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PUBLIC HEARING

before

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

Implementation of the State's  
Public Employee Occupational Safety and Health Act

July 1, 1987  
Room 334  
State House Annex  
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

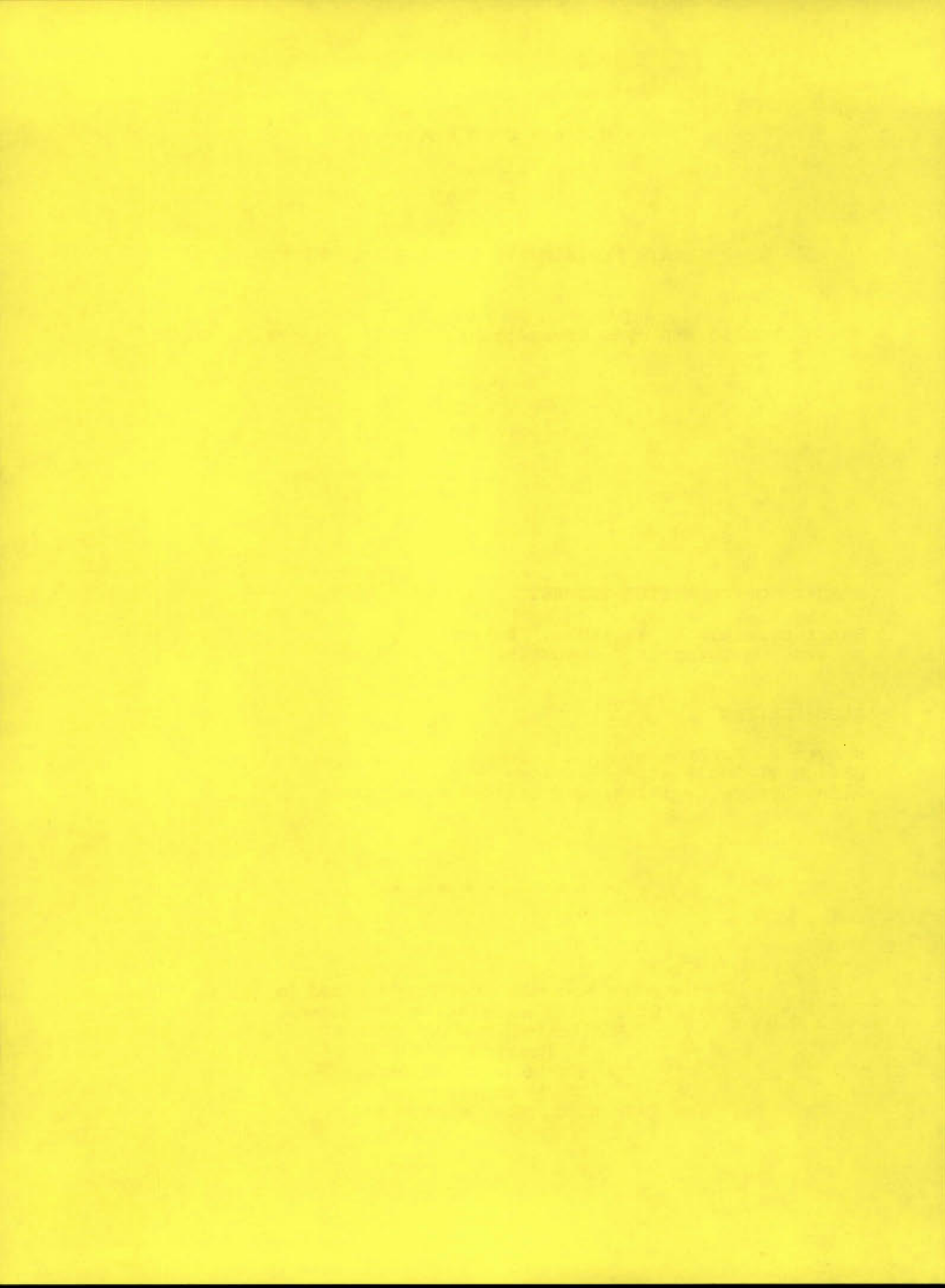
Senator Gerald R. Stockman, Chairman  
Senator Christopher J. Jackman, Vice Chairman

ALSO PRESENT:

Steven B. Frakt  
Office of Legislative Services  
Aide, Senate Legislative Oversight Committee

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**New Jersey State Legislature**

**SENATE**

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**MEMORANDUM**

**TO: Legislative Calendar  
Hearing Reporters**

**FROM: Steven B. Frakt, Committee Aide** SBF

**DATE: May 28, 1987**

**SUBJECT: SENATE OVERSIGHT COMMITTEE PUBLIC  
HEARINGS**

**The Senate Legislative Oversight Committee will conduct two public hearings on the implementation of the State's Public Employee Occupational Safety and Health Act on Tuesday, June 23 and Wednesday, July 1. Both hearings will commence at 10 a.m. in room 334 of the Annex.**



TABLE OF CONTENTS

Page

|   |    |
|---|----|
| Molly J. Coye, M.D.<br>Commissioner<br>New Jersey Department of Health  | 3  |
| Kathleen O'Leary<br>Director<br>Occupational Health Program<br>New Jersey Department of Health                                      | 9  |
| Alice Freund<br>Coordinator, PEOSHA Project<br>New Jersey Department of Health  | 23 |
| Alfred B. Vuocolo, Jr.<br>Special Assistant to the Commissioner of Labor<br>New Jersey Department of Labor                          | 44 |
| Mario Gomes<br>Assistant Director<br>Office of Public Employee Safety<br>New Jersey Department of Labor                             | 55 |
| William J. Clark<br>Assistant Commissioner<br>Division of Labor Relations and Workplace Standards<br>New Jersey Department of Labor | 70 |
| William Van Arnum<br>Assistant Director<br>Division of Workplace Standards<br>New Jersey Department of Labor                        | 71 |
| William M. Connolly<br>Deputy Director<br>Division of Housing and Development<br>New Jersey Department of Community Affairs         | 93 |
| <b>APPENDIX:</b>  |    |
| Statement submitted by Molly J. Coye, M.D.<br>Commissioner<br>New Jersey Department of Health                                       | 1x |

\* \* \* \* \*



SENATOR GERALD R. STOCKMAN (Chairman): Good morning. At our first hearing last week, this Committee heard rather disturbing and sometimes shocking testimony from various union representatives alleging the failure of the Department of Labor to carry out their responsibilities under the Public Employees' Occupational Safety and Health Act in a timely, thorough, and vigorous manner.

In making their major points, the union representatives offered numerous examples of safety and health situations that they believe need to be addressed. They alleged numerous incidents of the failure of the Administration to take proper action or act in a manner consistent with the spirit and letter of the PEOSHA law.

These charges are serious. There should be a full accounting of each and every one. But it's not possible for this Committee to review each of the particulars in a setting such as this hearing. Not only are there time constraints, I do not wish to lose sight of the forest for the trees. While I am not precluding testimony on specific cases, I would like this hearing to focus on issues of a systemic nature. For that reason, let me summarize the eight points developed at our first hearing:

1) It has been charged that although the law mandates that the Commissioner of Labor establish standards where no Federal standards are applicable, in three years only one standard has been promulgated;

2) It has been charged that although the advisory board listed 13 areas for priority for the development of standards, none of the standards have been promulgated;

3) It has been charged that although the Department of Labor is mandated to promulgate regulations for the proper administration and enforcement of the Act, no procedural standards have been promulgated;

4) It has been charged that although the Commissioner of Labor is required to issue a plan to develop health and safety standards, no plans have been adopted;

5) It has been charged that although the law requires regulations governing an information and educational program, no regulations for an educational program have been developed;

6) It has been charged that there is a lack of follow-up inspections to ensure that violation have been corrected;

7) It has been charged that the Department of Labor has issued only six orders to comply after finding 13,000 violations of safety and health standards;

8) And it's been charged that there is a constant bickering between the Department of Labor and the Department of Community Affairs as to the enforcement of fire safety and building code regulations.

Last week I allowed the union representatives wide latitude in presenting their testimony. I intend to do the same today for the Departments of Labor, Community Affairs, and Health, as they respond to these charges. I will add that I expect results out of these hearings. The final standards will be issued, that final procedural standards will be set up and established; that the Department of Labor will start issuing compliance orders, and that the Department of Labor will sit down with the organized representatives here to work in a harmonious way to make this act work.

We have a number of witnesses today. I'm delighted to see that the Commissioner has taken time out of her busy schedule to personally be here and share with us some of her ideas. My instinct tells me, and the information I get tells me, that's because of a genuine commitment on her part to this act, and to the letter and spirit of it. And I'm delighted to welcome Commissioner Molly Coye to speak to the Committee today. Senator Jackman, would you like to get in anything?

SENATOR JACKMAN: Me too.

SENATOR STOCKMAN: Me too. All right.

COMMISSIONER MOLLY J. COYE: Thank you very much, Senator. I'd like to thank you for the opportunity to appear to speak about the Public Employees' Occupational Safety and Health Act.

Our Occupational Health Program -- within the new division that we established last year for Occupational and Environmental Health -- is responsible for all activities related to occupational health in the Department of Health. This program included the PEOSH Project and the Right-to-Know Project, which cover public employees, and two other projects that conduct research and surveillance.

Before the PEOSH Act was passed, the Occupational Health Program was the main resource in the State to help public employees and employers with workplace health concerns. The PEOSH project started with the passage of the Act, and the hiring of just two people: Alice Freund, who remains as coordinator of the program, and an industrial hygienist. When we increased funding in Fiscal Year '86, we expanded from two to ten professionals.

The Act was implemented, as you know, in two phases: The first phase covered State employees, 114,000, and phase two, beginning in November of '86, covered an additional 346,000 local government employees. So the responsibilities of the departments administering the law increased very rapidly -- threefold.

Under the PEOSH Act, the Department of Health is mandated to investigate complaints of alleged health violations by conducting inspections of workplaces. That's the primary responsibility that we have. We are also mandated to consult the Department of Labor in for the following list of actions, so that we're involved in all of these other activities as well:

- the development of health standards,

- the development of procedural regulations,
- the enforcement of health standards,
- the dissemination of information to employer and employee organizations,
- the development of methods to encourage employers and employees to solve their own safety and health problems, and
- the development of methods to establish new safety and health programs and to strengthen old ones in the public agencies.

To do that in the Department of Health we've developed a comprehensive program. The types of activities are: 1) response to complaints and requests for assistance, 2) targeted investigations, 3) development of standards, 4) education, 5) internal policy development, 6) interagency policy development, 7) and managing the large amount of data that we collect as a result of our activities.

SENATOR STOCKMAN: Commissioner, let me stop you for a moment. Those areas of responsibility and activities, you tell me are focused within your Department, or on a statewide basis for all 21 departments?

COMMISSIONER COYE: Okay, the last part which I said, within our Department. The last part that I read, on the bottom of page 2 there, is within our Department. The section above that, in the middle of the page where I was reading the Department of Labor's responsibilities, we work with them on that. But we are developing standards, and targeting investigations for all the 21 departments, and also for the municipal and local groups; for everybody. So, it's not just for our own employees in the Health Department. It's for all the public employees.

SENATOR JACKMAN: That includes health and safety?

COMMISSIONER COYE: Primarily health, in the Department of Health. The Department of Labor is responsible for the safety areas. Okay?

SENATOR JACKMAN: Okay, that's what I want to know. Okay. Thank you.

COMMISSIONER COYE: Now I think you know, Senator Stockman, that my own training and background is in environmental and occupational health, and actually my specialty is in occupational medicine. So I feel a great deal of personal commitment to this area, and I really appreciate very much the tremendous boost that we got this spring, when Governor Kean requested an additional \$700,000 in new appropriations. I also appreciate the support from the public employee unions, and the Legislature in incorporating this into our Fiscal Year '88 budget. This new funding, and the associated personnel in Fiscal '88, will relieve our overburdened staff. It's an unparalleled opportunity to broaden our approach to improving public employee health. That funding will enable us to expand from a staff of 10 to a staff of 23 professionals. There are very few programs in the State that get the opportunity to expand that rapidly, and I think it reflects a real concern about the increase in our responsibilities when we took on the local and municipal employees as well.

With these new funds, I'd like to tell you a little bit about what we plan to do. We plan to triple the number of field investigations that we perform. We anticipate that we can continue to respond successfully to complaints, but we'll be able to decrease our response time and increase the number of targeted inspections in high risk workplaces where we know we may find problems. These are inspections not in response to a complaint, but where we say we know there are problems in these kinds of places and we go out to look at them. We'll also be able to devote at least one person full-time to educational efforts, and will be able to promote the formation of joint health and safety committees in many workplaces around the State. We think the formation and training of those kinds

of Committees will allow the employers and employees to do more for themselves; to be more self-sufficient, because obviously even with 23 workers we can't adequately cover the large number of employees that are under the law.

We will do much more to publicize the law, and to begin other activities. We'll be developing a standard on video display terminals. We will devote a full-time position to coordinating our approach to indoor air quality problems. Those are the tight office building syndrome, the energy efficient buildings, and completing the development of a standard for that. We also plan to incorporate a lot of the suggestions that come out of these hearings into our future plans, as we develop that work plan.

Let me very briefly -- I won't read all of it to you -- but go over some of our major activities in the past. Let me give you two examples of the complaint response, which was our major activity. The first one is a case of carbon monoxide. As you know, that's the way a lot of people commit suicide, so it's an important hazard. Last year we got two complaints from employees in a garage. During the winter especially, when all the windows and doors are closed, the vehicles would be started and left to warm up on cold mornings. The workers were complaining of headaches and dizziness and nausea, a lot of the typical symptoms we would expect, especially headaches. We went in and did monitoring for two days in that area, and documented that there were significant levels well over either the NYOSH recommended standard -- which is about 35 parts per million, or the OSHA standard of 50.

As a result of that, and sending the required letters, and having some meetings and discussing this with the various agencies, we were able to have significant changes in that workplace. Most importantly they sealed off the common walls between the garage and the office, installed a monitor to set

off an alarm whenever the carbon monoxide built up too high, and then set up written policies, and relocated a pregnant secretary who was exposed -- because of a particular hazard for pregnant women. So, that's a kind of concrete example of what can result when you go in to do these kinds of inspections.

The second case is number three on the next page, under asbestos. As you know, asbestos is probably the most important occupational hazard in the United State and around the world, and unfortunately we can't say we've totally controlled it. One of the continuing nagging problems is with the brake inspections and brake jobs that are done. As a result of the investigation that we conducted there, DOT ordered 21 enclosure systems to protect their employees from asbestos exposure in their garages. Our recommendations resulted in a number of other improvements, including forming the kind of joint labor, management, health and safety committee that we're trying to set up in many cases.

Those two are just examples of the kind of results that we've been able to get in some of our better inspections. Not all inspections are as successful as that, but at least in those two we really felt we were able to make an impact.

Now there are cases where we get a request for assistance from an employee or an employer, and there are no apparent violations of a standard. For example, there may not be an OSHA standard for that, or it may be below the OSHA standard, but frankly in our scientific point of view we may think the OSHA standard is inadequate. In those kinds of cases, we often offer what is called technical assistance. In other words, we're not doing an enforcement procedure because there isn't a standard to hold people to. What we're doing is offering technical assistance. This is the way we approach a lot of the stuffy office -- the tight office building complaints that happen. I'm now on top of page six, if you're referring to my testimony.

Since our major complaint is for tight office building and the stuffy air problems, and there are no applicable standards right now, we have streamlined our response by issuing written recommendations immediately to the employer letting them know what they need to change in their ventilation systems to add more outdoor air in their make-up system. And asking them to complete and return to us a ventilation questionnaire showing the measured quantities of outside air. So we have a way of checking on whether they have done what they're supposed to. This approach has been pretty successful, because most of our recommendations are indeed implemented, even though there is not in fact a standard that we can cite in many of these cases.

SENATOR STOCKMAN: Let me stop you for a moment. I don't want to disrupt your testimony but I know you're trying to help us, and for my sake, it brings up this question of promulgation of standards, and whether there has been a failure to do that or too long a delay. You talk in the statement about, for instance, these stuffy offices and problems about air quality, and there are no standards. Should there be standards?

COMMISSIONER COYE: We think there should be a standard. In this case we haven't completed the development of the standard. It's a very difficult standard to set because the range of different kinds of exposures people might experience in a tight office building varies tremendously. For example, I've personally done investigations where in some cases it's ditto fluid, it's printing fluid, it's just plain cigarette smoke and not enough outside air making it up, it's formaldehyde off-gassing from the chairs or the carpets-- So it's a pretty difficult standard, and here the onus is on us. We haven't finished the development of that standard. It's in review right now.

SENATOR STOCKMAN: Fine, now I'm going to be pressing -- because of some earlier testimony -- the Department of Labor about this subject of establishing standards. As I listen to you I gather that it's an issue that really overlaps the Department of Health and the Department of Labor. Is that correct?

COMMISSIONER COYE: Yes.

SENATOR STOCKMAN: And you're telling me you haven't completed the standards; you're working on them. That means people are day-to-day trying to establish them, but it takes time.

COMMISSIONER COYE: And there are different stages. I mean, like for example the tight office buildings indoor air quality standard. We are still internally in the Department of Health developing what we would propose to the advisory board for the PEOSHA program.

SENATOR STOCKMAN: How do you go about doing that? How many people do you have working on that?

COMMISSIONER COYE: Well, until we got this expansion to begin in July, we've only had a staff of 10. So, I don't know exactly how many we have, but it can't be more than one or two people working on standards development.

SENATOR STOCKMAN: And would they be working exclusively on that?

COMMISSIONER COYE: I doubt it very much.

KATHLEEN O'LEARY: No.

COMMISSIONER COYE: I'm sorry. I didn't have a chance to introduce Kathleen O'Leary, who is the Director of our Occupational Health program at the Department.

SENATOR STOCKMAN: Feel free to call on Ms. O'Leary. I think the Committee wants to get into this a little bit -- and maybe this is an appropriate time -- because I am concerned about how much progress we have or haven't made. You have a total staff of ten, to deal totally with this law. Ms.

O'Leary, do I understand that of those ten, one or two may have involved themselves to some degree in this question of promulgation of standards?

MS. O'LEARY: No, actually it's probably either four or five staff. We've now developed seven different standards. So different staff people have worked on different standards. Instead of taking one person and just have that person work on standards, the staff handles some complaints, technical assistance, and has an assignment to work on a standard over time. Once a standard is drafted, it's then reviewed within the Department. There's an interagency task force that then reviews it from different Department representatives. It then goes to the advisory board, then it goes to a subcommittee of the advisory board, then with recommendations back to the advisory board, then there's a procedure and a deliberation of the advisory board, and then they make recommendations to the Commissioner of Labor.

SENATOR STOCKMAN: About ten steps, give or take. How many standards are you focusing in on establishing, was it 13 or--

MS. O'LEARY: One standard has already been adopted, and there are--

SENATOR STOCKMAN: What area is that?

MS. O'LEARY: That was a standard with respect to direct exposure to asbestos.

SENATOR STOCKMAN: How long ago was that established, approximately?

MS. O'LEARY: Approximately a year ago.

