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PUBLIC HEARING

before

SENATE JUDICIARY COMMITTEE

The nomination interview of Christopher J. Daggett to be
Commissioner of the New Jersey Department of Environmental Protection

February 9, 1989
Room 424
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

- Senator Edward T. O'Connor, Chairman
- Senator Raymond J. Zane, Vice Chairman
- Senator Gabriel M. Ambrosio
- Senator Richard J. Codey
- Senator John A. Lynch
- Senator Carmen A. Orechio
- Senator Richard Van Wagner
- Senator Donald T. DiFrancesco
- Senator John H. Dorsey
- Senator William L. Gormley

ALSO PRESENT:

John J. Tumulty
Office of Legislative Services
Aide, Senate Judiciary Committee

* * * * *

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PUBLIC HEARING

before

SENATE JUDICIARY COMMITTEE

The Commission in view of Christopher S. Gargano to be
Commissioner of the New Jersey Department of Environmental Protection

February 27, 1989
Room 414
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

- Senator Edward T. O'Connor, Chairman
- Senator Raymond J. Sarno, Vice Chairman
- Senator Gabriel M. Arduini
- Senator Richard J. Cobey
- Senator John A. Lynch
- Senator James A. Graddio
- Senator Richard Van Wagner
- Senator Donald T. DiFrancesco
- Senator John H. Dorsey
- Senator William D. Gormley

ALSO PRESENT:

- John J. Tammy
- Office of Legislative Services
- Alfred Senate Judiciary Committee

Hearing Recorded and Transcribed by
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State House Annex
Room 414
Trenton, New Jersey 08613

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M E M O R A N D U M

TO: MEMBERS OF THE SENATE JUDICIARY COMMITTEE

FROM: EDWARD T. O'CONNOR, CHAIRMAN

DATE: FEBRUARY 3, 1989

SUBJECT: COMMITTEE MEETING - FEBRUARY 9, 1989

Please address any comments or questions to John J. Tumulty,
Committee Aide at (609) 292-5526.

The Senate Judiciary Committee will meet on Thursday, February
9, 1989 at 10:00 a.m. in Room 424 in the State House Annex, Trenton,
New Jersey.

The following nominee will be interveiwed:

TO BE THE COMMISSIONER OF THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL
PROTECTION:

Christopher J. Daggett, of Basking Ridge, to replace
Commissioner Richard T. Dewling, for the term prescribed by law.

SENATOR EDWARD T. O'CONNOR (Chairman): The Committee will come to order. We will begin today where we left off at our last hearing with testimony from those who have signed up to testify before the Committee. Our records indicate that there are four such witnesses that remain. They are Karen Kiss, Jane Nogaki, Ian Walker, and Phyllis Elston. Is Karen Kiss here?

Good morning.

K A R E N K I S S: Good morning.

SENATOR O'CONNOR: If you would press the white button on the panel before you, and speak into that microphone.

MS. KISS: Into that one?

SENATOR O'CONNOR: Yes, please.

MS. KISS: My name is Karen Kiss and I am President of the Alliance for a Living Ocean, a citizens' organization based in southern Ocean County. Since the Alliance was formed in 1987, we've acquired a membership of 2500 individuals from around the State.

I am here today to convey the opinion of Alliance members that the Senate should not vote to confirm the appointment of Christopher Daggett as Commissioner of the New Jersey DEP.

To our membership, not to be here today would be to minimize the impact the environmental crisis has had on the lives of the people in the ocean community, as well as our hopes for the future.

The Alliance opposes Mr. Daggett's confirmation on two specific points: First, we maintain that Mr. Daggett's EPA record on ocean dumping reflects an unacceptable, outmoded philosophy on waste management; a philosophy which deals with toxics by moving them through the environment to the dump site of least public resistance. This attitude is based on the erroneous assumption that toxics are here to stay, and so we have to find the most acceptable home for them.

The result is obvious. We've run out of hiding spots. We have contaminated much of our environment, and the general condition of the environment appears only to be deteriorating. The bottom line here is that waste disposal is a critical issue in New Jersey today, primarily because waste production has never been seriously addressed. The responsibility for the present state of the state of waste management can only be attributed to a few people, and Mr. Daggett is one of them.

But this issue alone did not bring us to Trenton today. The membership of the Alliance became actively opposed to this confirmation when Christopher Daggett attended Lawrence Bathgate's party in the heat of the Ciba-Geigy controversy. This demonstrated a remarkable lack of sensitivity and judgment for a person in such a highly visible public role.

To the public which suspects that the quality of the environment has often been traded for political favors, Mr. Daggett's attendance at this party sent an abrasive message that the old boy network way of doing business behind closed doors, is alive and well.

We all know that Mr. Daggett was exonerated by the EPA Ethics Committee. We all know, too, that Mr. Daggett did not completely represent the total picture to the Committee prior to the party. To the Alliance, his victory appears to be as superficial as his commitment towards honoring a position of public trust.

Mr. Daggett has not admitted that he has made a mistake. He merely acknowledges that if he had the opportunity to relive that episode, he wouldn't go to the party. In the final analysis, perhaps this attitude best exemplifies the ambivalent nature of Mr. Daggett's ethics.

Ironically, the need for a new code of ethics for government employees is one of the first issues prioritized by the new Bush administration. President Bush, of course, is the key figure in the Bathgate controversy; the man Mr. Daggett had to see, regardless of how it looked to the public.

In a speech on ethics in government, which incidentally was delivered the very day this confirmation hearing began, President Bush defined government service as a noble calling of honorable men and women; to serve in a position of trust; that there is no higher honor greater than to serve free men and women, and that government is an opportunity for public service; to use power to serve the people, not for private gain. He capsulized ethical behavior as simply knowing right from wrong, and avoiding even the appearance of what is wrong.

And therein lies the crux of the matter. Does Mr. Daggett, a man of questionable ethical standards, either under the new Bush administration code of ethics or any other prior ethical code, deserve the honor of this Senate confirmation?

Mr. Daggett has been praised for being a competent administrator. But the Alliance believes that New Jersey's environmental crises have outgrown the need for a mere administrator. And whether we are considering Mr. Daggett's nomination or any future Commissioner's nomination, what New Jersey really needs is a Commissioner who is respected for his integrity: who is not afraid to rock the boat; to take initiative; and to make a measurable difference. What our State needs is a DEP Commissioner of substance, not style.

Thank you.

SENATOR O'CONNOR: Thank you. Any questions?

SENATOR DiFRANCESCO: I have one quick question. You mentioned and you made a very big point about the attendance at the party, and you said subsequent to that in your statement -- I may have it but I don't, can't put my finger on your statement-- "Questionable ethical standards," I think is the phrase you used. Is there anything else besides the attendance at the party that caused you to say that; some other ethical problem that Mr. Daggett has encountered that I am not aware of, or perhaps that I have not been made aware of, either by you or some other person?

MS. KISS: I state that there seem to be several instances, although there is a problem of judgment as to whether or not -- how it looks to the public in attending political functions.

SENATOR DiFRANCESCO: I am going to come to that, but is there something else that you can think of or that caused you to make that statement? I mean that you said, "questionable ethical standards." I want to know, is it based upon his attendance at the fund-raiser?

MS. KISS: I think it starts there, yes.

SENATOR DiFRANCESCO: Now, let me get to that attendance, and I wasn't there because I was not invited. But, had Mr. Daggett gone to Mr. Bathgate's house for dinner, that is, a personal invitation, no one else attending, just a personal invitation to have dinner at his house, in Bay Head-- I think this was in Bay Head, right?

MS. KISS: Yes.

SENATOR DiFRANCESCO: Would you say the same thing?

MS. KISS: I think at the time, you know, if-- Again, here is a very visible public event. In a private situation like that, and the public-- How could the public know about it? I mean that--

SENATOR DiFRANCESCO: Forget about whether the public knows about it or not.

MS. KISS: I don't think he got--

SENATOR DiFRANCESCO: Do you think that is an ethical problem?

MS. KISS: Yes, I do.

SENATOR DiFRANCESCO: Because Larry Bathgate--

MS. KISS: Represents Ciba-Geigy

SENATOR DiFRANCESCO: --represents Ciba-Geigy, and that's the only reason?

MS. KISS: Yes. At that time, yes.

SENATOR DiFRANCESCO: Okay. Is Larry-- You mean Larry Bathgate's law firm, I assume, because I know he has a rather large law firm and he does a lot of different things, and one of his clients is Ciba-Geigy. He's not on the payroll of Ciba-Geigy. He charges them fees, theoretically, right? That's what we are talking about?

MS. KISS: He has testified on Ciba-Geigy's behalf at the CAFRA hearings.

SENATOR DiFRANCESCO: And he charges them fees?

MS. KISS: I'm not familiar, you know-- I don't know.

SENATOR DiFRANCESCO: Well you're saying that he works for Ciba-Geigy. You said that he has a connection with Ciba-Geigy, a monetary connection, I assume--

MS. KISS: Yes.

SENATOR DiFRANCESCO: --because he has a private law firm. He is not an employee of that corporation, so to speak, where he goes to Ciba-Geigy every day.

MS. KISS: Correct.

SENATOR DiFRANCESCO: Now, if a congressman were to have been at that party, would you say the same thing about the congressman, and let's assume the congressman was a chairman of a committee, an important committee that dealt with the environment? Would you say the same thing about the ethical standards of that particular congressman? Would that lead you -- personally you--

MS. KISS: I'm thinking, I'm thinking.

SENATOR DiFRANCESCO: --to that same conclusion, whether it's right or wrong?

MS. KISS: I'm not sure. On that particular ethic, it would depend on the circumstances. I think in this situation, Mr. Daggett was in a position of deciding just exactly what the disposition of the Superfund site was going to be, and the price tag.

SENATOR DiFRANCESCO: All right. And if Don DiFrancesco had attended that party, who is a State Senator, and I happened to be -- although I am in the minority -- and I happened to be in the majority, and I was Chairman of the Senate Environment Committee, would you say that that was questionable ethically that I went to Larry Bathgate's house, comp ticket, because it was \$2500, right? -- that's what I understand -- because the President, now President, former Vice President, was going to be at his house? Would you say that might cause me to have a problem with ethics, in your own mind, not necessarily from a legal standpoint?

MS. KISS: Yeah, I think so.

SENATOR DiFRANCESCO: You think so?

MS. KISS: Yes.

SENATOR DiFRANCESCO: Okay. That's all I have to ask.

MS. KISS: Especially on the eve of these very weighty decisions that were coming down -- the CAFRA decision and all these Superfund sites. There was a lot going on at that time. The public was really focused in on the issue.

SENATOR DiFRANCESCO: Okay. I understand that. Thank you.

MS. KISS: Thank you.

SENATOR O'CONNOR: Any other questions? Senator Zane?

SENATOR ZANE: Hello.

SENATOR O'CONNOR: Ms. Kiss, would you come back? We do have some more questions. (witness complies)

SENATOR ZANE: I was going to ask you some of the same questions that Senator DiFrancesco asked because I am concerned about it, and I want to ask one more that I know he asked, but just so you can dwell on it just a little more. Is there anything else that in your opinion, other than what you referred to as bad judgment-- Is there anything else in the area of ethical misconduct that you can tell this Committee about, other than that label being placed on the attendance at the Bathgate function? Anything else at all?

MS. KISS: Yesterday in the newspaper, there was some mention as to Mr. Daggett being a keynote speaker at John Bennett's upcoming political fund-raiser. Now, you know of course, I don't know the whole issue. This was just something that came to my attention yesterday. Again there seems to be some equivocation as to whether or not, that is, whether or not Mr. Daggett can-- He seems to equivocate as to what is right from wrong -- what is the appearance, what falls within the appearance of what is right or wrong.

SENATOR ZANE: Let me ask you, in fairness, on the article you are referring to regarding Assemblyman Bennett's fund-raiser, was Mr. Daggett interviewed or asked any questions? Any quotes from him in that article?

MS. KISS: I don't have the article in front of me. I read it in the Asbury Park Press.

SENATOR ZANE: Okay. Was there any suggestion at all that he knew nothing about being asked to be one of the keynote speakers?

MS. KISS: If I am correct, I believe he said that he was not aware that it was a political fund-raiser. Again, I don't have the article in front of me.

SENATOR ZANE: Okay.

MS. KISS: And it was yesterday.

SENATOR ZANE: All right. And when Mr. Daggett testifies, I am sure we will question him about that. But other than those two incidents that you're relating to us, is there anything else that you would call ethical misconduct or something akin to that, that you would suggest to this Committee as a valid reason as to why Mr. Daggett should not be confirmed?

MS. KISS: I don't know whether this falls under the category of ethics, but Mr. Daggett had spoken in November about wanting to change the image of the DEP.

At the present time we are pursuing an issue with the DEP. In the article, in The Star-Ledger, he had said that if he finds that there has been a problem with his staff, that they have been unfair or have acted inappropriately or basically been unfair, that he would get to the bottom of it. At the present time, we are still working through the system on that, and I don't want to say that he has made his decision definitely one way or another on this. We have not had the opportunity to discuss the problem with Mr. Daggett as of yet. Although we addressed all our communications to Mr. Daggett, he shifted them to people below him. So that's the only thing where we've had an experience with Mr. Daggett.

SENATOR ZANE: But that certainly doesn't suggest or import--

MS. KISS: Any ethical problems? No.

SENATOR ZANE: --ethical misconduct. So I guess then the answer to my question is, that in your opinion, the only misconduct that you are aware of would be what, the attendance at the Bathgate function, and I guess yet to be determined what the situation was regarding the Bennett fund-raiser?

MS. KISS: That's right.

SENATOR ZANE: Let me ask you this: What was your reaction-- I understand that there was another matter that was before the Department of Environmental Protection, during his term as Acting Commissioner, that Mr. Daggett also had to rule on regarding Ciba-Geigy.

MS. KISS: Yes.

SENATOR ZANE: And I was looking for exactly what it was. I know we discussed it the last time -- another request that they had, which he denied. What was your reaction to that decision?

MS. KISS: Well, we were pleased that the decision came down, that the CAFRA permit was denied. I think there was overwhelming evidence. For once, you feel like the efforts of

the environmental community have been vindicated because -- and the efforts of the DEP-- there was substantial evidence to deny that CAFRA permit. I believe -- I can't remember now exact quotations from the newspaper -- but I think Mr. Daggett also attributed the denial to the efforts of his staff in showing that it really should be denied. He didn't necessarily take that on himself as his own personal effort, although, of course, direction does come from the top. I mean, the bottom line is we were very pleased and that was our reaction to it; to the denial of the CAFRA permit.

SENATOR ZANE: During the term in which he has been Acting Commissioner, are there any decisions that you are personally familiar with that you also are disappointed with or that you feel may have been improperly influenced by some ethical misconduct that you feel may exist? Any decisions at all like that, during this term?

MS. KISS: Not so far.

SENATOR ZANE: While he has been Acting Commissioner of the Department of Environmental Protection, how would you-- Are you representing an organization called Alliance for a Living Ocean, who sent us, I guess, all these postcards? Am I correct?

MS. KISS: Yes.

SENATOR ZANE: Okay. How would you overall categorize his performance as Commissioner of DEP during this period of time?

MS. KISS: I think that since he-- It's hard to say which came first, the chicken or the egg. I think that he's had a much more visible role since he's taken on Commissioner, in that he's tried to bend over backward in a lot of ways to the environmental community, in fairness to him. But now, you know, with the results of this heat of the Bathgate controversy, you're not really sure what the motivation is. I would hope that that would be his, you know, behavior as a Commissioner.

SENATOR ZANE: Okay. Let me ask you this: If you remove for one moment the Bathgate matter--

MS. KISS: Yes?

SENATOR ZANE: --and you then had to make the decision as to what kind of a Commissioner he has been, in the absence of the Bathgate-- In other words, that can't even enter into your thinking. How would you rate him then?

MS. KISS: I think it's hard to take, to disassociate one behavior from this other performance because, I think that, you know, with this-- We have tremendous environmental problems, and it takes a person of, I think, only the highest moral standards and personal integrity to deal -- to confront some of the forces that are at work to maintain the status quo, which, in my opinion, is a deteriorating environment. And I don't know whether this person has shown that he has it, to confront that -- to confront these problems. And I don't think you can separate the two.

SENATOR ZANE: So in other words, what you are saying is you couldn't rate him because you couldn't separate the Bathgate situation from his performance?

MS. KISS: I would have very-- Yes.

SENATOR ZANE: Okay. Thank you very much.

SENATOR O'CONNOR: Senator DiFrancesco?

SENATOR DiFRANCESCO: Ms. Kiss, Alliance for a Living Ocean-- I'm sorry I don't have that card with me; I'm sure I got plenty of them. How long has that organization been in existence?

MS. KISS: We had our origin right after the wash in of medical waste, the summer of '87, Labor Day.

SENATOR DiFRANCESCO: The summer of '87?

MS. KISS: That's right.

SENATOR DiFRANCESCO: Where do you personally live?

MS. KISS: I live on Long Beach Island.

SENATOR DiFRANCESCO: And the membership of this organization is comprised of-- Is there a membership?

MS. KISS: Twenty-five hundred members, from in and around the entire State. I'd say about a quarter of our membership actually resides in the southern Ocean County area. Even though we're based there, most membership comes from around the State, because people have summer homes there.

SENATOR DiFRANCESCO: Now, with regard to the Ciba-Geigy permitting process, or whatever, that process took place early in the Kean years -- perhaps the end of the Brendan Byrne years, early in the Kean years. In fact, they were given another permit to run that pipeline to the ocean. Isn't that correct?

MS. KISS: The pipeline actually is about 20 years old--

SENATOR DiFRANCESCO: Right.

MS. KISS: --and the permit was renewed in 1985, right in the middle of the Kean administration.

SENATOR DiFRANCESCO: Right, but the process was in the early years. I mean by the time they renewed it in '85-- But it took two or three years, as I recall, to go through the process of renewing it. So this was prior to Mr. Daggett being involved, isn't that correct?

MS. KISS: Well, no. Actually, Mr. Daggett has been involved with the situation for a long time, ever since he's been in EPA, because--

SENATOR DiFRANCESCO: And when did he go to the EPA?

MS. KISS: I believe it's four or five years ago?

SENATOR DiFRANCESCO: Prior to '85?

MS. KISS: I'm not really sure exactly when he started.

SENATOR DiFRANCESCO: Was it '84, '83? Somebody could nod their head, "yes," --'84, okay. Prior to 1984, this permitting process I believe was taking place. I know because I've called about it a few times. You see, I know where that

pipeline is. I've vacationed there for the last 40 years. So I have seen the Greenpeace boat. I have swam with my children in the water adjoining this pipeline, so I'm familiar with it. I'm familiar with the concerns, and I'm familiar with the people expressing the concerns, because I've seen it and I've called about it, and I called about it many, many years ago, asking questions about it. I also represent Ciba-Geigy from a legislative standpoint, because they are in Summit, and I represent Summit, New Jersey. So I just want to clear up in my mind where your organization is and whether you will agree with me that the permitting process began prior to his really getting involved with the EPA. I believe it did; you're not sure. You're going on the basis that the permit was granted in '85, and he was with the EPA at that time.

MS. KISS: I think there's two issues here: One issue is the actual use of the pipeline. The other issue is the Superfund site that Ciba created around their plant.

SENATOR DiFRANCESCO: That's a more recent issue. Is that what you mean?

MS. KISS: No, it's been ongoing since -- quite a while.

SENATOR DiFRANCESCO: Prior to his involvement with the EPA?

MS. KISS: Oh, sure, but as an EPA Region II Administrator, he was actively involved in the actual cleanup process, or what will be the cleanup process for the Superfund site. The biggest, most controversial part of that is the price tag that will be involved in the cleanup of the Superfund site, and whether or not the pipeline will be used to discharge the Superfund site. So that's where Mr. Daggett's role came in as EPA Administrator.

SENATOR DiFRANCESCO: I understand.

MS. KISS: So, it didn't really have to do so much with the actual permit of the pipeline. It dealt more with the Superfund cleanup.

SENATOR DiFRANCESCO: One last question, and I hate to keep asking you all these questions. I don't mean to-- I should have perhaps mentioned this to somebody else, but I understand the Governor was at this party, too. Isn't that correct?

MS. KISS: I don't know.

