mandatory timeframe triggers mandatory NJDEP direct oversight. Also, the subsection that triggers direct oversight upon failure to complete an entire site remediation within 10 years after discovery of contamination and 5 years after the date of enactment is also troublesome. This subsection does not provide an exception for delays caused by NJDEP review, which can be considerable.
- The Chamber also believes that **section 27** is confusing and deserves another look. Does **section 27** mean that regardless of how long a remediation has been in progress before the date of enactment, there will be an additional five years to complete the remediation after enactment? What if the bill is enacted tomorrow and then a discharge is discovered? Is it then ten years from discovery or five years from enactment? We respectfully ask that the sponsors revisit the language used in this section.
- **Section 27** also continues to require a feasibility study, allows NJDEP to select the remedy, and requires the establishment of a remediation trust fund for any site subject to direct oversight. The Chamber believes these are still troublesome provisions in the legislation. While there may be justification for letting NJDEP select the remedy in some circumstances under direct oversight, the Chamber feels this should not be in every case. Also, if there is going to be a remediation funding source required it should not be limited to the trust fund mechanism. Other options, including self guarantee, should be allowed, and the cost should be limited to the cost of the remedial action alone, not the "remediation," which includes investigatory costs.
- **Section 28** - The bill would require NJDEP to set mandatory time frames for each phase of a remediation. It is unclear why this requirement is necessary. NJDEP already specifies how long a party has to complete its work in responding to NJDEP comment letters and NJDEP already requires the inclusion of schedules in all submittals. If this requirement is kept in the bill, a requirement for NJDEP to respond to submittals in a mandatory time frame should also be included. In addition, the condition that requires that a party seeking an extension on account of a property access delay must have filed a court action for access before the extension will be granted should be eliminated – why should a party that has a reasonable prospect of entering into an access agreement with a neighbor be forced to go to court?

- **Section 41** - This section has been revised to eliminate the proposed expanded coverage of remediation funding sources, which the Chamber supports. However, the Chamber would like to the remediation funding source requirement be broadened to include small businesses remediating their own business property.
- **Section 45** - The Chamber appreciates that the changes to this section, which deal with presumptive and alternative remedies, are now more flexible and workable. However, would ask the sponsors to consider allowing a LSRP to select and "approve" an alternative remedy without the need for separate NJDEP approval.
- **Section 48** - The bill once again changes the statute of limitations for filing natural resource damages claims. There is no justification for doing this again and it should not be included in a bill primarily directed at establishing an LSP program.

The Chamber appreciates the opportunity to comment on **S-1897 (Smith) / A-2962 (McKeon)**.

500 HORIZON CENTER DRIVE, SUITE 530 • ROBBINSVILLE, NEW JERSEY 08691 - 1907
PH 609-587-5577 • FAX 609-587-0044
WWW.NJBA.ORG



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President

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Vice President

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**TO: MEMBERS OF THE SENATE ENVIRONMENT COMMITTEE
& ASSEMBLY ENVIRONMENT & SOLID WASTE COMMITTEE**

FROM: STEPHEN A. PATRON, PRESIDENT

DATE: FEBRUARY 26, 2009

**RE: Site Remediation Reform Act
Establishes Licensed Site Remediation Professionals Program
S1897 (Smith, B.) / A2962 (McKeon/ Cryan)**

The New Jersey Builders Association appreciates the extensive efforts of the sponsors, the Department of Environmental Protection (Department) and legislative staff in meeting with stakeholders and in responding to our concerns while developing the bill.

From the initial stakeholder discussions, NJBA has **strongly supported** the establishment of a Licensed Site Remediation Professional (LSRP) program to remediate contaminated sites so that they no longer threaten human health and the environment, but instead are put to safe, productive use which will revitalize local economies. We remain supportive of the LSRP concept and believe that it is a necessary initiative to tackle the extensive backlog of contaminated sites.

While significant improvements have been made from the originally proposed bill, there are some additional areas where the bill should be strengthened to achieve its environmental objective of cleaning up sites. NJBA is concerned that the unintended consequence of many of the program changes will be that residential development, particularly needed low and moderate income housing, will not be able to absorb the resultant increased costs and therefore simply will not be built.

NJBA remains supportive of providing the Department with robust auditing authority within specific bounds. However, the bill as currently drafted also allows for the Department to review documents submitted by the LSRP and to assess how the remediation is performed rather than to focus on whether the ultimate remedy is protective. The prospect of constant oversight through these reviews will inhibit remediation and redevelopment projects that produce residential housing from moving forward. Although the LSRP is to "continue to conduct the remediation" while additional review is being conducted, the prospect of remediation efforts being halted and in fact redirected down the road will only dissuade the financial investments needed to fund the remediation itself.