SENATOR STOCKMAN: So I take it that made that journey -- that you just spread on the record through those various things -- and was approved, is in place and is being enforced now.

MS. O'LEARY: That's right.

SENATOR STOCKMAN: There are how many others in the mill, from start to finish?

MS. O'LEARY: There are six standards that are in that process, and two additional standards that are under development within the Department.

SENATOR STOCKMAN: Is that your target, to establish eight standards, or are there more?

MS. O'LEARY: One of those eight standards is a standard that was initiated by the Department of Labor. The other seven standards were standards initiated by the Department of Health.

SENATOR STOCKMAN: And, if you were to take those eight others that are making this journey -- right?

MS. O'LEARY: That's right.

SENATOR STOCKMAN: Can you give me some idea, some notion, of where they are along this journey, and where you anticipate us being in terms of adoption of additional standards?

MS. O'LEARY: Each one of them is at a different stage. So if you want to I can go through each one, or a copy. What we had done was put together a status of them. The Department of Labor probably has done something similar.

SENATOR STOCKMAN: All right. Let's come back to that, because I really interrupted the Commissioner. I think in fairness you want to complete your statements. Some of this you may not have to stay around for, and I know you're busy.

SENATOR JACKMAN: Just before you go any further. We had people come here from Glassboro College the other day, last week. They talked about asbestosis. Is your Department handling that phase of it, going in to Glassboro to check and find out whether these people are handling the asbestos? One of them claims he has contracted asbestosis. What has the Health Department done on that end of it? Are the inspectors taking care of that, or is the Labor Department taking care of that?

MS. O'LEARY: No, that would fall under our responsibility.

SENATOR JACKMAN: That's under your Department.

MS. O'LEARY: That's right.

SENATOR JACKMAN: Okay.

SENATOR STOCKMAN: We'll get into that maybe after the Commissioner finishes--

SENATOR JACKMAN: All right, good.

SENATOR STOCKMAN: --because there was some peculiarly intense comments and contentions about the handling of asbestos at Stockton State College -- or Glassboro, I'm sorry.

SENATOR JACKMAN: Glassboro.

SENATOR STOCKMAN: Okay, I'm sorry.

COMMISSIONER COYE: What I was talking about was the technical assistance that we give, where we don't have a standard that covers something, but there is a potential problem; we still go in. What we can do there is not an enforcement action, but offering technical assistance, and let me give you two examples.

There is not a good standard on diesel exhaust. So, when we heard about a problem in firehouses, we went into the firehouses. We developed a fact sheet so the firehouse managers and the workers would understand what the health risks were, and what the ways you could control it were in the different firehouses. As a result of that, \$500,000 is being spent to completely renovate one firehouse and isolate the engine room from the living quarters, because the diesel fumes were coming up into the living quarters for the firemen. Additional ventilation is being provided in all the firehouses so you can seal off the fumes getting into the living areas, and you can suck out the diesel exhaust fumes from the area where the trucks are. So that's again, practical results from doing this kind of inspection.

More typical of the kind of thing we do are the indoor air quality, which is case number two here. Here we had a complaint from a county library where the problems of cigarette

smoke were made worse by the fact that there had been some pesticides sprayed on some ficus trees in the library. You know all the libraries in all the buildings now have plants inside, and one of the problems we ran into was the pesticides that are sprayed on those plants. Our investigation found that the pesticide that was applied -- orthine -- is not indicated for indoor use, and actually had carcinogenic and reproductive effects. We recommended that they not use that pesticide any longer inside, and actually referred it to DEP who cited the violation of applying the wrong pesticide in the building. We also managed to help them with the smoking problem by recommending improvements in the ventilation, and changes in their rules about when and where people could smoke.

So let's stop with those two examples in the case of the technical assistance. Going to the next type of work we do, which are targeted inspections-- This is on the bottom of page seven. This has been a relatively new activity for us. We realized that if we continue to reply to complaints only, we would sometimes miss out on important health problems, because the problems which workers know about and recognize -- therefore know enough to call us about -- are not necessarily the only bad problems. There can be other problems that we're aware of, and that we ought to be going out and taking a positive action on.

In 1987 we investigated 20 indoor firing ranges, either in response to receiving reports of lead poisoning from our own lead registry, or from our own physicians surveillance system, or following up on recommendations from investigations in previous years. What that meant was instead of someone making a complaint to us, we looked at all our data and we said, "We think there's a problem in the indoor firing ranges from lead poisoning from the bullets, so we're going to go out and look at them." That's a targeted inspection.

The third kind of activity is standard development, and we've already discussed that so I won't go over that testimony. We can come back and discuss it later. I would like to point out though that our approach to standard setting has been somewhat different from Federal OSHA's approach. We think it's much more appropriate for public employers, than the OSHA approach to general industry. For example, rather than requiring the public employer to hire industrial hygienists or physicians to do air or medical monitoring, we try to remove the hazard. In other words, the Federal OSHA approach is to say you can keep using something, or you can keep doing whatever you were doing before, but you should have air monitoring and physician care for the people. What we try to do as much as possible is offer what are called engineering solutions. What that means is to change the design of the process to enclose it completely so there are no fumes that come off of it, or to substitute one material for another.

That approach we think will be very practical for public employers because: First of all it's very expensive to have all the industrial hygiene and medical monitoring on a permanent basis. And also, frankly, that always was the original intention that Federal OSHA was supposed to have -- to try and actually get changes in the workplace that would mean workers would not be exposed all their life to some noxious substance.

We also have been doing a great deal on education. We respond really to hundreds and hundreds of requests for information by sending out information, especially we did big mailings on the asbestos standard, and to the schools on the dangers of picric acid -- which they were using a great deal. We developed a bulletin on the diesel fumes -- as I said -- on fire stations. We're currently developing a bulletin on general hazards in the schools since we now have the responsibility. About half of the local municipal employees

that we have responsibility for now are the school workers. We do a lot of public speaking, both in individual workplaces for unions, and for the associations that are listed here in my testimony.

Internal policy for us means just figuring out how we're going to interpret existing regulations. For example, OSHA standards on the use of respirators, and making that easier to understand for other State agencies.

Interagency policy means working with each department on the particular problems they tend to have. For example, with the Department of Education we're working on school problems such as the ditto machine fluid that many schools use. The Department of Community Affairs, we're working on ventilation standards. And with the Department of Labor, on the orders for compliance on development of standards. We also produce the complaint form that's used by the three agencies.

And finally -- especially next year as we start doing more and more inspections -- our data system is getting pretty enormous as a result of all these inspections. It's important for us to manage that data well, not only to track whether we are following up appropriately on each case, but also so we can look at our experience overall and say, "Well, in New Jersey these are the kinds of problems that are really high on the list, that we've run into a lot of high levels and we need to target more activity to that."

Let me just finish up by saying, given what you heard last week, we recognize that there certainly are inherent difficulties related to the interagency administration of many pieces of legislation. These problems occur in other State and Federal programs, especially in new and developing programs. We have been relatively successful at resolving this kind of problem in the past, and we're optimistic that many of the problems with the functioning of PEOSHA cited in the previous hearing, will also be resolved.

For example, in working with DEP on two major programs -- Right-to-Know and Risk Assessment -- we did have similar initial difficulties, sometimes in terms of communication. We successfully coordinated those activities and worked out a joint agreement. Similarly, we're now in the process of establishing a PEOSHA interagency task force, with representatives from each department reporting monthly to their respective commissioners. This task force will meet monthly and report back, and we think that will substantially improve the coordination at the highest levels between the departments.

We also are proposing a streamlining of the current procedures for the development, review, and adoption of standards; and will work with the departments involved to revise and finalize those procedures.

Finally, I want to make a recommendation to both the Legislature and to the public. That is that we should not lose the unique opportunity available to us to become leaders in the field of public employee safety and health. Very often, in response to our efforts, we have heard the refrain, "OSHA does it this way. Why should we be different?" -- that we should follow the Federal OSHA model. We should not make some of the same mistakes that Federal OSHA has made. It has been criticized for its narrow approach to occupational health in the private sector. In New Jersey we have the ability and the opportunity to be better than OSHA, and to have the best public sector program in the country, if we maintain strong and innovative leadership, and flexibility, creativity, and commitment among our agencies and the legislators who created this program, and are very responsive to it.

Thank you for the chance to actually go through all of my written comments in such detail. I'd be glad to stay and answer questions for a few minutes, and then I could let Kathleen and Alice Freund -- who is the coordinator of PEOSHA -- pick up for me if that's okay.

SENATOR STOCKMAN: All right, fine. If any questions are appropriate to someone other than yourself or your staff, feel free to just pass the ball to them.

First of all, Commissioner, I appreciate your testimony. I said that. I appreciate your plea that we in fact not be satisfied simply with trying to catch up with, or operate in an OSHA type of approach or atmosphere, but in fact argue about whether we should be doing better than OSHA has done at the Federal level. I think you'd agree that before we can outdistance OSHA and the approach that has been taken in the private sector through OSHA, we've got to catch fully up to it, and beyond. At least some of the testimony we've heard raises questions as to whether we've gotten there yet.

For instance, one thing that concerns me is this violations issue. Maybe you can help me. It was charged that the Department of Labor had issued only six orders to comply after finding 13,000 violations of safety and health standards. Now first of all let me ask you this. Are you familiar with those statistics, or know anything about them?

COMMISSIONER COYE: I know generically. I would refer to Kathleen on a lot of the details of it. I would like to make a general comment though. I think that even if we expand to 23 staff, and with the full cooperation with the other departments, with more than 400,000 public employees -- and I don't know how many public employment places, centers of work that there are-- One of the things we learned from the OSHA experience is that there's no way that we can alone get into every workplace. The old figures that used to be given for OSHA was, there was 114 years from the first inspection to the return inspection if you went to every workplace in the country. So one of the things that we learned from that is we're a lot better off if we have very good education programs and joint labor/management safety committees, and then were available both to do the target inspections and to follow-up on

complaints. For example in the tight office building, the indoor air quality problem, instead of going in workplace after workplace after workplace, and reinventing the wheel in each case; if we can develop an approach that maximizes our effectiveness, that that's very helpful.

So independent of the specifics that I hope Kathleen will give you on the actual enforcement actions, I'm not sure I would always use that as the measure of whether we have an effective program.

SENATOR STOCKMAN: Good. I absolutely agree with you, but, the notion of cooperation -- and incidentally that's been somewhat challenged, and I'm very concerned about that, and I want to ask you about -- that is a good, close, friendly, working relationship between organized labor and the people it represents, and the departments enforcing-- And my instinct is, from what I heard, that there is some real question about that. So, I don't think we've gone that route necessarily; we'll get into that. But, if you don't have at least some evidence of seriousness in terms of enforcement, I hope you would agree with me that the beyond step, the more important arguable step about cooperative efforts' is severely undermined. I mean, if I know that the motor vehicle laws aren't going to be enforced, and that I can speed at 70 and 80 miles an hour with impunity, then the fact that I get some literature and I'm persuaded to go to an education program maybe about the dangers of drinking and driving, or the dangers of speed and driving, I'm going to listen some, but you know-- But if I know that in addition, that, hey if the message educationally cooperatively doesn't get through, there is a bigger stick in the offing.

So I respect and accept your concept, but let's get back to the question: 13,000 violations, and six compliance orders. Now that may be totally off the mark. That may be inaccurate, and I want to be careful. I haven't heard from

Labor yet, but you're here and then you're going to leave, and I want to get you before you leave. Ms. O' Leary, do you know anything about that?

MS. O'LEARY: No. Those statistics are Department of Labor actions. They don't refer to Department of Health actions.

SENATOR STOCKMAN: Well, does that mean you were not in on any of those?

MS. O'LEARY: No. I can just give you the number for ours. There were two orders to comply sent to employers, and there are four requests from the Department of Health that were forwarded to the Department of Labor for action -- for them to then issue orders to comply. Those other numbers refer to Department of Labor statistics.

SENATOR STOCKMAN: Well, now I'm confused, because I'm having a hard time differentiating. In other words, as I understood you earlier, you get into investigations -- at least some aspects, primarily I gather the health rather than the safety. So were you into some of those 13,000 violations found?

MS. O'LEARY: The 13,000 are safety inspections.

SENATOR STOCKMAN: Are safety, alright. So I'm talking to the wrong people. On the health side, how many inspections did you make, let's say in the last year, or since you've been at it, with regard to health as opposed to safety?

MS. O'LEARY: Our statistics are broken down a little bit differently. Probably in the past year we're talking about something like 40 or 50 site inspections.

SENATOR STOCKMAN: All right. Most of those were as a result of complaints received by you?

MS. O'LEARY: Most of them, right.

SENATOR STOCKMAN: A few of them were--

MS. O'LEARY: Targeted, yes.

SENATOR STOCKMAN: For instance I gather the last, was that more your initiative based on--

MS. O'LEARY: That's right.

SENATOR STOCKMAN: But most of those 40 to 50 inspections by your people, were the result of public employees bringing complaints to your Department.

MS. O'LEARY: That's right.

SENATOR STOCKMAN: Your people went out and inspected, and in two of those instances the situation was clear enough, severe enough, that you actually issued orders to comply with a finding.

MS. O'LEARY: Yes.

COMMISSIONER COYE: Yes. Let me add one thing though. We only go to the point of getting an order to comply if the employer is not willing to make the changes. So if we can manage to get it all wrapped up-- This is a difference from the Federal OSHA approach, where they would cite in any case--

SENATOR STOCKMAN: Okay.

COMMISSIONER COYE: --and order to abate, but we don't need to get the order to comply unless they're not willing to take care of it.

SENATOR STOCKMAN: So I can sense that in those two orders to comply, you had some rather recalcitrant public officials with regard to what was going on.

MS. O'LEARY: In this particular case you're talking about where you find violations of standards. In many of the investigations that we're doing there are no applicable standards where you can then issue a citation. So what you have to do is then make recommendations and work with the employer to correct the problem. For example, about a third of the investigations that we do are with respect to indoor air pollution problems, and there's no standard that you can cite. Then you have to rely on providing technical assistance to help resolve the problem.

SENATOR STOCKMAN: All right. Now I'm getting the picture, slow but sure. That's not critical. Two orders to comply were actually issued, so there were standards that were clearly violated, and was it a situation where despite your pleas, you sensed or saw that the public officials were not going to change it without an order?

MS. O'LEARY: Actually, I think it's more clear that there were violations there. We wanted to issue orders to comply where we saw violations of a standard.

SENATOR STOCKMAN: Regardless of whether the people involved were likely to immediately correct it or not?

MS. O'LEARY: I think in most cases you're going to find a degree of compliance with recommendations, but we wanted to have an effect in these cases. We felt that it was a serious enough violation that we should issue an order to comply.

COMMISSIONER COYE: It becomes also a question of, if you don't know six months or a year down the road how effectively it will have been implemented, getting it on the record by having an order to comply becomes very important also.

SENATOR STOCKMAN: So -- as I listen to you through -- you can come upon situations where there are standards, where there is a violation of the standard, but were based on the not too seriousness of it, or other factors -- such as the very positive attitude of the public employees in charge involved -- that you will work it out, it will get corrected, and you'll go on your way, and there will be no issue ordered. Right?

COMMISSIONER COYE: Right.

SENATOR STOCKMAN: Then in some instances the standards are violated, you see them, and you want -- and put on the record -- an order to comply. There were two of those.

MS. O'LEARY: Right. What we have to do is make the request. Actually the Department of Labor issues the order to comply. So what we have to do is ask the Department of Labor. We give them the documentation.

SENATOR STOCKMAN: Oh, okay. There's where I wanted to get to because I didn't understand it. You don't have authority to issue orders to comply?

MS. O'LEARY: No.

SENATOR STOCKMAN: That's what I thought. I should have known that. So you request, in some instances, the Department of Labor to issue orders to comply.

MS. O'LEARY: That's right.

SENATOR STOCKMAN: Now, you've obtained two such orders to comply since the Act has been in force, correct?

MS. O'LEARY: That's right, and four others have been forwarded to the Department of Labor.

SENATOR STOCKMAN: Do I take it from that your total number of requests for orders to comply, to the Department of Labor to date have been six?

MS. O'LEARY: That's right.

SENATOR STOCKMAN: The other four are being reviewed, presumably. What's the time lapse? When did those other four requests go in, approximately? A week ago, a month ago?

MS. O'LEARY: It would be difficult -- I could probably give you the dates if you'd like.

SENATOR STOCKMAN: Approximately.

MS. O'LEARY: A few months.

SENATOR STOCKMAN: A few months?

MS. O'LEARY: A couple of months in different cases.

SENATOR STOCKMAN: What's the oldest one, roughly?

MS. O'LEARY: I can't give you the numbers. Probably it's a matter of months, but I'm not sure of the times.

SENATOR STOCKMAN: Who would have handled that? Would you have handled it yourself? Would a letter under your hand go to the Department of Labor?

MS. O'LEARY: No, Alice Freund.

SENATOR STOCKMAN: Alice who?

MS. O'LEARY: Alice Freund.

SENATOR STOCKMAN: Is Alice Freund here?

COMMISSIONER COYE: She's here and she's the coordinator--

SENATOR STOCKMAN: Alice, can you help us with that? (Ms. Freund comes out of audience to answer questions) Alice, do you want to take a seat here for a second? It's Ms. Freund?  
A L I C E F R E U N D: Right.

SENATOR STOCKMAN: And you are directly involved, along with Ms. O'Leary, in this phase of the Department of Health, correct?

MS. FREUND: Correct.

SENATOR STOCKMAN: Did you make the requests to the Department of Labor in these four other compliance matters?

MS. FREUND: Yes.

SENATOR STOCKMAN: Can you tell us the earliest one that you requested, how far back it goes?

MS. FREUND: Those four actually include the two that were issued. I think there was some confusion about the statistics.

SENATOR STOCKMAN: All right, so we're down--

MS. FREUND: We record a total of four violations. Anytime we see a violation of a standard, we forward it to the Department of Labor.

SENATOR STOCKMAN: Now, wait a minute. Let me digest that. Anytime you see a violation of an established standard, you as a procedural matter are trained to make a request to the Department of Labor, to issue an order of compliance?

MS. FREUND: That's right. The confusion is that if we see--

SENATOR STOCKMAN: I'm glad you acknowledge there's some confusion, because I know there's some up here. Maybe nowhere else.

MS. FREUND: No, I think what we're talking about is a language problem. There's standard violations, and then there's what we see as health hazards. We have under the law the ability to make recommendations to abate health hazards. We don't usually find violations of health standards. In fact, we've only found what we think are four violations.

COMMISSIONER COYE: If I can add an editorial comment from my experience with NYOSH and OSHA. Part of the reason for that, you should understand, is that there are something around 30- to 50,000 chemicals used in American workplaces and there are considerably less than that total number of standards -- under a thousand standards existing. So, frequently, there are either no standards for substances, or the standard may have been set ten years ago and it not adequately protective we feel.

SENATOR STOCKMAN: But I'm trying to make sure we understand ourselves as we go through this hearing, in terms of the standard operational procedures.

MS. FREUND: Okay.

SENATOR STOCKMAN: In listening I may have not realized that it's more complex. But, can we agree that you've gone out to roughly 40 to 50 locations to investigate questions about public health for the employees in the workplace?