SENATOR DiFRANCESCO: You only know that Chris Daggett was at this party.

MS. KISS: I know Chris Daggett was there. It's my -- and I don't know this for fact-- I don't think the Governor was there, but you know, I could be wrong. I know the Governor was on the beach in Bay Head with President Bush in the afternoon at that time, and they had a press conference on the beach.

SENATOR DiFRANCESCO: All right, thanks.

SENATOR O'CONNOR: The next witness is Jane Nogaki, representing the New Jersey Environmental Federation.

J A N E N O G A K I: Good morning. My name is Jane Nogaki. I am Chairman of the New Jersey Environmental Federation, which is a coalition of 45 labor, citizen, and environmental groups, and 40,000 individual members.

The New Jersey Environmental Federation thanks the Committee for the opportunity to present comments on the issue of whether Christopher Daggett should be confirmed as Commissioner of the New Jersey Department of Environmental Protection. We feel that Mr. Daggett's past record on the environment while at EPA Region II and during the last five months as Acting Commissioner of NJDEP has been mixed. His performance raises a number of serious issues that cause us to have grave concerns about his commitment to environmental protection. We hope and feel that the Committee should address these concerns, before making its recommendation.

First I'll examine his record at EPA as Region II Administrator. On the plus side, he has been a strong advocate of wetlands protection and, in particular, played a good

leadership role in raising concerns about the environmental impact of the multibillion dollar boondoggle Westway Project. That project has since been laid to rest, but we're not quite sure that it's gone for good.

He has been extremely accessible to leaders of community groups regarding the cleanup of local Superfund sites, although his follow-through has not always been satisfactory from the community groups' point of view.

On the negative side, he has had a terrible record on stopping ocean dumping and other threats to the New Jersey shore. He has never denied a single ocean dumping permit, and he was an aggressive, outspoken advocate for ocean incineration of hazardous waste 100 miles off our coast. The question of ocean incineration was ultimately put to rest by Mr. Daggett's superiors at EPA headquarters in Washington, because of its potential dangers to the ocean. Environmental groups and citizens of New Jersey who are members of our group are vehemently opposed to ocean dumping and ocean incineration of waste, and we want the Committee to look very carefully at Mr. Daggett's past record and determine whether his position has changed on this issue of ocean dumping.

Now we'll look at his record from August to January, as Acting Commissioner of NJDEP. He has had five months to demonstrate his leadership on environmental issues. On the plus side, he responded to Clean Ocean Action, New Jersey PIRG, and the New Jersey Environmental Federation very positively when they requested him to postpone issuance of altered surface water quality standards, due to a lack of public participation. On the minus side, although Daggett has said that enforcement will be a top priority for the DEP, the Department has failed to demonstrate strong support for the Clean Water Enforcement Act -- important legislation which would call for automatic penalties, including fines and jail sentences for repeat polluters.

In addition, he has failed to redirect the State's garbage policy away from a low-tech, outmoded, burn-and-bury approach toward a long-term preventative waste management approach which would emphasize reduction and recycling.

New Jersey Environmental Federation believes that aggressive enforcement and pollution prevention are the two cornerstones of effective environmental programs which will point New Jersey into the next century. We need a DEP Commissioner who will be supportive of legislation such as the Clean Water Enforcement Act, and who will take the lead in the area of hazardous waste reduction by creating an aggressive program to require industries to reduce their use of toxic substances and decrease their generation of toxic waste.

In my testimony I mentioned the Bathgate incident. I will not go through it again. I will just reference it. You have my written testimony.

In conclusion, I will close by saying that we feel that Mr. Daggett has some very positive things on his environmental record, but there are some concerns that we would like answered. And we would like the Committee to raise those specific issues with him about what his philosophies are about toxics use reduction and garbage and ocean dumping. Those would be our three major interests.

SENATOR O'CONNOR: You can be assured that we'll be looking at those areas as well. Senator Zane?

SENATOR ZANE: If those questions are answered satisfactorily, and if you see what you consider to be a good sound environmental approach, would you then be in support of this nomination?

MS. NOGAKI: Yes.

SENATOR ZANE: Thank you.

SENATOR O'CONNOR: Senator Ambrosio?

SENATOR AMBROSIO: I'm curious. You criticized Mr. Daggett for his policy with regard to ocean dumping. Would you expand on that?

MS. NOGAKI: I think the groups that have spoken before me, Karen Kiss, Nancy Menkcke from Save Our Ocean, and Ocean County Citizens for Clean Water, have expounded on that. The ocean dumping, the barge dumping, the wood burning, these were the issues that were brought up at the last hearing. These were the ocean dumping kinds of issues that we are concerned about; not only the Ciba-Geigy pipeline, which is the only commercial pipeline that's permitted into the ocean, but also the acid dumping that's going on by major corporations at sea and the wood burning of old timbers out at sea, which fall off boats and wash back on shore. These permits were permitted by the EPA region while Commissioner Daggett was chairman.

SENATOR AMBROSIO: Do you also oppose his policies with regard to dumping of sewage sludge?

MS. NOGAKI: Yes, we believe that there should be land-based dumping of sewage sludge.

SENATOR AMBROSIO: Where is that land-based sewage?

MS. NOGAKI: You're asking me right now where it is?

SENATOR AMBROSIO: Yes.

MS. NOGAKI: I think that this discussion took place with someone the last time.

SENATOR AMBROSIO: Well, I think its only fair to ask, if you're criticizing someone for an environmental alternative, that you propose a viable alternative.

MS. NOGAKI: Well, the alternative-- I'll go through it again. The alternative is that you insure that the sludge is clean, that the toxics are taken out of the sludge locally; in other words, not allowed to get into the sewage--

SENATOR AMBROSIO: All right, let's assume we do that. We have nice clean sludge.

MS. NOGAKI: Assume you've done that. We've got clean sludge. Clean sludge can be used as fertilizer in farming, it can be used in--

SENATOR AMBROSIO: Are you aware there is a market for the billions, literally billions, of tons of sludge that are generated in this country -- that there is a market for that kind of fertilizer?

MS. NOGAKI: Well, there has been some marketing of that through-- Philadelphia does it; it's called Phil-Organic. Milwaukee does it through Mil-Organite. There are various sludge fertilizers that are made and used. That is one option. Composting is another option, and using its sludge--

SENATOR AMBROSIO: If I told you that the amount of the market for fertilizer, sludge-made fertilizer, is infinitesimal compared to the volumes that are produced, and you have to find a method of disposing of the sludge, either-- The only two methods, or the three methods that are available, are dumping in the ocean, landfilling it, or burning it, and all the experts will confirm that those are the only three methods available to us today. Which of those three would you choose?

MS. NOGAKI: We would prefer a land-based alternative.

SENATOR AMBROSIO: That means a landfill somewhere?

MS. NOGAKI: Not necessarily a landfill. The other alternatives would be using it as a product, as a fertilizer product or as what we call a soil amending product.

SENATOR O'CONNOR: Senator DiFrancesco and then Senator Zane.

SENATOR DiFRANCESCO: Remember, Gabe, this is the Garden State.

In following up on Senator Ambrosio's question, in my own mind I want to be certain on this. Are there any particular policies that you don't like -- I'll put it that way -- that Mr. Daggett put into place, that were, in fact, not in place before, with regard to ocean dumping or-- I guess you concentrated on ocean dumping. Is there any policy that wasn't

occurring, or was he just issuing permits that had been issued for many years?

I mean, that's what I would like to know, in my own mind.

MS. NOGAKI: I don't think that he instituted any of these philosophies. It was a continuation of the way of doing business. However, I think that one possible thing that did come up was the use of the Superfund site, discharge of the Ciba-Geigy pipe, that would have never been-- Probably it was not discussed before he was in.

SENATOR DiFRANCESCO: Okay, I'll ask him about that. Thank you.

SENATOR O'CONNOR: Senator Zane?

SENATOR ZANE: One of the main areas of criticism was during his tenure at the Federal level with the EPA, am I correct, regarding the ocean dumping? Let me ask you this: The authority to -- and this is akin to Senator DiFrancesco's question-- The authority to grant permits to allow ocean dumping, do you have any idea what the origin of that was? Was it an act of Congress? Was it Federal regulations that were published and approved? Do you know what the source of that was?

MS. NOGAKI: I can't--

SENATOR ZANE: I mean, you're not suggesting that he autonomously decided to permit that, are you?

MS. NOGAKI: I can't answer that question. I don't know what the origin is.

SENATOR ZANE: Okay, thank you.

SENATOR O'CONNOR: Thank you very much. The next witness is Ian Walker of the Sierra Club.

I A N W A L K E R: Mr. Chairman, members of the Committee, my name is Ian Walker. I'm Chairman of the New Jersey Chapter of the Sierra Club. It's a national organization. The Chapter in New Jersey has 14,000 members. We are an environmental

organization. I'm here to testify in support of Mr. Daggett's nomination, and to express the hope that the Committee will act favorably on his nomination.

There are a number of points I would like to make. First, I think that he's, and I don't think anyone's questioned this -- knowledgeable of the programs and problems in New Jersey and in the region.

Second, I worked for a number of years in the Department of Environmental Protection, and there are scientists, engineers, and managers there whom I've known for a long time and whom I respect. They tell me that from their experience with Mr. Daggett, they respect his management and his leadership skills.

A third point which I think is important, is that Mr. Daggett is now working for the State of New Jersey, specifically the Governor of New Jersey, and I expect that he would carry out the Governor's policies and New Jersey's policy. And New Jersey's policy is to clean up the ocean -- has been for some time.

The Sierra Club, along with other organizations, opposed ocean incineration. EPA was for that, for a time. Now the State of New Jersey is for cleaning up the ocean. I want to make some further comment on this in a moment. But I think that the trust and confidence that the Governor obviously has in Mr. Daggett, and has had for a long time, will encourage and promote communication and coordination between the Governor's Office and the Department of Environmental Protection, and that will help to clean up the ocean and to do the other things that need to be done in the State.

I think a very important point is that, if we are to clean up the ocean and clean up the other waste problems that we have; that is, if we are to pick up the waste and the garbage and so on that everyone wants to have picked up, then we have to put it down. And Mr. Daggett, I think, has

demonstrated a capacity for bringing people together and getting people to work together in the common interest. I have no doubt that he will continue to do that, and he has already taken some initiative in that direction in New Jersey in several respects. He will make participation of the various interests possible to help us try to solve these problems.

A larger question for the rest of us is, will we respond, and participate and work to find the solutions? But I have no doubt -- and the Sierra Club has no doubt -- that he will provide the opportunities for us to sit down, and for others to sit down. I think also that Mr. Daggett, after listening to people and listening to the various views, will make decisions. We have no easy decisions or options; simply tough choices. The case of garbage and solid waste is an example.

The Sierra Club is sensitive to this issue because we have chapters in Ohio, and in Pennsylvania, and in other areas that are working mightily to send New Jersey's garbage back to New Jersey. Therefore, we recognize that in the short term, we're going to have to embrace a number of options, including incinerators. And Mr. Daggett has looked us and other environmentalists in the eye and said, "We can't wait for future ecstasy. It's not a perfect world. We are going to have to do what is necessary and, unfortunately, incinerators, certainly scaled down, some of them, in size, and possibly fewer of them, but they are going to be necessary." And he's acknowledged that.

So I think that after listening to people, he will make tough decisions. I repeat that the Sierra Club supports Mr. Daggett's nomination and hopes that you will act favorably upon it.

Thank you very much for this opportunity.

SENATOR O'CONNOR: Thank you. Any questions? Senator Zane.

SENATOR ZANE: Mr. Walker, maybe you can answer the question that I asked before. The authority, the Federal authority to dump or burn or whatever in the ocean-- Do you have any idea of what the genesis is of that? Was it an act of Congress? Was it regulations by EPA? Can you help me with that one? I don't know the answer to it.

MR. WALKER: Senator, I'm sorry. I don't know.

SENATOR AMBROSIO: I can help you, Senator.

SENATOR ZANE: The ocean dumping?

SENATOR AMBROSIO: It's an act of Congress.

SENATOR ZANE: That's right. Thank you very much.

SENATOR O'CONNOR: The next witness is Phyllis Elston, representing the New Jersey Environmental Lobby.

P H Y L L I S E L S T O N: Thank you, Mr. Chairman and members of the Committee. My name is Phyllis Elston and I am the Executive Director for the New Jersey Environmental Lobby, at 112 West State Street, here in Trenton. On behalf of the Board of the New Jersey Environmental Lobby, I'm testifying today in favor of the nomination of Chris Daggett as Commissioner of the New Jersey DEP.

We feel that Mr. Daggett is well qualified and brings to his position more than a thorough understanding of New Jersey's environmental crises and problems. Indeed, when the nomination of Mr. Daggett as Acting Commissioner first became public, I think the comment that we made in the press was something like this: "We are pleased with the appointment of Chris Daggett as Acting Commissioner, because we feel he comes to New Jersey with a -- knee-deep in the knowledge of our environmental problems."

I'll amend that now to say that these months later, he is now neck-deep and doing a fairly commendable job keeping his head above water as Acting Commissioner of New Jersey DEP.

Communication, obviously, between the various environmental groups and the Department is vital if we are to

get our job done. One of the first things that Chris Daggett did as Acting Commissioner was to come before the one and only annual function that is attended by a majority of environmental groups in the State; that's the ANJEC Conference. He came, he spoke, he received questions. He fully and freely admitted he didn't have the answers to a lot of the questions. He brought along with him staff that were able to give us the answers. So from the beginning, as far as his -- in his position as Acting Commissioner, he started off in a position of total communication with the environmental groups at large. We need that. We can't function without that. We did enjoy that with Dick Dewling, and we seem to still enjoy it with Chris Daggett.

Currently, the goals of the New Jersey Environmental Lobby in particular are centered on the protection of our priceless and irreplaceable natural resources, through legislation long awaited to establish a trust fund for protection of same. We also need strong growth management techniques as espoused in the proposed State Development and Redevelopment Guide Plan, now in the cross acceptance process. We also had as a priority, and have had for the past two years, some kind of a land use mechanism to help to manage growth of our sensitive coastal lands. On all of these three issues, we have cooperation, and most of the time agreement, with Acting Commissioner Chris Daggett. We are convinced that he understands, as we do, that New Jersey's future depends on the necessity of a clean environment and a healthy atmosphere, which will bring along a healthy economy for our State.

I might say for the record, if you will allow me, that the last time you met, you had several people on your list whom you were kind enough to call once and twice and were not able to be here. So on behalf of the Passaic River Coalition, Ella Filippone, who directs that organization, Sally Dudley and Candace Ashman, who are Executive Director and President of

ANJEC, I've been asked to note for the record that their testimony is in favor, and I have PRCs to hand in to you. It is my understanding the other two individuals sent their testimony separately.

In closing, I would like to point out that, as I said in the beginning, Mr. Daggett has been very accessible to the New Jersey Environmental Lobby, and to the group called the Environmental Collegium that meets monthly to discuss and share environmental issues and concerns. Mr. Daggett is back in the mode now of meeting quarterly with that body, so we are assured that on a regular basis we will have participation and cooperation and communication with the Department and their decisions.

I'd like to echo the words that Senator Jackman said last time when he spoke in support of this nomination. I believe he said he had sent people out into the field looking for information and received back positive input, I guess, which outweighed negative input. I'm sure there was some of that, too. But he asked that you dignify the position now after the track record that you've seen over these past months, and take the "Acting" away from the title. New Jersey Environmental Lobby asks you to confirm this nomination. Thank you.

SENATOR O'CONNOR: Thank you. Any questions? (no response) All right, thank you very much.

At this point in time, we've heard from all of the witnesses who have contacted the Committee to testify, and at this point we will have Mr. Daggett come up to the table and begin our questioning of him.

I should say I know that there are a number of students who have joined our proceedings today. Just so you understand what we're about, we are considering the nomination of Mr. Christopher Daggett to be the Commissioner of the Department of Environmental Protection. It's the job and the

function of this Committee to look at his credentials and to hear all the testimony that we've heard now over two hearings, to decide whether we agree that Mr. Daggett is qualified for the position and should be voted on by the entire Senate. Our favorable vote today would mean that his nomination would then proceed on and be voted on by the entire Senate. If we vote against the nomination, the nomination process stops right here. The nomination would not proceed forward.

So that's what we're doing, in case you're scratching your heads and wondering what's going on with all the questions before this Committee.

Mr. Daggett, Senator Jackman is here, and he also requested to address us again. Senator Jackman, we thank you for that, but in the interest of time, I assume that your support remains the same, based upon our conversation earlier today?

S E N A T O R C H R I S T O P H E R J . J A C K M A N :
Yes. With your permission, this is an ironic situation. I talked-- I remembered two weeks ago when the question of Mr. Daggett attending Mr. Bathgate's dinner, so to speak-- Ironically, I got a phone call yesterday, and as a Democrat I found out on the list that I was supporting Courter for Governor. Somebody took the privilege of taking my name that was attached to the Committee for a Balanced Budget, and they left my name on the leaflets, so to speak, and they shipped it all over the State. So I got a call from some of my Democratic colleagues who wanted to know how come I was supporting a Republican gubernatorial candidate? So you can see how you can be suckered in by your name being attached to something just in an offhanded way.

I also wanted to make mention, with your permission, Mr. Chairman, that I have had occasions in the last three weeks to call Mr. Daggett's office, not him per se, but his office, concerning a very serious problem we have along the waterfront

in Hudson County. And I can say, without any fear or reservations, the conduct of the protectional people working with him and the conduct that I got fed back from his office made me feel very comfortable, and I wanted you to know that. Thank you very much.

SENATOR O'CONNOR: Thank you, Senator. I would assume, then, that you're sitting on the Republican side of this Committee today is no endorsement of any candidate, most especially Senator Bill Gormley, in whose seat you're sitting? (laughter)

Okay. Mr. Daggett, a number of questions have been raised, and we want to spend some time now with you going over some of the concerns that all of us have. I'd like to just begin on the issue that was raised regarding ocean dumping, and the allegation that was made that you've never denied a-- When you were at the EPA as a regional administrator, you never once denied an ocean dumping permit. How do you respond to that?

A C T. C O M M. C H R I S T O P H E R J. D A G G E T T:
First of all, that's correct. By the same token, with respect to an ocean dumping permit, the only one I ever signed was with the Allied Corporation in 1985, which was a continuation of a permit that they already had. The permitting process is done under the authority of the Marine Protection Research and Sanctuaries Act, which was indeed an act of Congress more commonly known as the Ocean Dumping Act. There are regulations associated with that Act that prescribe certain hurdles essentially that people have to cross, in order to be granted such a permit. If they cross that set of hurdles, then indeed they are granted the permit, and if not, they are denied the permit. In 1985, when Allied came forward with its permit, it went through a very rigorous review of the type of material that was being dumped. It was assessed against a criteria that had been outlined and, indeed, it was determined that a permit was proper and should be issued and, indeed, I signed that permit.

But I think the whole question of ocean dumping needs to be looked at in each of the categories that exist. There are, as you know: sludge dumping, industrial waste dumping, acid waste dumping, and wood burning at sea, which is not dumping, because the burning occurs at sea and the ashes from the burning that remain on the barge are hauled back to land and then put in a landfill. So, no actual dumping occurs.

If I may, I think it might be instructive to separate those out for a minute and tell you where I've been on each of those issues.

With respect to the industrial waste dumping, at some point -- I forget the exact date -- I had issued a tentative determination to indeed issue permits to the DuPont Corporation. They were holding two permits: one from a facility in New Jersey, and one from a facility in, I believe, Delaware. I think that's their second facility, Delaware. In each case, they had in the determination again, after a staff review, crossed the various hurdles that were required to be crossed in order to get a permit. This dumping was proposed to occur at the 106-mile site. It is known as an industrial dump site. It is essentially right next to the 106-mile site used for sludge dumping currently.

When those permit applications came through the public review process, we began to take a hard look at them. From a technical and scientific side, again we thought they were okay. We were told by DuPont they had no other alternative whatsoever to that dumping, and they really needed to do it. That is part of the determination process; that is, the demonstration of need. Somewhere along the line, they had a meeting with Congressman Hughes. I believe it was at either one of the two facilities, I can't remember which one. Literally, the day after that meeting, they essentially withdrew their application for dumping in the ocean. Needless to say, we were both surprised and somewhat annoyed at the

process, because we had been lead to believe all along that they had no other alternative, and we had checked and double-checked and tried to go through and find out whether indeed there were alternatives, and we didn't think there were. For them to walk away from that permit made us assume that we had been doing something wrong ourselves probably, and had not done a thorough enough analysis.