NJBA reiterates the need for a clear depiction of the process and the Department's responsibilities. Procedural safeguards are needed to focus any "additional reviews" must be included to provide predictability and finality to the remediation and

redevelopment process. The bill should include that DEP must establish checklists that identify the particular circumstances that would cause the Department to alter the manner by which the LSRP is conducting a remediation and the timeframes for the DEP to inspect and inform the LSRP of any potential problems with the submissions.

Presumptive Remedies

Similarly, the bill mandates use of unrestricted use remedial action or presumptive remedies where new residential construction will be developed or where the site's use changes to residential use.

The Department should ensure that the required level of remediation is **not** cost-prohibitive and impractical that the consequence would be that low and moderate affordable housing is not built. Presumptive remedies should be economically feasible and doable, and based on specific factors, such as "**realistic potential exposure scenarios associated with each use**" and "**economically realistic approaches**". Further, the LSRP should be able to seek approval (or approve on their own) "alternatives that provide equivalent levels of protection".

Response Action Outcome and "Covenant Not to Sue"

The NJBA remains steadfast in recommending that the "No Further Action" term be used for the final determination issued by the LSRP rather than the proposed "Response Action Outcome" (RAO). The basis for this position is that it would take the public, and in particular the financial community who are necessary partners in brownfields' redevelopment projects, years to understand and accept the legal significance of the RAO, as it had taken for the NFA.

However, if the use of the RAO is to move forward, then the State must proactively educate the public that the RAO determination is in effect the **same** as a NFA and has the same bearing on remediation projects in terms of legal liability. It is not enough that this very detailed bill now includes language to this point.

The current bill also includes language that a person responsible for conducting a remediation is deemed to have received in turn a Covenant Not to Sue (CNS) letter by the issuance of a RAO. The NJBA appreciates the Committees' responsiveness in recognizing the significant incentive that the CNS letter bears on "innocent purchasers" in voluntarily up taking remediation efforts.

The NJBA strongly encourages the Senate and Assembly Committees to issue a joint statement recognizing the equivalency of the RAO and NFA:

"Under the bill, the liability protections currently provided under law to recipients of No Further Action (NFA) determinations will also apply to parties issued a Response Action Outcome (RAO) by an LSRP including a Covenant Not to Sue."

Similarly, the Department should issue guidance to the redevelopment community on the practical applicability of the RAO.

Next steps

As you work through the implementation of the new LSRP program, NJBA encourages you to commit to restoring prior mechanisms and incentives and instituting new incentives that will ensure that the sites that are ultimately cleaned up will be redeveloped to provide affordable housing.

ADDITIONAL APPENDIX MATERIALS
SUBMITTED TO THE
SENATE ENVIRONMENT COMMITTEE *and*
ASSEMBLY ENVIRONMENT AND SOLID WASTE COMMITTEE
for the
FEBRUARY 26, 2009 MEETING

Submitted by David Brogan, Vice President, Environmental Policy and Small Business Issues, New Jersey Business and Industry Association:

David Brogan, "New Jersey needs licensed site professionals to clean up land," APP.com, February 24, 2009.

Submitted by Michael Egenton, Vice President, Environment and Transportation, New Jersey Chamber of Commerce:

Irene Kropp, "Breaking the Backlog: Site Remediation Reform Crucial to Economic Development, Healthy Environment," Enterprise IQ, 2009.

Submitted by Roy L. Jones, Co-Chair and Coordinator, South Jersey Environmental Coalition:

Alex Nussbaum, "Are 'capped' trash sites safe?" *Bergen Record*, April 1, 2007.

Megan Tady, "New Jersey Program Bought Polluted Lands for Low-income Schools," *The NewsStandard*, October 23, 2006, © 2006 The NewStandard.

Dunstan McNichol, "Corzine asked to prevent schools from being built atop pollution," *The Star-Ledger*, June 25, 2008, © 2008 The Star Ledger.

Tom Baldwin, "Activists press Corzine to address 'toxic schools'," GANNETT State Bureau, June 25, 2008.

Dunstan McNichol, "Lawmakers ask extra \$2.5B for school construction," *The Star-Ledger*, May 22, 2008. © 2008 The Star Ledger.