MS. FREUND: That's just in the last year. We've done probably a total of a 100.

SENATOR STOCKMAN: All right, so in the last year it's 40.

MS. FREUND: And that doesn't include the targeted investigations of firing ranges.

SENATOR STOCKMAN: All right. And out of those, do I understand that you found and made requests for orders of compliance with regard to four?

MS. FREUND: Correct.

SENATOR STOCKMAN: Two of those requests -- which go on to the Department of Labor -- were acted on, and orders to comply were issued.

MS. FREUND: Correct.

SENATOR STOCKMAN: The other two have not been yet.

MS. FREUND: That's correct.

SENATOR STOCKMAN: Now one of the questions I was getting at was, when were those other two requests made to the Department of Labor? How long ago?

MS. FREUND: Approximately April of this year.

SENATOR STOCKMAN: April of '87. So we're talking about May, June, July, a couple of months time. You're still waiting to get a yes or a no on that. What were those two? What did they involve basically?

MS. FREUND: One was a school where children and teachers were doing asbestos brake work in an auto body shop.

SENATOR STOCKMAN: I gather you thought that a serious enough problem and a clear enough violation of your standards to constitute a health hazard?

MS. FREUND: That's correct.

SENATOR STOCKMAN: And you asked the Department of Labor to issue an order on it?

MS. FREUND: Correct.

SENATOR STOCKMAN: And they're still studying it?

MS. FREUND: Well they actually responded, but the problem isn't resolved. We've talked to them about resolving it.

SENATOR STOCKMAN: How did they respond?

MS. FREUND: That they didn't feel it was citeable.

SENATOR STOCKMAN: Serious enough?

MS. FREUND: Now, one of the issues--

SENATOR STOCKMAN: Let's stay right there for a minute.

MS. FREUND: No they didn't say it wasn't serious enough.

SENATOR STOCKMAN: But, we've got a specific instance, which may create one of the problems for this committee meeting. It may not, but let's get into it. You went and

inspected at the request, I gather, of some teachers or someone, a school site where people were working around asbestos in the school?

MS. FREUND: Well, we didn't see it when we were there, and that's part of Labor's concern.

SENATOR STOCKMAN: Okay.

MS. FREUND: We just have it documented from interviewing an employee who's in charge of the asbestos brake work.

SENATOR STOCKMAN: Was there no way you could test his claim to you about what went on? In other words, there's no testing, no material to be tested, or air to be tested, or anything of that sort in that case?

MS. FREUND: Not at the time. We would have had to expose people to document it.

SENATOR STOCKMAN: But you were satisfied that there was a violation, it had been occurring, and could occur prospectively?

MS. FREUND: Yes, in fact the school admitted it, and actually took action to correct the problem.

SENATOR STOCKMAN: But you wrote to Labor and said, "Here's a situation, we'd like an order issued." And that was in April?

MS. FREUND: Approximately.

SENATOR STOCKMAN: Okay. And they independently reviewed it and said they weren't comfortable with it, or-- Did they go out to the school, or did they interview your staff any further?

MS. FREUND: No. In their situations they're the ones that have to actually go to court with this kind of thing. So they're going to be very particular about whether there's adequate documentation for this kind of thing. They felt two things: 1) That we couldn't prove that the brakes were asbestos. These are cars that anyone can bring in off the street.

SENATOR STOCKMAN: Okay.

MS. FREUND: Also, they felt that since the employer was already doing something about it, it wasn't necessary.

SENATOR STOCKMAN: Okay. I was going to say I am a little puzzled that they'd be that apprehensive about the provability -- the evidential problem -- if you tell me in fact the school itself acknowledged that there was a problem and were in the process of correcting it. But they still were. Your position, I gather, is regardless of whether it's going to be corrected or not, it ought to be a matter of record just for educational purposes for part of putting the message out to the public -- in this case the public employers -- that this kind of things has to be watched.

MS. O'LEARY: There's a specific requirement within the asbestos standard that if you're going to work on brakes, that it be enclosed. So we felt that since there is a specific provision within an adopted standard, that this school should be using enclosures to work on brakes.

SENATOR STOCKMAN: Right. And they are now, I gather, as a result of your efforts.

MS. O'LEARY: They're probably either going to put in the controls, or they're not going to do the work until they have.

SENATOR STOCKMAN: But as of today the Department of Labor is not satisfied that that's the fact?

MS. O'LEARY: They haven't yet accepted our documentation and issued an order to comply. That's right.

SENATOR STOCKMAN: I'm troubled by that. My instinct is that that shouldn't be, but maybe I'm wrong. What do you think?

MS. O'LEARY: No, I think there is enough documentation. I think what we're doing is still in the early stages of -- if you have to work through another department, that we each have and share the same criteria for issuing orders to comply. And that's what we need to do.

SENATOR STOCKMAN: And are you telling me that there's a different criteria in the Department of Labor?

MS. O'LEARY: Well, if we in effect-- In this particular case, we felt there was enough documentation. They're not satisfied, yet they have to issue the order, which shows that the two departments have to continue to make certain that we come up with agreed criteria, so that we can in effect more quickly issue those orders.

SENATOR STOCKMAN: Okay. Now the other issue, the second one, what was the second one?

MS. FREUND: The second one was referred to at the last meeting. It was the spill of mercury in a State college.

SENATOR STOCKMAN: All right. And your people went out and found a health hazard, a violation of a standard there?

MS. FREUND: Yes.

SENATOR STOCKMAN: And requested an order of compliance.

MS. FREUND: Yes.

SENATOR STOCKMAN: And that's been with the Department of Labor for a couple of months?

MS. FREUND: Correct.

SENATOR STOCKMAN: What, in that instance, did they tell you is the reason they balked at issuing an order of compliance?

MS. FREUND: It gets pretty technical, but one of the issues was-- They didn't have the proper equipment to clean up mercury on hand and we issued--

SENATOR STOCKMAN: When you say "they," who are you referring to?

MS. FREUND: The college.

SENATOR STOCKMAN: All right.

MS. FREUND: And another thing is they didn't have correct personal protective equipment--

SENATOR STOCKMAN: Right.

MS. FREUND: --the gloves, the respirators needed. They also didn't have any procedures for dealing with -- written procedures in place. The Department of Labor's concerns, as I understood them, were that they didn't find this an ongoing violation.

SENATOR STOCKMAN: Well had it been cleaned up? At the point, was all the mercury cleaned up?

MS. FREUND: Yes.

SENATOR STOCKMAN: So they were sort of taking the position that it was a unique, one spill happening and--

MS. FREUND: Correct.

SENATOR STOCKMAN: And it's not there now? It's not a problem there now?

MS. FREUND: Correct.

SENATOR STOCKMAN: Your feeling, your philosophy under the Act is, the violation of the standard occurred -- there's clear evidence of that -- and therefore an order should be spread on the record so that people know to be more careful, prospectively.

MS. O'LEARY: I think, again, the major issue there would be that they would have a procedure in place so that no one would have went and cleaned up that spill, not being properly protected.

SENATOR STOCKMAN: If there were 40 or so site inspections, and four requests -- two obtained, two yet with the Department of Labor -- you're talking about maybe 10%. You're pointing out that in many instances there aren't standards, so it's a matter of negotiation. In some instances, I gather, you would find that in fact the violation wasn't established, and you back off. So are you telling me that that's the record so far, currently, in your Department with regard to this law?

MS. O'LEARY: Right. In each case, after a site visit is made, there is a report issued with recommendations. In many cases that's the mechanism that we're using to in effect help resolve the problem; where you're not issuing orders to comply but making recommendations and working with the employer to then correct the problem.

SENATOR STOCKMAN: How much of a backlog do you have? How many complaints do you have that you simply have not been able to reach, approximately?

MS. FREUND: We do something on everything. The minimum is that we notify the employer, let them know that a complaint has been filed, and give them some advice on the phone.

SENATOR STOCKMAN: Okay.

MS. FREUND: But we have about 137 open cases.

SENATOR STOCKMAN: Are there any other areas of difference or problems between your Department and the Department of Labor, with regard to this law?

COMMISSIONER COYE: I think that the two major areas -- which we have already recognized and are developing some procedures for working on -- is the need to streamline the development of standards, and to facilitate the compliance orders. If I could ask a question, or beg your indulgence-- I unfortunately have to go back to the Health Department. Is there anything else you wanted to ask me?

SENATOR JACKMAN: Yes. I wanted to ask you a couple of questions.

SENATOR STOCKMAN: Senator Jackman?

SENATOR JACKMAN: Is there a designated responsibility between the Health Department, the Labor Department, and Community Affairs, or do you overlap?

COMMISSIONER COYE: We overlap in many different ways.

SENATOR JACKMAN: Well there's where I think the problem is, each one overlaps, and each one is giving a different opinion. For example, in April 1985 the Department of Labor found 50 safety violations in the Department of Health laboratories. The citations were never posted by the Department of Health as required by law. Although the Department of Labor set the abatement date at September 1985, the Department of Health ignored the deadline. Now it seems to me like the Department of Health and the Community Affairs Department, and the Labor Department, are operating in different views. It doesn't make sense to me the overlapping of one department issuing a citation, and the other department not fulfilling it. Now, it seems to me like each one is blaming the other, and when you got 13,000 complaints and somebody tells me they've settled four of them, what in the hell are the inspectors doing?

SENATOR STOCKMAN: Chris, there are different statistics. That's the--

SENATOR JACKMAN: I don't care about statistics. I'm talking about four people going out and settling four complaints, with ten inspectors. Now, what they hell do they do for 365 days? That's what I want to know. Now that's not a stupid question I want you to know. You may be a lawyer, but I ask the dumb questions that--

SENATOR STOCKMAN: Senator Jackman, I never suggested it was a stupid question. I'm trying to help you with some testimony. I don't want to get into difficulty with you.

SENATOR JACKMAN: No, but I get a little annoyed with all this statistical data, and all that garbage. All I'm interested in, you're being accused by the Labor Department of not doing your work. Is that true or isn't it?

COMMISSIONER COYE: It's not true now.

SENATOR JACKMAN: I'm saying that's what they said, right?

SENATOR STOCKMAN: All these questions are through the Chair. I want you to understand that.

SENATOR JACKMAN: Of course they are.

SENATOR STOCKMAN: Right.

SENATOR JACKMAN: But I if don't get an opportunity to talk it won't be through anybody. (laughter)

SENATOR STOCKMAN: Senator Jackman, I think you've done all right on this Committee with regard to-- (inaudible)

SENATOR JACKMAN: Well let me finish my statements, because the--

SENATOR STOCKMAN: Well you can finish them through me, but I think you've done all right on that score.

SENATOR JACKMAN: Well, it's through you of course. Everything is through you. (laughter)

SENATOR STOCKMAN: All right. Fine, go ahead.

SENATOR JACKMAN: Take this thing, and I'll put it over here.

SENATOR STOCKMAN: No, I didn't want that at all. But I think somebody has to-- (inaudible)

SENATOR JACKMAN: I get a little annoyed listening to all this statistical data. I came down here to listen to things that are going to be settled. You can go all day long. You got ten inspectors. They took care of four cases. What did they do the rest of the time? That's what I want to know. The Labor Department has got inspectors. What do they do? They got 13,000 cases they took care of, they said. Yet, nobody got fined, nobody got citations. What does that mean to me? It means somebody's got to be kidding somebody. And we sit here and we listen to this. And no disrespect, you've done a marvelous job, at least you're here. But I get a little annoyed when I see some of these figures. That four, with four complaints-- You mean to tell me that in this entire State of ours we've only got four complaints settled in a one-year period? What are these people doing? Somebody is not doing

their job, if you've got ten inspectors. If they took care of one complaint a day, and came back and made a report the second day, and the third day went out again, you'd have at least 150 complaints. If you have ten of them, that's 1500 complaints we could have settled, or at least we've got some input on. We didn't get anything yet.

This is not disrespectful to you. It's I think an overlapping of Community Affairs, the Labor Department, and the Health Department. And if you're sending people out, and then they're accusing you of not doing your job, somebody's got to come up with some answers. Through you. (laughter)

SENATOR STOCKMAN: That was a question. I want to hear the answer.

COMMISSIONER COYE: I'll reply with a detail. That actually our ten people did more than fifty inspections, but you're right that there were only four attempts to cite people for that. We have remedied all but one of the problems that were found in the Department of Health, and that one is on order. In the next couple of weeks we'll have the equipment to take care of that. So, as soon as I became aware of all these problems they've been cleaned up. But that's the best that I can do as a response.

SENATOR JACKMAN: Through you. Remember the mercury spill? Can that happen again?

COMMISSIONER COYE: If they don't adopt written procedures, and make sure they have good training for their employees, it potentially could.

SENATOR JACKMAN: The potential is there?

COMMISSIONER COYE: Yes.

SENATOR JACKMAN: Corrective measures that were taken?

COMMISSIONER COYE: We recommended that they develop written procedures so they train employees and everybody knows what they're supposed to do next time there is a mercury spill.

SENATOR JACKMAN: Thank you.

SENATOR STOCKMAN: Coming back to this citation, is there still electrical equipment being used in proximity to hydrogen storage -- one of the allegations that were made at the last hearing.

COMMISSIONER COYE: There is today. I think we've only got two or three weeks to run on a six week order which I placed two months ago, or something like that, as soon as I was aware of this situation.

SENATOR STOCKMAN: All right.

COMMISSIONER COYE: I don't know if it was clarified that a great number of those were settled immediately when the complaints were cited against the Health Department. When it was brought to my attention a couple of months ago, the remaining problem was the hydrogen sulfide and I think one other that I don't remember as well. It wasn't as serious. There's no question about that being a serious problem, and I personally feel bad that we didn't take care of it faster. I'm glad that we are now.

SENATOR JACKMAN: Through you, Mr. Chairman.

SENATOR STOCKMAN: Yes.

SENATOR JACKMAN: You were in the fire department. You sent your people in, you found a health hazard in the fire departments, equipment-wise. Are you involved with the equipment? Is that part of your rule making?

COMMISSIONER COYE: Yes it is.

SENATOR JACKMAN: Okay. What has occurred rule making-wise, through your Department, to the various fire departments, with safety hats?

MS. O'LEARY: What we've done is, there are standards now in place and what we've proposed is amendments to those, and that's one of the standards that the Department of Health has developed. It's referred to as a, "Personal Protective Clothing for Fire Fighters," and the notice of adoption of that amendment was published in the "New Jersey Register." So,

that's one of the standards that's been developed, and it's been published in the "Register."

SENATOR JACKMAN: All right. Through you, Mr. Chairman. Has there been a follow-up, where the towns have now made available the safety equipment that you've put in the "Register"? If not, what is being done to make these towns abide by the ruling that you made for that safety equipment?

MS. O'LEARY: This particular amendment has just been put in the "Register," so it hasn't yet been adopted. Okay? It hasn't been adopted yet, it's just been--

SENATOR STOCKMAN: It has to be posted for--

SENATOR JACKMAN: Oh it hasn't been posted yet?

SENATOR STOCKMAN: It's been posted, but it has to be--

MS. O'LEARY: It's been posted, right.

SENATOR STOCKMAN: How much time--

MS. O'LEARY: It was June 15th.

SENATOR JACKMAN: June 15th, okay. Thank you.

SENATOR STOCKMAN: Commissioner, I think you've been very helpful to us--

SENATOR JACKMAN: Very good.

SENATOR STOCKMAN: --and you can go. I do have a few more questions of your staff.

COMMISSIONER COYE: Fine. Thank you for the chance to appear with you.

SENATOR STOCKMAN: A couple of further questions on these standards. Let's go through them. Target dates for issuance of the following standards: "Personal Protection Equipment for Fire Fighters." Now that's been put in the registry. Based on the journey it has to complete that you outlined, when do you anticipate that standard will be in place, barring some very serious disruption?

MS. O'LEARY: The "Personal Protective Clothing for Fire Fighters," that particular one is-- (looks through her notes) This one here was notice of adoption of the amendment

was published in the "New Jersey Register" for June 15th. Then there's an additional standard for fire fighters that was proposed by the Department of Health. It has not been presented to the advisory board, so that one is at a different stage. There's two different--

SENATOR STOCKMAN: Give me your best guesstimate, based on your experience, in this journey to full-- approximately.

MS. O'LEARY: This new standard-- This is so you can see what the steps will be. It gets presented to the advisory board. This particular standard that we worked on was for fire fighters. It's already gone through an inner agency task force. It has, even at an earlier stage, gone through an advisory standard subcommittee. So my sense would be that you've probably got good agreement now with the agencies, and also with the subcommittee. So probably it's just a matter of a few months. It would then go to the advisory board. They meet three or four times a year. So it goes to them. If they consent to it, it goes to the Department of Labor. Then you've got the time for publication in your "Register," or a comment period of time. So you're talking about maybe three or four months.

SENATOR STOCKMAN: So, certainly by the end of the year that should be in place.

MS. O'LEARY: Yes it should.

SENATOR STOCKMAN: How about indoor air pollution standards? Where are they, and what's your best estimate as to when we expect them to be in place?

MS. O'LEARY: What we have is a draft of a standard now, that's within review at the Department of Health. What we've done with that standard -- because it does have a lot of technical issues -- the first draft was developed with the staff; we sent it out to a peer review by a group of experts throughout the country to make certain that it was technically

sound. It's now for final review within the Department. The next step would be for the Department of Labor to convene a committee of the interagency committee for their review, and then we're involved in a process -- depending on if they have major problems with the standard or not. My sense would be that that process would probably-- The departments have agreed that that process should not take longer than a year. It's taking different lengths of time with respect to the different standards.

SENATOR STOCKMAN: All right.

MS. O'LEARY: I guess after the initial meetings with the interagency group, and if there were no major problems, then we could probably shorten that estimated time.

SENATOR STOCKMAN: Are there any problems caused by funding by the Legislature and the Administration in that journey? In other words, is it a matter of you not having enough people? Or is it just a matter of you dealing with important new standards with a lot of technical issues, and a lot of need for balance and input?

MS. O'LEARY: Well first of all, we had to balance all the activities that we were doing, so--

SENATOR STOCKMAN: All right, but you think you can get it done in perhaps another year, through that journey?

MS. O'LEARY: Right.

SENATOR STOCKMAN: Let me ask you this. To your knowledge do other states already have in place an indoor air pollution standard that they're working with?

MS. O'LEARY: No, there's no Federal indoor air pollution standard.

SENATOR STOCKMAN: No OSHA standard?

MS. O'LEARY: There's no OSHA standard.

SENATOR STOCKMAN: How about states-- To your knowledge are any other states now enforcing an indoor air pollution standard in public facilities, on behalf of public employees?

MS. O'LEARY: Alice could comment.

MS. FREUND: California recently passed a standard.

SENATOR STOCKMAN: All right. So, one standard you have to work at, to look, and juxtaposition against what you're coming up with, is the California standard. But we would be in the forefront -- along the lines that Commissioner Coye has urged us to be -- if we get this into place within the next year.

MS. O'LEARY: That's right.

SENATOR STOCKMAN: How about carbon monoxide in garages?

MS. O'LEARY: That is also a standard that's in draft form within the Department.

SENATOR STOCKMAN: Same journey approximately, the same time estimates?