So with the second permit, now that we had one of the two DuPont permits out, I had indicated that I wanted to take a better and harder look at that permit, and that while I had issued a tentative permit, or tentative decision to go ahead with it, that I was going to use the public process time period to really review it.

In my review, I said that I thought they had no longer demonstrated a need, because while they held a permit at the time, they did not -- they had not used that permit in some 12 to 14 months. I essentially sent a signal to the DuPont folks that they had one of two options: Either I was going to deny the permit, should it come forward, because I felt there was enough information to help me to deny the permit now, despite my earlier tentative determination to approve it, or they could voluntarily withdraw the application. I didn't care which way they did it, but the fact was that they were not going to be able to dump in the ocean. They subsequently withdrew that permit application. So, both DuPont facilities were no longer dumping. They represented the last dumpers at that site, and I then moved forward and started the process, which I believe is about to come to a conclusion, to permanently shut down that site.

So that site once shut down, will make it so that no one can even apply for a permit there, because you need to have a site before you can make an application.

With respect to the Allied Corporation-- The acid waste dumping, yes, I signed the permit in 1985. When it came

around again, we had done a number of additional surveys on that permit. We had asked them to do bioassays during the time of the permit between '85 and '88, when the next deadline was. They did those bioassays. It began to make us raise some questions, at least in terms of what the rate of discharge should be on those permits. But in my last two weeks at EPA, while that permit was just really beginning, because it wasn't due to expire until after I left EPA, I brought in the Allied management, and I told them that while I thought that over time they may convince us that the technical merits were such that they could, indeed, be granted a permit, that by this time public opinion was such that they ought to really reassess, in their own minds, whether they should dump in the ocean and continue to do so, because they, at that point, were the last ocean dumpers. So they agreed, and they agreed that they would look seriously at trying to get out of the ocean by 1991 -- in the same time frame that Congress had set for sludge dumping.

It turned out that they were negotiating with that, and moving toward that end. They said they would do it. This was after I had left. They said they would get out of the ocean, and finally, in the interim, the EPA gave, based on those bioassays done, new permit requirements that Allied felt were so onerous that they could not continue to even dump in the short term. They had subsequently stopped dumping and they, too, are in the process now of closing the acid waste site. So, indeed, contrary to what people have indicated in testimony before you, I feel that in respect to acid waste dumping and industrial dumping, I have indeed taken an aggressive stand on it and was not unwilling to change an opinion that I had formed based on staff work that had initially indicated that there was an acceptable -- I mean, that it was acceptable to grant a permit. I had no problem changing my mind when I saw that, indeed, we had either been given bad information or that we didn't do a good enough analysis the first time around.

The wood burning at sea is a very difficult issue. Wood is collected as part of the U.S. Army Corps of Engineers' Harbor Cleanup Program. It is collected in our harborways for one very specific reason, and that is to get out of the water, navigational hazards. It is a critical program for the safety of the port activities. It is one that, absent that program, we would have not only a lot more accidents of boaters in the New York Harbor area, but we would have a lot more incidents of material washing up on our beaches than washes down during storm events. The problem with that which exists, is that in 1986, there were a lot of sloppy operations on those barges. Wood was falling off and we had some very -- as we heard from testimony here, from one person in particular -- near fatal accidents out at sea with commercial fishing boats that were going out and hitting some of the logs that they alleged had fallen off the barges. Frankly, it could never be proven, because there is enough wood in New York Harbor that you don't know actually where it originated from. But the fact of the matter is, we think it could have come off a barge also. As a result of that, we put in extremely stringent controls on that, which included chain link fences built on the barges that could withstand 1800 to 2000 degree temperatures -- I think it is -- whatever it was that the burns reached. To retain that wood, we required EPA ship riders on the boats that were tugging those barges.

We required that they burn only during the off-season. They could not burn during summer months. They could only burn during certain weather conditions. And frankly, since then, we have not had at all in the time between 1986 and when I left EPA-- We had no further complaints like the ones we had in 1986.

We were struggling many days and many weeks trying to find land-based alternatives, but we couldn't find any land-based alternatives for that operation. I would be the

first to tell you that I would love to have a land-based alternative. Indeed, since I came here, I continued to pursue it even though I no longer had the responsibility, and working with Assemblyman Shinn in Burlington County, I found an option potentially which is a wood-crushing operation that we now have EPA, DEP, and the Corps of Engineers seriously looking into. And we may, within the next couple of years, be able to end what we all would agree is somewhat of an archaic practice of burning wood at sea. So we feel that we may, indeed, be on the way to that end.

The issue of sludge dumping: We've all talked about that, many for hours, and it is probably one of the most difficult issues facing us. There was dumping going on at the 12-mile site for some 30 or 50 years. That site became known as the "Dead Sea," because there was virtually no active marine life around that site. It is only some 88 feet deep. As you dumped in that, the material never had a chance to disperse before it hit bottom, so it just mounded over time. And there was a real strong need to stop that practice. EPA determined, in 1985, to close that 12-mile site and to open the 106-mile site, because of the absence of readily available land-based alternatives. I was instrumental in the negotiations of shutting down that site. We negotiated a very difficult set of dates that the sludge dumpers had to move from the 12- to the 106-mile site over a 26-month period.

We had said that they were tough, we thought they were fair, and indeed, on the last day of the deadline, the last dumper went out. Since that date, which was December 31, 1987, no one has dumped at the 12-mile site and, indeed, all dumping goes on at the 106-mile site. As you well know now, law has been passed by both Congress and this New Jersey Legislature to end sludge dumping by March of 1991, and I've said that I will do absolutely everything within my power to

meet that deadline. I have brought the dumpers in on one occasion, and I will do it as many times as necessary to force that process to move forward, difficult though it will be.

SENATOR O'CONNOR: Okay. While you were the Regional Administrator of the Environmental Protection Agency, between 1983 and 1987, New Jersey was affected very much so, particularly this last summer, by the results of the -- what you could call primitive way in which New York City approaches its sewage and solid waste disposal problems. New York City's approach to upgrade its sewage treatment plants, its operation at Fresh Kills Landfill, is what I am referring to on Staten Island. And this, of course, is something well known to us, particularly those of us who went to the beach this past summer. The question is, while you were at the EPA Region II as their Regional Administrator, why didn't you pursue a more aggressive approach towards New York and its methods of disposal?

ACTING COMMISSIONER DAGGETT: The question of the Fresh Kills Landfill is one that's plagued this region for some time -- certainly long before I got there, and since then. It has been subject to many court suits, with the town of Woodbridge, with the State of New Jersey, with environmental groups. Many people have entered that court action. When I was at the Agency, I took a look at those court activities, and frankly I determined that in the world of limited resources that we all have, that there were plenty of people in that fray, with respect to spillage at that landfill, and it was moving along in a court case, and to jump in just for the purpose of saying that I jumped in-- I did not feel that it was a good use of those resources. I was comfortable that the legal process was going to take it to a proper conclusion, and indeed it did. I used my resources for other things, because the same people that would have had to work on that, are the same people who worked on many of the shore activities. I had a limited budget while I was at the EPA, and I chose not to get involved.

However, we did take action against them for some of the leaching that was coming from the landfill. In fact, we were highly criticized by the New Jersey Attorney General at that time for what he felt was an interference with his legal efforts to do some things. Frankly, my opinion was that, not only did I not interfere with anything that he was doing then or was able to do as Attorney General, but more importantly, the issue was that we should take action, and we did. So while we did not deal with the spillage from the landfill, we did indeed deal with the leaching problem.

SENATOR O'CONNOR: One of the recent developments that I was happy to see was this plan to clean up the shores of our harbors -- New York Harbor, Newark Bay, and other harbors -- in response to a theory that was developed while you were at the EPA. This refloatable theory, did you have a role in coming up with that program?

ACTING COMMISSIONER DAGGETT: Yes indeed. In fact, from the time the Governor announced his 14-point plan, when I was still at EPA, I had said from the beginning that I felt that there should have been a 15th point. The 15th point was a need to clean up the shoreline. We felt -- and I say we -- at the time at EPA, and everyone that I have dealt with ever since then in many areas of dealing with shore activities would agree, that the huge, and I mean huge, quantity of material that sits on our shoreline of the New York Harbor -- I don't mean the beaches, but the actual shoreline -- is such that when the high tides come every 30 days with the new moon or with a major storm event, those tides rise, and as they rise, they pick up the debris that's on the shoreline and refloat it, and off it goes. I was interested in doing something about it. I did not have the resources while I was at the EPA. Literally as soon as I got to DEP, I had the occasion to go into New York City and have lunch with Mayor Koch. At the time of the lunch,

I asked him whether or not he would consider working with me, and having his people work with me, to develop a joint effort to clean the shoreline. He immediately said "Yes." He didn't hesitate, because while he has fought some of the issues on sewage sludge, he feels very strongly that there are some real problems with floatable materials.

We subsequently worked together and developed a plan that was, with the good assistance of Commissioner Fauver at Corrections, to use people from the Highway Cleanup Program to work on the shoreline. We managed to put together a program that had its pilot project, as you indicated very recently, working in both Woodbridge and Bayonne. To give you an example, in two days' activity in Woodbridge, we took off 104 tons of material from about 1500 feet of beach. There was an enormous amount of material there.

The program pilot project looks to be successful enough that we will be able to continue it and manage to find a source of funds with some transfers of money from one program to another, and with a little luck, we expect to be able to clean up from Sandy Hook to the George Washington Bridge, some 45 miles of shoreline, before Memorial Day.

SENATOR O'CONNOR: We had a very interesting sort of human interest story about the cleanup in Bayonne, which is in my district -- the comments of the prisoners with respect to their work.

Judging by the amounts of the debris that you say have already been removed and the enormity of the task, is this going to be an ongoing process, or is this something we are going to do once and walk away from?

ACTING COMMISSIONER DAGGETT: Our intention is to take a look at what happens now that you have clean areas and how quickly they become dirty and judge some of our response based on that. The problem that exists is that, the New York Harbor is filled with derelict wooden piers and wooden vessels that

have existed there for many, many years, and literally, in some cases, have virtually entire marinas half submerged which are all made of wood. Those break off a piece at a time over a long period of time. Some of them are pieces longer and larger than telephone poles. Others are small pieces of driftwood. The point is that this is a large quantity still as a source. The Harbor Cleanup Program the Corps of Engineers runs, frankly, is not funded fully enough, nor do they have enough resources by way of boats to clean it up anytime soon. It's going to continue to break off. We need to figure-- My guess is we are going to have this as an ongoing program until such time as we can actually clear the harbor completely. We are trying to work with members of the congressional delegation, to talk to them about different ways to continue and improve on the program. Congress and the delegation from New Jersey have been incredibly supportive of that program, and very aggressive in its pursuit of funds. But frankly, as good as they've been, it's not enough, and we're going to need a number of years longer to do it. Until then, the likelihood is that we are going to have to clean that shoreline on some sort of a regular basis.

SENATOR O'CONNOR: Thank you. New Jersey, in conjunction with counties and the strong support of DEP, is now fairly well down the road towards building incinerators, at a cost that is estimated at around \$3 billion. Other states have called this the "rush to burn," and have criticized New Jersey for that. Do you think that this commitment to what is as yet untested technology should be given another look, or is it too late for such an evaluation?

ACTING COMMISSIONER DAGGETT: First of all, I would disagree that burning is an untested technology. I think the fact is that, whether people agree with it or like it, it is about the only technology that right now has been demonstrated to be able to reduce -- make significant reductions in the

quantity and the volume of our waste at the kinds of volume that we generate on a day-to-day basis, day in and day out. Look at the size of some of these facilities. They range from about 400 tons a day to some 2250 tons a day. The material that these facilities have to burn-- They are able to reduce that volume by about, some two-thirds or so, and in doing so, enable us to then develop ways to handle that residue, which is the ash. The concern I have is that -- and this is a problem, as you know, that I inherited -- it's been developing for some time in this State. In 1970, we passed the Solid Waste Management Act in this State. It was amended, I believe, in '75. It gave responsibility to the counties to come up with plans. In every single instance, those counties came up, on their own, with technical advice, with strong analyses that they did. They chose to go with incineration because in every instance, that was the most readily available technology.

I have yet to see a proven technology other than incineration that can handle the kinds of material at the quantities we're talking about, day in and day out. As such, I feel that we have to move forward.

It is true that other states are doing what we did, and that is looking to develop ways in which they can block our trash from coming to their states. Currently, we export some 55% to 60% of our trash out of this State. I've characterized it to people that we can see the clock, but we can't see the hands on the clock, so we don't know when midnight is approaching; we don't know when the bell is going to go off. And those states effectively develop ways to block us. When they do -- and it's not a question of if, I think it's really a question of when-- When they do, we'd better be able to handle our trash ourselves and be able to be self-sufficient.

We have chosen in this State to set a goal of 1992 by which we should become self-sufficient. Frankly, it could be the year 2000 before we need to do it, and it may be the year

1990. We don't know. But in the absence of knowing, we felt '92 was a reasonable date. We are pushing counties to meet that date, and they have chosen incineration. When they have asked us to go off incineration, we have said, "That's fine, as long as you can still meet the '92 date." We have not told them that they have to build incinerators. We've told them that they can group together as counties; that if they choose to develop a multicounty effort, that's fine. But again, they must stay within that deadline of 1992. We have pursued it.

The bottom line is, in the end, we are going to have to have some incinerators, and we are going to have to make the tough decisions of siting them, building them, getting them operational, and then making sure that we do everything possible to monitor their use so that we minimize any environmental impact associated with incineration.

SENATOR O'CONNOR: Well, given the experience in Warren County, where they're already encountering two major difficulties, one the overcapacity of the plant having been built for 400 tons a day but producing about half of that at the present time, and secondly, the cost of toxic ash disposal, the question is, has the DEP reexamined the capacity for other planned incinerators to determine whether these incinerators -- whether it is realistic in the light of Warren County's experience?

ACTING COMMISSIONER DAGGETT: We have done a couple of things: First, with respect to ash, we are requiring now that people separate the so-called fly ash from the bottom ash. The fly ash is generally the ash that is the more toxic of the two. It had been thought in the past that the best thing to do with the fly ash was to mix it with the bottom ash, so that you could render it nontoxic through, essentially, dilution. The fact is, what that does is only make the bottom ash toxic, we are finding, rather than the other way around. So in separating the two, we expect to significantly reduce the

volume of ash that needs to go to hazardous waste facilities, because more often than not, and overwhelmingly so, the bottom ash tests as not having a problem. It's the fly ash that's the problem. So we are requiring separation of the two.

With respect to the sizing -- the sizing that was done at Warren -- there were some miscalculations both on the amount generated originally, and then some question about whether it was adequately taken into account that there would be a 25% recycling effort underway. In light of that, we are certainly taking another look. I can't say that we have, as a result, downsized any facilities. The facilities that are already under construction are set and moving, and I don't know that it's that easy a task, frankly, once in the construction phase, to downsize it like that.

SENATOR O'CONNOR: I would like you to turn your attention to the cocktail reception, in the summer of '88. Have you had the opportunity to review the Inspector General's report concerning your attendance at the July 22 fund-raiser?

ACTING COMMISSIONER DAGGETT: Yes, I have.

SENATOR O'CONNOR: Do you agree with the findings of this report?

ACTING COMMISSIONER DAGGETT: With the exception of one statement in the beginning that says something, I think, to the-- There was the possibility of less than full disclosure. Nowhere in the remainder of the report, that I have been able to find, did they give any documentation of what they mean by that. It sounds to me like they leave a hint of possible impropriety or improper behavior on my part, but do not at all document that. So, with the exception of that statement, which I strongly disagree with if that is indeed the implication, the report, I think, was an attempt to honestly assess the situation.

SENATOR O'CONNOR: The report indicates that you were offered two complimentary tickets to this event for yourself and your wife. Who did you speak to regarding these tickets?

ACTING COMMISSIONER DAGGETT: I had a-- I was in Washington several days before the event. By sheer happenstance, I bumped into Larry Bathgate, who I have known for a number of years. He and I chatted, and he asked me if I was interested in attending the function. I told him that I didn't know, that I'd get back to him, and that I would have to check it out. He was the person that I talked with.

SENATOR O'CONNOR: Did you subsequently then have conversations with James Barnes, the former Deputy Administrator of the EPA, and Douglas Blazey, the Regional Counsel for the EPA?

ACTING COMMISSIONER DAGGETT: Yes, I did. I spoke with James Barnes. I called him, because as Deputy Administrator, I wanted to reach out to him, because when I reached out to the General Counsel for the agency, who was the ethics officer -- the ethics official for the agency -- he was not available. I called Jim Barnes partly because he is both Deputy Administrator and a lawyer. I asked him about it. He indicated that he didn't see any particular problem from his viewpoint, but that I ought to indeed go through the formal process of the General Counsel's office. I then spoke with Donnell Nantkes, who is the Deputy General Counsel and the person who acts on behalf of the Counsel when he is not there, and also he is the deputy ethics official. I spoke with him about the event. I also spoke with Doug Blazey about the event. The sequence, I believe, was that I first spoke to Blazey, who in turn called Nantkes. I, in the interim, called Barnes, and after speaking with Barnes, I talked to Nantkes. I think that was the sequence of conversations that occurred.

SENATOR O'CONNOR: You never told Mr. Barnes that the fund-raiser was sponsored by Larry Bathgate nor what Mr. Bathgate's relationship was to Ciba-Geigy. Is that correct?

ACTING COMMISSIONER DAGGETT: I'm not sure if the former comment was correct, but the latter is correct. In

other words, I did not make the link-- I don't know if I mentioned who it was. I did not make the link about Ciba-Geigy, but I may, indeed, have told him that it was Larry Bathgate as the Finance Chairman for the Republican National Party.

SENATOR O'CONNOR: In any event, Mr. Barnes told you to get an opinion from the EPA ethics office?

ACTING COMMISSIONER DAGGETT: That's correct.

SENATOR O'CONNOR: Am I also correct that you never told Douglas Blazey about the Bathgate Ciba-Geigy connection when you asked him to contact the ethics office?

ACTING COMMISSIONER DAGGETT: Neither he nor I are clear on that, so I will assume that we -- that I did not. But neither of us were sure, in conversations afterwards, whether I did or did not.

SENATOR O'CONNOR: Mr. Nantkes' statement in the report indicates, and I'll read a quote from it, on pages 15 and 16, "I was aware that there was an entrance fee for the affair, but I do not recall if I knew then what the amount was. I was aware that the fee was to be waived for Daggett, because those attending the gathering were interested in nominating Daggett to head a New Jersey association and wanted him to attend the fund-raiser." Do you know what the association was that Mr. Nantkes referred to in his statement?

ACTING COMMISSIONER DAGGETT: Once again, if you would read that, please?

SENATOR O'CONNOR: Okay. Just the second part? I assume that's where you're questioning?

ACTING COMMISSIONER DAGGETT: Yes.

SENATOR O'CONNOR: "I was aware that the fee was to be waived for Daggett, because those attending the gathering were interested in nominating Daggett to head a New Jersey association and wanted him to attend the fund-raiser."

ACTING COMMISSIONER DAGGETT: That is incorrect. I mean that is simply not even-- I talked to him about if he got that information from somebody else. No one ever said to me that they were asking me because I was being nominated for -- or that they were interested in my nomination for this post.

SENATOR O'CONNOR: The fact is, you had been nominated to head the DEP approximately one month before.

ACTING COMMISSIONER DAGGETT: That's right. That's correct.

SENATOR O'CONNOR: Were there any other representatives of firms which you regulated in your capacity as Regional Administrator of the EPA at the Bathgate party?

ACTING COMMISSIONER DAGGETT: I really do not know. There were some 300 people, I think, who attended it. Some 70 of them received complimentary tickets, as did I. There were many people there. To be honest with you, I don't know.

SENATOR O'CONNOR: Were any companies present at the party that were regulated by the New Jersey DEP?