MS. O'LEARY: Probably there's just been a little less work done on that standard, so maybe just a little bit longer. That's at an earlier stage of review within the Department.

SENATOR STOCKMAN: Any other states-- Does California have a carbon monoxide in garages standard that they enforce in public buildings?

MS. O'LEARY: Not specifically, no.

SENATOR STOCKMAN: So that's almost a--

MS. O'LEARY: What we've been trying to do there is -- if I follow Dr. Coye's comments -- when we see a specific problem that can be addressed by engineering design, rather than having someone to continue to monitor the CO level, and so it's unique.

SENATOR STOCKMAN: And that's part of the standard establishment, because the standard would contain that sort of direction.

MS. O'LEARY: That's right.

SENATOR STOCKMAN: All right, how about video display terminal standards; where is that in its journey to completion?

MS. O'LEARY: We were given a draft of a standard by the Communications Workers, some time ago. We've got a lot of the background information for it. We don't have a draft of a standard for it that's been developed within the Department.

SENATOR STOCKMAN: So, based on what you've told me, you're talking about more than a year before it's likely that it makes its full journey?

MS. O'LEARY: It may take less time now, because we're looking at some time this year having an increased staff. So potentially some of those time frames may change.

SENATOR STOCKMAN: Do other states have video display terminal standards that they apply to their public employees?

MS. O'LEARY: None that I know of.

SENATOR STOCKMAN: Work in confined spaces standards, where is that?

MS. O'LEARY: That's a Department of Labor standard.

SENATOR STOCKMAN: So you don't get into that.

MS. O'LEARY: That's right.

SENATOR STOCKMAN: All right. How about indirect exposure to asbestos. That's in places, isn't it?

MS. O'LEARY: No. The asbestos standard is in two different parts. The first one was direct exposure, and that's the one that's been adopted.

SENATOR STOCKMAN: All right, where are you with this standard -- indirect exposure?

MS. O'LEARY: There had been an approval of standard, but there are new provisions under EPA that made us go back and have to revise our standard so that we would be in concurrence with EPA's new regulations. We're in the process of making those revisions.

SENATOR STOCKMAN: So that's six months to a year off?

MS. O'LEARY: No, I think a shorter period of time.

SENATOR STOCKMAN: Work on roads and highways standards, where are you with that? Or you're not into that. That's strictly Labor. Communicable disease control standards?

MS. O'LEARY: Just initially, that was on our list of standards that should be developed. We have not yet started to work on it. We've been in communication with OSHA, and the Center for Disease Control, with respect to that standard, just gathering background information. We have not drafted a standard.

SENATOR STOCKMAN: That's a complex and difficult one. That would encompass a lot of illnesses, including some with a great deal of notoriety today.

MS. O'LEARY: In that particular case there has been some preliminary actions by the Federal OSHA to come up with a standard. We were intending to look at what they have. If they don't proceed, we'll probably proceed with that action.

SENATOR STOCKMAN: I have no further questions. Senator Jackman?

SENATOR JACKMAN: I do, through you, Mr. Chairman. We go back again in retrospect, you mentioned about a problem concerning firemen and asbestosis. You handled it in your Department, or does the Labor Department handle it?

MS. O'LEARY: We handle anything that's related to a health issue or exposure to a toxic substance. That comes within the responsibilities of the Department of Health.

SENATOR JACKMAN: The Department of Labor and the Department of Health, is that what you said?

MS. O'LEARY: No, with respect to asbestos and the asbestos standard, we're responsible for the enforcement of that standard.

SENATOR JACKMAN: All right, so far we've got two men who have got asbestosis. How do you tell them you've enforced it? You -- not you per se -- your Department, and the Labor Department, what do you tell them after they get it, that we're working on a rule to eliminate it?

MS. O'LEARY: No. When the law was first promulgated there was an asbestos standard. It was a Federal OSHA standard on asbestos that was adopted. We felt that it wasn't totally adequate, and we then adopted a new asbestos direct standard. So there has always been an asbestos standard that was enforceable. We've now adopted and amended a new asbestos direct exposure standard.

SENATOR JACKMAN: Again please but don't misunderstand my remarks, but, is there an overlapping of authority that in essence handicaps the thing being consummated? It seems to me like -- again, this is not being disrespectful-- We got the Community Affairs Department who's got a piece of the action. We've got the Labor Department with a piece of the action. We got the Health Department with a piece of the action. In the meantime, we don't seem to be able to resolve some of the differences, and yet we've accusing one another of not consummating their end of the deal.

MS. O'LEARY: I think there are separations with respect to safety and health issues, and I think the two departments understand those. What we have to do is the standard setting. The Department of Health can develop and draft standards. Then there's a procedure, and it's up to the Department of Labor to make a decision whether or not to move for adoption, to propose those standards or not. That's the distinction of responsibilities between the two departments.

SENATOR JACKMAN: In the inspection phase of it, is there an overlapping of the inspection with Labor going in and making one inspection and Health making another inspection?

MS. O'LEARY: No. I think with respect, again, to the issues that the two departments would address I think there's not a problem there. Again, if you're asking where the two departments have to work together-- If in effect we see a violation of a standard, we do not have the ability to issue the order to comply ourselves. We, again, must work through the Department of Labor, but that's how the law was written.

SENATOR STOCKMAN: Senator Jackman I know heard some disturbing testimony as I did, about the Glassboro incident. Are you specifically familiar with that? There's some gentlemen here who for instance contend that there were very serious health problems there they didn't know about involving asbestos. One or more of them may even have contracted asbestosis. Then they say the school contracted out for a contractor to come in and do work in these areas, which was a problem for them in terms of their employment, but in addition seemed to reflect an indifference on the part of the school to the safety of those new workers coming in who supposedly had little or no protection and didn't know what they were doing. Did you get into that at all? Are you familiar with that case?

MS. O'LEARY: Between us, that particular kind of problem is not uncommon -- and it's probably going to become more common -- where an employer has a particular kind of situation. He then doesn't want his employees to do the work. He contracts out for the work. But then you have -- where we do the enforcement because it's a public agency -- you now have a private contractor who comes in who is covered by the Federal OSHA. So in that particular case it gets difficult.

SENATOR STOCKMAN: You lose jurisdiction, in other words?

MS. O'LEARY: Right, but two things can happen: One is that the contract could have provisions in it that the work has to be done in a certain way, and then they would have a violation of the contract if it weren't. And also, if the work is not done, and the contract workers are not being protected, in this particular case we intend to make a referral to Federal OSHA, and in fact bring it to their attention that you have a private contractor not in fact following their own asbestos standard.

SENATOR STOCKMAN: Well, shouldn't all contracts by the State of New Jersey involving repair of public facilities have a clause requiring that they comply with our Public Employees' OSHA standards? I mean, we as an owner of a property, don't want to expose private workers any more than we do public employees to asbestos dangers or risks.

MS. O'LEARY: No. I think then that would be our recommendation.

SENATOR STOCKMAN: Okay. Alright.

MS. O'LEARY: And if you want, Alice can talk about the particulars. We are involved in Glassboro.

SENATOR STOCKMAN: You're still involved?

MS. O'LEARY: That's right.

MS. FREUND: Oh yes.

SENATOR STOCKMAN: What can you add, if anything?

MS. FREUND: We did an inspection of their facility on June 24th, to see--

SENATOR STOCKMAN: Of this year?

MS. FREUND: Of this year -- to see if there were any violations of our direct asbestos standard. There's another program in the Department of Health called, the Asbestos Control Project. They are involved with looking at all State and municipal facilities to determine the need to remove asbestos, or repair asbestos. Now, that came up at the last hearing, and they're working on that aspect of it. They're separate from PEOSHA, because there's no standards yet in terms of requiring anybody to remediate asbestos hazards. That's what our indirect standard would do.

SENATOR STOCKMAN: I noticed that the inspection was the day after our last hearing. Did we help a little bit in terms of maybe nudging that, or is that wishful thinking?

MS. FREUND: No, actually.

SENATOR STOCKMAN: Okay. That was an unfair question.

MS. FREUND: Our inspection got delayed because we were waiting to get the proper respirators for our own inspectors.

SENATOR STOCKMAN: All right, but you're moving on it. You're aware that there are some very serious concerns, and you're involved in it on two fronts within your own Department.

MS. FREUND: Correct.

SENATOR STOCKMAN: All right. Thank you very much. I think we're anxious to hear from the Department of Labor. We may have been a little slow in getting to you, but we apologize. I would invite any or all of the representatives from the Department of Labor-- Mr. Vuocolo, do you want to start?

A L F R E D B. V U O C O L O, J R.: Yes. Senator Stockman, Senator Jackman, thank you for giving me the opportunity to respond to your concerns about the implementation and enforcement of the Public Employees' Occupational Safety and Health Act. Commissioner Serraino intended to be here personally, but he was called in to work on the garbage strike. So I'd like to pass along his regrets to the Committee.

SENATOR STOCKMAN: I'm sorry that the Commissioner himself won't be able to be here. I'm especially sorry if he had planned to be here and this garbage strike in fact interfered. When, in fact, did that crisis call him away?

MR. VUOCOLO: Well, the contract expired yesterday at midnight, and they've managed to keep people working---

SENATOR STOCKMAN: And he thought he was going to be here until then?

MR. VUOCOLO: Well, he was hoping to.

SENATOR STOCKMAN: Okay. I gather this statement by you would have been redone, or you would have had a separate one?

MR. VUOCOLO: No, it would have been done by him.

SENATOR STOCKMAN: Okay.

MR. VUOCOLO: Except for the introduction, where I give my name.

I'd like to assure you that the Department of Labor has worked diligently to meet all of its responsibilities regarding PEOSHA enforcement that were given to it under the law. It is our belief that we have compiled an admirable record in ensuring the safety and health of public employees at their work sites throughout New Jersey, and that these employees can feel comfortable in the knowledge that the Department is conscientiously addressing all of their complaints and concerns.

Since 1985, we have responded to 234 employee complaints and inspected 1980 public employee work sites. The number of hazards that were identified as a result of these inspections totaled 19,949. Additionally, the Department has conducted 915 follow-up inspections.

Although exact numbers are not available, a survey by the Office of Public Employee Safety indicated that hazards identified by our investigations are being abated at a rate exceeding 80%. The survey was taken in the first half of 1986, which was before the standards of the Act were extended to employees of local government and during the period when compliance by local government entities was voluntary. We have reason to believe that the level of compliance has increased since November 6, 1986, when the PEOSHA standards became applicable for local government employees.

It is also important to note that the Act has only been fully operative for seven months for all public employees in New Jersey. Prior to November 6, 1986 coverage of the Act was limited to employees of State government. As one might expect with a new responsibility, we are experiencing the inevitable growing pains. And these are becoming less frequent as the months go by.

In order to accurately assess the effectiveness of PEOSHA and the progress the Department of Labor has made in enforcing it, I would ask you to take into account the relative newness of the law's coverage for all public employees.

As required under the law, we have adopted all applicable standards developed by the Federal Occupational Safety and Health Act. In addition to adopting the OSHA standards, the Department has adopted a standard for direct exposure to asbestos and proposed a revised standard for toxic and hazardous substances. Additionally, the Department has adopted a standard concerning protective clothing for fire fighters, and we are in the process of developing other standards.

At last week's hearing the Department of Labor received criticism for its alleged tardiness in adopting procedural regulations. Under the Act, the Commissioner of Labor has no direct authority to promulgate standards. He can only do so with the advice and consent of the PEOSHA Advisory Board, and in consultation with the Commissioner of Health and the Commissioner of the Department of Community Affairs.

The Advisory Board is comprised of 23 members, representing labor, management, government, and the public. As one might expect with such a diverse group of people, it is sometimes difficult to reach a consensus on the complex and technical issues they must deal with.

Procedural rules are currently mired in this cumbersome adoption process. These rules have been drafted and are currently being reviewed by the appropriate subcommittee, but the Department of Labor cannot promulgate them until they have been consented to by the Advisory Board, in consultation with the Commissioners of Health and Community Affairs.

The lack of officially adopted procedural rules has not impeded our ability to enforce the Act. The Department has internally established inspections and enforcement procedures which correspond to the proposed procedural regulations.

One of the criticisms voiced last week was that the Department has not carried out its responsibility to promulgate a plan for the development and enforcement of occupational safety health standards. The plan referred to is mentioned in NJSA 34:6A-39 and specifically requires the State to submit to the Federal government a proposal for Federal funding of the PEOSHA program. This plan is irrelevant to the development and enforcement of safety and health standards.

Furthermore, there is only the remote possibility that we will be able to get Federal funds for the enforcement of PEOSHA because there are numerous statutory differences between the PEOSHA law and the Federal approval guidelines.

As I mentioned earlier in my statement, the record indicates that employers are willingly complying with the provisions of the Act for the welfare of their employees. We have been successful in obtaining compliance with the Act without resorting to punitive measures. It has been necessary to issue only eight orders to comply.

The power to directly levy fines was not afforded the Department when the law was drafted. Penalties may only be assessed through court proceedings. Furthermore, employers may not be subject to fines if it is determined that they have made a good faith effort to comply within their resources, financial or otherwise. The Department has no authority to issue fines if employers take immediate steps to abate hazards, which has generally been the case. Finally, many of the violations have occurred in urban cities facing severe financial problems, and we feel that pursuing the issuance of penalties in these circumstances would be counterproductive to achieving the desired goal of the PEOSHA Act.

Since the law was enacted the Department has been engaged in activities to educate both employees and employers about the law's provisions. Posters have been printed and distributed to all State, county and municipal agencies and

school boards, as well as to every union which is authorized to represent public employees in the State. Additionally, a reduced version of the poster was distributed to all State employees with their May 29, 1987 paychecks. The Department has a library of training films, and the films are available upon request. A total of 162 informational seminars were presented between November, 1984 and April, 1987 for State, local and county agencies and employee union groups. These seminars were attended by over 7400 persons.

Finally, the Department provided a free consulting service to public employers for a six-week period in the summer of 1986. During that period the Department worked with 20 public employers employing 7700 workers and identified over 1100 workplace hazards.

It has also been alleged that the effectiveness of the Act has been impaired by, and I'll quote this, "constant bickering" between the Department of Labor, and the Department of Community Affairs. I am quite frankly mystified by these charges. The Act clearly states that DCA is responsible for building code and fire safety regulations under the authority of the Uniform Construction Code and the Uniform Fire Safety Act. As indicated last week, some employee groups would like that responsibility to lie with the Department of Labor. We have always adhered to the statutory division of responsibility, as has DCA. When we receive building code or fire safety complaints, we routinely refer them to DCA. I can also state that I have never been aware of any jurisdictional dispute on this issue.

In conclusion, I'd like to point out that in no instance has an employee complaint been ignored by the Department and in nearly every case, corrective measures were instituted to abate identified safety hazards. The employee safety complaints were received promptly and there is currently no backlog of employee complaints.

I want to assure you that the Department of Labor is committed to administering a meaningful and purposeful health and safety program for all public employees in New Jersey. And I want to emphasize in the strongest possible terms that the success of the PEOSHA law is dependent upon the development of a close working relationship between the Department and the unions which represent our State's public employees. We not only welcome their ideas, their criticisms and their suggestions, but actively seek them.

Thank you very much.

SENATOR STOCKMAN: Mr. Vuocolo, I'm troubled by your statement, and frankly somewhat disappointed. But maybe as I have an exchange with you, you will persuade me that that troubledness shouldn't be. Frankly, if this statement were given by the Commissioner of Labor -- and I gather but for this garbage strike he would have issued this statement -- I can tell you I would have made the same comment to the Commissioner of Labor. Now. Let me tell you why, but first let me ask you this. Mr. Vuocolo, have you yourself had any involvement in this area, that is the PEOSHA law?

MR. VUOCOLO: Let me clarify my status. I'm a Special Assistant to the Commissioner, and he uses me in areas where he feels that my talents can be utilized.

SENATOR STOCKMAN: All right.

MR. VUOCOLO: I have been working on and off in this area since about February of last year. I've been involved in a pretty significant fashion.

SENATOR STOCKMAN: All right, since February of '86 you yourself have spent, what, a third -- half -- of your time in this area of PEOSHA and its implementation?

MR. VUOCOLO: Perhaps.

SENATOR STOCKMAN: All right. Now, you contend that the Department has worked diligently to meet its responsibilities. I have to assume that you really basically

reject the testimony that we heard from one of the members of your own Department, as well as from the union leadership?

MR. VUOCOLO: Senator, we feel that the testimony last week was comprised of distortions of facts, and maybe half-truths, and maybe misunderstandings. We feel that we can effectively refute all of the charges which were made last week by speakers who appeared.

SENATOR STOCKMAN: All right. Are you troubled by the fact that there seemed to be a concurrence by the overwhelming majority of organized labor unions expressing disappointment at the performance of the Department of Labor in this area? I'm moving away from the specific charge of one of the witnesses who testified.

MR. VUOCOLO: No. I'm very happy to answer that question. Since the Act has been implemented we have worked very successfully with a number of labor unions who have cooperated with us, and worked closely with us in seeing that the workplace is safe. We have not received that cooperation from other groups.

SENATOR STOCKMAN: So you're telling me that with regard to most of the organized labor groups, you've been working cooperatively, closely, they're comfortable with what you're doing, and you with them; but, what, there are a few organized labor groups that--

MR. VUOCOLO: I wouldn't say most groups, or get into that. There were a couple of union representatives who testified here last week who stated that they felt that our performance under the Act was fine. They didn't receive the attention that some of the other groups did, because it's not as exciting to come in and say the State is doing its job as to say they're not doing their job. There are other unions out there who are not represented who, I'm sure, would come in and say they're satisfied with the progress that we've made.

SENATOR STOCKMAN: Basically, the Department's position is that they've been doing an admirable job, and public employees can feel comfortable about the workplace in New Jersey?

MR. VUOCOLO: Senator, I'm willing to let our numbers speak for themselves.

SENATOR STOCKMAN: But that's your position?

MR. VUOCOLO: We are conducting--

SENATOR STOCKMAN: I don't want to misstate you--

MR. VUOCOLO: Yes, yes.

SENATOR STOCKMAN: --that you're doing an admirable job, and that there aren't any real appreciable problems out there. Let me get into, then, a couple of other questions. As I understand it -- you heard the testimony of the Department of Health -- and you have actually adopted one standard beyond the OSHA standard, so far.

MR. VUOCOLO: Actually it's two, Senator.

SENATOR STOCKMAN: All right.

MR. VUOCOLO: There was a direct asbestos standard, and a revised standard for fire fighter protective equipment.

SENATOR STOCKMAN: I'm going to come to specific questions, but going through your statement, Mr. Vuocolo, you say on page 4, "Procedural rules are currently mired in this cumbersome adoption process." Do I take it from that that it's the position of the Department of Labor that this process of promulgating these standards and rules is cumbersome, and should be changed?

MR. VUOCOLO: Senator, we've been criticized for a lack of standards. The point that I was trying to convey is that the advisory board process is similar to the legislative process. The Advisory Board is our Legislature. And the Commissioners serves as the Governor -- to make the analogy complete. Many times difficult issues come up, and it's difficult to reach a consensus between the diverse groups on

the Advisory Board. The Advisory Board, as the Legislature, has people that are conservative, liberal, management oriented, union oriented, and we're dealing with difficult, complex issues, which in many cases are highly controversial.

SENATOR STOCKMAN: But Mr. Vuocolo, just as I'm sure there are many people who think the Legislature is a cumbersome body and maybe ought to be eliminated, there is an implication in that statement. What I'm trying to get at is, is it the position of the Department of Labor that this procedure for developing these standards and adopting them, is cumbersome? Because if it is, we ought to look at the law and streamline it. Now if it's more a matter of a necessary procedure to guarantee appropriate standards, well thought out, etc., that's something else, in which case I wouldn't think it would be fair to describe it as cumbersome. You can't have it both ways. If the Department has a position on that I'm sure this Committee wants to hear about it, because we might want to make an effort at changing the law in that area.

MR. VUOCOLO: Let me answer that in this way. We understand the policy reasons which led the Legislature to put an Advisory Board in place, but we also acknowledge that the more people you have involved in the process the more difficult it is to get things done. If the Commissioner had unilateral authority to promulgate regulations, things would be more efficient. But the question is, would they necessarily be better? Would they be representative of the various views that are out there? I'm not necessarily advocating that the process be changed. I'd just like to point out that the delay--

SENATOR STOCKMAN: I don't know how you can call it "cumbersome," but back off of the notion that it can't be improved. I think there's an inherent contradiction in it, but I don't want to belabor it if that's your position. Is the Advisory Board working well? I mean, are you having problems for instance convening it, getting attendance, getting good input?

MR. VUOCOLO: Well, it's difficult, as you're well aware, to get 23 people together at one time anyplace. The attendance record varies widely. Some people have perfect attendance records, other people never come. The Advisory Board is required by law to meet four times a year, and it has always met that requirement.

SENATOR STOCKMAN: I'm concerned and I'm really uncomfortable about -- on page 5 -- your statement that, "The lack of officially adopted procedural rules has not impeded our ability to enforce the Act." It seems to me that if you don't have clear procedural rules, you're at sea. I mean, I'm not saying you can't get something done, but when individuals or organized groups want to proceed in ways to enforce the law or to help you enforce it, if there aren't clear procedural rules it complicates matters. So again, Mr. Vuocolo, a statement of that sort misunderstands the importance of adopting procedural rules, and it leads me to suspect that the Department may not be working that hard at adopting procedural rules. Because, after all, if it's not impeding your ability to enforce the Act, maybe you ought not even bother developing procedural rules.

MR. VUOCOLO: No, Senator. I'd like to take exception to that remark if I may. As I stated before, we've conducted almost 3000 inspections, and identified almost 20,000 hazards. To state that the lack of officially--

SENATOR STOCKMAN: That means nothing to me, you know, in the context we're talking, Mr. Vuocolo. I mean, I have no way of knowing what the numbers should be or shouldn't be. That may be too high or too low.

MR. VUOCOLO: Well these are verifiable figures.

SENATOR STOCKMAN: But when you make a statement before this Committee "that the lack officially adopted procedural rules has not impeded your ability to enforce the Act." I don't understand how you can defend that statement?

MR. VUOCOLO: The procedural rules deal with, in primary part, inspection and enforcement procedures. Our contention is that we're doing inspections -- and the numbers show that -- and we're enforcing the Act. What I'm saying is, we've been criticized very soundly for not having procedural rules. As I explained before, it's not totally within our control to promulgate those rules because we have an Advisory Board process to go through. But nonetheless, we have been going out and doing the inspections and citing the violations.

SENATOR STOCKMAN: Well, I don't want to belabor it. Now you also suggest on page 6 that you've been successful in obtaining compliance with the Act without resorting to punitive measures. Do I take it from that statement that you define compliance orders as punitive measures?

MR. VUOCOLO: Of penalties I was referring to particularly in that sense.

SENATOR STOCKMAN: Penalties?

MR. VUOCOLO: Right.

SENATOR STOCKMAN: What about compliance orders?

MR. VUOCOLO: Compliance orders are not our first resort. Senator, we've been successful in obtaining compliance with the Act without resorting to those measures. If we go out to municipalities and say, "Here are your problems. We want you to clean them up," or, "You have to clean them up," and they do it, there's no sense, we think, in beating them over the head.

SENATOR STOCKMAN: I think you're dead wrong. Let me get more specific. We had a Commissioner who came in here and shared some time with us on this score. She used an illustration, and I think it's a good one. It's the mercury spill incident. Are you familiar with that?

MR. VUOCOLO: Yes.

SENATOR STOCKMAN: Now, no compliance order was issued. The mercury was cleaned up. At first blush one might say, "Hey, the mercury was cleaned up. It's not there now. What's the big deal? Why bother any further?" You know better than that, I think, and I think this Committee knows better than that. A compliance order would incorporate more than just the cleanup. It would encompass and incorporate requirements that prospectively there not be a spill, or if there is it is properly attended to and someone isn't hurt as a consequence of it. I think that's a classic example of where the Department of Labor may be -- if you're articulating the Department's philosophy accurately -- may be off base. And where perhaps the Department of Health and Commissioner Coye understand better the importance of these compliance orders.

MR. VUOCOLO: Can I respond?

SENATOR STOCKMAN: What do you say about that. Am I mistaken or confused?

MR. VUOCOLO: In the mercury spill situation, the spill, as you said, was cleaned up promptly, and the hazard was abated. Under the Act we have no authority to issue orders for prospective violations or potential violations, only for actual violations. By the time that was brought to our attention there was no violation.

SENATOR STOCKMAN: When you issue a compliance order, are you telling me that you are prohibited from including in that compliance order direction that proper steps will be taken prospectively to see that that doesn't happen again, and/or if it does that it's handled in a safe manner?

MR. VUOCOLO: Okay, Mario Gomes will answer this one.

SENATOR STOCKMAN: Good. Mr. Gomes? I'm sure we'll want to hear from Mr. Gomes.

M A R I O G O M E S: I'm Mario Gomes, Assistant Director of the Office of Public Employee Safety. The question was, can we issue an order to comply where there is no violation?

SENATOR STOCKMAN: No, no. No, no, Mr. Gomes.

MR. GOMES: Begging your pardon?

SENATOR STOCKMAN: Let me take it again, so we're clear on this. Mr. Vuocolo seems to suggest that punitive measures aren't necessary, and I at least interpreted that statement to imply that compliance orders were punitive. He seems to not want to go that far, but has suggested he was thinking -- in that broad phrase -- more in terms of penalties. All right, fine. We left that for the moment. But we're then honing in on this question of what I sensed was a difference in philosophy between the Department of Health and the Department of Labor, and a very important difference because it sounded like the Department of Labor was far less enthusiastic about compliance orders than the Department of Health. I'd be happy to hear from you generally on that, but more specifically now I'd like to know about this mercury spill situation, because it was suggested that there should have been, and indeed, still the Department of Health apparently is on record for suggesting that there should be a compliance order that incorporates some statement with regard to prospective handling of a situation such as that. And I'm saying that seems sensible to me, and it's the very reason why I think there ought to be more compliance orders issued by the Department of Labor. Mr. Vuocolo seems to have suggested by the colloquy that you can't do that, and I was startled if that's the contention, but I guess you're the expert in the area so I'm happy to hear from you on that.

MR. GOMES: No, I believe Mr. Vuocolo is correct. We can't issue an order to comply on a potential of what might happen.

SENATOR STOCKMAN: I'm sorry, Mr. Gomes, I'm not making myself clear today. Maybe it's getting a little bit late. I did not raise the question of whether you can go out and issue a compliance order where everything is rosy and

nothing has happened. I'm sure-- I'm pretty sure of that. I don't think anyone would want you to do that. We're talking about something very different. We had a serious, as I understand it, mercury spill, which was life threatening and could have endangered the health of public employees. That was a clear violation, I think, of standards, I gather -- and there isn't much dispute about that -- and it would justify an order of compliance. Certainly if the people involved had refused to clean it up, I'm sure there would have been such an order. But they cleaned it up. The question is, does that mean forget it, there should be nothing further? The Department of Health, if I understood them, was saying they felt there should be a compliance order which incorporated in the order provisions going to the question of seeing that it doesn't happen again, and were it to happen again seeing that the proper steps were taken not to unnecessarily expose public employees to that. Mr. Vuocolo seems to suggest you can't do that. I can't imagine that, but I gather you deal with this question of compliance orders, so you can either agree with Mr. Vuocolo that you can't do that, or agree with me that you can.

MR. GOMES: Senator, we can't issue a compliance order after the abatement has been effected. The law doesn't allow us to do that.

SENATOR STOCKMAN: All right. So once the abatement occurs-- Maybe I can get Ms. O'Leary back into this because now I'm a little concerned about that. Ms. O'Leary, do you agree that once a violation has been corrected that you lose power or authority to go after a compliance order?

MS. O'LEARY: No, I think that an order to comply could be issued once we've seen a violation of a standard.

SENATOR STOCKMAN: Even if it's been cleared up?

MS. O'LEARY: Even if it's been cleared up.

SENATOR STOCKMAN: So we have a very fundamental difference in understanding of a critical part of this Act, namely, compliance orders.

SENATOR JACKMAN: With your permission?

SENATOR STOCKMAN: Yes.

SENATOR JACKMAN: I'll go back to a statement that you mentioned before and see if I-- Just sit there, because this might come back for you. With your permission? I didn't mean it to be that abrupt. (laughter) You say under the Act the Commissioner of Labor has no direct authority to promulgate standards. That's what you said? You also said he can only do so with the advice and consent of the OSHA Advisory Board in consultation with the Commissioner of Health and the Commissioner of Community Affairs. Now when you all get done with all this consultation, what in the hell do you do to abate some of these problems we've got? You go on, you say, "Well, we have problems, because it's too cumbersome." You say the Advisory Board is comprised of 33 members representing labor, management, government, and the public. "As one might expect, such a diversified group of people is sometimes difficult to reach a consensus on very complex technical issues" as mercury and all this other stuff. Is that what you're telling me in essence here? Is that what you're saying?

MR. VUOCOLO: I'm saying that it's difficult to promulgate regulations because the process is a cumbersome one.

SENATOR JACKMAN: Well then maybe what we ought to do is just take the Commissioner of Labor, the Commissioner of Public Affairs (sic), and the Commissioner of Health, and say, "Here, the three of you, nobody else, you make the rules," and take all them 23 people that you can't contact -- you say here -- half of the time.

MR. VUOCOLO: We can contact them, Senator.

SENATOR JACKMAN: Eh?

MR. VUOCOLO: We contact them.

SENATOR JACKMAN: You do, but you have trouble.

MR. VUOCOLO: Well sometimes they don't show up.

SENATOR JACKMAN: Yeah, sometimes.

MR. VUOCOLO: Just like Senators.

SENATOR JACKMAN: That sometimes -- in the meantime the mercury is on the floor. Oh well, what's the use of talking?

SENATOR STOCKMAN: All right. I'm satisfied that there appears to be a misunderstanding of this question of compliance orders. I'm not going to belabor it now. I think it's on the record. But I want to -- before we get into some very specific question, Mr. Vuocolo -- tell you what disturbs me most of all about your statement, and I find it most distressing. It appears on page seven. You make the statement that, "Many of the violations have occurred in urban cities facing severe financial problems, and it's felt that pursuing the issue of penalties in these circumstances would be counterproductive to achieving our desired goal." In other words, if your in urban areas it's less sensible to be rigorous in enforcing this PEOSHA law because they're on the ropes financially, their tax base, their quality of life in them, etc. That's basically what you're saying.

MR. VUOCOLO: No, Senator.

SENATOR STOCKMAN: I find that outrageous.

MR. VUOCOLO: Okay. No, you're not taking that totally in context.

SENATOR STOCKMAN: All right. Explain what you meant by that.

MR. VUOCOLO: I'll explain what I meant.

SENATOR STOCKMAN: Okay.

MR. VUOCOLO: The point I was trying to make is that the problems, by and large, that we've encountered have been in the Newarks, the Trentons, the Atlantic Cities, cities like that. Short Hills, Far Hills, Bedminster, don't come to us with these problems. We go to a city like Newark or Atlantic City and say, "You have to replace this fire equipment." They say, "Well it's going to cost us \$150,000. We can't do it. We

can't afford it." It doesn't seem to be beneficial, in my sense, to say, "Well then we're going to fine you \$1000 a day for not complying with the law." That seems to be missing the point.

SENATOR STOCKMAN: But in Short Hills you would fine them? (laughter)

MR. VUOCOLO: No, Senator. We haven't had necessity to fine them. No, we haven't had the necessity of pursuing fines because we've achieved compliance. The problems with compliance have--

SENATOR STOCKMAN: Do you understand why I might very much misunderstand your choice of words?

MR. VUOCOLO: I understand your point now, Senator, and I can assure that is not what I meant to convey. If you did interpret it that way, I'm sorry that our choice of words was not as precise as it might have been. But there's no distinction in enforcement between urban cities and suburban areas, if that's what you're trying to get at.

SENATOR STOCKMAN: Mr. Vuocolo, I can't reconcile what you just said with what your written statement says. And if this is a statement that's adopted by the Commissioner of Labor, I want to confer with the Committee to decide whether we're going to request personally the Commissioner of Labor come back to another hearing of this Committee and explain. If that's his statement as well.

SENATOR JACKMAN: Well you know-- It's through you again, Mr. Chairman.

SENATOR STOCKMAN: Yes, yes.

SENATOR JACKMAN: There's a letter here from the Commissioner, and in it he says, his priorities for health standards, and goes on for personal protection equipment for fire fighters, and he says the Department has adopted the OSHA standards for fire fighting protective clothing found, etc. etc. In addition, on July 31, 1986, the Commissioner issued a

directive ordering the removal from the workplace of certain items of protective clothing which constitute an imminent hazard to the wearer. The Department has also promulgated to revise rules concerning protective clothing for fire fighters. Finally, the Standing Subcommittee on Safety and Health Rules has agreed on a revised standard for personal protective clothing for fire fighters. This proposal is being prepared by the Department of Health for presentation to the Board. In the meantime, you took the clothing away. What are they wearing?

MR. VUOCOLO: No, they have clothing provisions in place.

SENATOR JACKMAN: No, no, no. You see, you said here -- and you give me a price. I listen very attentively. That's one thing, my hearing is good. You mentioned before about a cost product. You didn't want to fine them a thousand dollars a day. You mentioned that to the Chairman, that you weren't going to fine them a thousand dollars a day because that wouldn't be productive. In other words, that money could be used toward clothing. Mr. Serraino mentions here that on July 31 the Commissioner issued a directive ordering the removal from the workplace of items of protective clothing which constituted an imminent hazard to the wearer. Now, what did you do to replace that hazardous clothing? Was there clothing bought?

MR. VUOCOLO: The municipalities had to replace the equipment.

SENATOR JACKMAN: That's what I'm asking you.

MR. VUOCOLO: That's the answer then.

SENATOR JACKMAN: But you said before you didn't want to do nothing about that. You see, you said to him before, we didn't want to fine these guys for doing what they're doing. Did they make the replacement of this clothing and the hats -- that I saw on this desk the other day? Has everybody got a hat today in the State of New Jersey, that's protecting his head fighting fires?

MR. VUOCOLO: I can't make the statement for everybody, but you have picked up on a very salient point.

SENATOR JACKMAN: I always hit on salient points.  
(laughter)

SENATOR STOCKMAN: What are they?

SENATOR JACKMAN: I don't know.

SENATOR STOCKMAN: I'm only kidding you.

SENATOR JACKMAN: See, you laugh once in a while and it breaks up the monotony.

MR. VUOCOLO: Senator Jackman, we have worked with a number of major cities in this State, including Union City in your district where you cooperated with us.

SENATOR JACKMAN: Yes, Weehawken.

MR. VUOCOLO: Weehawken, I'm sorry.

SENATOR STOCKMAN: Yes I know. I called the mayor.

MR. VUOCOLO: In Weehawken for example, we got the equipment replaced.

SENATOR JACKMAN: I know we did.

MR. VUOCOLO: The fire fighters are wearing complied equipment. We didn't have to issue an order to comply. We didn't have to go to assess fines. We got the job done. That's the intent of the Act. We don't view the purpose of the Act as being affected by issuing orders to comply or seeking to assess penalties. We want to be judged in terms of the inspections we've done, the violations we've cited, the violations that have been corrected. And the other towns that we've not necessarily gone out to but have seen what's going on, have complied voluntarily.

SENATOR STOCKMAN: Mr. Vuocolo, this question of not enforcing, not getting tough with compliance orders or penalties; I made the comment to Commissioner Coye -- did you hear the exchange we had? -- that if you don't know that's going to happen, this lighter approach -- the more consensual, and everybody work together and happy ending to it -- is

undermined. It's just like motor vehicle laws or any other laws. So I am really troubled with this continued suggestion that, "Well look, we're not in the business of--" We know you're not in the business of collecting fines in order to make yourself look good, but when no fines have been imposed, and when only a handful of compliance orders have been issued in three years, don't you understand why people -- including a lot of organized labor representatives and others -- are getting very restless about whether the spirit or the letter of this law is being complied with?

MR. VUOCOLO: Again Senator, I understand your concern. I would respond by saying, the spirit and the letter of the law is to promote a safe and healthy workplace for public employees, not to pursue orders to comply or fines against employers. We have not had the necessity, and I can tell you very honestly, most employers have complied with us. We had a problem with Newark and we had to take them to court to enforce compliance with the order to comply, but that's been the only situation where we had to take that drastic step.

SENATOR STOCKMAN: Fine. I'm sorry Chrissy.  
(referring to interrupting Senator Jackman earlier)

SENATOR JACKMAN: No, that was okay. You almost asked the same question that I was going to say. I agree in principle. I wouldn't want you to fine people just for fines, and I don't think the Chairman wants you to fine people just for fines. But it seems to me that if nobody takes care of these laws and follows through to make sure that I get the equipment, then somebody's got to pay. For example, Hoboken just got done paying a \$250,000 fine. Hoboken, my district. Thank God, Hartz Mountain comes along and picked up the tab for the sewers. Okay? They weren't taking care of the sewer problem, and it was flowing up into the streets and nobody cared about it until somebody decided, "Well let's do something about it." Then when OSHA came in, the Department of Health,

they got fines of \$5000 a day. Boy that adds up pretty quick. They broke up the streets pretty fast. Two hundred and fifty thousand dollars worth of fines. Now, somewhere along the line, if there were no fines, and no nothing, that sewage could just keep overflowing and overflowing and overflowing and overflowing, until somebody got killed.

SENATOR STOCKMAN: Until it got to Chrissy Jackman's house. (laughter) All right.

MR. VUOCOLO: Senator Jackman, in your district in Weekawken the fire fighters have safe, standard equipment; and we didn't have to fine anybody or penalize anybody.

SENATOR JACKMAN: I'm glad.

MR. VUOCOLO: I don't see anything wrong with that.

SENATOR JACKMAN: No, we buy that.