ACTING COMMISSIONER DAGGETT: Oh, wait a minute, I'm sorry. There was an individual there from Ciba-Geigy, at the function, regulated by DEP. But not, the regulations-- The DEP regulations were with respect to the permit for the ocean outfall.

SENATOR O'CONNOR: Who was there from Ciba-Geigy?

ACTING COMMISSIONER DAGGETT: I think there was Mr. Simas.

SENATOR O'CONNOR: Is that someone that was known to you personally at the time?

ACTING COMMISSIONER DAGGETT: No. I knew him by name. I had maybe met him on an occasion in our work with the company as part of the cleanup operations at the Ciba-Geigy site, but I'm not sure if that was the first time I'd formally spoken to him or not. I knew him by name more than anything else.

SENATOR O'CONNOR: Did you have discussions with him at that affair?

ACTING COMMISSIONER DAGGETT: No. I mean, I greeted him. I said hello. I mean, I was introduced to him and said hello, but that was it.

SENATOR O'CONNOR: Do you think it is appropriate for the attorney for a regulated industry to help select and promote a potential Cabinet member?

ACTING COMMISSIONER DAGGETT: If it's not, we're in trouble, because I think regulated industries' representatives have spoken for or against many people over many years of appointments before this group, as well as the full Congress and elsewhere.

SENATOR O'CONNOR: Well, do you think it's appropriate for a nominee to head a regulatory agency to accept complimentary tickets, and to attend a party with representatives of companies that he either currently regulates or is about to regulate?

ACTING COMMISSIONER DAGGETT: I think that's a difficult question. We have a lot of people who lobby, and there are a lot of functions that are carried on in government that are paid for by corporations. People are given complimentary tickets to any number of functions. In this particular instance, I felt because it was a complimentary ticket, that it was incumbent upon me to check out with ethics officials whether or not it was appropriate for me to go. And that is exactly what I did.

I felt that was a reasonable response when given this opportunity. So I indeed called and made the requests I made and asked the questions I asked, because I was concerned that I was going to be given a complimentary ticket. At the time, I did not know the source of the -- if anybody-- The ticket was going to be paid for, but I knew it was complimentary. So I asked that question. So it's not-- I don't think this is a

direct answer. I don't think it is inappropriate. I think that you have to make sure, though, that you clear it through proper channels to make sure that it's appropriate.

SENATOR O'CONNOR: When did you find out from the ethics office that your attendance at the event would not be considered improper?

ACTING COMMISSIONER DAGGETT: A day or two before the event.

SENATOR O'CONNOR: Thank you very much. Any questions from the Committee? Senator Zane, then Senator Van Wagner.

SENATOR ZANE: Mr. Daggett, while we're on that subject, at the time of the conversation with Mr. Bathgate, when he asked you if you wanted to attend, was there any discussion at all about Ciba-Geigy?

ACTING COMMISSIONER DAGGETT: Yes, we spoke about Ciba-Geigy, but we spoke about it in terms of his involvement with trying to -- representing against Ciba in an attempt to change a zone, zoning of the facility. I believe it was in the middle of going through a local procedure where they were changing from an industrial to a recreational zoning, and I believe he was representing them in that capacity, and we talked briefly about that. The reason is, he had sent me a letter asking me if I would have someone at EPA attend the public meeting about that to essentially assist Ciba-Geigy somehow in that process. I denied the request both verbally and in writing, because I didn't think it was appropriate for us, as a Federal agency, to be involved in local land use issues.

SENATOR ZANE: You indicated that this conversation took place in Washington?

ACTING COMMISSIONER DAGGETT: Yes.

SENATOR ZANE: Could you tell us where?

ACTING COMMISSIONER DAGGETT: I bumped into him on an airplane.

SENATOR ZANE: Okay. In other words, you were not in Washington to meet specifically with him?

ACTING COMMISSIONER DAGGETT: Oh, no. I was in there on EPA business. I was not there to meet with him.

SENATOR ZANE: Was there any other discussion that day regarding Ciba-Geigy, or any of its problems?

ACTING COMMISSIONER DAGGETT: No.

SENATOR ZANE: And obviously from that conversation, you were aware that Mr. Bathgate represented Ciba-Geigy?

ACTING COMMISSIONER DAGGETT: Yes, I knew. And I knew prior to that that he represented them. I had seen it in the newspaper.

SENATOR ZANE: Let me ask you another question on a different subject: Regarding incinerators which were discussed earlier, you mentioned that New Jersey actually, when it comes to garbage waste, is an exporting State.

ACTING COMMISSIONER DAGGETT: That's correct.

SENATOR ZANE: I guess that's exporting about 60% of the waste that is generated.

ACTING COMMISSIONER DAGGETT: That's correct.

SENATOR ZANE: One of the things that has concerned me, especially in light of the United States Constitution, specifically the Commerce clause, is how would we regulate in the future, or control in the future, the flow of waste from other states to New Jersey?

ACTING COMMISSIONER DAGGETT: We were able to do that very creatively through our permitting authorities and our waste flow authorities. I believe the history of it is that New Jersey basically decided, for example, in a given county, if they could receive say, 50 tons a day of trash -- and that's what the permit was; regulatory authorities decided that-- Maybe they could only receive 25 tons and it just happened to be that that 25 tons a day was all that the county generated. Once they had reached that capacity, they couldn't take from

anybody else, whether it be out-of-county or out-of-state or wherever. I believe that was the mechanism by which people effectively, through that permit process, restricted flow from out-of-state.

That is exactly the sort of thing that is being done now, being considered from out-of-state; that they, in turn, might restrict their waste flow on the permits or the tonnage allowed to be received in a landfill, and thereby render the contracts we hold with them null and void essentially because they don't hold a permit to accept the waste.

SENATOR ZANE: But isn't the existing law today contrary-- That, to me, strikes me as somewhat -- some gymnastics regarding the process. Isn't the existing law, and case law, contrary to that -- that you really couldn't interfere with that flow?

ACTING COMMISSIONER DAGGETT: That's correct, and to my knowledge, when New Jersey tried it by just restricting the flow originally, they lost a case in that regard. Again, it's stretching my memory a bit, because I was not involved in it at the time, but I believe New Jersey made that attempt and through the Interstate Commerce Act was essentially denied that opportunity, or prevented from doing that. So New Jersey got creative, or gymnastic -- use the word "gymnastic" to use your term -- and was able to develop mechanisms to indeed restrict the flow in a way that did not interfere, or was not perceived to be in violation of the Interstate Commerce Act.

SENATOR ZANE: So, as I understand what you are saying, I think, the permitting process, for example, might permit 25 tons and the party seeking the permit knows the fact that that's the capacity that they are looking to burn to serve their needs. Therefore, they would not have additional capacity. Is that essentially it?

ACTING COMMISSIONER DAGGETT: That's correct.

SENATOR ZANE: Now, what would it take for the Federal government to intervene in a serious situation where, for example, Pennsylvania or New York might have a major problem to set that type of process aside and say, "You will, in fact, take"?

ACTING COMMISSIONER DAGGETT: I don't know the answer to that question. I would want to ask for some legal advice on that as to whether that would be the case. You'd then be into the case where, essentially you would be asking the Federal government to force the opening of facilities to handle someone else's waste.

SENATOR ZANE: But isn't it-- I mean, under existing law that we have today, isn't it misleading to suggest, or to have the residents of this State believe, that their facilities can, in fact, be limited just to New Jersey -- under existing law?

ACTING COMMISSIONER DAGGETT: I don't know that it's-- Well, under law, yes, I guess. And again, not being a lawyer, I'm not sure. I'd turn to others here who may be more familiar with the nuances of the law. But I believe that if you are looking strictly at the law, that may be the case. That you could not upon a legal basis alone, at least through the Interstate Commerce Act, restrict that flow. But it's legal in the sense that, the permitting process, if it's followed from a set of regulations and you then issue a permit, I would think that's legal. I mean that legally that would be defensible.

SENATOR ZANE: I have spoken with legislators from other states -- and I think you used this term, and if not I know others have -- that New Jersey is in the process of rushing to burn, while other states, and legislators from other states, have said to me that it's not that they're not up to speed with us, but that they're waiting until we have it in place because it then gives them an alternative to dispose of their waste. How do you respond to that?

ACTING COMMISSIONER DAGGETT: I respond to that by saying that I believe that the facilities that are being built in New Jersey right now are sized essentially to be able to burn the flow that is being generated by New Jersey, and that they would be-- In fact, I believe-- I forget which is which, but Essex-- If you look at Essex and Bergen Counties, one of them is, I think, a bit undercapacity in its projections, and one is just a bit overcapacity. So it's really, we're right up against the limits on both of those. Warren County is another example, but as you know, Warren County is looking to develop an arrangement with other New Jersey counties. If they do that and reach the capacity, there will be no capacity for people to come to this State with their trash.

SENATOR ZANE: Let me ask you this: Are the actual incinerators themselves-- Is the actual capacity of the incinerators, as you know it, greater than the capacities that they are seeking to get a permit for to dispose of waste? In other words, is it a plant? Are they actually building and designing plants that could handle, let's say, 100 tons a day, but they are only seeking permits for 50, or are they building plants that can only burn 50 and they are seeking permits for the full capacity?

ACTING COMMISSIONER DAGGETT: No. I believe the permits are for the full capacity of the plant.

SENATOR ZANE: Let me ask you another one: Under the terms of the 1986 amendments to the Federal Superfund Act, each state has, as I understand it, until October of this year to certify to the EPA that it has provided for 20 years of hazardous waste disposal capacity. And the sanction for failing to provide this capacity is the potential cutoff of Superfund financing for cleaning up the state's Superfund hazardous waste sites. I believe that's accurate. What are your thoughts on whether or not this State will, in fact, meet its deadline?

ACTING COMMISSIONER DAGGETT: I think New Jersey will meet the deadline. We were going-- We were making good progress on that, but we got a little bit of a monkey wrench thrown into it within the last month because the EPA, as the Reagan administration ended, put out some final guidance which changed what's called the "reportable waste stream," and the reportable waste stream, what has to be reported, was greatly expanded. That is going to significantly increase our paper work load, and we don't even think we have all the data they are asking for. So we will have to work through that issue, but we think we will be able to do that.

The second issue is that we have to have individual agreements with exporting and importing states. Meaning, if we import from another state, we have to have an agreement with them; if they export to us, we need a separate agreement with them. We had some-- We thought we were going to have just a broad statement that we'd be able to make, or a broad certification that we have such arrangements. Now it looks like we are going to have to demonstrate that we have these individual arrangements, and since we export to, I think it's-- I think we export to 37 states and import from 41 states. So we're looking at some -- if I've got the numbers exactly right -- 78 individual agreements that we are going to have to have.

That's going to be a problem for us, but we think we can do it. But in any event, we know we are quite a distance ahead of other states in doing this. Relative to the rest of the country, we are in pretty good shape on this issue, so if push comes to shove and some extensions of that deadline have to be granted, or something like that, because other states can't make it and people put pressure on Congress to extend the deadline, we'd be in very good shape, I think.

SENATOR ZANE: As you are aware, there is legislation in place now to amend the Hazardous Waste Facility Siting Act, and it would grant the Siting Commission increased flexibility

in posing environmental siting criteria to encourage the siting of hazardous waste disposal facilities on already contaminated industrial sites. And this is the so-called "brown fields alternative." Do you support that approach?

ACTING COMMISSIONER DAGGETT: I don't have any trouble with the approach overall. I think that the brown fields approach can work under certain conditions, and I think those conditions are being addressed right now in the Legislature and elsewhere. Frankly, this is one, as you know, the DEP is not in the middle of, and I'm content, frankly, to let the process take its course. I have so many other things on my plate right now that I have to make decisions on, this is one that I am not embroiled in. Conceptually, I can support the brown fields approach, but I would like to let the process proceed.

SENATOR ZANE: Would DEP be called or consulted on this?

ACTING COMMISSIONER DAGGETT: Ultimately for permitting, sure. We would have to go through that process.

SENATOR ZANE: What would you be looking for in the permitting process?

ACTING COMMISSIONER DAGGETT: I'd like to make sure that whatever is built, that the overriding criteria is environmentally safe and is not going to be detrimental to the public health.

SENATOR ZANE: Just two other quick questions: A great concern in my area has been over the burning of PCBs, a known carcinogenic. There is a facility -- it's through Rollins Environmental Services within Gloucester County -- that's been an ongoing battle back and forth with a lot of great concern; a lot of community activity. What are your thoughts about the burning of PCBs by someone such as Rollins? I think we all know a little bit of the history of Rollins, especially some problems in New Orleans and other places. What are your thoughts about that?

ACTING COMMISSIONER DAGGETT: My feeling is that first someone has to demonstrate the technology to be able to get a complete enough burn to handle the PCBs. If they can make that demonstration, then as long as we can put in the proper monitoring effort, they should proceed. The question about Rollins' history-- There is no question that they have had a number of enforcement actions brought against them. Recently, within the last month or so -- I can't remember the exact date -- we brought a major penalty against them of over \$1 million, I believe it was. Again, I can't remember the exact numbers. We took a significant action against them.

The difficulty of this business, frankly, is that even some of the best people in the business -- and I am not passing judgment on where Rollins is in that -- but even some of the best people make mistakes and end up getting fined, and end up having somewhat of a track record of having enforcement actions taken against them. I think the key is we've got to make sure, and assure the public that if we do grant the permit, that we have an adequate monitoring system in place to be able to assure people that on an ongoing basis, the facility is being operated properly; that as long as we can do that and they pass the first test, as I said, about whether they can actually technically take care of those PCBs, then I'd say that we should move forward.

In that particular instance, as you know, there is a facility nearby that has a lot of waste oil to be dealt with. And I believe Rollins is one of the bidders on that. I can't remember where in the process that is, but it is the Bridgeport Oil and Rental Services, or Rental and Oil Services site. There are some 50 million gallons of waste oil that ultimately will have to be handled.

SENATOR ZANE: Let me just ask you one other, back to the Bathgate matter. Did anyone approach you at that activity and ask for any special considerations at all for Ciba-Geigy?

ACTING COMMISSIONER DAGGETT: No. In fact, if you will allow me, that is the one thing that I would argue most strongly, that I would be willing to lay before anybody in any forum. I have never, nor will I ever, make any decision in this business that is based on improper influence of any kind. I have-- I am proud to say that I have made every decision that I have made on the merits of the case. You can disagree with my decision, but I challenge anyone, anywhere, to find any evidence of a decision I have made that has not been made simply on the merits.

SENATOR ZANE: Not that you are under oath, because you're not, but one question I asked a couple of witnesses, let me ask it of you. Is there anything at all in your background that you should be telling this Committee that in any way at all would reflect upon your ethical conduct in the offices you've held?

ACTING COMMISSIONER DAGGETT: None.

SENATOR ZANE: Good. I have one other comment in the form of a criticism. Mr. Daggett, many people who come to be involved in some sort of process with DEP, frequently find themselves in a situation where they don't know what to expect next. On a very local level, a local municipality received, in my district, a grant regarding a sewer project, and thought they were making all of the proper applications and seeking all of the proper permits, and that project has been delayed by more than a year.

And part of the reason for the delays -- I don't want to label it as incompetence -- but by DEP not setting forth with someone, particularly this municipality, the exact permits, etc. that they would need along the process, and they would be told, and I was involved and intervened for them-- They would be told they had to satisfy this requirement, and then they would go forward and that requirement would be satisfied, and lo and behold a half a dozen more would pop up.

That has added additional cost to this project, probably. It began as a little over a \$2 million project, and today it's approximately \$2.5 million. A lot of that is because of the delays and not providing sufficient information to that municipality. I would suggest that if, in fact, you are confirmed, that one of the things you get DEP to do is to lay out in the beginning exactly what someone must do, recognizing that other things can come up. But lay it out very, very clearly so that someone knows what they are dealing with, and when someone goes to financing, they know that they are borrowing the right amount, and if someone figures that they are going to be able to proceed with the project within six months, they don't later on find it is going to be 18 months because of something additional all along the process. Something's got to be done there. That's one of my greatest criticisms of DEP, and it just comes up time and time again.

ACTING COMMISSIONER DAGGETT: I agree with you in the need-- I would say to you, though, that I would be happy to work with you at another time after this hearing process, but I would like to know the specifics of that particular case because I think it ultimately would be instructive for us. If something is indeed broken, the best way to fix it is understanding an example from beginning to end, so that we know what went wrong and where it went wrong.

I have to tell you that in fairness to the staff of DEP, while I will not say to you that there aren't problems associated with the organization there and getting things done as efficiently as we would like to, there always is a second side to these stories, and every time I've looked into them in any detail, I've found that there, frankly, is some fault on both sides, and it's a matter of trying to work through an issue. I think it would be instructive for us to take that particular example, go through it in some detail, and see if we can't learn from it so it doesn't happen elsewhere, wherever

the fault is. If it is on our side, fine, or if it is on the other side, we need to figure how we can better help the local officials do the right thing.

SENATOR ZANE: Thank you.

SENATOR O'CONNOR: Mr. Daggett, we are going to have questions from other members of the Committee, but I overlooked something which I meant to ask you before that is in relation to a story that was reported yesterday in the Asbury Park Press and today in The Star-Ledger. I'm referring to the fund-raiser that you were associated with -- I put that in the past tense -- for the benefit of Assemblyman John O. Bennett. It is referred to as the Third Annual Chairman's Brunch. And I'm holding a ticket which says that you are cordially invited to join New York Giants star, Karl Nelson, and New Jersey Department of Environmental Protection Commissioner, Christopher J. Daggett, at this luncheon and that the tickets are priced and so on.

It was reported in the Asbury Park Press that you advised Mr. Bennett that you would no longer be part of this -- would not attend this. Would you tell me in the first instance, how you came to accept an invitation and what your understanding was of what your role would be in this function?

ACTING COMMISSIONER DAGGETT: Yes. That is a large misunderstanding is what it amounts to. I had a telephone call come into my office several weeks ago that was handled by my staff. The request was, would I attend something called the Chairman's Brunch for John Bennett. I have known John and have known his reputation in the environmental field, and frankly, without thinking, and violating one of the fundamental rules of this business, that is, that I don't accept any invitations that aren't in writing and largely have never done that, for John Bennett I said, "Sure," because I thought it was an environmental type function.

I subsequently found the same thing you found. Those tickets that you are holding were printed without my knowledge. There is an associated letter from Congressman Chris Smith, which was also printed without my knowledge. When I discovered what the function was, and what my role was to be in the function, I called Assemblyman Bennett and told him that we had had a misunderstanding about this; that when my office had received the call I did not have enough details to realize that it was indeed a political fund-raiser, and I subsequently told him that not only would I not be speaking at his fund-raiser, but that, unfortunately, I would not be able to attend it either. Subsequently I have written a letter to him to that end.

SENATOR O'CONNOR: Well, assuming that you are released by this Committee and ultimately confirmed by the Senate, would it be your position as the Commissioner of the DEP that you would attend similar functions in the future, or not?

ACTING COMMISSIONER DAGGETT: No. I believe strongly that the Department should not have its members actively involved in political campaigning. It's-- I want to draw a distinction there. That does not mean that they can't attend fund-raisers, that they can't attend political functions, because that is something that every person has to make their own decision about, and as long as it's within whatever ethical or legal rules that are outstanding, then it's their choice to do that. But in terms of being actively out-front in a campaign as is implied by the materials that you're holding there, with the Bennett fund-raiser, I personally will not attend such functions or be part of such functions. I've asked my staff not to either. But again, they have to make individual decisions based on whatever the ethical guidelines are.

SENATOR O'CONNOR: Well, your predecessor, Mr. Dewling, allegedly did not attend political events as such, feeling that it was not proper to attend fund-raising events. Do you subscribe to that thinking as well?

ACTING COMMISSIONER DAGGETT: Well, in the sense of-- I guess I have to be careful about it, in the sense of saying that attending a fund-raising event-- If you're asking for the Department itself, I answer one way, and then for myself. I am not personally going to do it. I don't have any intention of attending those fund-raisers. I have traditionally not done that, and I don't expect to start now.

SENATOR O'CONNOR: We do have a copy of your letter to Assemblyman Bennett dated February 6, in which you disavow your association with this particular event.

Senator Ambrosio, I am going to jump to you, since you were here when we started the meeting. I know you have some questions, and then we'll take Senator Van Wagner and Senator Codey.