MR. VUOCOLO: Senator Stockman, since you've dwelt on the subject of fines, I'd like to make a statement. When this act was in its formative stages, the Department of Labor was asked to submit a draft piece of legislation. In our draft, we gave the Department the authority to directly issue fines. When the Act got done with the legislative process, that process was made a little bit more -- and again I'll use the word -- cumbersome. Fines can only be assessed through a civil action, brought in Superior Court by the Attorney General's office. Also, the language of the statute qualifies that employers are not subject to fines if they have made good faith efforts to comply with the Act within their resources, financial or otherwise. It also states that the Commissioner has the authority to abate 90% of any fine levied if the employer has abated the violation within one year from the date of the fine. The Legislature I think made a very distinct policy decision to make it difficult to fine municipalities, and I can understand that because the taxpayers--

SENATOR STOCKMAN: But not impossible. Are you suggesting that the Department of Labor's position is that this procedure ought to be made more easy and streamlined, so that the Commissioner of Labor would have the power to levy those fines?

MR. VUOCOLO: Senator, we would endorse the concept of first instance sanctions, or giving us the direct power to levy fines.

SENATOR STOCKMAN: Mr. Vuocolo, I didn't ask you that. I understand that. I have difficulty-- You're honing in, or I'm honing, or we're both honing in, on this fine question. You haven't done it. You haven't utilized it. You're saying that's really a last resort. You're saying, "As a matter of fact when the bill was drafted we wanted direct authority to issue fines, but you people in the Legislature didn't go that far." I'm asking you now, do you think the law would be a better law if in fact we gave direct authority to the Commissioner of Labor to levy fines; with the other protections, and with the intent and the spirit of the law that that be a last resort? Do you understand my question?

MR. VUOCOLO: I'll answer it very briefly. Yes; my shortest answer of the day.

SENATOR STOCKMAN: Is that your position? You'd like to see that changed?

MR. VUOCOLO: Yes. Senator, also--

SENATOR STOCKMAN: We'll look seriously into changing that law to give you that authority. I have difficulty understanding the position of the Department of Labor that has not exercised that authority, and seems to be suggesting to this Committee that it's a last resort, and it almost ought not be exercised; but at the same time suggest to this Committee that we ought to consider giving him more authority to issue fines. To me there seems to be some incongruity in that--

MR. VUOCOLO: Well let me put it this way, Senator--

SENATOR STOCKMAN: --but maybe this is a bad day for me.

SENATOR JACKMAN: No it's a good day.

MR. VUOCOLO: The Act makes it difficult for us to successfully pursue fines against municipalities. The municipality has to take no good -- make no good faith effort to comply. If it's a matter of buying equipment, and the municipality has put it out to bid, or put in orders, the Attorney General has told us that constitutes a good faith effort.

SENATOR STOCKMAN: All right.

MR. VUOCOLO: There haven't been that many cases where there's been absolutely a complete refusal -- there's only been one and there was a legal issue involved, but we haven't encountered those situations where the municipality says, "We're not going to do it; leave us alone; go pound sand."

SENATOR JACKMAN: Let me ask him a question.

SENATOR STOCKMAN: Sure, go ahead.

SENATOR JACKMAN: Through you, Mr. Chairman. This is again, don't misunderstand my remarks, because sometime people think I try to be funny or something.

MR. VUOCOLO: Well, I'm from Hudson County, so I understand you.

SENATOR JACKMAN: Is there a little bit of animosity -- it's a tough way to even put the question -- but wouldn't you say there's just a little bit of animosity between the Health Department, and the Labor Department, and Community Affairs, because of the overlapping sometimes of authority, and somebody figures, "What the hell do I have to answer to her for when I have my own boss to answer to?" and "I don't have to do this, and I don't have to do that." Is that possible?

MR. VUOCOLO: Senator, you're correct in stating that when you have three departments involved in any process it's more cumbersome than having one department involved. I wouldn't use the word animosity.

SENATOR JACKMAN: You can use any other word that you want to, that would fit in, you know.

MR. VUOCOLO: I think that what you meant to say was there might be differences in philosophy, or differences in perspective between the departments, and I suppose that's possible in some cases. We saw one instance right here today in terms of the mercury spill. We have different philosophies on how to proceed under the Act. The Act, again, very clearly divides the areas of responsibility, and the Legislature did that to take advantage of the expertise of various departments. I don't know what to say. If there were one department running the Act it would probably run smoother, but I don't know if it would necessarily be better.

SENATOR JACKMAN: Through the Chair? The Chairman made recommendations and we're going to make recommendations. It seems to me that we've got three separate departments, and there is an overlapping of authority in taking care of some of the problems that exist. Now, I spoke with Commissioner Coye this morning -- and through the Chair again -- we asked the question, and she tells us she has something to do with the equipment problem in the firehouses.

MR. VUOCOLO: Yes, respirators, Senator.

SENATOR JACKMAN: Yes, respirators. Now, what do we do, define certain equipment, "You take care of the respirators, I take the hats, you take care of the gloves, I take care of this"? That to me seems to asinine. We're in the position where we've got people who are fighting fires today -- and again this is not being disrespectful -- we take away equipment, it's hazardous, it's no good. The Health Department has got a certain jurisdiction, you have a certain jurisdiction, Community Affairs has a jurisdiction. Whew. Then the poor guy who sits back there and says, "I don't know what the hell's happened, but I still don't have a hat."

MR. VUOCOLO: Senator, you're right, if you use the firehouse example, which you've picked up on. The Department of Labor inspects personal protective equipment: the hats, the coats, the helmets, the boots. The Department of Health inspects the respirators, and the Department of Community Affairs is responsible for fire fighter training. So if that's the point you're trying to make, you've made it.

SENATOR JACKMAN: But isn't that a waste of good time, and effort, and people? The guy who looks at the respirators, couldn't he look at the hats? Couldn't he look at those things instead of an overlap, one guy coming in and maybe the other guy not showing up? And only one guy takes care of the respirator, but the rest of the stuff, "Sorry that guy is down in South Jersey. He's not available today." Why can't we get a coalition, put them together, and everybody work in one form. Here, here's the sheet. It's all got the same thing. When you go in there you inspect everything that's in there, and I do the same thing in the other stop, and maybe we won't have the overlap. And when you come back, each one make your report, and we send you all copies.

MR. VUOCOLO: That's the way Federal OSHA does it, Senator, and most of the other states do it that way. Again, when the Act was in its formative stages we did submit a draft act which had all responsibility coming under our Department, and the Legislature -- for valid policy reasons -- divided the authority to take advantage of the expertise of particular departments.

SENATOR JACKMAN: Okay. Good, thank you.

MR. GOMES: Can I add to that, please?

SENATOR STOCKMAN: Yes, Mr. Gomes.

MR. GOMES: It's stated clearly in the Act that the Department of Health has the responsibility for respiratory equipment.

SENATOR JACKMAN: Yes, I know.

SENATOR STOCKMAN: Let me get into some record keeping issues which I think are important. The Act requires each employer, in accordance with Department of Labor regulations, to establish records that document the extent of work-related deaths, injuries, and illnesses. These records are available to the departments. Has the Department of Labor issued final regulations indicating what types of records public employees must keep?

MR. VUOCOLO: Senator, those guidelines are contained in the procedural rules, which we've discussed previously.

SENATOR STOCKMAN: And you said you didn't think they were important to enforcement of the Act.

MR. VUOCOLO: Well in terms of enforcement I'm talking about inspection, and cleaning up violations. I really see statistics as ancillary to our ability to enforce the Act.

SENATOR STOCKMAN: Is that why you haven't developed--

MR. VUOCOLO: No, Senator. The reason why the regulations haven't been promulgated is because the procedural rules are still in the subcommittee to the Advisory Board, and there's still several points of contention that have to be worked out.

SENATOR STOCKMAN: This has been a three-year journey towards developing regulations as to what type of records should be kept to establish deaths, injuries, illnesses, on the job. I can't believe that. When we listen to the Department of Health talk about the technical problems involved in air quality -- things of that sort -- and we start getting the engineers, and biochemists, etc., that's one thing. When you're talking about establishing a procedure whereby records would be kept -- which the law specifically says should be done, and the law has been in place three years roughly -- and I think you're telling me there are no such regulations in place; and I therefore suspect that aren't any statistics. I could ask you a lot of questions about what statistics you have

of a variety of sorts, to give us some insight. For instance, you come before the Committee and say, "Things in the workplace for public employees are great. We're proud of the job we're doing. We don't need penalties, compliance orders. Hey, everybody should be so well off." Well maybe you're right, but maybe you're wrong. And if we don't have statistics, how can I begin to assess whether that contention is fluff -- mere words -- or reality?

MR. VUOCOLO: Senator, if we had the authority to promulgate these regulations directly, they would have been done. We are, as I said, the regulations are--

SENATOR STOCKMAN: Well who's the problem? We're focusing on regulations dealing with compiling important statistics. Who's the hold up on that?

MR. VUOCOLO: There's a subcommittee on-- What is it called?

MR. GOMES: Administrative Rules?

MR. VUOCOLO: There's a Subcommittee on Administrative Rules, subcommittee to the Advisory Board.

SENATOR STOCKMAN: Subcommittee on Administrative Rules.

SENATOR JACKMAN: Who made that committee?

SENATOR STOCKMAN: Of what committee?

MR. VUOCOLO: A subcommittee of the Advisory Board.

SENATOR STOCKMAN: When was that Subcommittee on Advisory Rules created? Who's the authority on that?

A S S T. C O M M. W I L L I A M J. C L A R K: It was created right after the Act, maybe six months after the Act went became effectual in 1984.

SENATOR JACKMAN: Six months after 1984?

ASSISTANT COMMISSIONER CLARK: As soon as it could be appointed. It took about six months to get the concept of the thing together, and get it going, and to pick the membership.

SENATOR JACKMAN: So that means it's in effect--  
(inaudible)

ASSISTANT COMMISSIONER CLARK: Yes, the Advisory Board is in effect since--

SENATOR STOCKMAN: Mr. Clark, for the record, it's William Clark, of the Department--

ASSISTANT COMMISSIONER CLARK: William Clark, I'm Assistant Commissioner in charge of the Division of Workplace Standards.

SENATOR STOCKMAN: Now, I am troubled about the failure of the Department of Labor to have issued regulations that would establish this record keeping practice by all the departments, so we'd have some statistics three years after the law was in place with regard to deaths, serious injuries, and illnesses, on the job. I understand those regulations still haven't been promulgated, but I understand from Mr. Vuocolo the real culprit is this Subcommittee on Administrative Rules, which is part of a 23 person advisory committee. You're here to help us with that. My question is -- and you can testify further, Mr. Clark, later on other issues because I suspect you'll want to -- but when was that Subcommittee on Advisory Rules established?

ASSISTANT COMMISSIONER CLARK: I think either the first or second meetings, so essentially its been established--

SENATOR JACKMAN: Two and a half years.

ASSISTANT COMMISSIONER CLARK: --maybe six months less than the 1984--

SENATOR STOCKMAN: About two and a half years ago?

ASSISTANT COMMISSIONER CLARK: Right.

SENATOR STOCKMAN: How many people are on that subcommittee?

ASSISTANT COMMISSIONER CLARK: I'm not sure. Mr. Van Arnum could tell you. I think it's a half a dozen.

SENATOR STOCKMAN: How many, Mr.-- Where's Mr. Van Arnum?

W I L L I A M V A N A R N U M: (from audience) Six or eight.

SENATOR STOCKMAN: All right. There's six or eight?

MR. VAN ARNUM: Eight.

SENATOR STOCKMAN: Eight, all right. There's an eight member Subcommittee on Administrative Rules. They were identified two and a half years ago. How many times have they met? Are you the Department's liaison to them?

ASSISTANT COMMISSIONER CLARK: Yes. He's the Secretary.

MR. VAN ARNUM: I'm the Secretary Pro Tem.

SENATOR STOCKMAN: So that when they meet, you're supposed to be there?

MR. VAN ARNUM: And I am.

SENATOR STOCKMAN: All right. How many times have they met in those two and a half years, approximately?

MR. VAN ARNUM: (inaudible)

SENATOR STOCKMAN: Pardon?

MR. VAN ARNUM: Nine times.

SENATOR STOCKMAN: Nine times. That's, what, about every three or four months?

MR. VAN ARNUM: Yes.

SENATOR STOCKMAN: All right. In those nine meetings, on how many occasions did they discuss the question of establishing simple rules for record keeping, gathering information?

MR. VAN ARNUM: I would say the subject came up at every meeting.

SENATOR STOCKMAN: All nine times. Where have they gotten with regard to coming up with recommendations as to what records should be kept?

MR. VAN ARNUM: The subchapter on record keeping is clarified. Our problem for the moment is on the section involving enforcement procedures.

SENATOR STOCKMAN: Enforcement of record keeping?

MR. VAN ARNUM: No.

SENATOR STOCKMAN: Why don't you come on up. I'm sorry. (Mr. Van Arnum comes forward) Do I understand you to tell me that this Subcommittee on Administrative Rules has reached agreement on what the regulations should be with regard to record keeping for deaths, injuries, and illnesses on the job?

MR. VAN ARNUM: Correct.

SENATOR STOCKMAN: When did that happen, approximately?

MR. VAN ARNUM: A year ago.

SENATOR STOCKMAN: All right. So a year ago the Subcommittee -- that I thought you told me, Mr. Vuocolo, was the real fly in the ointment on promulgating these regulations -- apparently reached consensus?

MR. VAN ARNUM: Yes, but I want to clarify that. There's three subjects that are current in these rules: inspections, orders to comply, that's one subject; the second major subject is record keeping; and the third subject is variances. They are all in one chapter of the Administrative Code, and it's our intent to promulgate them together. The reason record keeping hasn't been covered separately is because it's in this single package.

SENATOR STOCKMAN: Well, Mr. Van Arnum, can we agree that the record keeping is separate and distinct from inspections and orders of compliance? If the Subcommittee has at least reached a consensus on that, why wouldn't they pass that on, and why wouldn't the Department of Labor -- in accordance with a three-year-old law -- have promulgated regulations that would begin to get us into a position of gathering information on deaths, serious injuries, or health problems on the job; so that if a deputy commissioner comes in to a legislative hearing and says, "Look things are rosy. We ought to almost be given citations of accommodation for our work," the Committee could either say, "Yes, as a matter of fact the statistics tend to bear you out," or "Hey wait a

minute, did you know that 'X' number of people got asbestosis, 'Y' number of people died, 'Z' number were injured?" Can you help me with why that wasn't done?

MR. VAN ARNUM: The only thing I can say is, it will take about three years to establish a record on record keeping--

SENATOR STOCKMAN: A record on record keeping.

SENATOR JACKMAN: Through you.

SENATOR STOCKMAN: I think Senator Jackman ought to handle this one. (laughter)

ASSISTANT COMMISSIONER CLARK: The basic-- If I could just say something.

SENATOR STOCKMAN: Just a moment. I'm sorry, Mr. Clark. Senator Jackman has the floor.

SENATOR JACKMAN: Mr. Clark, you've met over a period of time nine times you said, in three years -- or two and a half years, nine times?

MR. VAN ARNUM: Yes.

SENATOR JACKMAN: That's an average of around every three and a half months. When you sat down, did anybody come up and say, "Five people died last week, or last month, or two months ago, or three months ago, in a fire accident due to faulty equipment" or anything? Did anybody give that kind of statistics? Did anybody make a note of it? Did anybody discuss the amount of people that were killed due to accidents that took place in the workplace, and that includes firemen, public employees, etc.? Did anybody come up with figures in those months that you met? The first three months, nobody came up with any figures? Up until now, right at this present time, the last meeting that you had, have you got any data documented telling me how many people died in work related accidents?

MR. VAN ARNUM: No. I think maybe you misunderstand what the purpose of the record keeping requirements are in this rule. They are telling the employer how he shall keep his records, and in what form, and who he shall submit that

information to. These rules are basically the OSHA standards on record keeping. They tell you what is a workday.

SENATOR JACKMAN: Oh I'm not interested in the workday. I don't care what the workday is. I'm interested in how many people died, that that employer told you about, in the workplace; or you found out about.

MR. VAN ARNUM: Let me just clarify that point.

SENATOR JACKMAN: Yes.

MR. VAN ARNUM: The responsibility is on the employer to establish the record keeping requirements.

SENATOR JACKMAN: Then why do you have a subcommittee? What do you do when you sit down, nine or eight people, you sit down, what do you talk about?

MR. VAN ARNUM: What we have done in the past recent meetings, is try to make these requirements on procedural rules, consistent with the terms of the Act.

SENATOR JACKMAN: Each meeting you decide-- What do you do the next meeting, the same thing?

MR. VAN ARNUM: We're down to two issues. We're going to have meetings scheduled next week, and that document should be ready for the Advisory Board.

SENATOR JACKMAN: All right. Now, you're going to give the Advisory Board the documentation of what?

MR. VAN ARNUM: Three issues.

SENATOR JACKMAN: Three issues.

MR. VAN ARNUM: Inspection procedures and enforcement procedures, record keeping requirements, and how to handle a variance.

SENATOR JACKMAN: We started off with that when you started the committee. You had all those things. What did you document in that proceeding? When you got a record keeping-- You told the employer to keep records.

MR. VAN ARNUM: Right.

SENATOR JACKMAN: Do you get a copy of those records

from the employer.

MR. VAN ARNUM: Not yet, no.

SENATOR JACKMAN: You didn't?

MR. VAN ARNUM: State employers are handled by the Bureau of Risk Management.

SENATOR JACKMAN: We got another department now?

MR. VAN ARNUM: Correct.

SENATOR JACKMAN: Whew. I got to tell you something. No disrespect, Mr. Clark, but I've got--

ASSISTANT COMMISSIONER CLARK: No, Mr. Clark's over here.

SENATOR JACKMAN: Oh, Mr. Clark and-- I apologize I didn't get your name, so I apologize on that. It seems to me that, this is what I call passing-- Where I come from this is called passing the buck. You know what I'm talking about?

ASSISTANT COMMISSIONER CLARK: Yes.

SENATOR JACKMAN: It's as simple as all that. When you sit down at nine meetings, with eight people, and you discuss subject matters, and the same subject matter is discussed for eight meetings-- You're not discussing anything else because statistical data, that was asked for by the Chairman, is not available.

ASSISTANT COMMISSIONER CLARK: There's a more basic problem than that. After that committee does all that stuff, they have to present it to the Advisory Board, which contains 23 diverse--

SENATOR JACKMAN: What the hell are they going to do with it?

ASSISTANT COMMISSIONER CLARK: --and they take positions that are strong for employers, employees, management, what have you, but that's not a scheme that the Department of Labor--

SENATOR JACKMAN: How can you take a strong position when the guy is dead?

ASSISTANT COMMISSIONER CLARK: The Department of Labor didn't establish that scheme.

SENATOR JACKMAN: Mr. Clark, would you answer my question? What kind of strong position can you take when a guy is dead? What's your position on a guy who's dead?

ASSISTANT COMMISSIONER CLARK: I can't answer that.

SENATOR JACKMAN: You can't answer it, of course you can't answer it. I don't understand. I get frustrated sitting up here listening to garbage that comes down the line--

ASSISTANT COMMISSIONER CLARK: It's garbage, but the garbage is in the Act. And Mr. Vuocolo said that--

SENATOR JACKMAN: So who makes the Act?

ASSISTANT COMMISSIONER CLARK: You people made the Act. (laughter)

SENATOR JACKMAN: We made the Act?

ASSISTANT COMMISSIONER CLARK: Yes, you made the Act.

SENATOR STOCKMAN: Excuse me, Senator. All of these questions are through the Chairman.

SENATOR JACKMAN: Through you?

SENATOR STOCKMAN: Yes.

SENATOR JACKMAN: Of course they are.

SENATOR STOCKMAN: Go ahead.

SENATOR JACKMAN: I apologize.

SENATOR STOCKMAN: Senator Jackman?

SENATOR JACKMAN: We made the Act?

ASSISTANT COMMISSIONER CLARK: Yes--

SENATOR JACKMAN: And what have you done to implement it?

ASSISTANT COMMISSIONER CLARK: --and you made it difficult for us to implement, because you put in the Act that we can't even think about a regulation and adopt it until we get advice and consent of these 23 people out there.

SENATOR JACKMAN: Then Mr.--

ASSISTANT COMMISSIONER CLARK: You should reconsider your Act.

SENATOR JACKMAN: Mr. Clark, then I say to you -- and I'm going to tell you this -- then you make that recommendation, that the 23 members are unruly, and it doesn't make sense, and we'll change it.

ASSISTANT COMMISSIONER CLARK: I personally made that recommendation when the thing was going through the Legislature.

SENATOR JACKMAN: Who did you make it to?

ASSISTANT COMMISSIONER CLARK: I don't recall, but I was Legislative Chairman at the time, and I was opposed to maybe 10 or 12 things in this Act that made it very difficult for us to enforce. There were compromises that were made with all the various interest groups to get the Act through. Now don't blame us for that.

SENATOR STOCKMAN: Mr. Clark, let me--

ASSISTANT COMMISSIONER CLARK: It's got to be the Legislature, they have to assume their responsibility.

SENATOR STOCKMAN: Mr. Clark, let me ask you this.

ASSISTANT COMMISSIONER CLARK: You're here hollering at my staff. I'm getting a little ticked at it.

SENATOR JACKMAN: I'm not hollering at your staff. All I'm saying is you-- Don't misunderstand-- that's the way I--

ASSISTANT COMMISSIONER CLARK: It's like an inquisition. Instead of giving us a chance, what you're doing is putting us on trial.

SENATOR JACKMAN: Hey Clark, let me--

SENATOR STOCKMAN: Wait a minute, Senator Jackman, wait a minute. If I'm going to--

ASSISTANT COMMISSIONER CLARK: I can shout too.  
(laughter)

SENATOR JACKMAN: What in the hell-- You think you're scaring me?

ASSISTANT COMMISSIONER CLARK: No. Nobody can scare you. You don't scare me either.

SENATOR JACKMAN: You don't think you do.

ASSISTANT COMMISSIONER CLARK: You don't think you scare me.

SENATOR JACKMAN: You're an employee and you better act like one.

ASSISTANT COMMISSIONER CLARK: I'm acting like one. I'm acting like a person, and I want to be treated like one.

SENATOR JACKMAN: I'll treat you like one.

SENATOR STOCKMAN: Senator Jackman, Chris--

ASSISTANT COMMISSIONER CLARK: You better do it.

SENATOR JACKMAN: Don't tell me-- What are you threatening me?

ASSISTANT COMMISSIONER CLARK: I'm not threatening you, no. You've been threatening my staff all the way through.

SENATOR STOCKMAN: Chris, you're embarrassing me.

SENATOR JACKMAN: All right, through you. When I ask a question--

SENATOR STOCKMAN: Wait a minute. If it's through me, let me rule.

ASSISTANT COMMISSIONER CLARK: You said, "You're an employee, and you've got to do something." Don't look down at me as an employee.

SENATOR STOCKMAN: Just a moment. Just a moment. Mr. Clark, just a moment. If this hearing is not going to totally get out of hand--

ASSISTANT COMMISSIONER CLARK: I'm not conducting it, you're conducting it.

SENATOR STOCKMAN: Excuse me, Mr. Clark, I think you are getting out of hand.

ASSISTANT COMMISSIONER CLARK: Excuse me. All right, excuse me. I'm sorry.

SENATOR STOCKMAN: As a matter of fact, I think very definitely the record will suggest you getting out of hand if you interrupt me again.

ASSISTANT COMMISSIONER CLARK: I won't interrupt you again, not intentionally. And I didn't do it intentionally.

SENATOR STOCKMAN: All right, Mr. Clark. You obviously are distressed at the -- I assume -- comments and testimony taken last week, which you interpret to be a personal attack on your--

ASSISTANT COMMISSIONER CLARK: No.

SENATOR STOCKMAN: Mr. Clark, I'm talking. And I would appreciate your listening, and when I finish I'll give you an opportunity to respond.

ASSISTANT COMMISSIONER CLARK: All right. Okay.

SENATOR STOCKMAN: You obviously are upset at some of the testimony that was taken last week, which you apparently interpret to be a personal attack on your staff. You appear to be upset at some of the questioning from this Committee. I want you to remind you that we're not here to make personal attacks on you or your staff. And I think that if we keep that in mind, keep calm, we can get to what we're about to get to, which is the well-being of public employees in New Jersey. So I ask that you calm down about it, and I think we can get through this hearing. If we don't get through it today, and have to have another hearing, we'll come back. But for your sake, and your dignity, and this Committee's dignity, and the interest of the people who are here listening, I ask you to try and keep that in mind; and I know that the Committee will keep that in mind. Now, I'm not sure even where we were. If you want to make a reply to that, Mr. Clark, you go ahead.

ASSISTANT COMMISSIONER CLARK: Yes. I would like to just say -- the honorable Senators -- that I am not distressed at the, so-called, attack that the people made at the last meeting. I'm not distressed at them. I am distressed a little bit that they are blaming our Department for a lot of issues that are inherent in the basic law. I think that many of the people last week were misled, and they blame our staff for not

doing a proper job, when they can't do what you people conceive as a proper job because of basic statutory problems which are not our part. Mr. Vuocolo attempted to outline that, and my staff is doing it, but there's a lot of comments-- I feel you're pushing our staff a little bit, but apart from that, you know, I think you're using a little bit of sophistry on us. But it's alright.

SENATOR STOCKMAN: Mr. Clark, if you think we're pushing your staff a little too much by this hearing, I'm sorry to hear you say that. I don't think we are.

ASSISTANT COMMISSIONER CLARK: But that's alright.

SENATOR STOCKMAN: No it isn't alright, but that's a question of judgment, I guess, for the public. I think the question of whether other people misinterpreted the problems you have with regard to the Act, I think the questions about the design of the Act -- whether it was poorly put together, and needs revision -- those kinds of things Senator Jackman is interested in and concerned about; I am too, and we can get to those. And you're going to have an opportunity -- if not today, at some other time -- to explain the weaknesses of the Act, as an act. And I don't doubt there are some weaknesses in it.

But you came up here -- and I'd like to finish that before this hearing today ends for sure -- you came up here as a result of a colloquy that I had, that made a journey through Mr. Vuocolo, to Mr. Gomes, to you, and then to Mr. Van Arnum. Frankly, it was focusing on something very specific, and I think relevant to these hearings. It was on this question of why, in three years, the Department hasn't promulgated regulations to deal with the question of record keeping. Now, Mr. Clark, I heard from you, but the answering party who really got us to where we are was Mr. Van Arnum with his comment about it takes three years to make a record on record keeping. I was puzzled about that, Senator Jackman got into it, and I'm not going to let go of it. I want to trace it down--

ASSISTANT COMMISSIONER CLARK: Can I speak to that a little--

SENATOR STOCKMAN: --because historically, the testimony that I've gotten -- and I would like to hear from this Secretary of the Subcommittee on Administrative Regulations -- seems to suggest that that Subcommittee had completed its work on this phase of regulations called for under the Act at least a year, or year and a half ago. And if that be the case, I am still not satisfied as to why that wasn't passed on to the full body, why they didn't approve it, and why the Commissioner of Labor didn't implement those regulations so that we would be on our way towards having statistics which I think are very vital, and are a very integral part of the Act; and are important to the State, and to the public employees who work for it. I'm still puzzled about it, and since Mr. Van Arnum got us to that, and is on that subcommittee, I'd like to ask him -- if you want to comment further on this record on record keeping -- but why is it that you didn't pass that on, and we don't at least have the beginning of these important records now?

MR. VAN ARNUM: Well we could have done that. But there's three subjects in this rule, and it just seemed that it was a nice neat package, and we've held up the rules on record keeping in order to finish the odds and ends on the other subjects.

SENATOR STOCKMAN: Mr. Arnum, but you know and I know that that means--

MR. VAN ARNUM: Van Arnum.

SENATOR STOCKMAN: Mr. Van Arnum -- that we have lost a year and a half apparently, at least, of valuable records. Maybe there wouldn't be records that we'd even have today, but we'd get them three and a half years sooner because whenever we get on this journey to the next step, and then the next, and get this implemented, and then State departments start

gathering these regulations, in that delay we've lost at least a year and a half apparently, and it has nothing to do with the imperfections in the law. Do you see my point?

MR. VAN ARNUM: Oh, I see your point, but I'm not sure that I agree with it.

SENATOR STOCKMAN: Well, explain to me why not?

MR. VAN ARNUM: Well, these three subjects are basic to the public employee program. There are the three most important subjects, and we got this rule altogether here, and it's all in a certain format, and it fits neatly together, and I'd just like to see it go out--

SENATOR STOCKMAN: I mean, neatness, orderly form, are all wonderful words; but in the meantime -- well let me switch back because I don't want to beat up on you. Let me ask Mr. Vuocolo, as the chief spokesman for the Commissioner of Labor you've heard this dialogue -- and I hope, Mr. Vuocolo, it doesn't sound to you like this Committee is beating up on anybody here on this issue. I hope not. But going beyond that, are you comfortable with this position? Is it the position of the Department of Labor that you're not about to implement the law in the area of record keeping until a neat, clean, all together three-part concept is promulgated by this Subcommittee and then works its way up? Is that the Department of Labor's position?

MR. VUOCOLO: That's not the Department of Labor's position.

SENATOR STOCKMAN: I would hope not. I would hope not.

MR. VUOCOLO: We haven't even gotten to that point. As Mr. Van Arnum indicated, the record keeping proposals are part of a package of administrative procedural regulations. I don't understand all the intricacies of the administrative rule adoption procedure. I suppose it's possible they could have been severed and considered separately, but quite frankly, that idea never came up. No one ever suggested it. If the

subcommittee had presented that portion to the Advisory Board, and the Advisory Board adopted it--

SENATOR STOCKMAN: What's the Commissioner of Labor -- and I don't mean personally but figuratively -- what's he doing about this? That idea that, hey, record keeping is separate and distinct from inspection and order compliance, and it's important, and the law requires that we do it and we're not doing it; and why doesn't somebody recommend to this Subcommittee that they break it off and get us that, and deal with the tougher issues at greater length? Isn't there anybody in the Department of Labor who would do that if this group doesn't seem to have enough understanding of the sensibleness of that?

MR. VUOCOLO: Senator, to make an analogy, the way the PEOSHA system works, the Advisory Board is like the Legislature, the subcommittee is like a legislative committee, and the Commissioner serves as the Governor. He accepts or rejects rules once they've been presented to him. The Commissioner may have some persuasive power to lobby on certain things, but as you know the Governor doesn't always dictate what the Legislature does.

SENATOR STOCKMAN: I have a hard time not believing that the Governor at times almost runs the Legislature. I'll tell you that frankly. That's my personal position. So if you suggest to me that an analogous Commissioner of Labor cannot in any way influence, or move, or nudge, a body like this, you've lost me totally in the analogy.

MR. VUOCOLO: I didn't say he couldn't in any way. I said he could possibly use some persuasive powers--

SENATOR JACKMAN: Through you?

SENATOR STOCKMAN: All right. Senator Jackman?

SENATOR JACKMAN: I want to go back to Mr. Clark. Because I look at your title-- This is not being disrespectful, again.

ASSISTANT COMMISSIONER CLARK: No, no. I understand.  
Go ahead.

SENATOR JACKMAN: I'm not picking on anybody--

ASSISTANT COMMISSIONER CLARK: I understand.

SENATOR JACKMAN: --because I get a little annoyed. You're the Assistant Commissioner for Workplace Standards, and William is the Assistant Director of Workplace Standards; and I can understand your frustration -- like I'm frustrated when you say we made the rules, and we made the law, and the law is not to your liking evidently, because you feel that the 23 members are too cumbersome, and it's very well that you could be 100% right. In fact, my recommendation is going to be to Mr. Serraino, Charlie -- who I respect and think is a good Commissioner of Labor, by the way, and I have access to his office -- and I'm a member of the Labor Committee -- but again, I get frustrated. Has the Department of Health been notified to what this Committee has done up to date?

ASSISTANT COMMISSIONER CLARK: The Department of Health participates very closely with the Committee. If I can just editorialize a little bit. Sure, the Committee is 23 members, but that's not the basic problem; because sometimes 23 diverse people are helpful because you get a lot of views. The basic problem is that the basic statute calls it an Advisory Committee, but they're not an Advisory Committee in one very very important respect. That respect is, the Commissioner of Labor absolutely, by statute, cannot adopt an effective standard, except for the initial basic OSHA standard. We didn't need their help on that, and we adopted that before the Board was even in effect. But we can't adopt any new regulations that exceed OSHA or in areas that OSHA doesn't cover, except with the absolute advice and consent -- and underline consent 50 times -- of that board. That's our basic problem. We're hamstrung until that committee-- Now we say they're spinning around all over the place, sure, we feel the same thing.

I had a draft copy of those rules very early. I just couldn't buy them, because there were a lot of things in the rules where the makers were attempting to get personal -- what do we call it -- things in there that they wanted, but exceeded the statute. We can't make law by rules and regulations. So the rules have to be within the context of the statute. The very initial draft I "Xed" through half of it, and sent it back to Van Arnum and said give it back to the Committee. My directions said, make sure the rules when they come out of the Committee are within the context of the statute, and don't make rules and try to make law, which is the province of the Legislature. So the basic problem is not the 23 in the Committee. I even like that, the diversity. Let them fight. Let them argue. You know, a lot of this stuff about departmental-- We have no problem with the other departments. We get along fine with them. But the problem is on these subcommittees we have diverse opinions, and they get in and they argue, which is necessary. They have different views, and out of that comes good things. But it takes time. The basic problem is the fact that we can't move unless we have the advice and consent of that committee.

SENATOR JACKMAN: You said before -- and again, Mr. Clark -- you said that you recommended that that committee was too big.

ASSISTANT COMMISSIONER CLARK: Well, apart from that, that's a nice--

SENATOR JACKMAN: Is that what you said before, or isn't it?

ASSISTANT COMMISSIONER CLARK: I may have. I think it's too big, yes.

SENATOR JACKMAN: Okay. You said it was too big.

ASSISTANT COMMISSIONER CLARK: But apart from that, that's not essential. That's a nicety. The real essential problem is the fact that that committee, big or small, whatever

it is -- and it's an interest group by statute. It's a very strong interest group, and when you put all interest groups together they don't agree on things. They have to hash things out. They're a strong interest group as related to any kind of law that we're administering. The basic problem as I see it, right or wrong, is the fact that we can't do anything, regulation or standard wise, without the advice and consent of that group.

SENATOR JACKMAN: Through you, Mr. Chairman? The Chairman asked before, statistically, have you got an amount of people that died in the workplace over this three year period that you had this committee? Have you got any documentation that you can say to us, for example, "Mr. Stockman, Mr. Jackman, we have documentation of 75 people dying in work-related deaths."

ASSISTANT COMMISSIONER CLARK: I don't have that, but it's available I believe, because in the last couple of days -- in attempting to answer Senator Stockman's request -- I had Mr. Van Arnum call two agencies. One, the Pension Board has general statistics about deaths; but the problem with those statistics they have is that they're not always specific in their job relatedness. Okay? One time we did have these statistics through our Workers Compensation group, but somewhere along the line somebody cut out an appropriation and our statistic research group stopped doing that. They do get some statistics for OSHA purposes which have general things, you know, "X" number of employees involved died.

But what we need is specifics of deaths and injuries in certain categories, so we can compare them year to year. We don't have that. I doubt when we're going to have it, even if we adopt these statistics as the statute requires, because the statute requires we have regulations that employers keep these things. Now we've got to gather them and indicate specifically what was the problem, where was it, what part of the State was

it in? That's a significant step, but statistics even in the private sector haven't reached that state-of-the-art yet. It hasn't been done anyplace, private or State. We get a number of deaths in General Motors, and we know something like, "X" number of people tripped over wires, but they don't say it's in this area. So there's a lot to be done with statistics, but it's also expensive. I asked our research group -- they used to have \$300,000 from the Federal government alone, which is more than almost our total budget, to do that.

SENATOR STOCKMAN: Mr. Clark, I don't doubt that there's some challenging and difficult issues in the area of statistics gathering--

ASSISTANT COMMISSIONER CLARK: Yes, we'd like to have statistics.

SENATOR STOCKMAN: --but listening here today and trying to be fair about it, I'm struck with the fact that as far as developing regulations in support of, and to get these employers -- these 21 departments of State government doing this and tackling the job-- I get the impression that we are essentially nowhere three years after the Act was passed. Now I've gotten from your staff, Mr. Van Arnum, the fact that a year and a half ago that aspect of this subcommittee's work seemed to reach a consensus. As a matter of fact, I point out that I wouldn't think that in the area of record keeping that there would be a tremendous battle between organized labor and-- I mean, that's not the most controversial area. So it would seem to me that if someone took seriously that part of the Act that charges you with promulgating those regulations, that the journey would have been complete long before now. It would have been out of that committee.

As an aside, incidentally, I'm not sure that I concur with your interpretation with this advise and consent provision in the Act with regard to that body. And I don't know whether you have an Attorney General's opinion on that or not. But you

seem to paint a picture of a Commissioner of Labor who is almost helplessly waiting on above, the behavior of a "Advisory Committee" of 23 people with subcommittees on various aspects, and if they kind of want to wait until they get their work productivity -- just dot every "i" and cross every "t" and cover every subject -- that he just has to stand by, and if it's three years, five, or ten, before we start gathering these important statistics, well, that's the way it is. But I don't think that was the intent of the Legislature. I don't think that's the letter of the law, and I certainly don't think that's the spirit of the law.

So in regard to record keeping -- and we may not be able to get too much beyond that today -- I continue to be restless. And I would point to Mr. Vuocolo's statement, in his very statement to this Committee, which I think may be the nub of the problem; because, in my opinion, a fair listening to that statement suggests that your Department -- if he is expressing the mind-set of it -- doesn't really see the promulgation of these regulations as being terribly important. I forget his phrase, but basically sort of saying, "Things are good and we're doing things, and these regulations we don't really need. We'll be at them." That's the kind of thing this Committee is concerned about. I think the record of the hearing so far makes very clear why we should be concerned.

ASSISTANT COMMISSIONER CLARK: Can I speak to that?

SENATOR STOCKMAN: Yes, go ahead.