SENATOR AMBROSIO: Acting Commissioner Daggett, just as a general question, how do you perceive your role as DEP Commissioner in developing and implementing environmental policy?

ACTING COMMISSIONER DAGGETT: Rather a narrow question-- I think that developing environmental policy should be a very public process, first of all. I think, first thing, I need to reflect the administration's position on issues that will get hammered out through any number of different techniques. Whether it's an initiative that comes out of the Department or out of the Governor's Office, we need to work it through. But in terms of the ultimate setting of policy, I believe that the more people that you get involved in that process that represent the various interests associated with that particular issue, the better -- that the environmental issues we face today are so often much more than environmental

issues, they are major social, political, economic, and environmental questions -- that it is really inappropriate to rely only on the DEP to make those decisions. I think that it is valuable to get as much input on that as possible. But I'd also finally add, though, that-- When the time comes to make a decision, if the responsibility is mine I fully accept that, and I will make those decisions, but I want to get as wide a range of input before that as possible.

SENATOR AMBROSIO: Let me get specific then: Would you give a brief checklist of what you think the most significant environmental problems are in this State, if you can rate them in any order?

ACTING COMMISSIONER DAGGETT: I listed, when I came in, six issues that I would say are probably pretty much the major issues that we are facing right now: oceans, groundwater contamination, air pollution, wetlands, open space, and air pollution. Did I say air pollution already? Wait a minute.

SENATOR AMBROSIO: No.

ACTING COMMISSIONER DAGGETT: Okay.

SENATOR AMBROSIO: Now, do you see the role of the DEP Commissioner to be in the forefront of setting environmental policy with regard to these, or do you see yourself--

ACTING COMMISSIONER DAGGETT: Absolutely, in the forefront.

SENATOR AMBROSIO: You and I have had a discussion in the past on some of these issues, in which you said that it is your job to implement the law.

ACTING COMMISSIONER DAGGETT: That's correct.

SENATOR AMBROSIO: I wasn't too satisfied that you understood that if there were some problems, that it is also your function to propose legislation to deal with problems.

ACTING COMMISSIONER DAGGETT: By all means. I am in the midst of trying to develop some proposals on specific pieces of legislation right now. I agree with you.

SENATOR AMBROSIO: Would you acknowledge that with the state of our environmental structure today, the laws and policies that are in place, that there is tremendous confusion and conflict between some of those policies?

ACTING COMMISSIONER DAGGETT: Boy, I would underscore that and put it in block letters. Yes, there is. And I think the reason is that it is hard for people to appreciate just how interconnected all of our problems are, right now, and that it is difficult to pass a law, for example, in the air area, without considering maybe some impacts on water and vice versa. Often that doesn't occur in the process. We have some very difficult issues right now that have to be addressed. That is why I urged the Governor -- and in discussions he was so readily willing to put in his State of the State Message -- the concept of having a commission put together that will, as we put it, take stock of the environment right now. I think we have a strong need in this State of assessing where we've been on environmental issues, where we are today, and where we want to be as we move into the '90s. I think that has to be very broad-based in its review, and it has to be very thorough, but all with an eye toward trying to get beyond some of this confusion that does, indeed, exist.

SENATOR AMBROSIO: Let me just explore some of the confusion that exists in my mind, and let's talk about ocean dumping of sewage sludge.

ACTING COMMISSIONER DAGGETT: Okay.

SENATOR AMBROSIO: Would you agree with me that there are really only three alternatives right now: either ocean dumping, landfill, or incineration?

ACTING COMMISSIONER DAGGETT: That's correct, with some few-- There are some situations where I think you can land apply it, either through -- in a fertilizing process, or whatever. I mean, some people do that in parts of the country.

SENATOR AMBROSIO: But with the volumes of sludge--

ACTING COMMISSIONER DAGGETT: Well-- I'm sorry, go ahead.

SENATOR AMBROSIO: But with the volumes of sludge and the quality of the sludge that we have in New Jersey, is that-- Isn't that literally impossible?

ACTING COMMISSIONER DAGGETT: That's the caveat that I want to put on. Of course, it means-- If you're asking me about the sludge that is currently dumped in the ocean, I'd say to you that the three options that you've outlined are about the options. If you are asking me generally about sludge, that was what I was answering. But you are right, with the sludge that is going in the ocean now, the sheer volume and the quality of that sludge, it is likely that it can only be landfilled, incinerated, or dumped in the ocean.

SENATOR AMBROSIO: We in New Jersey-- The municipal utilities authorities are all under Federal and State mandate to end ocean dumping. If you could change that policy and change the law, would you recommend that that law be changed?

ACTING COMMISSIONER DAGGETT: I would want it demonstrated to me first more conclusively than it has to date, that they could not meet the deadlines we've set. I've too often been in this business where people told me they couldn't meet deadlines, and when we took a firm line in the Department, or at the Agency when I was there, lo and behold, the deadlines were met.

SENATOR AMBROSIO: Well, aside from deadlines, I'm talking environmentally. Of the three choices, which, in your judgment, is environmentally the least offensive -- sludge burning, landfilling of sludge, or ocean dumping?

ACTING COMMISSIONER DAGGETT: I would probably say that at this point, the incineration process is the least environmentally damaging because of, frankly, the unknowns associated with ocean dumping. We have no evidence whatsoever that I have ever seen, scientifically, that has demonstrated

that ocean dumping, per se, of sewage sludge has caused any environmental degradation. But there also are, with ocean dumping, a large number of unknowns that warrant, I think, the decision to get out of the ocean. Now, with respect to incineration, again we know a lot about incineration. We know a lot about what comes out of stacks. I think we can control those emissions and monitor them, and develop an incineration process in a manner that is environmentally acceptable, and from a public health standpoint, acceptable.

Landfilling on the other hand-- It largely becomes a problem of space in landfilling. We're just clearly-- To landfill the kinds of quantities of sludge we are talking about would be prohibitive in this State.

SENATOR AMBROSIO: Have we ever tested sludge burning in the quantities that we are talking about?

ACTING COMMISSIONER DAGGETT: I don't know the direct answer to that, because there are a number of cities throughout the country that indeed incinerate their sludge. I don't know whether they generate nearly the quantities we're talking about. They probably don't, collectively, because I think if you added all of New York, New Jersey, and Nassau and Westchester Counties' sludges together, it would probably exceed what is now being handled by any one incinerator elsewhere in the country. There are some cities that are burning sludge.

SENATOR AMBROSIO: Would you also confirm that sludge burning poses certain environmental problems with regard to air pollution?

ACTING COMMISSIONER DAGGETT: Certainly. That's true of any incineration. That's correct.

SENATOR AMBROSIO: How do we rationalize, or justify an environmental policy that is pushing us toward burning of sludge -- burning of solid waste, and concentrating these incinerators in regions of the State that already are in violation of Federal EPA standards? And let me get specific:

My understanding, from what I have seen in my district alone-- Two garbage-burning incinerators are planned, in my district alone. With the towns that border my district, that actually touch my district, two more plants are within, literally, a five-mile radius. Four garbage-burning incinerators are on the drawing boards. In addition, in that same district, there are at least two sludge-burning incinerators that are planned. Now, I've read the preliminary State Planning Commission report, and it targets that particular area as the most critical area in the State with regard to air pollution. Now, how, as a Commissioner of DEP, can you justify proceeding down the road to building four incinerators for garbage and two incinerators for sludge in the area of the State that has got the worst air pollution problems?

ACTING COMMISSIONER DAGGETT: The remaining air pollution problems that plague our area are primarily ozone and carbon monoxide. Many of the other problems that have been associated with air pollution have been handled fairly effectively over the last decade or decade-and-a-half. I think the point here is that if you take all the incinerators that are planned for sludge and solid waste, the incremental addition to the emission load is very small relative to what we already put into the air. We are up against the situation again, as we have been so many times lately, where it's not the question of having an ideal, but it's the question of the lesser of evils that we have to go with, and we have to make some very tough decisions.

What we've done is, every facility that is proposed and comes in for a permit has to be modeled out. Its emissions have to be modeled out, assuming all the others are already built. So you have to make the assumption from the start. And then we assess the impact. To date, those that have come before us have met those standards that have been set. It is, as I say, a difficult question -- difficult issue -- but the overall

emissions load associated with those, when you add up all 20-- If you add 20, I think, or 25 incinerators, if there were that many built, that overall emission load, the increase, would be very small.

SENATOR AMBROSIO: None of those incinerators that I am talking about have gotten permits, have they?

ACTING COMMISSIONER DAGGETT: Not the ones you're talking about, except the--

SENATOR AMBROSIO: I'm talking about Bergen, Passaic, Essex, and Hudson.

ACTING COMMISSIONER DAGGETT: Essex is permitted. I believe it to be undergoing construction, and Bergen is about to-- It just was permitted, or is on the verge of permitting, I believe.

SENATOR AMBROSIO: And did those permits include the potential air pollution impact of the Passaic incinerator and the sludge incinerator from Passaic Valley?

ACTING COMMISSIONER DAGGETT: I'd have to go back and double check, but I believe so, with the exception possibly of the sludge incinerator. I believe they were, with respect to all other solid waste incinerators. I don't know the answer, but I can get it for you, as to the question of whether the sludge incinerators were included.

SENATOR AMBROSIO: Recently, the EPA indicated that New Jersey is in danger of not meeting its goal of reducing its ozone pollution, and I think the deadline is 1991. Is that true?

ACTING COMMISSIONER DAGGETT: No. It was 1987, and we missed it.

SENATOR AMBROSIO: We missed it, and we're-- But there is a new deadline of 1991, I understand, before some action is going to be taken?

ACTING COMMISSIONER DAGGETT: No. The '91 deadline is that between now and then, we must provide to EPA a new State

implementation plan. That is the plan by which we put in place additional control measures such that when they're modeled out, on sophisticated computer models, if they were all implemented, we would meet the standard. The State implementation plan we have in place now, when modeled out, no longer reaches the standard. When it was first put together, all the assumptions that were put into it showed meeting the standard. That's why it was approved. We found a number of reasons why that, in fact, was erroneous information, if you will; that we'd made miscalculations -- we being the State and the Federal government at the time approving it. So, given that that State implementation plan is inadequate, there is a requirement now that within two years, or by the fall of 1991, we submit a new plan with additional control measures to meet that standard.

SENATOR AMBROSIO: And if we don't meet that standard, as I've seen the report, it indicates that EPA could mandate the closing down of some of these incinerators that we are talking about.

ACTING COMMISSIONER DAGGETT: No, I don't think that would be the sanctions that they can put in place. The sanctions-- In fact, one of the problems that I always had while I was with the EPA with the sanctions issue, was, to be honest with you, the law. The sanctions in the law had so many loopholes for how to get out of it and they were so basically weak, that I didn't think they were really sanctions. You can't just go in and shut down a facility if you don't meet the deadline. There is, as you know, a new debate beginning, or continuing, I should say. It looks like this year may be a year when we have a new Clean Air Act, federally. If we do, I think it is imperative that New Jersey, arguing from a position of strength now, because absent California we probably have more stringent controls in place than any other state in the nation-- We need to go down, from a position of strength, argue vehemently with Congress that they must address the

question of transport of pollutants from upwind states, and if they don't address those, we should take a hard line about our willingness to go, or how much further we will go, because we start bumping up against very real economic impacts associated with these new measures that could have a very deleterious effect on our industrial community in the State.

SENATOR AMBROSIO: Mr. Daggett, let me just go back to the ocean dumping problem for a second. New Jersey law is different from Federal law, as you are aware.

ACTING COMMISSIONER DAGGETT: Different by nine months. The deadline was March 17, 1991 here. It is December 31, 1991 for the Federal level.

SENATOR AMBROSIO: Does that have the practical impact of putting New Jersey at a disadvantage to New York?

ACTING COMMISSIONER DAGGETT: Not really. There is a small disadvantage, but nine months is not going to mean a great deal.

SENATOR AMBROSIO: Do you believe that the six authorities -- I think it's six -- that currently dump in the ocean-- Do you believe that they are going to meet the deadline?

ACTING COMMISSIONER DAGGETT: I think there is some question about it. I think-- It's my understanding that there is a firm about to make a major proposal with respect to handling all the sludge that's in the ocean right now; that there is some talk about some things like that. There is some talk about-- And I think they believe they can meet the deadline, not for New Jersey, but for the Federal government. I've heard discussion about the chem-fix process being used at least at one facility, and there's a lot of question about that technically alone. And that only represents one facility to my knowledge. There are a number of things floating around, so it's a little early yet to tell whether they will meet it. I have said all along it is a very, very difficult deadline. They will be hard-pressed to make it.

SENATOR AMBROSIO: When we talk about meeting that deadline, there's no possibility that any of these authorities are going to have incinerators in operation by that time?

ACTING COMMISSIONER DAGGETT: That's correct. They will not have incinerators, but there are other alternatives that they are exploring, to my understanding: One, that they would consider temporary fixes so they could get out of the ocean by '91, but only on an interim basis; or that they would truck the sludge to out-of-state landfills. They would use some chem-fix process and do something else with it. I mean, there are a number of things being discussed, but certainly you are correct. By 1991 -- March 17 anyway -- I would doubt seriously whether anyone will have an incinerator in place to handle sludge.

SENATOR AMBROSIO: And those interim measures are extremely expensive, aren't they?

ACTING COMMISSIONER DAGGETT: Oh, you bet. Yes, they are.

SENATOR AMBROSIO: I've seen some numbers that would indicate that the towns of my district would be paying between \$30 million and \$40 million a year.

ACTING COMMISSIONER DAGGETT: It's possible. I haven't seen those numbers, so I would have to look at them.

SENATOR AMBROSIO: Is EPA, or I mean DEP, doing anything to ameliorate the impact of this occurrence on the taxpayers of the--

ACTING COMMISSIONER DAGGETT: I don't-- The direct answer is, "No," and the further answer is, I don't know what we could be doing to ameliorate that impact on the taxpayer other than to relax the deadline, and I don't have the authority to do that.

SENATOR AMBROSIO: Would you recommend that?

ACTING COMMISSIONER DAGGETT: Not yet. And I say not yet meaning I still want to see a lot more than I've seen so

far in making a case that the deadline can't be met or that it is just prohibitively expensive to indeed meet that deadline.

SENATOR AMBROSIO: The other area of conflict that I see environmentally in this State, is that on one hand the Legislature believes that they have in place effective recycling laws and that we are encouraging the reduction of waste flow by putting into effect mandatory recycling to hopefully reduce our waste flow. Yet the building of these incinerators has caused the municipalities, and the agencies which are building them, to discourage recycling because they don't want to cut down the flow of garbage that they need to feed these incinerators. Do you see that as a conflict?

ACTING COMMISSIONER DAGGETT: It may be an initial conflict. There may be some problems, but over the long term, no.

SENATOR AMBROSIO: Why not?

ACTING COMMISSIONER DAGGETT: Because I think that we are going to continue to grow as a State. Even if we reach our goal of 25% and go beyond, we're still going to be generating more and more waste. At some point, if you-- The waste generated is going to catch up to any excess capacity at the moment. It may exist as a result of recycling efforts.

SENATOR AMBROSIO: How do you get a permit to recycle today from your Department?

ACTING COMMISSIONER DAGGETT: The full process?

SENATOR AMBROSIO: Yes.

ACTING COMMISSIONER DAGGETT: Do you mean a recycling firm that comes in or a recycling center?

SENATOR AMBROSIO: Isn't the first thing you would have to do is to go to the county and get them to amend their solid waste management plan?

ACTING COMMISSIONER DAGGETT: Right.

SENATOR AMBROSIO: And aren't the counties universally turning them down because they don't want to issue those permits?

ACTING COMMISSIONER DAGGETT: I haven't seen that. I mean, it may be the case. If it is, I haven't seen it.

SENATOR AMBROSIO: How many recycling centers have opened up in New Jersey since you've been Acting Commissioner?

ACTING COMMISSIONER DAGGETT: I don't know if I know the answer to that question. Again, I can easily get the answer, but I don't have it at my fingertips.

SENATOR O'CONNOR: Senator, with your permission-- Senator Lynch has to go down to our conference, and I would like, with the indulgence of Senator Van Wagner and Senator Codey, to give him an opportunity to ask some questions at this time.

SENATOR LYNCH: Thank you very much, Mr. Chairman. I'm sorry that I wasn't here earlier, but some conference problems, that are today's problems, unfortunately had to be addressed.

Let me first, just as an aside, follow up a little bit on what Senator Ambrosio has talked about in terms of air quality. Some people say that my memory lapses are significant today, but I don't recall over the last 20 years a worse case scenario than what we have experienced in "Cancer Alley" with air quality over the last 12 months. It's almost intolerable to drive through, even on the Turnpike, in low pressure systems these days. I suggest that you might want to experience that, and then tell me that air quality is not a problem.

Secondly, with regard to the deadline for ocean dumping--

ACTING COMMISSIONER DAGGETT: If I may-- I have not said air quality is not a problem in the State. We have a problem, particularly with ozone, and we are working toward dealing with that, most recently the new regulations I signed with respect to gasoline refining. Air quality is a problem in this State, but primarily in the ozone and carbon monoxide areas. But, I have had that experience on the Turnpike.

SENATOR LYNCH: Well, it's not ozone and carbon monoxide necessarily that we are talking about in "Cancer Alley." We want to go through that petrochemical industry in Linden and Sewaren and so forth. Even in high pressure systems -- but forget that if you have a low pressure system--

ACTING COMMISSIONER DAGGETT: I recognize that. In fact, one of the reasons--

SENATOR LYNCH: --it is intolerable -- worse than it has ever been. And I don't understand why, with the state of the art where it's at today, we have to experience that.

ACTING COMMISSIONER DAGGETT: First of all, I'd be happy to take a look at that, because I am not sure that I would agree that it is worse than it's ever been. I mean, I would just have to see what's going on there that I may not be aware of. That was one of the reasons that when I was at the EPA I put together a study plan over on Staten Island, because of their ongoing concerns about what may be coming from New Jersey with respect to odors and other things. We put in place a very sophisticated but state-of-the-art -- and to my knowledge not done anywhere else on this scale nationally, to try to understand the chemical constituents in the air over Staten Island, such that once we can identify them, not a nose alert where we run around and chase what we smell, but really getting an understanding of the chemical constituents in the air-- From that, we should be able, through what we know of various processes of facilities in New Jersey and in Staten Island, to identify the sources of those. If we can do that, then we can get a good handle on whether or not they're meeting their permit limits, and if not, then we can crank down. Even if they are meeting them, but we find it's higher than we thought, then we can develop ways to get them to crank down. That, to me, is the way to do that. We're on the tail end of that study, and we should have some results within the next six to twelve months.

SENATOR LYNCH: I am not going to belabor that point. I think that I agree that you need sophisticated studies, but what's coming from outside is clear, and they are not living up to the state of the art today. That may be the source of the problem; just as a suggestion.

Secondly, with regard to the other issues Senator Ambrosio raises with regard to the deadline: I am sure I'm being redundant in here with regards to this panel, but just as an example, you said that maybe deadlines can be met to get out of the ocean by March of 1991. You're not prepared to say that that can't happen. Recently, I discovered down at the Middlesex County Utilities Authority, one of the five or six authorities who were the major ones, who were requested to, or commanded to submit plans on how they were going to be out of the ocean, made a submittal to the DEP of their plan. As it turns out, that submittal wasn't even opened for 90 days, and after a period of five months they received a notification that it was incomplete, so the clock starts over for the 180-day cycle, as I understand it. They're back literally to ground zero and they are looking at March of 1991 with the clock moving very rapidly--

ACTING COMMISSIONER DAGGETT: They have an application?

SENATOR LYNCH: --which brings me to the point that I really want to make about your role. You've been there for awhile. We get a-- There are a lot of concerns expressed out there by the public -- on both sides of the issue -- that the DEP, the regulatory side, does not necessarily carry out the policy of the Legislature, that the Governor has enunciated into law.

Secondly, that the DEP may be unresponsive from a management standpoint to its ability to carry out the law in a timely and responsive fashion.

Third, that the DEP has developed this DEP bashing syndrome. That they are afraid in many instances to take on

the responsibility that is necessarily theirs, some of which I have experienced myself in areas where they had indicated that they would not like to have the responsibilities.