ASSISTANT COMMISSIONER CLARK: I don't know where to start now, except that we have to do what the statute requires us to do, within the limits of our resources. So, I have to take responsibility for that because I'm immediately in charge of this program. I have to determine what goes first, and what can stand aside. It's not a question of record keeping not being important. Record keeping is important for a lot of reasons, statistical and what have you. I've made the decision

-- at least in my area -- that record keeping, we want those as soon as we can get them; but they're not the essentials we have. They're somewhere down the line. More essential is getting better, improved, standards than we have. My pressure on the Committee acting as their Chairman, has been to get going on better improved standards beyond the OSHA scope. And frankly, it's a decision I made. I'll have to bear the responsibility. I put records down maybe fourth or fifth, and that's my thing, but there are other things that I'd like to get first.

SENATOR STOCKMAN: Mr. Clark, why are they exclusive?

ASSISTANT COMMISSIONER CLARK: They're not exclusive.

SENATOR STOCKMAN: In other words, if this subcommittee has reached consensus, why couldn't they move on and--

ASSISTANT COMMISSIONER CLARK: Oh we'd like to have them, yes. They're coming, but I haven't-- Records are important from a statistical standpoint, an overlook standpoint, and judge their work. But basically to help an employee, more important are standards. That's what my own position has been.

SENATOR STOCKMAN: When do you think that these regulations, that will help us to get some meaningful statistics, will be in place?

ASSISTANT COMMISSIONER CLARK: The last time the Committee Chairman-- I don't want to get into that. But I'm hopeful that the Committee, from what Mr. Van Arnum tells me -- who has been working with them on a day-to-day basis -- that these proposed regulations are in order, and I hope that they'll soon be presented, maybe at the next meeting of the Board. The Board -- I don't know how they're going to act on them. I hope that they won't be too long in acting and approving them. So as soon as the Department of Labor gets them, we will immediately enact them.

SENATOR STOCKMAN: I translate that to mean within the next six months?

ASSISTANT COMMISSIONER CLARK: Well, it takes a month to get them through the administrative process. You have to publish them, and then ask for comments, and what have you. I think we're ready-- As soon as they have a regulation before me -- and Bill, do you have any of that so we have an excuse for calling a meeting together?

MR. VAN ARNUM: The subcommittee should be able to turn those over to the Advisory Board by the 1st of August.

ASSISTANT COMMISSIONER CLARK: Alright. As soon as I can, we'll do it.

SENATOR STOCKMAN: Incidentally, am I incorrect, aren't those regulations you're turning over basically the OSHA regulations?

MR. VAN ARNUM: No. They're a modified version. The record keeping are the OSHA standards. The enforcement procedures are not.

SENATOR STOCKMAN: No, no. But we've been talking about the record keeping, right?

MR. VAN ARNUM: The record keeping requirements are the OSHA standards.

SENATOR STOCKMAN: Now, we had the OSHA standards when this Act was passed, didn't we?

MR. VAN ARNUM: Yes.

SENATOR STOCKMAN: So, in three years, we're about to get a Subcommittee on Administrative Regulations recommending and passing on the OSHA regulations with regard to record keeping, as a recommendation to implement in the State law we're talking, right?

MR. VAN ARNUM: Together with other subjects.

SENATOR STOCKMAN: But on regulations-- Do you see my point, Mr. Vuocolo? Let me turn back to you for a moment. Now, I don't want to beat up on anybody, and I don't want to be

misunderstood; but this Act three years ago said -- among other things -- statistics are important. You came into this Committee and started out by saying, things are rosy out there. Maybe things are rosy, but we don't have any statistics. Three years ago the Act said the Department of Labor will promulgate regulations that will enable us to gather these statistics. We have no such statistics now. Mr. Clark has pointed out we used to have some in pensions, we use to have them in Workmen's Comp., etc. We're three years down the road, we haven't gotten them. The regulations that we're probably going to adopt in that area are basically the OSHA record keeping regulations.

ASSISTANT COMMISSIONER CLARK: Probably.

SENATOR STOCKMAN: Probably. If that doesn't suggest less than-- (searches for Mr. Vuocolo's written statement) --"admirable compliance with this law," and less than assurance that our public employees can be comfortable in knowing that the Department is conscientiously addressing all of their concerns, I don't see it.

MR. VUOCOLO: Well, Senator, again--

ASSISTANT COMMISSIONER CLARK: But there's a correction.

SENATOR STOCKMAN: Excuse me, Mr. Clark.

MR. VUOCOLO: You're talking about some things that are beyond our direct control, and again I'll state that--

SENATOR STOCKMAN: What? What is beyond your direct control?

MR. VUOCOLO: The Commissioner of Labor cannot unilaterally promulgate regulations. By the law he needs the advice--

SENATOR STOCKMAN: Mr. Vuocolo, that observation, this late in the day, on this record, to this Committee, I find offensive. Maybe I'm getting tired, and I want to confer for a moment with my colleague, and I'll have something further to

say. Excuse me. (confers with Senator Jackman) After concurring with the balance of the Committee, and recognizing that perhaps we've been at it too long, and perhaps somebody is getting tired, and certainly not wanting to be overzealous, I'm going to have to adjourn this hearing today. After consultation with the Committee we'll decide if and when a further hearing will be held. I might say publicly I think the probabilities are overwhelming there will be a further hearing. I appreciate your coming to this hearing. I appreciate other members of the Administration, and there will be a further opportunity for the Department of Labor to express themselves on this. And I do want to -- and Senator Jackman points out -- Mr. Connolly is here, and has been patiently awaiting his opportunity for the Department of Community Affairs. And I'm afraid, Mr. Connolly, we're simply not going to be able to get to you today.

SENATOR JACKMAN: No, and it's unfortunate because he sat here patiently for three hours.

W I L L I A M C O N N O L L Y: Another day will be fine.

SENATOR STOCKMAN: Alright. Thank you very much.

(HEARING CONCLUDED)



**APPENDIX**





State of New Jersey

DEPARTMENT OF HEALTH

CN 360. TRENTON. N.J. 08625-0360

MOLLY JOEL COYE, M.D., M.P.H.  
COMMISSIONER

Oversite Testimony

July 1, 1987

INTRODUCTION

I would like to thank you, Senators, and the Public Employee Unions for the opportunity to appear before you concerning your interest in the New Jersey Public Employees Occupational Safety and Health Act.

The Occupational Health Program, within the Division of Occupational and Environmental Health, is responsible for all activities related to occupational health. This Program includes the PEOSH Project and the Right to Know Project, which cover public employees, and two other projects that conduct research and surveillance activities in private sector workplaces.

Before the PEOSH Project was formed the Occupational Health Program was the main resource in the State to help public employees and employers with workplace health concerns. The PEOSH Project started with the passage of the PEOSH Act and the hiring of a Coordinator, Alice Freund and an industrial hygienist in January, 1985. With increased funding in FY 86 the PEOSH staff expanded from 2 to 10 professionals by March, 1986.

The PEOSH Act was implemented in two phases. In phase one, between November 1985 and November 1986, State employees were covered by the standards adopted under the Act. A total of 114,000 employees were covered in this phase. In phase two, November 1986 and after, an additional 346,000 local government employees gained coverage. Thus the responsibilities of the departments administering the law increased three-fold.

Under the PEOSH Act, the Department of Health is mandated to investigate complaints of alleged health violations by conducting inspections of workplaces. We are also mandated to consult with the Department of Labor on their following responsibilities:

- the development of health standards,
- the development of procedural regulations,
- the enforcement of health standards,
- the dissemination of information to employer and employee organizations,
- the development of methods to encourage employers and employees to solve their own safety and health problems, and
- the development of methods to establish new and to strengthen old safety and health programs in public agencies.

We have developed a comprehensive program to address all of our mandates. These PEOSH activities, which I will describe in more detail, can be divided into seven major areas: 1) response to complaints and requests for assistance; 2) targeted investigations; 3) standard development; 4) education; 5) internal policy development; 6) interagency policy development; 7) data management.

## FUTURE DIRECTION

The PEOSH Project was given a tremendous boost this Spring when Governor Kean requested an additional \$700,000 in new appropriations. His request was supported by the public employee unions and the legislature and is incorporated in the FY 88 budget sent to the Governor last week. This new funding and associated personnel in FY 88 will relieve an overburdened staff, and is an unparalleled opportunity to broaden our approach to improving public employee health. The funding will enable us to expand from a staff of 10 to a staff of 23 professionals.

With these new funds, we expect to triple the number of field investigations we perform. We anticipate that we can continue to respond successfully to complaints and at the same time decrease our response time and increase the number of targeted inspections in high risk workplaces where we expect to find violations. We will be able to devote at least one person full time to educational efforts and will promote the formation of joint safety and health committees in public agencies. We believe that the formation and training of such committees will make employers and employees more self-sufficient in identifying and controlling hazardous conditions. We will do more to publicize the law. We will begin the development of a standard on video display terminals. We will devote a full-time position to coordinating our approach to indoor air quality problems and completing development of that standard. We are also open to incorporating into our future plans any suggestions that may come out of these hearings.

## PAST ACTIVITIES

Complaint Response - Our major activity in the past two years has been complaint response. If violations of health standards are suspected, or in the case of very serious health hazards, the PEOSH Project conducts field investigations. For example .....

### 1. Carbon Monoxide

Complaints were received last winter from 2 employees who work in an office adjoining a large municipal public works storage garage. During the winter large vehicles (diesel trucks, graders, backhoes and gasoline powered pick-up trucks) are started and left to warm-up on cold mornings. Garage bay doors were left closed and exhaust fans were not turned on. Service mechanics and vehicle operators were in and out of the area; however office employees were in the office for 8 hour days. Exhaust from the idling vehicles entered the offices by infiltration and would not clear out for hours. Secretaries complained of headaches, dizziness, nausea and shortness of breath. One secretary was pregnant and was advised by her physician not to work in the area; she was not relocated to another area until we documented serious overexposures to CO.

Two days of CO monitoring were conducted and hazardous levels were documented (CO levels in the garage reached 250 ppm; 40-50 ppm were measured in the offices). While the levels in the garage decreased significantly once the fans were on and the doors were opened, office levels remained hazardous (40-50 ppm) for several hours.

After two field visits, a letter, and a final report, the township relocated the pregnant secretary to another building, established written policy for using the fans and opening doors during warm-up, installed a CO monitor with alarm which signals CO build-up (15 ppm) and sealed off common garage/office walls.

To this date, everyone is satisfied.

### 2. PCB Leak

The PEOSH office was contacted in April, 1986 concerning a PCB leak from a transformer at a State College. Numerous air and wipe samples were taken to identify the extent of the initial contamination and subsequent clean up activities. Above acceptable PCB levels were identified after lengthy clean up procedures. Our department recommended to the college that the spill room be maintained under negative pressure (exhausted directly outside), an

interlock device be installed to shut off both ventilation systems if the exhaust fan fails, respiratory protection be provided for all employees who may need to enter the room, and the room be posted as a PCB contaminated area.

All these recommendations and others made by our office were implemented by the college.

3. Asbestos Brakes

In October, 1986 a formal complaint was received regarding potential violations of the PEOSH Asbestos Standard. During a field investigation, two brake jobs were being conducted without the use of enclosed brake systems. The law specifically states that all brake work must be done using an enclosed system to reduce airborne asbestos fibers. As a result of the investigation, DOT was issued an order to comply and 21 enclosure systems were purchased for use in all N.J. DOT maintenance garages.

Ten (10) other recommendations were also issued, including the establishment of joint labor-management health and safety committees, repair of friable asbestos pipe cover, improvement of local exhaust ventilation and the use of personal protective equipment. Meetings were held between DOH, DOT and both unions involved (CWA and IFPTE Local 195) to address each potential hazard. Solutions were worked out to the satisfaction of all parties.

4. Sandblasting

Because of the potential of serious respiratory disease from silica found in sandblasting, PEOSH has specific requirements for respiratory protection to be used during sandblasting. An investigation of a municipal sandblasting operation uncovered serious deficiencies of the respiratory equipment used. The equipment did not incorporate proper safeguards to insure the air supplied to the respirator was of breathing quality. It was also noted that the municipality did not have a respiratory protection program. As a result of the inspection the deficiencies were remedied.

5. Indoor Air Quality

An inspection of a police dispatcher's office revealed that an inadequate supply of fresh outdoor air was contributing to the health symptoms experienced by a police dispatcher working in a windowless office.

Following written recommendations issued in April, 1986 a new ventilation system was installed which introduced 25% fresh outdoor air by early 1987. Staff of PEOSH assisted the ventilation engineer to ensure adequate amounts of fresh outdoor air were delivered to all building occupants and that fresh air intakes were not located to sources of contaminants.

When the PEOSH Project receives a request for assistance from an employee or employer and there are no apparent standard violations and the remedies are obvious, we handle the request as one of "Technical Assistance". This, for example, is our approach to most stuffy office complaints. Since this is our major type of complaint and there are no applicable standards, we have streamlined our response by issuing written recommendations immediately to the employer including the quantity of outdoor air needed and the need to complete and return to us a ventilation questionnaire showing the measured quantities of outdoor air. Our technical assistance approach to problems has been successful, as indicated by the fact that most of our recommendations are indeed implemented, even though there were no standard violations suspected or documented. For example .....

1. Diesel Exhaust in Firehouses

In response to a complaint of diesel exhaust contamination in four (4) firehouses of a large New Jersey municipality, we sent a fact sheet on diesel exhaust which includes recommendations to rectify this problem. The fact sheet was developed by our PEOSH Project for such purposes.

Following the fact sheet recommendations, the department is spending \$500,000 to completely renovate one firehouse and isolate the engine room from the living quarters in the others. Additional ventilation is also being provided for all firehouses.

2. Indoor Air Quality

We received a complaint of poor IAQ in a county library which was compounded by the spraying of insecticide on ornamental ficus trees and cigarette smoke from a nearby lunchroom.

Our investigation found that the insecticide, orthine, was not indicated for indoor use and was shown to have carcinogenic and reproductive effects. We recommended against using this insecticide and referred the misapplication to the DEP who cited the violation.

The smoking problem was resolved through scheduling smoking hours and general recommendations were made to improve the general IAQ.

### 3. School Duplicators

In October, 1986, a complaint was received regarding employee exposure to harmful methyl alcohol vapors. Methyl alcohol was the primary chemical in the ditto fluid used by the school system. Four schools within the school system were identified as using the ditto fluid which contains methyl alcohol. Further investigations revealed the fact that the ditto fluid contained ethylene glycol monoethyl ether (cellosolve), which may cause adverse reproductive effects. The Department of Health assisted the Board of Education in identifying a ditto fluid which neither contains harmful methyl alcohol nor ethylene glycol monoethyl ether, thereby reducing employee exposure and potential for teratogenic effects.

### 4. Contaminated Carpet

In October, 1986, the Department of Health was contacted by employees of a Middlesex County school system to identify the contaminant responsible for the high incidence of respiratory ailments among teachers and students at a particular school. After questioning the school board's administrators, it was apparent that the respiratory problems were due to a concentrated rug cleaner containing sodium borates, which was improperly applied to the carpet in the school. Sodium borates can cause chronic stomach pain, eye, skin and respiratory irritation. In addition, acute health effects ranged from severe poisoning to death.

After careful analysis of the complaints from teachers and students, air sampling results, pH test results, school nurse records and the general appearance and condition of the carpeting in the school, the Department of Health recommended that the Board of Education should remove the carpet. The carpet was removed and all adverse health effects ceased soon thereafter.

Targeted Inspections - Our second and newest activity has been targeted inspections. There are potentially serious problems that may not be brought to our attention by public employees. For these reasons we decided several months ago to set up a special unit to look for violations and hazards in workplaces we know to be high risk. In 1987 we investigated 20 indoor firing ranges either in response to receiving reports of lead poisoning DOL referrals, or as follow-up investigations of recommendations issued in previous years.

Standard Development - Our third major activity has been standard development. Our standard on Direct Exposure to Asbestos has been promulgated. Our standards on Indoor Firing Ranges and Toxic Substances have been approved by the Advisory Board but have not been promulgated by the Department of Labor. A standard on Personal Protective Equipment for Firefighters has been approved by an Interagency Task Force and awaits approval by the Advisory Board. Internal drafts of our Indoor Air Quality Standard and a standard on Carbon Monoxide in Garages and Public Vehicles are almost complete. A standard on Indirect Exposure to Asbestos has been approved by the Advisory Board and revised to comply with Federal regulations on schools.

Our approach to standard setting has been different than OSHA's and more appropriate for public employers than OSHA's general industry approach. For example, rather than require employers to hire industrial hygienists or physicians to do air or medical monitoring, we have taken a design approach, requiring that certain engineering controls or protective equipment be used regardless of measured overexposure. We believe this is the most practical approach for public employers who do not have the resources for monitoring.

Education - A fourth activity of the Project has been education. We respond to hundreds of requests for information by mailing out literature on the law or various health hazards. We did massive mailings on the Asbestos Standard and on alerting schools to the dangers of Picric Acid. We developed a bulletin on controlling diesel fumes in fire stations and are currently developing a bulletin on hazards in schools. We have been conducting training sessions for such groups as local shop stewards, State agency liaisons, school building managers, and local health officers. We have spoken before such groups as the

National Safety Council, the New Jersey Water Pollution Control Association and the American Society of Heating, Refrigeration and Air Conditioning Engineers.

Internal Policy - A fifth activity has been the development of internal policy on such issues as interpretations of OSHA standards, respirators, renovation during occupancy, screening complaints and first aid.

Interagency Policy - A sixth activity has been the development of interagency policy. We have developed policy for working with the Department of Education in schools, the Department of Community Affairs on Ventilation Problems and the Department of Labor on issuing orders to comply and on developing standards. We also produced a complaint form that is now being used by all 3 agencies.

Data Management - A seventh activity has been the creation of a data management system which computerizes statistics on complaints, inspections, and citations. This system could be adopted by the other agencies if they so desire.

#### FUTURE PROGRAM DEVELOPMENT

There have been inherent difficulties related to the interagency administration of the Act. Such interagency problems occur in other state and federal programs, particularly in very new and developing programs. Our department has been relatively successful at resolving these problems in the past and we are optimistic that many of the problems with the functioning of

PEOSHA cited in the previous hearing will also be resolved. For example, we have coordinated two major programs with the Department of Environmental Protection: Right to Know and Risk Assessment. After some initial problems due mainly to insufficient communication, we have successfully coordinated these activities and have worked out a joint agreement for our risk assessment activities with DEP.

Similarly, we are now in the process of establishing a PEOSH interagency task force with representatives from each department reporting to the respective Commissioners. This task force will meet monthly and report back routinely to the Commissioners regarding unresolved issues.

We are also proposing a streamlining of the current procedures for the development, review and adoption of standards, and will work with the departments involved to revise and finalize these procedures.

Finally, I would like to make a recommendation to both the legislature and the other Departments involved and the public. That is to take the unique opportunity available to us to become leaders in the field of public employee safety and health. Too often, in response to our efforts, we have heard the refrain "OSHA does it this way, why should we be different". We should not make the same mistakes as OSHA, which has been criticized for its very narrow approach to occupational health in the private sector. In New Jersey, we have the ability and opportunity to be better than OSHA and to have the best public sector program in the country if we have strong and innovative leadership and if we can maintain flexibility, creativity and commitment among our agencies and legislators who shape the program.