With that in mind, from my perspective, I am one of the sponsors of the wetlands legislation with Senator O'Connor, which was the product of a significant compromise. Nobody is totally happy with the legislation as adopted. I'm hearing now, however, from both sides of the issue, that what is being carried out through the regulatory process doesn't fit within the policy that is clearly enunciated in that legislation. Have you been monitoring the regulatory evolution?

ACTING COMMISSIONER DAGGETT: Yes. In fact, I just signed off on regulations that will appear shortly in the "New Jersey Register" with respect to the whole area of buffers. I think that if there is a problem with that regulation as proposed, that's what the public process is all about, and if we are indeed putting a document out for a review that does not reflect the law, I will stand ready to make those necessary changes. I am not in the business of trying to write new law through the regulatory process.

SENATOR LYNCH: You've been around awhile. You understand the process. It's not uncommon-- It's not new that there are broad-based accusations that the regulators are adopting regulations that have very little or nothing to do with the policy that is enunciated in the law.

ACTING COMMISSIONER DAGGETT: I recognize that charge. That's not an uncommon charge.

SENATOR LYNCH: You don't see that? You have not seen any pattern that that has been the case?

ACTING COMMISSIONER DAGGETT: No. But again, I would say I would offer to anyone, please make that case, and if that case can be made, I'll be the first in line to make the necessary changes or to do what's necessary to correct it. I haven't had that brought to my attention with any specifics. I

certainly have heard the charge generally. That's not uncommon to hear that people think regulators write laws, and that legislators frequently find their intent frustrated.

SENATOR LYNCH: With regard to the other issue on the ocean dumping and the timeliness of the response of the DEP, I cite that as an example of the outcry that we hear from not only developers, but people seeking permits of all types; that the DEP process is so encumbered, it takes too long. There are always excuses made: It moves down the road, that credibility becomes an issue-- Do you see that as being a problem that you have to tackle?

ACTING COMMISSIONER DAGGETT: A major problem. In fact, I have already begun tackling it. I found that one of the big problems that exists, frankly, that we have had in the last seven years at DEP-- We have had an increase of 1600 positions through legislatively mandated programs. That is some 200-plus positions per year. That has often been done with virtually impossible deadlines, and often, not even enough resources given that large increase in resources to handle the work load. As such, we have ended up developing our data bases and other ways of handling the information in the Department very rapidly, often without having the luxury of thinking in long-term about how that data base may relate to another data base that later you have to link to. So now we--

SENATOR LYNCH: Do you need to restructure your management structure?

ACTING COMMISSIONER DAGGETT: We are in the process-- Not the management structure, but we are trying to get a handle first on our data. We have a project underway, frankly, to do some fairly simplistic things. Believe it or not, you have situations throughout the Department where one facility, say a J&J, or a Merck, or a DuPont facility, might have 20 or 30 identifiers in the Department, such that if you want information about it, you have to go to a specific place to get

it. You can't call one number and find out all about that facility in the Department. We are beginning that process now; trying to get a much better handle on our data base. I've brought in--

SENATOR LYNCH: I am more concerned about being more responsive to applications and in winding up with a problem that seems to be pervasive out there that you have a very limited number of people ready, willing, and able to make decisions at the DEP, and those people may be over encumbered.

ACTING COMMISSIONER DAGGETT: I would disagree with that. I think you have to have control of your data to be able to be responsive on applications. You can't-- We can't-- We have such a huge--

SENATOR LYNCH: How about being able to control the middle -- being able to hold to the envelope of the 90-day period?

ACTING COMMISSIONER DAGGETT: I'd want to hear that again. I'd want to see the specifics of that.

SENATOR LYNCH: I will definitely bring that to your attention.

ACTING COMMISSIONER DAGGETT: I would appreciate it. That is the first I have heard of that, but I would be happy to take a look at that and again, as I said before, I think we've got to bring some of these examples out, follow them through from beginning to end to find out where they went wrong. To be honest with you, and I have said it before, I had, on any number of occasions when I had gone into detail, found out that there was a second side to that story, and, in fact, the applicant didn't do a number of things that the applicant should have done and should have known.

SENATOR LYNCH: We are not going to talk for hours. I'm going to give you the specifics on that later. As an example, how many people do you have working on these proposals from these six major sewer authorities?

ACTING COMMISSIONER DAGGETT: I don't know the exact answer. I can get it for you, but there are plenty of people who are focused--

SENATOR LYNCH: How many people are there to make decisions?

ACTING COMMISSIONER DAGGETT: The decisions-- I'm not afraid to make decisions. I've told my staff not to be afraid to make decisions, and I'm going to keep pushing that. We have got responsibilities that we've got to meet. We've got decisions that we've got to make. I want people to make them.

SENATOR LYNCH: But, as a practical matter, don't you have Dr. Deieso in a position where he has to make all the decisions on solid waste and the sludge disposal systems right now, and isn't that an overwhelming task?

ACTING COMMISSIONER DAGGETT: Yes. He is the Assistant Commissioner responsible for that area in the Department. Yes. But that doesn't mean that he is the one who is going to make all those decisions. I mean, there is a process in place to go through, of which he is a part. But you are right. There is a very heavy load.

SENATOR LYNCH: Not for Dr. Deieso, but he, maybe, has too much responsibility right now. I don't see anybody else's name. You never hear anybody else making decisions. Then you start hearing examples like this where we have real tight time deadlines.

ACTING COMMISSIONER DAGGETT: If I were looking at one area of the Department that, from an organizational standpoint, may eventually need to be split up some, and have more managers in place, it would be in the whole water area. It is a very large section of the Department and you might make the case, persuasively, that it is almost unwieldy in its size. We may need to split that up some, but overall, I think what you're hitting on is an issue that faces us.

And it's not just there, as you know. It's in all the wetlands permits. They're some of the same people who are doing some of the ocean issues that we are dealing with. I mean, there are a number of people whose plates are extraordinarily full right now, and I have never seen-- I mean, I am amazed every day. Despite what you read in the papers or what you hear, the people at DEP have an extraordinary commitment and willingness to work in the Department.

SENATOR LYNCH: I'm not suggesting otherwise. The problem is, and I've always said it, that you don't have enough high level management people, making enough money, to be competitive with the private sector, to make decisions.

ACTING COMMISSIONER DAGGETT: If you want to talk about that, I would agree with that and I'd be happy to talk about how that might be able to be relieved eventually.

SENATOR LYNCH: Let me make a last point: This syndrome in the Department that they are tired of being bashed, I think, is a major problem. It denigrates the system. It makes the Department-- It almost ties the Department's hands from being decisive. I think that both sides of the issue today would rather see a strong decisive Department, ready to respond, than one that is afraid to make decisions.

ACTING COMMISSIONER DAGGETT: Senator, I couldn't agree with you more, but I have to say, those people who have been on the firing line in this business-- There are very few decisions we make that are not attacked from one quarter or another.

SENATOR LYNCH: That's the nature of the business.

ACTING COMMISSIONER DAGGETT: I recognize that, but I'm saying that it can, over time, for career people in particular, be a difficult issue, day in and day out, to know that the decisions you make are constantly battered about often, frankly, unfairly. People do it with a limited amount

of facts and a limited amount of information. That isn't to say that we haven't made mistakes; we have. We've made mistakes, and we will probably continue to make mistakes. But I'm trying to get across to people that I want an open process that leads to a firm decision, in a timely fashion.

SENATOR LYNCH: Then they have to receive support for that decision.

ACTING COMMISSIONER DAGGETT: Pardon me?

SENATOR LYNCH: And then they have to receive at least internal support for their decision.

ACTING COMMISSIONER DAGGETT: That's right. And I have found, from my working in the DEP, that that support is there from senior decision-makers. Frankly, we also need it from other outside groups, whether it be the Legislature, the Governor's Office, the environmental groups. Frankly, we need some support when we make some of those tough decisions where it is so easy to stand up and grandstand, and say "Well, it wasn't tough enough." Knowing that we are constantly struggling with a very difficult set of issues, we need support from a lot of places. Again, I'm not sitting here asking you for support all the time. I recognize that the nature of the business -- that we're in some tough decisions and we're going to get criticized and we're going to make those mistakes. I'll stand ready to correct those, but we need to be supported when we do make tough decisions that we can document in terms of the science and the technology behind them.

SENATOR LYNCH: Thank you.

SENATOR O'CONNOR: Senator Codey?

SENATOR CODEY: I just want to talk about Ciba-Geigy for a moment. Where is that Superfund site located?

ACTING COMMISSIONER DAGGETT: Toms River.

SENATOR CODEY: Where is it on the current list of Superfund sites?

ACTING COMMISSIONER DAGGETT: I don't know the number. It's a Superfund site that needs to be addressed, like many others. I don't remember the exact number; it may be in the 80s, or something like that. I'm not sure if it's that high up or not.

SENATOR CODEY: You don't know?

ACTING COMMISSIONER DAGGETT: I can't remember that exact number. I know there are 1000 sites on that list, and I don't know the exact number.

SENATOR CODEY: What about New Jersey?

ACTING COMMISSIONER DAGGETT: New Jersey has 100-- Of the 110 in New Jersey, I honestly don't know the number. I can get it for you.

SENATOR CODEY: You wouldn't have any idea of its priority?

ACTING COMMISSIONER DAGGETT: We have always taken the approach in priorities that we move sites along not necessarily on the degree of environmental risk. We like to try to move in that direction, but some sites get ready for certain actions faster than others, because either we can find a responsible party or we are able to move and get permits in place faster -- any number of reasons, but they don't always get taken on in order of environmental priority.

SENATOR CODEY: I'm not talking of environmental priority. I mean in terms of being able to move on with the cleanup.

ACTING COMMISSIONER DAGGETT: The cleanup is in the control right now--

SENATOR CODEY: If you had a choice, and they were all ready, where would you go?

ACTING COMMISSIONER DAGGETT: I'm sorry?

SENATOR CODEY: I'm saying, if you had a choice on the list, where would you go first, second, so forth and so on. Not in terms of which ones would be ready, which ones would not be?

ACTING COMMISSIONER DAGGETT: If I had the choice, which way would I go? Oh, boy, I'd have to look at a lot of information on that. One of the ones we've focused on the most in New Jersey, and we're finally successful in reaching a resolution of how we are going to move forward, was the Lipari Landfill site in Pitman. That has plagued us for years. It's the number one site in the nation, and we now have a cleanup plan in place, so I'd probably put that very high on my list, particularly given the recent information about health problems that may have been associated with that landfill in the 1970s. There are other sites, and I would really have to have the list in front of me and take a look at some of the risks that we've seen, and I'd try to give you my answer based on the real risks that we feel are possible to the general public.

SENATOR CODEY: You said with Pitman you have a cleanup program finished?

ACTING COMMISSIONER DAGGETT: No, not finished. A cleanup program approved and moving toward implementation.

SENATOR CODEY: Well, when is implementation?

ACTING COMMISSIONER DAGGETT: Implementation will begin this spring with what is known as a flushing operation. The larger problem of the Alcyon Lake and the marsh area around it is in what's known as the design stage. We are designing how we are going to implement the remedy we have selected. It will probably be, I think, a year after that, that the lake begins to be addressed.

SENATOR CODEY: At what stage is the Toms River cleanup?

ACTING COMMISSIONER DAGGETT: The Ciba-Geigy site is in an earlier stage than Pitman. It has not formally had its option selected. While at EPA, I made a decision for what I considered the preferred remedial alternative plan, which is a requirement in law that I must make, and that is to say as part of the public process, you have to state what you would prefer

to do. Then you have a large public process, and this one has been particularly lengthy because of the controversy around it. EPA is now on the verge of having received all those comments. They're on the verge of actually selecting a remedy. Once they select it, we'll move into the design of that cleanup and then the actual cleanup. I don't think you'll see actual activity where you are removing materials from that site for another year or two at least.

SENATOR CODEY: How much is that cleanup expected to cost?

ACTING COMMISSIONER DAGGETT: The last figure I have seen, at least the one I dealt with when I was with EPA, was about \$65 million or \$70 million.

SENATOR CODEY: Out of that \$65 million, how much was it going to cost Ciba-Geigy?

ACTING COMMISSIONER DAGGETT: Sixty-five million dollars. Every penny.

SENATOR CODEY: Every penny is to be paid by them?

ACTING COMMISSIONER DAGGETT: Right.

SENATOR CODEY: What role did the EPA have in overseeing that cleanup?

ACTING COMMISSIONER DAGGETT: Virtually, we had what we called the lead on that site. We had historically divided up sites on that list with no real magic. We just talked about who had the staff and was ready to move on something and somebody would take the lead. The Federal government had the lead on the Ciba site, so we were very much involved in it.

SENATOR CODEY: Now, what's the role of DEP on that site?

ACTING COMMISSIONER DAGGETT: The DEP role is one of working side by side, not nearly with the extensive commitment of resources that the EPA would do, but working side by side; staying abreast of it and ultimately having to agree on the ultimate solution.

SENATOR CODEY: Were there other items affecting Ciba-Geigy before you and your role at the EPA?

ACTING COMMISSIONER DAGGETT: Only with respect to an appeal process on the permit. The permit that was given by the State Department of Environmental Protection was a part of a delegated program where the Federal government can delegate certain authorities under Federal law to the states. In the Clean Water Act, New Jersey and many other states across the country had sufficiently strong programs that we could delegate the implementation of those programs to the State. We did that. As part of that, DEP gave out the permit to Ciba-Geigy. Whenever any permit is appealed, the appeal then goes back, or can go back through to the Federal agency, and that's, indeed, what occurred with Ciba-Geigy. We had to review an appeal of that permit as well as do the Superfund site. Those are the two items where we had interaction on the Ciba facility.

SENATOR CODEY: With regard to those two items, you may have had quite a bit of interaction with that particular company. Of those two items--

ACTING COMMISSIONER DAGGETT: Of those two items?

SENATOR CODEY: Yes.

ACTING COMMISSIONER DAGGETT: What was the question?

SENATOR CODEY: The EPA had quite a bit of interaction with Ciba-Geigy because of those two items that you mentioned.

ACTING COMMISSIONER DAGGETT: Less so on the permit. In fact, almost none really at all on the permit; much more on the Ciba-Geigy Superfund cleanup.

SENATOR CODEY: Which is going to cost them \$65 million?

ACTING COMMISSIONER DAGGETT: Right.

SENATOR CODEY: Which is a rather significant amount of dollars. I'm sure that's probably the number one thing on their list.

ACTING COMMISSIONER DAGGETT: I would gather that's the case, although they do have other facilities elsewhere in the country. I don't know whether they may have other cleanups to do, but yes, that has got to be a very high priority.

SENATOR CODEY: I want to go back to the fund-raiser for a moment. You are aware, aren't you, of the Hatch Act?

ACTING COMMISSIONER DAGGETT: Absolutely.

SENATOR CODEY: What does that spell out in terms of political involvement for you when you were a Federal employee?

ACTING COMMISSIONER DAGGETT: Basically that I cannot be actively involved in partisan politics, in the form of being actively involved in campaigns and otherwise outfront on them. But there is no restriction on giving money--

SENATOR CODEY: I don't think it says "outfront," does it -- the Hatch Act?

ACTING COMMISSIONER DAGGETT: Well, it doesn't use those words, but there is no restriction in the Hatch Act on attending functions. There is no restriction in the Hatch Act on taking part in the political process. You can't be involved in partisan politics as I, when I first came into the process -- I was in the middle of. I had gone through a primary election process and was moving toward a municipal election. I had to drop out of that race. That I could not do. That was active involvement in partisan politics, so I dropped out of that immediately because of the Hatch Act.

SENATOR CODEY: Wouldn't it also bar participation in partisan politics?

ACTING COMMISSIONER DAGGETT: No.

SENATOR CODEY: No?

ACTING COMMISSIONER DAGGETT: No.

SENATOR CODEY: That's my understanding of the Hatch Act.

ACTING COMMISSIONER DAGGETT: Not my understanding. It's not my understanding of the Hatch Act. My understanding of the Hatch Act is not that you cannot get involved in partisan politics. It's that because-- You are allowed to give money to campaigns. That's involvement in partisan politics. There is no restriction on giving money to campaigns in the Hatch Act.

SENATOR CODEY: Why did you ask for the ethics decision?

ACTING COMMISSIONER DAGGETT: Because I was potentially going to receive something of value that I did not pay for and that in doing so I may violate the question of gifts, in receipt of gifts as a Federal official, or as a government official.

SENATOR CODEY: So you never asked for the opinion in terms of the Hatch Act?

ACTING COMMISSIONER DAGGETT: No. It was in terms of the Ethics Act, but my full assumption is that any question about the Hatch Act would have been reviewed as part of that. I mean, that is just not an issue in this case.

SENATOR CODEY: Did you ask for it to be reviewed as part of a violation of the Hatch Act?

ACTING COMMISSIONER DAGGETT: I don't believe so. I asked the question of whether there was any violation possible in my attendance at a fund-raiser. Now, whether I did not specifically say, "Please look at this act or that act or another act," I, not being a lawyer, relied on the ethics officials to know what areas they would need to look at that may be a violation.

SENATOR CODEY: In other words, your asking for an opinion was not because you thought it may be a violation of the Hatch Act. Is that correct?

ACTING COMMISSIONER DAGGETT: Exactly.

SENATOR CODEY: Your asking for an opinion was not because you thought maybe it was a conflict because the chairman of the fund-raiser was Mr. Bathgate, who was representing Ciba-Geigy for the EPA on some very, very substantial matters? Is that correct, then?

You were strictly asking for an opinion because you felt there was a gift involved?

ACTING COMMISSIONER DAGGETT: Mr. Bathgate was not hosting that function in any capacity whatsoever associated with Ciba-Geigy. He was hosting that function in his capacity as the Republican National Committee Finance Chairman. And as a strictly political event, it had nothing to do with Ciba-Geigy, at all.

SENATOR CODEY: But he was still-- You cannot remove the fact that he was the attorney who represented Ciba-Geigy--

ACTING COMMISSIONER DAGGETT: That is correct.

SENATOR CODEY: --at the time he was in front of you?

ACTING COMMISSIONER DAGGETT: No, he was never in front of me.

SENATOR CODEY: In front of the EPA?

ACTING COMMISSIONER DAGGETT: No, he was not in front of the EPA.

SENATOR CODEY: Ciba-Geigy was.

ACTING COMMISSIONER DAGGETT: Ciba-Geigy was, but Ciba-Geigy, to my understanding at the time, and even to this day-- I don't believe Mr. Bathgate has gotten involved whatsoever with that Superfund site.

SENATOR CODEY: But you knew that he represented them?

ACTING COMMISSIONER DAGGETT: Yes, I did.

SENATOR CODEY: And at no point in time did you ever have any problems, or think there was a problem in attending that because he was, in fact, representing Ciba-Geigy?

ACTING COMMISSIONER DAGGETT: Prior to the event, no. I thought-- I was concerned more about the possibility of

receiving something of value that I didn't pay for. I asked for an opinion on that. Right after the event, when people raised the issue about his association with Ciba-Geigy, I immediately asked the question again of ethics officials, and said, "Look, there is a piece of information here that I did not bring before you because I didn't think it was germane to this issue, but I now want an opinion from you because I want to know if I did something wrong."

SENATOR CODEY: And at no point-- It never entered your mind that there may be a conflict, that someone may raise a question, there may be a perception that this was wrong because he represents them and because of their matters before the EPA, until someone else raised it, is that correct?

ACTING COMMISSIONER DAGGETT: That's correct because I reasoned in my mind-- You can argue if you want that it's faulty reasoning, but the reasoning that I went through in my mind was that the function had nothing to do with Ciba-Geigy; that there are other functions that other people have held that you would essentially be asking me to check whenever I go to any fund-raiser or to any event at someone's home, that I'd essentially have to make sure that their list of clients did not include somebody I regulated. I thought-- To me, that didn't make sense. I asked the question absent that. I made the decision in my own mind that it wasn't related. As soon as I found out that people thought it was, I asked the question again. And I said, "This time, please give me the advice with the knowledge that he is a legal advisor to Ciba-Geigy, which has a Superfund decision pending before us," which by the way I had made already. I had made it a month earlier, and knew at the time--

SENATOR CODEY: You were involved in making decisions affecting that company?

ACTING COMMISSIONER DAGGETT: Not after that point. And that is exactly--

SENATOR CODEY: Before that point?

ACTING COMMISSIONER DAGGETT: Yes, before that point. A month earlier, I had made a tentative determination about the cleanup of the Superfund site.

SENATOR CODEY: And maybe once again you would have to act.

ACTING COMMISSIONER DAGGETT: No. I knew that I would not have to act as a Federal official.

SENATOR CODEY: You were still in your capacity as a Federal official?

ACTING COMMISSIONER DAGGETT: That's right, but I was within, I think, two weeks of leaving the Agency when the event took place, and I knew that there were no other issues that I would have to deal with with respect to Ciba-Geigy while I was there. That also crossed my mind and went into my thinking when I asked the question of ethics officials, and I didn't think of it as anything. So I then asked the question afterwards and got the exact same answer; that even had they known that Ciba-Geigy was represented by Mr. Bathgate, that they would have given me the exact same advice prior to the event, had I asked for it prior to the event.

SENATOR CODEY: Did you go to other fund-raisers while you worked at EPA?

ACTING COMMISSIONER DAGGETT: No.

SENATOR CODEY: No others? The only fund-raiser--

ACTING COMMISSIONER DAGGETT: No. If I had attended Republican party functions within my home county of Somerset, which are generally broad in nature, like a golf outing or something along that line for the party--

SENATOR CODEY: Whether they are a fund-raiser at a house or--

ACTING COMMISSIONER DAGGETT: No.

SENATOR CODEY: Did you go to Republican fund-raisers?

ACTING COMMISSIONER DAGGETT: Yes, in that sense, in the broad sense. I am trying to answer your questions as clearly as I can, but it was not in a narrow sense of at someone's home, no. But in a broader sense, for the Republican party of Somerset County, yes.

SENATOR CODEY: But the reason for the event was to raise money for a partisan venture, correct?

ACTING COMMISSIONER DAGGETT: That's correct.

SENATOR CODEY: Why didn't you ask then for an ethics opinion as to whether or not it was correct?

ACTING COMMISSIONER DAGGETT: I did.

SENATOR CODEY: No, you said you only asked at the Bathgate affair.

ACTING COMMISSIONER DAGGETT: Oh. Oh, in other events?

SENATOR CODEY: Yes.

ACTING COMMISSIONER DAGGETT: Because I was not receiving something of value that-- In other words, I either wrote a check myself if I attended, and then it wasn't-- The issue for me at the Bathgate event, was to receive something of value for which I had not paid. That was what prompted me to ask the questions.

SENATOR CODEY: So you never had any problem with attending partisan events, and you, in fact, did?

ACTING COMMISSIONER DAGGETT: Right.

SENATOR CODEY: While a member of the EPA, you felt that that was no violation of your understanding of the Hatch Act?

ACTING COMMISSIONER DAGGETT: That's correct.

SENATOR CODEY: So you went to a number of Republican partisan affairs?

ACTING COMMISSIONER DAGGETT: If I went to four or five events in four years, that would be a lot. I do not generally go to many events. I've attended a couple of

functions in my own community, a candidate's function, that sort of thing, yes. But as a general rule, no. I don't attend many of those functions at all.

SENATOR CODEY: Who introduced you to Mr. Simas at the fund-raiser?

ACTING COMMISSIONER DAGGETT: To whom? Oh, to Mr. Simas? I don't recall.

SENATOR CODEY: But someone had to introduce you to him?

ACTING COMMISSIONER DAGGETT: Yes.

SENATOR CODEY: You just don't recall who it was?

ACTING COMMISSIONER DAGGETT: No.

SENATOR CODEY: As far as you know, did Mr. Bathgate advertise the fact that you would be attending the fund-raiser to other interested parties?

ACTING COMMISSIONER DAGGETT: To my knowledge, no, he did not.

SENATOR CODEY: You don't know whether he did or did not?

ACTING COMMISSIONER DAGGETT: That's my point. I don't know whether he did or did not.

SENATOR CODEY: I think in response to a question by Senator O'Connor, I'd like to refresh my memory if I could. I think Senator O'Connor asked whether or not there were other companies that had work before the EPA or attorneys who were there?

ACTING COMMISSIONER DAGGETT: My answer was, "I don't know the answer to that."

SENATOR CODEY: You don't know whether or not there were other people attending that function that would have work before you as--

ACTING COMMISSIONER DAGGETT: That's correct.

SENATOR CODEY: --EPA or DEP Commissioner?

ACTING COMMISSIONER DAGGETT: That's right. I don't know whether there were or not. I don't know. There was a mix of people, public officials and others. I knew some of the people there as public officials, but not in terms of anybody who had any business of any kind before me at EPA, nor to my knowledge, before me as I would go into DEP.

SENATOR CODEY: Did Mr. Bathgate ever have any conversation with you about becoming Commissioner of the DEP?

ACTING COMMISSIONER DAGGETT: I don't recall specifically. I may have had a conversation with him about -- generally some problems the DEP and -- the management of DEP.

SENATOR CODEY: My question is, did he have a conversation with you about becoming DEP Commissioner, before your nomination?

ACTING COMMISSIONER DAGGETT: Before my nomination? No. No one did. The only person I spoke to before my nomination was the Governor, who asked me if I would serve.

SENATOR CODEY: He asked you out of the blue?

ACTING COMMISSIONER DAGGETT: That's correct.

SENATOR CODEY: And no one, as far as you know, had spoken to him?

ACTING COMMISSIONER DAGGETT: I'm sorry?

SENATOR CODEY: Did Mr. Bathgate speak to the Governor?

ACTING COMMISSIONER DAGGETT: I have no idea.

SENATOR CODEY: You have absolutely no knowledge?

ACTING COMMISSIONER DAGGETT: I have no knowledge of that whatsoever. To my knowledge, the Governor asked me. He had said that he had asked a number -- that in his estimation I would be the person that would best serve in this capacity, and he asked me if I would do it.

SENATOR CODEY: No further questions.

SENATOR O'CONNOR: Senator Orechio?

SENATOR ORECHIO: Mr. Bathgate, in the gubernatorial question there, you answered--

ACTING COMMISSIONER DAGGETT: Do you mean Mr. Daggett, sir? (no response)

SENATOR ORECHIO: In 1984 you were a candidate in the Bernards Township Council race, and then after the primary you dropped out.

ACTING COMMISSIONER DAGGETT: That's correct.

SENATOR ORECHIO: I imagine because of your proposed nomination for that EPA position.

ACTING COMMISSIONER DAGGETT: That's correct. As I knew that I had been appointed and that I was going to take the position, I dropped out of that race.

SENATOR ORECHIO: And resultant coverage-- You mean application of the Hatch Act to prohibition for your service in that capacity?

ACTING COMMISSIONER DAGGETT: That's correct.

SENATOR ORECHIO: In question 15, Mr. Daggett, in response to whether you made any political contributions in the past four years, your response was, "None." Might that also apply for the previous four years?

ACTING COMMISSIONER DAGGETT: No. Probably not. I had made contributions before that.

SENATOR ORECHIO: On another subject: Incineration as a viable alternative to landfilling is under attack rather intensely these days. When it was addressed earlier -- I think Senator O'Connor asked the question -- you seemed to indicate that you weren't concerned about that challenge with respect to the environmental hazards that have been cited as potentially dangerous for people who live within the area. What I am wondering is, since the solid waste management plans of counties that they implemented years ago, and they have lagged for many reasons, them being probably in the forefront--

My concern is with the ash -- the residual ash from incineration. Also, requiring a site for the landfill of that ash, what progress are we making? (no response) I'll go along

on the premise that you feel the challenge can be overcome with respect to incineration, but what about the siting of those landfill areas that will be required for the dumping of this ash? What kind of progress are you making in that regard?

ACTING COMMISSIONER DAGGETT: I have to go through specifically-- I don't know if I can remember all the situations. We are making some progress. I don't think we're making the kind of progress we'd like to see made yet. We've been giving out, in some cases, I believe, some interim permits essentially that allow people to dispose of ash for a period of time outside the State, or in other facilities than what they ultimately will use. That's a difficult issue. It has to still be addressed.

SENATOR ORECHIO: You don't see that as a deterrent with respect to meeting deadlines that are imposed by the current legislation?

ACTING COMMISSIONER DAGGETT: Not at the moment.

SENATOR ORECHIO: Earlier, Senator Lynch asked about decision-making and Dr. Deieso having responsibility for a lot of decision-making in this solid waste, hazardous waste area. You indicated that you probably needed more management people. With the hiring freeze imposed by the Governor, how is that going to-- Won't that have an impact on your ability to make your Department more efficient in the area that I just alluded to?

ACTING COMMISSIONER DAGGETT: It hasn't yet. I don't anticipate that. We have been putting through exemption requests as we have needed to and we've been fairing okay so far. I am concerned that -- and I've said for a long time -- that as we reach a limit to our growth in environmental protection and the resources we put toward it, that instead of the very large increases we have received -- as you know we're leveling off and even taking a bit of a drop-- I'm really quite concerned over our capacity to make decisions about where

best to put our resources. We need to ultimately have a good decision process that might say, for example, we wouldn't put our money into this program, and instead we'd put it into solid waste. Even though the law says we have to do this program, we don't have the resources to do it, and I've got to pick and choose. I've got to maybe put it into solid waste instead of some other area. That is what we are starting to face, and as we do, I am rapidly trying to put in place a decision-making process that enables us to really deal with those environmental issues that are most pressing before us, as opposed to some others that might not be as pressing.

SENATOR ORECHIO: With respect to your partisan political activities, was the '81 campaign the first time you were involved in partisan politics?

ACTING COMMISSIONER DAGGETT: No. I was first involved in partisan politics in the campaign of Ray Bateman, when he was running for Governor against Brendan Byrne in 1977.

SENATOR ORECHIO: Now, there are a number of people who no doubt worked with you side by side in that campaign and maybe the succeeding one in '85--

ACTING COMMISSIONER DAGGETT: In '81. I was not involved in the '85 campaign.

SENATOR ORECHIO: Okay, '81 -- who eventually-- Several of them became members of the Governor's Cabinet. Basically that's probably part of the process. Whether you are a Democrat or a Republican, you work hard for somebody and they become victorious and as a result, with the basic premise that you are qualified, you get a job just included. My concern really with the Bathgate party -- and I recognize that Ciba-Geigy had some problems, and at the same time recognize that Larry Bathgate is not only a national figure with respect to raising money, but also has been a tremendous source of revenue for candidates conducting Republican campaigns in this

State-- That sort of event would not have been an unusual one for someone to go to. You say there were about 70 who had complimentary tickets?

ACTING COMMISSIONER DAGGETT: That's correct.

SENATOR ORECHIO: And you were among the 70?

ACTING COMMISSIONER DAGGETT: Yes, that's correct.

SENATOR ORECHIO: Were there any other officials of State government included in that group?

ACTING COMMISSIONER DAGGETT: Yes, I believe so. I don't have the list before me, but I believe the public officials that were there were more than likely comped on those tickets.

SENATOR ORECHIO: What was the basic thrust of the party?

ACTING COMMISSIONER DAGGETT: It was a fund-raiser.

SENATOR ORECHIO: Was the President the honored guest?

ACTING COMMISSIONER DAGGETT: It was a fund-raising event for the then Vice President and candidate, George Bush.

SENATOR ORECHIO: Was he at the function?

ACTING COMMISSIONER DAGGETT: Yes.

SENATOR ORECHIO: I just have one final question, Mr. Chairman; the rest of the Committee. I realize that we are running late. We've had a problem in my district, namely Montclair, with radon.

ACTING COMMISSIONER DAGGETT: Indeed.

SENATOR ORECHIO: We've had four families, of course, who have had to vacate their homes. As a result, they are still not in their homes. Basically, the decision had been made by the Department that the soil that remains there is going to be treated locally, and then, of course, there's also an opportunity for them to offer the State the opportunity to buy those properties. That hasn't been resolved yet.

But there is another issue in that particular problem, in that those homeowners maintain that for the period of three

or four years, that in addition to the hardship, and in addition to, in one case, a robbery or break-in to the home had taken place, or actually theft-- They have really suffered, and the question is whether or not there is any decision made as to whether or not those drums that were stored on their property for all those years will receive any consideration in the final chapter of that litigation there? Do you know how that's progressing?

I know that's one or two of the demands they've made upon the State, namely the DEP, for satisfaction in that suit -- that's in suit here.

ACTING COMMISSIONER DAGGETT: In other words, compensation for storage cost, or something along that line?

SENATOR ORECHIO: Yes. And the fact that they were unable to use their homes.

ACTING COMMISSIONER DAGGETT: To date, we have said that there hasn't been. We felt-- I believe the legal argument behind that has been that we really don't have the authority to give that kind of compensation. I'd have to look in greater detail. Again, I forget the exact line of reasoning, but I think that was basically it. This is probably one of the most frustrating and difficult issues I have ever faced in public service. It has just got to be resolved, and I tried as hard as I could to get it resolved while I was at EPA, and I am continuing to press. I have had a number of meetings on it since I got here, and I am going to press this on through to a conclusion. It has got to be resolved.

SENATOR ORECHIO: I remember very vividly the night you attended the meeting in the school with 1500 irate people who had lived in the neighborhood.

ACTING COMMISSIONER DAGGETT: I can remember that very vividly, too.

SENATOR ORECHIO: I just want to ask one final question with respect to radon in general and its problems in

the foreseeable future with respect to DEP's responsibility in terms of coping with that problem.

Do you see anything that might be a match for this problem, that might overcome it?

ACTING COMMISSIONER DAGGETT: Not occurring from man-made sources. Naturally occurring, I suspect we will probably, on occasion, identify isolated instances of very high readings, as we have in Clinton and in several other locations. But I think if people retain a sense of calm about the issue, we do have ways to mitigate those problems now that have been proven, that have been effective, that are relatively cheap. I trust we will be able to move quickly, as we have. In fact, our efforts on the naturally occurring radon have been as good from a governmental response as any that I have been involved in. As I say, the most troubling to me of any has been, and continues to be, the radium contaminated soil in Montclair, Glen Ridge, and West Orange.

SENATOR ORECHIO: Is the problem in Clinton fully abated?

ACTING COMMISSIONER DAGGETT: Fully abated in the sense that the homes that have the elevated readings have indeed had the levels reduced through the venting devices that have been put in the homes.

SENATOR ORECHIO: No other questions, Mr. Chairman.

SENATOR O'CONNOR: Senator Gormley?

SENATOR GORMLEY: Good afternoon. The question-- We have gone over enough of the event, and other issues. Just one issues question, and then see if you think a suggestion has merit, as it pertains to sludge sites specifically in the six North Jersey authorities.

It has often been stated in retrospect that in 1975 or 1976, when they passed the Solid Waste Management Act, we should have had mandatory siting by DEP. Now that 10 or 11

sites have been sited, everybody with the counties, where they haven't done the siting yet, said, "You know, the DEP should step in and we shouldn't have all these incinerators," right? Now the question is, in terms of sludge -- Senator Lynch isn't here, but I know he has a bill in which I favor -- in order to push these decisions that were brought up by Senator Ambrosio, or whatever, would you favor a measure that would provide that if, in fact, there isn't appropriate action within a six-month or nine-month time frame on the siting of these sludge facilities, that DEP would be able to do the siting itself? Therefore, possibly eliminate--

You see, it's easy to say you're against all the incinerators, but someone is going to have to make those hard decisions. Obviously, once you have one county saying to another, "I'll take your sludge," or vice versa, that means one freeholder board's out of office that year. Would you favor a measure giving DEP the prerogative, let's say, within the next six to nine months if, in fact, these sites weren't moving forward, that you would have mandatory siting capability as it pertains to sludge sites?

ACTING COMMISSIONER DAGGETT: I would have some difficulty with that, because I think that these are very, very difficult decisions, as we have all come to know. If the authority were given to us, I certainly would be willing to step in there and try to make the decisions, but I would have to tell you that I don't think that the State has any corner on its ability, other than sheer muscle somehow, maybe through a law, to get that done; meaning that I think people can rise up in opposition to a State action just as fast, or faster, than a county or a local action. I think the issue most important is not so much who has the responsibility, but the process by which we go through it such that it's seen to be an open process which covers all the aspects of the issue.

SENATOR GORMLEY: Isn't the reality that one of the functions of the DEP is to make the hard decisions, because elected officials, in many of these cases, would be out of office if these decisions were made? Isn't that one of the main functions of DEP that we pass on hard decisions for you to make?

ACTING COMMISSIONER DAGGETT: Thank you.

SENATOR GORMLEY: That's the truth. Then we can protest what you do, and then say in the hallway, "I know you had to do it."

ACTING COMMISSIONER DAGGETT: That's about the way it works.

SENATOR GORMLEY: That's why you exist. Don't you think, therefore -- of course, it would be a very difficult decision-- Don't you think it's something where you would fill that void? You know, the bill will move if you say this, so be very careful. (laughter)

ACTING COMMISSIONER DAGGETT: Yes, I know it might. I don't-- I just have difficulty saying the DEP has any magical ability that no one else has to site facilities. Take a look at the Hazardous Waste Facilities Siting Commission. That, to me, has been as responsive a process as we've been able to put together in this State. We still don't have a site after seven years.

Now, you know, if DEP is given this authority, they are going to have to go through the same sort of very open and public process. I wonder whether or not we are just delaying the decision process by doing that, because once you give us the authority, we are going to then have to set up a process by which we go through it.

SENATOR GORMLEY: So are you saying that the process would be delayed longer if DEP--

ACTING COMMISSIONER DAGGETT: Yes, I am. I am saying that it would be delayed, and I think that leaving it at the

municipal and county levels at the moment is not inappropriate. And I think that at that point, once it's sited, then certainly DEP comes in for the permitting process. We are there and we have every responsibility for permitting.

SENATOR GORMLEY: I understand that aspect, although I can imagine if either the Legislature or local government bodies had the responsibility of hazardous waste siting, that would be about the year 3000.

One other point: Given the nature of the questions that you have had regarding the fund-raiser, would it make life easier for department heads because of appearance -- not because of anything done, but because of appearance, and the type of questioning that you have undergone -- that there simply be a prohibition that department heads not attend fund-raisers?

ACTING COMMISSIONER DAGGETT: It certainly would be easier in terms of-- It's clear-cut. You can turn them down very easily and not have to worry about it.

SENATOR GORMLEY: Because, one of the bans on casino officials in the State, key employees, is that they can't give contributions. They bemoan the politicians, "Oh, it's regrettable I can't," and they love the provision. Do you think it's time to have a measure like this, because I think the appearance level has gone far beyond what has occurred, but it is something which has to be dealt with? Would you prefer just to have a regulation so that you can avoid those situations of having to turn people down?

ACTING COMMISSIONER DAGGETT: I'd have to think a little bit about that, but generally speaking, I think I would be favorable toward it because I think it's something that is one of the most difficult struggles for the public official in a regulating capacity, to struggle with this concept of appearance of a conflict of interest. Appearance is so much of a subjective process, and there are different ways to look at

that. It would be a lot easier, frankly, if you had an outright prohibition against it. The reason I'd be somewhat supportive of that is, I think it is critical. I think it is important, particularly given a DEP Commissioner, with the broad regulatory authority I have. We need to avoid any appearance of a possible conflict. That was part of why I quickly decided against the fund-raiser for Assemblyman Bennett when I realized it was a fund-raiser, as we've discussed earlier in the testimony.

SENATOR GORMLEY: So, based on the problem of appearance, which is obviously a real problem--

ACTING COMMISSIONER DAGGETT: Sure.

SENATOR GORMLEY: --you think you're positively disposed towards a regulation or a change--

ACTING COMMISSIONER DAGGETT: I have no problem. I don't have any problem with public officials having that kind of restriction. It would go a long way toward making the public feel assured that there was no problem.

SENATOR GORMLEY: We're talking specifically department heads.

ACTING COMMISSIONER DAGGETT: I wouldn't have a problem with that, frankly.

SENATOR GORMLEY: I think it would make it a lot easier for everyone. Thank you.

SENATOR O'CONNOR: For those of you who thought we would not get through this process, we are beginning to see the light at the end of the tunnel. Mindful of the fact that we have a two o'clock session today, we are going to keep moving without a break. I'd ask the reporter if you'd like to take a break at this point? (negative response) We'll rely on the sound alone, because I know you've been at it steadily since 10:15. You're okay? (referring to shorthand reporter) All right.

Senator Van Wagner?

SENATOR VAN WAGNER: Thank you, Mr. Chairman. Mr. Daggett, obviously over the past several months, this nomination has been subject to a great deal of comment. While I was listening to the questioning of the previous members -- the previous questions of the members -- I was just looking at the box score of testimony. I think it roughly comes out to eight against, four for, and two no comments, or expressing strong reservations, but in terms of the comments so far, not counting the people who have commented earlier.

In a sense, I look at that as really a healthy thing, because obviously people have expressed opinions for and against your nomination in one manner, shape, or form because of concerns that they have, whether it be in the area of ocean dumping, your conduct as an EPA regional director, how many permits you issued or how many permits you didn't deny, your feelings about wood burning, or ocean dumping. I think you have exhausted your comments, to a large degree, on why and under what circumstances you had to make those decisions as a permit officer.

I would like to go to, really, questions that revolve around what is now; what you may have to do if you are confirmed; what has to happen in this State if we are to make a small step toward cleaning our ocean, solving our waste disposal problem, maintaining some type of comprehensive waste disposal system in our State, and not falling prey to some of the concerns that have already been expressed. I'm going to go first to the Coastal Commission.

As you know, that was proposed by the Governor. It has been through a series of legislative reviews. Most recently, a Senate committee has reported out what is proposed to be a compromise. Earlier, I believe, an Assembly committee acted also on the same measure. What is your view? What do you see your role as, and what is your hope for the Coastal Commission, if, in fact, you support it as it now stands?

ACTING COMMISSIONER DAGGETT: I have to tell you that as it now stands, meaning as it has come out of committee, I don't have-- I'm still trying to get an understanding of all the details of it. As you know, it's relatively new. It's a lengthy bill. I am trying to get a better understanding. Generally speaking, I would be supportive of that bill as I understand it to this point. I think the idea of having a commission whose sole mission is the protection of our coastline is a laudable goal. I think what needs to be done, is to make sure it is done in a fashion that can operate in an efficient and effective fashion with respect to the permitting process. That also will go with it as part of its charge. The master plan concept, I think, is absolutely critical. It has to have-- There has to be some sort of regional planning approach to development, not only at the shore, but statewide. Certainly in this particular instance, the shoreline, that is critical. How we structure the transfer of authority from DEP to the Coastal Commission, I think, has to be carefully done, but I think it can be done. I don't think it's something that we should fear as being a major problem.

SENATOR VAN WAGNER: I take it that means that you favor the implementation of that legislation?

ACTING COMMISSIONER DAGGETT: As I understand it, yes. I would only put the caveat that I want to see if there are any nuances or details that I'm not comfortable with. That may be the case, but generally speaking, yes, I would favor it.

SENATOR VAN WAGNER: But you see it only as a framework within which governmental units charged with the responsibility of protecting coastal resources of this State can work together?

ACTING COMMISSIONER DAGGETT: It's a framework, but it also has with it quite a bit of substance that has been proposed anyway. By that I mean, they're not just going to have--

SENATOR VAN WAGNER: I understand; the permitting aspects and the CAFRA implications.

ACTING COMMISSIONER DAGGETT: Yes, you're right. Rethinking your question, yes. It is a framework whereby we can make a number of decisions and go through a process in order to protect the coast, yes.

SENATOR VAN WAGNER: But in no way would you consider it, I'm sure, a solution to our coastal problems?

ACTING COMMISSIONER DAGGETT: By no means. Our coastal problems have some very difficult issues that are going to take a lot of commitment, a lot of time and effort, and by all means, a great deal of resources to overcome.

SENATOR VAN WAGNER: Well, that brings me to my next question: Will you join with me to support the Clean Water Enforcement Act in this State, that's currently pending before the Senate Environmental Committee?

ACTING COMMISSIONER DAGGETT: If it has not been amended from-- I haven't seen the latest version of it. I could not support the Clean Water Enforcement Act as it was originally proposed.

SENATOR VAN WAGNER: In what fashion do you have a problem?

ACTING COMMISSIONER DAGGETT: I have a problem severalfold. I have a problem in taking away a major amount of discretion from the Department in its enforcement activities. I have a great deal of difficulty with the concept of having municipal officials being held criminally liable for some of the possibly routine violations that might occur, because I think it will put a huge dampening effect on the ability to attract decent people, and good people, into the municipal governments. I think that we need to shape a bill that has the goals of improving our water quality and making sure that we have adequate enforcement. But not in the way-- I don't see that in the way the bill is originall, shaped. No.

SENATOR VAN WAGNER: There are those who say that despite the fact that administration officials -- not just this administration but in other administrations, and in other jurisdictions, as well as legislators and municipal governing officials -- talk about strong penalties and sending a strong signal to people who would, in effect, play fast and loose with the environment, particularly the coastal environment, that although we say that, we do not, in fact, back our words up with strong laws.

ACTING COMMISSIONER DAGGETT: I don't agree with that. I think New Jersey has some of the strongest laws in this country with respect to taking on polluters. I think what we have got to do, though, is, we have to take--

SENATOR VAN WAGNER: Let me just correct that. Let me not say strong laws. Strong enforcement.

ACTING COMMISSIONER DAGGETT: Well, I think DEP's record on enforcement is a lot better than people give it credit for. I think if you take an honest assessment and go into the details of various enforcement actions that we've taken and why we've come to the conclusions we've come to, you'll find that we're doing a pretty good job on that. If you ask me whether or not we are getting to everybody that we ought to get to that need some enforcement action taken, I'll tell you that there may be more going on out there than we can deal with. That's true, and that's something we need to address, if that's the case. I would have to tell you also that we need to take, in my mind, a look at the concept of enforcement, particularly with respect to municipalities, as to what we want to see.

For example, is a measure of enforcement against municipalities, that we have a fine that we've assessed, which means taxpayers have to pay additional moneys that these days are sometimes in the half-a-million, million, million-and-a-half dollar range? Or is the concept of

enforcement better addressed by saying we now have them on an enforceable schedule in court by which they have to meet certain deadlines toward making improvements and having commitments behind that, in the case as we do, of billions of dollars of those local dollars going toward it? I'm thinking in terms of improving sewage treatment plants, for example. To me, having them on enforceable court orders with stipulated penalties attached is a good measure of enforcement, and successful enforcement. Having a scalp, or something to show by way of penalties, may or may not be something that ought to come with that. What we haven't done is take a good hard look at what we want to do with municipalities in particular.

Shouldn't they be distinct from industry in the actions we take? Some people think yes; other people think no. We need to go through that debate in this State, I think, and we need to take a good hard look at just what we mean by enforcement, who we want to target in our enforcement activities, and then how aggressive we want to be.

SENATOR VAN WAGNER: I'm going to ask you this just as an aside: As you know, I have taken over the management and sponsorship of that bill with the departure of now Congressman Pallone. I am very concerned about it and interested in it. Obviously, as a shore legislator, or as a bayshore legislator, I have other concerns; particularly the relationship of the Coastal Commission to the Raritan Bay region, and how that will be addressed in relationship to the oceanfront problem, which I realize is a broader problem.

Secondly, in relation to the Clean Water Enforcement Act as it presently stands in the Legislature, I would like to ask you or your staff to please express to me, in writing, comments regarding that bill, if you would?

ACTING COMMISSIONER DAGGETT: Absolutely.

SENATOR VAN WAGNER: Regardless of what happens as the outcome of this hearing, I would like to get that information.

ACTING COMMISSIONER DAGGETT: Certainly. We'd be happy to do that.

SENATOR VAN WAGNER: I'm going to move quickly. In the area of legislation again, there is, in the Assembly now, a bill that has been recently introduced that would change the structure of the Department of Environmental Protection into the Department of Natural Resources -- Natural and Historic Resources. What is your view of that bill? It is sponsored, I believe, by Mrs. Ogden.

ACTING COMMISSIONER DAGGETT: I have said that I think it is a bill that ought to be debated and be part of the political process, but that I'm not going to get on board behind that bill one way or another right now. I can see reasons that people make for supporting it. I also happen to think there are some good reasons not to support it.

On the not supporting it side, I'd say that anymore the decisions we make have such interconnectedness, that to separate out these two departments when a number of things in Natural Resources need to be-- There needs to be an interaction in relationship to the other issues in the Department; like water, air, and hazardous waste. It will create two bureaucracies -- two new bureaucracies -- that essentially have to learn to work together.

Right now, there is a lot that goes on -- interaction within the Department. It is very good, and would be difficult to maintain at the levels they are now if we had two separate departments. I also would say to you that to my mind, separation versus non-separation isn't as much an issue as the leadership of the departments. I think we have had demonstrated at times in the previous administration on the national level, that you can have a Department of Interior and an EPA that are headed by people, that without the commitment, cannot end up moving forward. And by the same token, if you put the right people in, you can move great distances. So I

think the leadership is as important as whether it is separate or not. I think what's critical is to get people who are deeply committed to the environment whether you have one or two departments.

I think it needs to be debated at some length. Those are some initial thoughts, and I would be happy to take part -- actively participate, I should say -- in debate in the upcoming campaign as to whether the next administration, whether it be Republican or Democrat, should, as one of its initial acts, move forward on such a separation of authority. I would support that debate, but I don't think it is something we ought to take on right now.

SENATOR VAN WAGNER: Would you be willing to begin the process of looking at the obvious need at this point -- and I say, quite obvious, if you listen to any of the questions -- to restructure the departmental objectives in terms of management, environmental planning, and interaction with the constituent counties and municipalities who have, in fact, the responsibility of implementing most of the laws that we have put in place?

ACTING COMMISSIONER DAGGETT: I think while it needs to be reviewed, that things again aren't going nearly as badly as a lot of common feeling is. I have instituted a number of things already. I've got this data project I mentioned. I'm going through a complete review of the rules of the Department. We hope that within six months we'll have standardized all the rules, so that if you are going into air, you are going to be treated the same way you are in water or in hazardous waste. We think that we can take off as much as one volume of the five-volume set of rules we have in that process. I'm instituting a study of the impact of all of our regulations on municipalities to see whether or not there is some overwhelming impact, which if we make some corrections without any change of our environmental gains, that we can

reduce the overall regulatory impact on municipalities. I'm trying to institute and put together this commission the Governor proposed in the State of the State Message, to take a hard look at the overall Department.

And, what we are doing, where we have been, where we are today, where we're going? All those questions need to be addressed. They need to be addressed, frankly, a bit, and the Legislature needs to be a part of that. Everybody needs to be a part of that discussion. So we need a broad-based commission, but we need to do it in some degree, frankly, in a setting that doesn't continually pile more on, as we are doing that.

I've said to some of you in conversations, and I really feel strongly, that what this Department needs right now is a little breathing room. We've got an enormous amount of material on our plates and we need to make sure that the management systems in place are adequate, and if not, we need to make the tough decisions and change them. We need to make sure that we are doing everything possible to make a better and more efficient operation because of the fact that without it, we are going to collapse on ourselves.

SENATOR VAN WAGNER: So, I take it then that you are committed to restructuring the Department?

ACTING COMMISSIONER DAGGETT: In whatever way is necessary, yes. And I'll work with anybody toward that end.

SENATOR VAN WAGNER: Two final questions: The issue, of course, of ocean dumping is a consistent issue. Is it your view at this point that there is a-- I don't want you to go into a lengthy answer, if you will; just if you can tell me yes, no, I think so, in perhaps a few short sentences. Is it your view that, in fact, there are no available land-based alternatives to ocean dumping or garbage disposal outside of mass burning?

ACTING COMMISSIONER DAGGETT: There are options that will need some additional time to be developed, but they do not currently exist readily here in New Jersey.

SENATOR VAN WAGNER: I'll just make a quick observation: I think that there is, in some instances, an opportunity for reductions in the sludge contamination process, or dewatering process.

ACTING COMMISSIONER DAGGETT: Through pretreatment.

SENATOR VAN WAGNER: Right. That may -- and I say this to you directly-- There is not enough emphasis on pretreatment; there is not enough emphasis on source reduction. I would like to see -- and I realize that should you be confirmed, you will have perhaps nine months in this position, although you have been Acting for three months now-- I would like to see us begin to move more heavily toward that in the Department's commitment, rather than through the constant discussion in the newspapers and the legislative halls by the legislators. I would appreciate that kind of commitment, regardless of what the outcome of this hearing is.

ACTING COMMISSIONER DAGGETT: May I say, I couldn't agree with you more on that. I think that we are struggling, particularly within the Department, to make source reduction more and more a part of our permitting process and working through those issues. More importantly, I am in the latter stages of working with my staff on developing a major source reduction proposal for the State to consider. I know there is a piece of legislation that's beginning to move-- I think, I'm trying to think, is it Senator Dalton or is it-- I forget who it is that's sponsoring a piece of legislation on source reduction that is also taking a look at this. That, to me, should be one of the highest priorities that face this State right now; addressing source reduction, getting legislation in place to deal with it, and moving forward, because the beginning of the pipeline, and not the end of the pipeline, should be the focus of environmental protection in New Jersey.

SENATOR VAN WAGNER: I take it to mean that you would support source reduction as it relates to floatables and other materials of that nature--

ACTING COMMISSIONER DAGGETT: By all means.

SENATOR VAN WAGNER: --such as proposed by former Senator Pallone, and former Assemblyman Villane?

ACTING COMMISSIONER DAGGETT: I'm not sure if I know exactly the proposals they made with respect to source reduction, but--

SENATOR VAN WAGNER: Well, conceptually at least.

ACTING COMMISSIONER DAGGETT: Yes, conceptually, sure. By the way, that's what the Shore Cleanup Program is all about, as you know.

SENATOR VAN WAGNER: Final observation and comment on radon: I have received a series of -- and I send this as a caution to you-- I have received a series of calls about people who have called various numbers through advertising that they have seen to have radon testing done in their homes. And in some cases, as it has turned out, some of this testing is not-- Although it is advertised as DEP approved, or EPA approved, it does so in a manner that is very misleading. In some cases, people -- consumers who think that they are being protected by this test are, in fact, not, and, in fact, pay more for a test that is relatively inexpensive.

ACTING COMMISSIONER DAGGETT: People, if they have examples-- Please get them to us, and we will look into it immediately.

SENATOR VAN WAGNER: Where in your Department should that be focused?

ACTING COMMISSIONER DAGGETT: We have a radon hotline that you can call.

SENATOR VAN WAGNER: That's always busy.

ACTING COMMISSIONER DAGGETT: It's always busy?

SENATOR VAN WAGNER: Yeah.

ACTING COMMISSIONER DAGGETT: Then get it to my office -- the information -- and I'll have it looked into.

SENATOR VAN WAGNER: Thank you, Mr. Chairman.

SENATOR O'CONNOR: Thank you, Senator Van Wagner. Before we move on the nomination, I would like to publicly thank all of you who attended today. The meeting did start at 10:30, and we've gone continuously since then. I want to thank you for your patience. I would like to thank all of those who testified -- some 30 people who testified before the Committee, and those who sent in statements that we have in our packets.

At this point we'll motion to release the nomination.

SENATOR ZANE: So moved,

SENATOR O'CONNOR: So moved by Senator Zane.

SENATOR ORECHIO: I'll second that.

SENATOR O'CONNOR: Seconded by Senator Orechio. I would ask in the interest of time, since the Senate is due to convene in 15 minutes, that we not explain our reasons. The press is here. If you want to stay afterwards and record your reason with them, that would be fine. I think we are being asked by our leadership downstairs to conclude as quickly as possible.

I'd ask that you explain your votes afterwards, but let's vote and let's conclude.

MR. TUMULTY: Senator O'Connor?

SENATOR O'CONNOR: Yes.

MR. TUMULTY: Senator Zane?

SENATOR ZANE: Yes.

MR. TUMULTY: Senator Ambrosio?

SENATOR AMBROSIO: Yes.

MR. TUMULTY: Senator Codey?

SENATOR CODEY: Yes

MR. TUMULTY: Senator Orechio?

SENATOR ORECHIO: Yes

MR. TUMULTY: Senator Van Wagner?

SENATOR VAN WAGNER: Yes

MR. TUMULTY: Senator Gormley?

SENATOR GORMLEY: Yes

MR. TUMULTY: Senator DiFrancesco and Senator Dorsey also asked to be voted in the affirmative. The nomination is released.

SENATOR O'CONNOR: Congratulations, Mr. Commissioner.

ACTING COMMISSIONER DAGGETT: Thank you very much.

SENATOR O'CONNOR: We are now adjourned. Our next meeting is on February 23.

Senator Lynch has asked to be recorded in the affirmative on that vote.

(HEARING CONCLUDED)

APPENDIX

NEW JERSEY ENVIRONMENTAL FEDERATION
46 BAYARD STREET, NEW BRUNSWICK, NJ 08901
201-846-4224

COMMENTS ON THE CONFIRMATION OF CHRISTOPHER DAGGETT AS COMMISSIONER OF NJDEP

My name is Jane Nogaki and I am chairman of the New Jersey Environmental Federation, a coalition of 45 labor, citizen, and environmental groups, and 40,000 individual members. The New Jersey Environmental Federation thanks the Committee for the opportunity to present comments on the issue of whether Christopher Daggett should be confirmed as Commissioner of the New Jersey Department of Environmental Protection.

We feel that Mr. Daggett's past record on the environment while at EPA Region II and during the last 5 months as Acting Commissioner of NJDEP has been mixed. His performance raises a number of serious issues that cause us to have grave concerns about his commitment to environmental protection. We feel the Committee should address these concerns before making its recommendation.

First we will examine his record at EPA as Region II Administrator. On the plus side, he has been an advocate of wetlands protection, and in particular played a strong leadership role in raising concerns about the environmental impact of the multi-billion dollar boondoggle Westway Project. He has been accessible to leaders of community groups regarding the clean-up of local Superfund sites, although his follow-through has not always been satisfactory from the community groups' point of view. On the negative side, he has a terrible record on stopping ocean dumping and other threats to the Jersey shore. He has never denied a single ocean dumping permit, and he was an aggressive, outspoken advocate for ocean incineration of hazardous waste 100 miles off our coast. The question of ocean incineration was ultimately put to rest by Mr. Daggett's superiors at EPA headquarters in Washington because of its potential dangers to the ocean. Environmental groups and citizens of NJ are vehemently opposed to ocean dumping and ocean incineration of waste and we want the Committee to look very carefully at Mr. Daggett's past record to determine whether his positions have changed on these important issues.

Now we will look at his record from August to January as Acting Commissioner of NJDEP. He has had five months to demonstrate his leadership on environmental issues.

On the plus side, he responded to Clean Ocean Action, NJPIRG and NJEF when they requested him to postpone issuance of altered surface water quality standards due to lack of public participation. On the minus side, although Daggett has said enforcement will be a top priority for the DEP, the Department has failed to support the Clean Water Enforcement Act, important legislation which would call for automatic penalties including fines and jail sentences for repeat polluters. In addition, he has failed to redirect the state's garbage policy away from a low tech, outmoded burn and bury approach toward a long term preventive waste management approach which would emphasize reduction and recycling.

NJEF believes aggressive enforcement and pollution prevention are the cornerstones of effective environmental programs which will point New Jersey into the next century. We need a DEP Commissioner who will be supportive of legislation such as the Clean Water Enforcement Act, and who will take the lead in the area of hazardous waste, by creating an aggressive program to require industries to reduce their use of toxic substances and decrease their generation of toxic waste .

Finally, we question Mr. Daggett's judgement in attending the Republican National Committee fundraiser at the home of Laurence Bathgate, who at the time was the attorney representing Ciba Geigy in their effort to obtain a permit to build a new pharmaceutical plant. Although the EPA officials who investigated this matter chose not to take any action against Mr. Daggett, they did point out that Mr. Daggett did not disclose the nature of the relation between Mr. Bathgate and Ciba Geigy . Therefore he was not forthright with the EPA ethics committee about the full implications of the potential conflict of interest in attending the fundraiser.

In conclusion, while Mr. Daggett has some positive environmental accomplishments to his credit, there are also some negatives which we feel the Committee should address before making its recommendation about confirmation.

Thank you for the opportunity to comment on this important matter.

2/9/89

